OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 2 July 2003

The Council met at half-past Two o'clock

MEMBERS PRESENT:

THE PRESIDENT
THE HONOURABLE MRS RITA FAN HSU LAI-TAI, G.B.S., J.P.

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

THE HONOURABLE JAMES TIEN PEI-CHUN, G.B.S., J.P.

DR THE HONOURABLE DAVID CHU YU-LIN, J.P.

THE HONOURABLE CYD HO SAU-LAN

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

DR THE HONOURABLE ERIC LI KA-CHEUNG, G.B.S., J.P.

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

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

THE HONOURABLE NG LEUNG-SING, J.P.

THE HONOURABLE MARGARET NG

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

THE HONOURABLE JAMES TO KUN-SUN

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE HUI CHEUNG-CHING, J.P.

THE HONOURABLE CHAN KWOK-KEUNG, J.P.

THE HONOURABLE CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, J.P.

THE HONOURABLE CHAN KAM-LAM, J.P.

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

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE SIN CHUNG-KAI

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

DR THE HONOURABLE PHILIP WONG YU-HONG, G.B.S.

THE HONOURABLE WONG YUNG-KAN

THE HONOURABLE JASPER TSANG YOK-SING, G.B.S., J.P.

THE HONOURABLE HOWARD YOUNG, S.B.S., J.P.

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE YEUNG YIU-CHUNG, B.B.S.

THE HONOURABLE LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

THE HONOURABLE AMBROSE LAU HON-CHUEN, G.B.S., 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

DR THE HONOURABLE LAW CHI-KWONG, J.P.

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

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

THE HONOURABLE LI FUNG-YING, J.P.

THE HONOURABLE TOMMY CHEUNG YU-YAN, J.P.

THE HONOURABLE MICHAEL MAK KWOK-FUNG

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE LEUNG FU-WAH, M.H., J.P.

DR THE HONOURABLE LO WING-LOK, J.P.

THE HONOURABLE WONG SING-CHI

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE IP KWOK-HIM, J.P.

THE HONOURABLE LAU PING-CHEUNG

THE HONOURABLE AUDREY EU YUET-MEE, S.C., J.P.

THE HONOURABLE MA FUNG-KWOK, J.P.

MEMBERS ABSENT:

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

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

THE HONOURABLE ABRAHAM SHEK LAI-HIM, J.P.

THE HONOURABLE HENRY WU KING-CHEONG, B.B.S., J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE DONALD TSANG YAM-KUEN, G.B.M., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE ANTONY LEUNG KAM-CHUNG, G.B.S., J.P.
THE FINANCIAL SECRETARY

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

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY

THE HONOURABLE MICHAEL SUEN MING-YEUNG, G.B.S., J.P.
SECRETARY FOR HOUSING, PLANNING AND LANDS

DR THE HONOURABLE PATRICK HO CHI-PING, J.P.
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE STEPHEN IP SHU-KWAN, G.B.S., J.P.
SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR

DR THE HONOURABLE SARAH LIAO SAU-TUNG, J.P.
SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS

THE HONOURABLE FREDERICK MA SI-HANG, J.P.
SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY

THE HONOURABLE STEPHEN LAM SUI-LUNG, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

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

TABLING OF PAPERS

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

Subsidiary Legislation/Instruments	*L.N. No.*
Ocean Park Bylaw	163/2003
Declaration of Change of Titles (Government Land Transport Agency, Government Land Transport Administrator, Government Supplies Department, Director of Government Supplies, Printing Department and Government Printer) Notice 2003.....	164/2003

Other Papers

No. 93 — Report of the Independent Police Complaints Council 2002

No. 94 — Independent Commission Against Corruption Complaints Committee Annual Report 2002

No. 95 — 2002 Annual Report by the Commissioner of the Independent Commission Against Corruption

No. 96 — Construction Industry Training Authority Annual Report 2002

No. 97 — Hong Kong Trade Development Council Annual Report 2002/03

No. 98 — Airport Authority Hong Kong Annual Report 2002/2003

No. 99 — The Fifteenth Annual Report of the Ombudsman, Hong Kong (June 2003)

No. 100 — Sir David Trench Fund for Recreation
Trustee's Report 2002-2003

Report of the Panel on Manpower 2002/2003

Report of the Panel on Commerce and Industry 2002/2003

Report of the Panel on Public Service 2002/2003

Report of the Panel on Administration of Justice and Legal Services 2002/2003

Report of the Panel on Home Affairs 2002/2003

Report of the Panel on Food Safety and Environmental Hygiene 2002/2003

Report of the Panel on Education 2002/2003

Report of the Panel on Planning, Lands and Works 2002/2003

Report of the Panel on Welfare Services 2002/2003

Report of the Panel on Information Technology and Broadcasting 2002/2003

Report of the Panel on Health Services 2002/2003

Report of the Panel on Environmental Affairs 2002/2003

Report of the Bills Committee on Chemical Weapons (Convention) Bill

Report of the Bills Committee on Copyright (Amendment) Bill 2001 and Copyright (Amendment) Bill 2003 in respect of the first bill

Report of the Bills Committee on Companies (Amendment) Bill 2002

Report of the Bills Committee on Legislative Council (Amendment) Bill 2003

ADDRESSES

PRESIDENT (in Cantonese): Addresses. Dr Eric LI will address the Council on the Report of the Independent Police Complaints Council 2002.

Report of the Independent Police Complaints Council 2002

DR ERIC LI: Madam President, on behalf of the Independent Police Complaints Council (IPCC), may I present the Report of the IPCC 2002.

The IPCC is an independent body whose members are appointed by the Chief Executive. Its main duty is to monitor and review the investigation conducted by the Complaints Against Police Office (CAPO) of the Hong Kong Police Force into complaints against the police to ensure impartiality and thoroughness. When examining the investigation reports, the IPCC can ask the CAPO to clarify areas of doubt or request the CAPO to reinvestigate a complaint if it is not satisfied with the investigation result. Where necessary, the IPCC may also interview witnesses including the complainants, complainees and professionals such as forensic pathologists, for further information or expert advice. A case will not be finalized until the IPCC has endorsed the CAPO's investigation results.

In 2002, the IPCC reviewed and endorsed a total of 3 607 complaint cases involving 6 213 allegations, an increase of 67 cases and 110 allegations when compared with the corresponding figures of 3 540 and 6 103 in 2001. Allegations of "Assault", "Misconduct/Improper Manner/Offensive Language" and "Neglect of Duty" constituted 81.5% of the complaints, representing a decrease of 0.1% when compared with the figure of 81.6% recorded for 2001. Of the 6 213 allegations endorsed, 97 were classified as "Substantiated", 149 were "Substantiated Other Than Reported", 19 were "Not Fully Substantiated", 986 were "Unsubstantiated", 354 were "False", 397 were "No Fault", 16 were "Curtailed", 1 827 were "Withdrawn", 699 were "Not Pursuable", and the remaining 1 669 allegations, which were of a very minor nature, such as impoliteness, were resolved by "Informal Resolution", that is, mediation by a senior police officer who is at least at the Chief Inspector of Police rank in the complainee's division. The substantiation rate in relation to the 2 002 fully investigated allegations in 2002 was 13.2%.

In 2002, the IPCC raised 704 queries on the CAPO's investigation reports, asking for clarifications on ambiguous points or questioning the results of investigations. Subsequently, the results of investigation of 84 allegations were changed. Arising from the investigation results endorsed by the IPCC in 2002, criminal proceedings, disciplinary and other forms of internal actions were taken against 299 police officers. The IPCC also suggested improvements to police procedures where appropriate.

To provide a higher level of service, the IPCC has promulgated a set of performance pledges in terms of standard response time in handling public inquiries and monitoring complaints against the police. The performance of the IPCC in meeting its pledges in 2002 was satisfactory. 99% of normal cases were endorsed within the pledged period of three months. In addition, 99.6% of complicated cases and 100% of appeal cases were endorsed within the pledged period of six months. With experience gained from operation in past years, the IPCC will strive to maintain a high level of performance in future.

Although the IPCC plays no part in the actual investigation, IPCC members and Lay Observers, through the IPCC Observers Scheme, can observe the conducting of investigations and interviews by the CAPO on a scheduled or surprise basis. In 2002, 260 observations were arranged under the IPCC Observers Scheme. After each observation, the Observers report to the IPCC as to whether the CAPO has conducted the investigation in a thorough and impartial manner. Their feedback has been useful for the IPCC in monitoring the complaint cases.

During 2002, the IPCC organized a series of programmes to publicize its functions and image. A Video Production Competition was organized in which students of local universities and tertiary institutions were invited to participate. The IPCC aimed at enhancing, through the competition, the younger generation's understanding of the IPCC's work. In addition, the IPCC also produced jointly with the Radio Television Hong Kong a corporate video on the IPCC's work. Through the video, the IPCC aimed at further promoting public awareness and understanding of the operation of the police complaints system in Hong Kong and the functions of the IPCC.

Madam President, to sum up, 2002 was a busy and successful year for the IPCC. Details of the activities of the IPCC and some complaint cases of interest are given in the Report of the IPCC 2002. We shall continue to keep up

with the high standard of thoroughness and impartiality in our monitoring and review of investigations into public complaints against the police. We understand that the Administration will introduce the Independent Police Complaints Council Bill to the Legislative Council to make the IPCC a statutory body, and we hope that this can further enhance the monitoring function of the IPCC and public confidence in the police complaints system.

Thank you.

PRESIDENT (in Cantonese): Mr Tommy CHEUNG will address the Council on the Independent Commission Against Corruption Complaints Committee Annual Report 2002.

Independent Commission Against Corruption Complaints Committee Annual Report 2002

MR TOMMY CHEUNG: Madam President, as a member of the Independent Commission Against Corruption Complaints Committee (the Committee), I hereby table the Independent Commission Against Corruption Complaints Committee Annual Report 2002 to this Council on behalf of the Committee.

This is the eighth annual report published by the Committee. The Report explains in detail the functions and mode of operation of the Committee, and summarizes the work handled by the Committee in the past year. In 2002, the Committee held three meetings during the year to discuss all papers and investigation reports and formed an independent view on the investigation findings concerning the complaints. An important and positive effect of this complaints handling mechanism is that through examination of issues brought up in complaints, both the Independent Commission Against Corruption (ICAC) and the Committee are able to carefully scrutinize the ICAC's internal procedures, guidelines and practices to see whether these need to be updated, clarified or formalized, with a view to making improvements.

Through publishing the annual report, the Committee hopes to report to the public on a regular basis the work done by the Committee and to enhance public understanding on the ICAC's complaints handling mechanism. Should

Members have any comments regarding the annual report, they are welcome to forward them to the Secretary of the Committee. I so submit.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr SIN Chung-kai will address the Council on the 2002 Annual Report by the Commissioner of the Independent Commission Against Corruption.

2002 Annual Report by the Commissioner of the Independent Commission Against Corruption

MR SIN CHUNG-KAI (in Cantonese): Madam President, as a member of the Advisory Committee on Corruption, I feel honoured in briefing Members here on the 2002 Annual Report by the Commissioner of the Independent Commission Against Corruption tabled before this Council today.

Last year, the Independent Commission Against Corruption (ICAC) received 4 371 corruption reports, representing a reduction of 105 reports and a 2% drop from the 4 476 reports registered in 2001. This reduction can be seen as a halt to the ascending trend of corruption reports recorded over the past few years. This is really an encouraging trend. In spite of this, the ICAC has not relaxed its efforts. During the year, the ICAC has continued to strengthen its liaison with other enforcement agencies, both locally and overseas, to facilitate co-operation in the investigation of cases and to promote the exchange of information and best practices in the fight against corruption.

In the area of investigation, the ICAC continues with its proactive strategy, in which the use of informants, undercover operations and analysis of intelligence combined to detect corruption cases which might otherwise go unreported. In order to combat the various corruption offences that involve the use of information technology, the Computer Forensics and Research & Development Section has provided technical assistance to mainstream investigators in preserving, seizing, examining and analysing computer data with a view to ensuring that the relevant data could be adduced in court as admissible evidence.

As regards community relations, the ICAC continues to render assistance to government departments in promoting preventive education work, formulating departmental guidelines on staff conduct and in drawing up tailor-made integrity training programmes for civil servants, so as to entrench a culture of probity within the Civil Service. As for the business sector, the ICAC continues to co-operate and develop partnership with related regulatory and professional organizations in promoting good corporate governance and ethical practice in various industries including banking, insurance, construction, tourism, telecommunications and retailing. The ICAC further broadened the horizon of its moral education endeavours for the younger generation by launching the first web-based Moral Education Resource Centre for teachers in Hong Kong. In order to promote probity messages and enlist the support of the community for its work, the ICAC launched the Community Integrity Programme, under which various activities were jointly organized with the 18 District Councils and district organizations. To maintain public vigilance against the evils of corruption, the ICAC made extensive use of the mass media to hammer home anti-corruption messages, including the launch of a new Announcement of Public Interest and the telecast of a house-produced programme on the mobile broadcast network of franchised buses.

Regarding the area of corruption prevention, in 2002, the ICAC completed 105 assignment reports concerning government departments. The areas examined included conducting several studies on the procurement systems and procedures of individual departments as well as reviewing the procedures for awarding and managing project contracts of public works departments, so as to step up the work of corruption prevention in public construction works. In selecting areas for examination, the Corruption Prevention Department would give priority to corruption loopholes revealed in investigations carried out by the Operations Department. Furthermore, the ICAC also continues to provide free and confidential corruption prevention consultation services on its initiative to private firms, particularly those small and medium enterprises lacking experience or ability to handle internal management control problems. During the year, the ICAC has made 334 corruption prevention suggestions to the organizations concerned.

Madam President, the Commissioner for the ICAC and I would like to take this opportunity to thank this Council and members of the public for their support, and the members of the Advisory Committee on Corruption for their valuable contribution during the year. We would also like to pay tribute to all loyal and dedicated staff of the ICAC.

PRESIDENT (in Cantonese): Mr LAU Chin-shek will address the Council on the Report of the Panel on Manpower 2002/2003.

Report of the Panel on Manpower 2002/2003

MR LAU CHIN-SHEK (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Manpower, I now present to the Legislative Council the report on the work of the Panel during the year 2002-03, and highlight a few major areas of work of the Panel.

Some members expressed support for the proposal of the Administration to adjust downwards the minimum allowable wage of foreign domestic helpers (FDHs) by $400 with effect from 1 April 2003. These members were of the view that the downward adjustment of the wage of FDHs is reasonable, particularly in a period of economic downturn, and this would also promote the employment opportunities of local domestic helpers.

Some other members expressed opposition to the proposed reduction of the minimum allowable wage of FDHs and queried the mechanism adopted for adjustment of the minimum allowable wage.

The Administration maintained that, in adjusting the minimum allowable wage, it had taken into account the general economic and employment situations of Hong Kong, and had made reference to a host of economic indicators, including the relevant pay trends, price indices, unemployment rate and labour market situation.

Regarding the Administration's proposal of imposing an Employees Retraining Levy (the levy) of $400 per month for each FDH employed on employers of FDHs with effect from 1 October 2003, some members were supportive. Among these members, some of them considered that the levy should also be imposed on all employers of imported employees, including those importing employees under the Admission of Talents Scheme and the Admission of Mainland Professionals Scheme. They also called upon the Administration to comprehensively review the policy on importation of FDHs with a view to improving the employment of local workers.

Some other members were of the view that the legislative intent of the Employees Retraining Ordinance (ERO) did not cover FDHs as imported foreign workers were under a labour importation scheme. These members queried whether the ERO gave such a power to the Administration to impose a levy on employers of FDHs without the need to legislate. They were of the view that as the levy proposal was a fundamental change in policy affecting some 200 000 employers, the public, the Labour Advisory Board, and the Legislative Council should be consulted.

At the meeting held on 6 May 2003, the Panel discussed the employment relief measures proposed by the Government in response to the outbreak of the atypical pneumonia in Hong Kong. Members were in support of the various measures proposed by the Government, including the Skills Enhancement Project and initiatives to create short-term job opportunities to ease unemployment. However, members considered that the Skills Enhancement Project should not be confined to the retail, catering, hotel and tourism industries. As for the Skills Enhancement Project, members were of the opinion that it should be extended to workers of all sectors. Some members expressed concern that the measures introduced by the Education and Manpower Bureau could not address the difficulties faced by operators and employees of kindergartens and child care centres because of the suspension of classes. Members pointed out that the employers and employees of all sectors had been hard hit by the epidemic, and therefore urged the Government to also implement measures to help them tide over the difficulties brought about by this epidemic.

The Administration subsequently suggested to implement further measures to create job and retraining opportunities to mitigate the impact brought about by atypical pneumonia. Members supported the proposal of creating about 32 000 job and retraining opportunities, and hoped that the duration of such short-term jobs could be extended to one year. Members also hoped that, among such jobs, those that were related to the improvement of environmental hygiene and keeping Hong Kong clean could be converted into permanent ones.

Some members expressed concern about the issue of arrears of wages. To streamline the procedures involved and to expedite the process so as to enable employees to receive early repayment of the unpaid wages, these members suggested that the feasibility of the Labour Department providing a one-stop service to handle cases of arrears of wages should be explored.

Regarding the proposed one-stop service, the Administration pointed out that it was a very complex issue as the process in question involved a large number of parties, including the enforcement agencies and the Judiciary. The Administration assured the Panel that it would continue to discuss the matter with the Judiciary with a view to simplifying and streamlining the existing procedures.

The Panel expressed concern about the provision of training and retraining courses for the unemployed. Given the broad range of tasks of the Manpower Development Committee (MDC), members were concerned that the Committee might neglect the importance of retraining. Some members pointed out that the various training and retraining schemes, for instance, the Employees Retraining Scheme, the Skills Upgrading Scheme and courses under the Continuing Education Fund, had failed to address the problem faced by unemployed persons aged above 19 and below 30, so they urged the Administration to conduct a comprehensive review in this regard.

The Administration assured the Panel that the Government would continue to attach great importance to retraining for the unemployed. The MDC would examine the scope, funding arrangement and mode of operation of the existing retraining schemes. The Administration undertook to revert to the Panel once MDC had finalized its proposals.

I would like to take this opportunity to thank members for their contribution to the work of the Panel. I would also like to express my gratitude to colleagues of the Secretariat, simultaneous interpreters, Honourable colleagues and the staff working in this Chamber for their assistance. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr Kenneth TING will address the Council on the Report of the Panel on Commerce and Industry 2002/2003.

Report of the Panel on Commerce and Industry 2002/2003

MR KENNETH TING (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Commerce and Industry, I present the report on the work of the Panel during the year 2002-03, and give a brief account on the major areas of work in the report.

The Swiss Government's decree barring Hong Kong exhibitors from participating in the World Jewellery and Watch Fair 2003 because of the outbreak of the Severe Acute Respiratory Syndrome had aroused grave concern of the Panel. The Panel met with affected traders and urged the Administration to proactively take follow-up actions, which included lodging a complaint with the World Trade Organization, seeking compensation from the fair organizer for exhibitors, and so on. The Panel also called on the Administration to maintain close contact with foreign governments and event organizers to prevent recurrence of similar incidents.

As regards the provision of front-end electronic data interchange services to the trading community, the Panel welcomed the appointment of new service provider after the expiry of the franchise of Tradelink by the end of 2003 in order to bring in competition. The Panel also supported the Administration in enhancing its back-end computer system to enable carriers to submit their cargo manifests electronically.

As regards the import, export and transshipment of cargoes, the Panel supported the Administration in removing the licensing requirement of certain categories of articles. However, on the grounds of security and public safety, existing control measures on strategic commodities, firearms and ammunition should be maintained. The Administration undertook to review related measures and consult the trade and overseas governments.

On the protection of intellectual property, the Panel welcomed the implementation of the new Trade Marks Ordinance since April 2003 to simplify the procedures for registering marks. Although the Panel agreed that prescribing the copyright registers would relieve the difficulty encountered by overseas copyright owners in producing proof in legal proceedings, that is, the provision of true copies of the copyright works, they strongly requested the Administration to consider establishing a similar register system in Hong Kong so that local copyright owners could also benefit. The Administration undertook to consider the views of the Panel and revert to them in due course.

As the small and medium enterprises (SMEs) are the major component of the local commercial and industrial sector, the Panel welcomed the implementation of a series of measures to improve the funding schemes for SMEs, for example, raising the ceilings of grant for individual funds, expanding the scope of individual schemes, deploying resources of the funds in a flexible manner, and so on, to better meet the needs of SMEs.

On promoting inward investments, the Panel discussed in detail how the resources of Invest Hong Kong should be deployed to boost investment promotion work. The Panel also put forward specific suggestions such as putting more resources in new markets that can attract investments to Hong Kong, increasing joint investment promotion activities with the Pearl River Delta, and so on. The Panel also supported the Administration in its capital investment in the construction of a new exhibition centre at Chap Lap Kok to enhance the competitiveness of Hong Kong and capture the growing exhibition business. The Panel would also follow closely the details and implementation of the Mainland and Hong Kong Closer Economic Partnership Arrangement announced last week.

As regards infrastructural support for technology-related industries, the Panel discussed the recommendations of the consultancy study to review the role, management and operation of the Hong Kong Productivity Council. The Panel also examined the performance and monitoring system of the Innovation and Technology Fund and Applied Research Fund.

The report also gives a detailed account on the work of the Panel in other areas. On behalf of the Panel, I would like to thank Panel members for their co-operation and the Secretariat for its assistance. Thank you, Madam President.

PRESIDENT (in Cantonese): Mr TAM Yiu-chung will address the Council on the Report of the Panel on Public Service 2002/2003.

Report of the Panel on Public Service 2002/2003

MR TAM YIU-CHUNG (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Public Service, I present to the Legislative Council the report on the work of the Panel from October 2002 to June 2003.

The report gives an account on the major work of the Panel in the past year. I would like to highlight a few key issues here.

During the past year, Hong Kong has had a difficult time during which people suffered from an economic downturn, rising unemployment and falling wages. Given the budget deficit problem, the Administration set the objective of cutting public expenditure by $20 billion to $200 billion by 2006-07. To achieve this objective, the Administration sought to reduce the establishment of the Civil Service and its expenditure on civil service pay and allowances. While the Panel considered that civil servants should share the burden with the community to tackle the budget deficit problem, it was concerned about the extent of the reduction and the impact of it on the Civil Service and the quality of public services.

On containing the size of the Civil Service, the Chief Executive had stated in his policy address delivered in January this year that the civil service establishment would be reduced by 10% to about 160 000 by 2006-07. In this connection, the Chief Executive announced two initiatives, namely, the introduction of the general civil service recruitment freeze with effect from 1 April this year and the Second Voluntary Retirement Scheme. The Panel was concerned whether further actions would be taken if the target could not be achieved through these measures and natural wastage. The Secretary for the Civil Service stated that the Administration would not rule out any feasible options to achieve the target of reduction in civil service establishment, including the option of forced redundancy. The Panel was concerned that the Secretary's remarks seemed to be contradictory to the Chief Executive's undertaking made in October last year that no forced redundancy would be carried out during his term of office. The Secretary clarified that there was no plan of forced redundancy at this stage and assured the Panel that before making any policy changes, the Administration would take into consideration the overall social and economic circumstances and consult staff-side representatives on the details of the proposals.

The civil service pay adjustment this year, as in the previous two years, remained a contentious issue. The Panel again urged for the implementation of civil service pay adjustment through a lawful, fair and reasonable mechanism. The Panel was pleased to note that the Secretary for the Civil Service had reached consensus with the staff-side representatives in February this year on the pay adjustment issue. Under the consensus, the dollar value of all civil service pay points would be restored to the levels as at 30 June 1997 in cash terms.

However, as regards the Administration's decision to introduce legislation to implement the pay reduction, the Panel again urged the Government to introduce general enabling legislation on the civil service pay adjustment mechanism as soon as possible, providing the legal framework for implementing upward and downward pay adjustments. The Administration planned to finalize the development of an improved civil service pay adjustment mechanism in 2004. The Administration would further consider the need for such general enabling legislation in developing this mechanism. The Panel called for early completion of this project.

Apart from pay adjustment, the Panel also supported the Administration to carry out a comprehensive review of all civil service allowances to bring the provision of allowances in line with present-day circumstances. As regards the job-related allowances for civilian grades, the Panel supported the Administration to defer the review of the hardship allowances payable for performing such duties as cleansing, drainage/sewer cleaning and waste/blood/dead bodies handling by six months. The Panel fully understood that during the outbreak of the Severe Acute Respiratory Syndrome in the recent months, the front-line staff who performed these duties had been facing tremendous work pressure. The Panel commended their efforts in tackling the epidemic.

On the other hand, the Panel would continue to follow up the initiatives for civil service reform in examining the streamlined procedure for handling persistent substandard performers and the disciplinary mechanism for civil servants. The Panel urged the Administration to ensure sufficient protection of the legitimate rights of the officers concerned and the efficiency and effectiveness of the relevant process and mechanism.

Lastly, I would like to take this opportunity to thank Panel members and the Secretariat for their contribution to the work of the Panel.

I so submit.

PRESIDENT (in Cantonese): Miss Margaret NG will address the Council on the Report of the Panel on Administration of Justice and Legal Services 2002/2003.

Report of the Panel on Administration of Justice and Legal Services 2002/2003

MISS MARGARET NG: Madam President, in my capacity as the Chairman of the Panel on Administration of Justice and Legal Services, I shall highlight the major work of the Panel in the 2002-03 Legislative Session. Members are invited to refer to the Panel's Report submitted to this Council for details.

The Government's Consultation Document on "Proposals to implement Article 23 of the Basic Law" was by far the most controversial issue considered by the Panel. Between September 2002 and January 2003, this Panel and the Panel on Security held 12 joint meetings on it, seven of which were for the purpose of receiving public views. A total of 271 organizations/individuals had made submissions to the two Panels, 114 of them had given oral representations.

Some members and deputations had urged the Administration to issue a White Bill setting out the details of legislative provisions for public consultation, before introducing a Blue Bill. Some other members and deputations expressed their support for the enactment of legislation to implement Article 23 of the Basic Law (Article 23) and considered that there was no need to issue a White Bill.

The two Panels held a joint meeting in February 2003 to discuss the Compendium of Submissions (the Compendium) issued by the Administration after the three-month public consultation exercise. Some members were dissatisfied that the Administration had merely classified the views received into three categories according to whether they supported the implementation of Article 23 by legislation. They also pointed out that some organizations had complained that their submissions were either not included in the Compendium or wrongly classified. The Administration had subsequently issued an addendum and a CD-ROM on the updated Compendium.

The two Panels also held a joint meeting in February 2003 to receive a briefing by the Administration on the National Security (Legislative Provisions) Bill to implement Article 23. The Administration had made a number of changes to its original proposals, not all members found the changes adequate. Some members remained strongly opposed to the introduction of the Bill.

The Panel was briefed on the cost saving proposals to be implemented by the Judiciary in 2003-04. The Panel noted that further savings would be

required in the years 2004 to 2007. Some members expressed the concern about the impact of the cost saving measures on the quality of justice. They considered that the Judiciary, being independent from the executive authority, should not be bound by the Government's target to reduce operating expenditure. The Panel passed a motion to urge the Judiciary not to introduce, for the purpose of implementing the Administration's austerity programme, any cost saving measures which would adversely affect the quality of judicial services.

The Panel was informed of the Judiciary's proposal to engage a legal publisher to translate and publish three Case Books on Criminal Law, Land Law and Employment Law respectively. The Case Books contained Chinese translation of excerpts from commonly cited judgements in English of courts in Hong Kong and courts in other common law jurisdictions. Some members had expressed the concern about the standard of the translated judgements and the legal status of the translated court judgements.

The Judiciary advised that the authentic and the only authentic version of a judgement was the one in the language in which the judgement was delivered, be it English or Chinese. The translated version of a judgement has no legal status as a judgement. Where the whole judgement was translated, in-house translators of the Court Language Section of the Judiciary was responsible for the work, and there was no immediate plan to change the arrangement.

Some members of the Panel requested the Judiciary to consider implementing a formal mechanism for handling complaints against the conduct of judges. The Judiciary considered the present mechanism a formal and effective system, and achieved a right balance between proper handling of complaints against judges and respect for judicial independence. In response to the Panel's request for measures to enhance the transparency of the complaint handling procedure, the Judiciary had published a leaflet on "Complaints against a judge's conduct" on 21 May 2003 for public information.

Arising from the arrest by the police of a witness giving evidence in civil trial in the High Court on 11 March 2003, the police gave an account of the incident to the Panel. Some members considered that the arrest action amounted to a contempt of court and obstruction of the due process of administration of justice. The Panel requested the police and the Judiciary to promulgate guidelines governing arrests made within a court building, or the arrest of persons participating in legal proceedings. The police had

subsequently prepared the "Police Guidelines on Arrest of Wanted Persons in Court Buildings". The Judiciary had also advised that it would prepare its internal guidelines.

The Panel discussed the issue of payment of compensation to persons who had served terms of imprisonment as a result of a criminal conviction, which was quashed on appeal or found to have been secured wrongfully. The Panel was advised that there were two compensation schemes, one was administrative and *ex gratia* in nature, and the other was the statutory compensation scheme under Article 11(5) of the Hong Kong Bill of Rights Ordinance. In response to the request of the Panel to promote public awareness of the two compensation schemes, the Administration had proposed that information on the two schemes be included in the website of the Department of Justice, and provided to the two legal professional bodies and law schools. In addition, the prosecuting counsel would be instructed, in cases where issues of miscarriage of justice arose, to inform as appropriate the Court, the defendant or his legal representative of the possibility of making a claim under either of the compensation schemes.

The Panel held two meetings with the Panel on Manpower to discuss the operation of the Labour Tribunal. The Panels received views from major labour organizations and employers' associations. The Panels requested the Administration to implement short-term measures to improve the operation of the Labour Tribunal and to conduct an overall review on the practice and procedures of the Labour Tribunal. I am glad to report that the Judiciary had advised the Panels last week that the Chief Justice has decided to appoint an internal Working Party to conduct a review. The outcome of the review would be reported to the Panels in early 2004.

In the last Legislative Session, the Panel formed a working group to examine issues relating to the provision of legal aid services. After considering the views received from interested organizations, the Panel identified a list of issues for review by the Administration.

At the last Panel meeting on 23 June 2003, the Administration briefed members on its findings on the annual review of financial eligibility limits of legal aid applicants to take account of inflation, and the biennial review to take account also of changes in litigation costs. The Administration proposed that the financial eligibility limits for the Ordinary Legal Aid Scheme and the

Supplementary Legal Aid Scheme be revised from $169,700 to $163,080, and from $471,600 to $453,200 respectively. As there was no conclusive evidence to show that significant changes in litigation costs had taken place in the past years, the current downward adjustment of the financial limits was proposed solely on the basis of consumer price changes.

At the next Panel meeting in July, members will continue discussion with the Administration on the outcome of the five-yearly review of the criteria used to assess the financial eligibility of legal aid applicants. The Administration will also give an overall response to the issues identified by the Panel for review by the Administration.

Madam President, these are my short remarks on the Report.

PRESIDENT (in Cantonese): Mr Andrew CHENG will address this Council on the Report of the Panel on Home Affairs 2002/2003.

Report of the Panel on Home Affairs 2002/2003

MR ANDREW CHENG (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Home Affairs, I would like to report on the work of the Panel during the Legislative Session of 2002-03.

Over the past year, the Panel discussed many issues of importance. I would like to make a brief report here on the two important issues of human rights as well as arts, culture, recreation and sport.

The Panel had been monitoring the submission of reports to the United Nations under various international human rights treaties by the Government of the Hong Kong Special Administrative Region (SAR) and its progress in following up the recommendations made by the relevant United Nations Treaty Monitoring Bodies in respect of these reports. Some members expressed dissatisfaction that the Administration had only published the broad outlines of the reports to be prepared under the respective international human rights treaties for consultation. They considered that the Administration should follow the good practice of some countries to release the draft reports for public consultation.

Some members expressed disappointment that the SAR Government had made little progress in following up the recommendations made by the relevant Treaty Monitoring Bodies concerned. These members had been requesting that the Administration should introduce legislation against racial discrimination in the private sector without further delay. The Administration recently announced that it would conduct a public consultation on the issue of introducing legislation against racial discrimination by the end of the year. I believe the Panel would follow up the related issues in due course.

The Panel discussed the issue of establishing an effective monitoring mechanism for the implementation of human rights treaties in Hong Kong with concern groups and the Administration. In response to the request made by the Panel, the Administration agreed to provide reports on annual overviews of developments relating to the various human rights treaties as applied to Hong Kong so as to enhance the monitoring role of the Legislative Council in this area.

Some members expressed disappointment that the SAR Government had continued to ignore the recommendations of the relevant Treaty Monitoring Body and refuse to establish a human rights commission. These members considered that in the absence of such an institution, it would not be possible to monitor effectively the implementation of human rights treaties in Hong Kong.

The Administration said it would examine thoroughly the role and functions of the recommended human rights commission in the light of local situations so as to determine if it would be appropriate to establish such a commission in Hong Kong. The Panel had requested the Research and Library Services Division of the Legislative Council Secretariat to conduct a research study on the establishment of a human rights commission and the monitoring mechanisms for the implementation of human rights treaties in other places. The Panel would further discuss the issue pending the completion of the research study.

Madam President, in the area of arts, culture, recreation and sport, the Panel discussed with the Secretary for Home Affairs the priorities in respect of the provision of sports, recreational and cultural facilities under the current budgetary constraints. Members worried that the Administration would further delay the projects for constructing cultural and performing facilities in the districts.

The Secretary for Home Affairs informed the Panel that the Administration hoped to enable private sector involvement in the development of

public facilities in order to speed up some works projects under planning. Some members were in support of implementing the Private Sector Involvement Scheme. However, some other members expressed concern that the Scheme might lead to a substantial increase in charges for leisure and cultural service facilities, and commercial consideration might override all other considerations. The Secretary for Home Affairs assured members that even if leisure and cultural service facilities might be privately built and managed, the Government would monitor the quality of service provision and also ensure that the charges for these facilities would be affordable to the general public.

Lastly, Madam President, the Panel had discussed the Culture and Heritage Commission Consultation Paper 2002 with the Commission Chairman and held a special meeting to receive views from organizations concerned on the Paper. Members were generally supportive of the fundamental notions put forward by the Commission for the long-term cultural development of Hong Kong. However, some members worried that the government-appointed Culture Foundation under the proposed administrative framework would take up the responsibility of the Leisure and Cultural Services Department and the Arts Development Council in funding allocation. In that event, it would become easier for the Government to control the cultural development of Hong Kong and such a single source funding mechanism would undermine the pluralistic development of the arts.

Madam President, I so submit.

PRESIDENT (in Cantonese): Mr Fred LI will address this Council on the Report of the Panel on Food Safety and Environmental Hygiene 2002/2003.

Report of the Panel on Food Safety and Environmental Hygiene 2002/2003

MR FRED LI (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Food Safety and Environmental Hygiene, I would like to submit the Report of the Panel to this Council and I shall also speak on a few issues of particular concern to the Panel.

In the area of food safety, the Panel had been closely monitoring the surveillance system and the enhanced hygiene measures to prevent the recurrence

of avian influenza following the three outbreaks in Hong Kong in 1997, 2001 and 2002. The Panel had held further discussions with the Administration on the investigation findings on the last outbreak in February 2002.

The Panel noted that the Agriculture, Fisheries and Conservation Department would assist all farms in implementing the biosecurity plans. Members were generally of the view that if any of these farms were unwilling or incapable of meeting the licensing conditions or hygiene standards, strict enforcement should be taken against them. As regards the introduction of an additional rest day for retail markets, the Panel requested the Administration to further discuss with the trade and provide more scientific data to justify the need for an additional rest day. The Panel urged the Food and Environmental Hygiene Department (FEHD) to conduct more frequent inspections to live poultry stalls in public markets, to ensure that there was no over-stocking of live poultry and all hygiene requirements were strictly complied with.

The Panel was pleased to learn that the Administration decided in May 2003 that there would be universal vaccination of chickens in all local farms, and discussion with the Mainland about vaccinating live mainland chickens supplied to Hong Kong had started.

On the suggestion that the community should discuss the extent to which the live poultry trade should be regulated, most members were of the view that there should be wide public consultation before the Administration took a decision on the matter. The Panel reminded the Administration to carefully balance the need to protect public health and the interest of the live poultry industry.

The Panel had held three meetings to discuss with the Administration and the trade the inspection and quarantine requirements and arrangements for chilled chickens to be imported from the Mainland. To facilitate identification and tracing of the chilled chickens imported from the Mainland, a label of security hologram printed with the letters of "CIQ" would be stuck onto each chilled chicken to show that the chicken had been approved for export to Hong Kong. As regards the trade concern about the possibility of illegal imports, the Administration advised that FEHD and the Customs and Excise Department would step up enforcement and impose stricter penalties against illegal importation and sale of chilled chickens.

On the food labelling system, members generally supported that the Administration should expedite the introduction of a mandatory labelling system on nutrition information of food. However, the Panel expressed keen concern that the Administration had not proposed to introduce a mandatory labelling system for genetically modified food.

The Panel passed a motion at its meeting in March 2003 urging the Administration to set up a mandatory labelling system with reference to the experience of European Union countries, in order to protect public health and the rights of consumers to know and to choose. The Panel requested the Administration to brief the Panel in the next Legislative Session on the outcome of its public consultation on the food labelling proposals.

The Panel generally agreed that "private kitchens", which offered special cuisines and had become a tourist attraction, should be brought under appropriate regulatory control to protect public health. However, members had divergent views over the regulatory framework proposed by the Administration, such as whether these establishments should be allowed to operate in residential buildings and the duration of operating hours. The Panel requested the Administration to revise its proposed regulatory framework for "private kitchens" and revert to the Panel later.

As regards environmental hygiene, in the wake of the outbreak of the Severe Acute Respiratory Syndrome (SARS) in March and April 2003, the Chief Executive announced the setting up of the Team Clean to develop and take forward proposals to improve the state of environmental hygiene in Hong Kong. Special meetings were held by the Panel with the Team Clean and relevant government departments to discuss the Interim Report on Measures to Improve Environmental Hygiene in Hong Kong.

The Panel welcomed the territory-wide cleansing and disinfection exercises to clean up the black spots such as back alleys. Members generally agreed that stringent measures and stricter enforcement should be taken against breaches of food and hygiene laws. As fouling of street by dog faeces and spitting would spread infectious diseases, the Panel suggested that more stringent actions, including an increase in fixed penalty, should be considered to achieve greater deterrence against these offences. The Panel also stressed the importance of making sustainable efforts to keep the environment clean, and the need to involve the community and District Councils in such work.

The Panel considered it necessary to change the hygiene culture through enhanced public education on civic responsibility and hygiene practices. The Panel also urged the Team Clean to review the legislation and existing systems, such as the design of buildings, drainage systems, refuse collection methods and facilities for shops and the food trade to dispose of their refuse. The Panel will further discuss with the Team Clean and relevant departments in August 2003 the longer-term measures to be taken.

The Administration also briefed the Panel on the progress of work of the anti-mosquito campaign. Members welcomed the launching of an enhanced dengue vector surveillance programme. Members were concerned about the mosquito problems on private agricultural land and vacant government sites and urged the Administration to employ more temporary staff to step up anti-mosquito measures.

Details of other items of work of the Panel have been presented in the Report. I shall not repeat such details here.

Madam President, I so submit.

PRESIDENT (in Cantonese): Dr YEUNG Sum will address the Council on the Report of the Panel on Education 2002/2003.

Report of the Panel on Education 2002/2003

DR YEUNG SUM (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Education, I would like to give a brief account on the major work of the Panel during the 2002-03 Legislative Council Session.

On higher education, the Panel discussed with representatives of the Administration, staff associations and students' unions in the higher education sector, and concern organizations on the proposal of the Administration to deregulate salaries of university staff. Most members were of the view that University Grants Committee (UGC)-funded institutions should consult their staff before deciding whether and when to delink their staff salaries from the civil service pay system. Some members even considered that delinking should be

implemented only when there was a new remuneration system, a reliable governance structure and a fair and transparent appeal mechanism in each institution.

The Administration stressed that UGC-funded institutions were free to decide whether and when they should implement delinking after 1 July 2003. The Administration ensured that the institutions adopting new pay packages would not be worse off than if they continued to maintain the link in terms of the public funding they received.

Some members opposed the decision of the Administration to implement the policy of providing sub-degree programmes on a self-financing basis. They urged the Administration to continue the provision of subsidies to sub-degree programmes run by The Hong Kong Polytechnic University and the City University of Hong Kong in view of their history and contribution to the development of the community in the past decades.

The Administration said that requiring UGC-funded institutions to operate sub-degree programmes on a self-financing basis would enable fair competition between new operators of sub-degree programmes and the institutions. This would also help channel resources to where they are most needed. Nevertheless, the Administration would still consider the needs of the community in continuing to fund individual sub-degree programmes.

The Panel discussed the proposed 10% funding cut in the block grant of UGC in the rollover year 2004-05 with the Administration, UGC and organizations concerned. Members noted that the Heads of the eight UGC-funded institutions were concerned that the proposed overall funding cut for 2004-05 would in fact be substantially more than 10%. It was because the proposed reduction did not include the reduction arising from resource-cutting projects including the proposals of making postgraduate and sub-degree programmes operate on a self-financing basis and the reduction in staff salaries. Members requested that the Administration should discuss with the institutions before making any decision on funding cuts, and stressed that any funding cuts should be phased in gradually in order not to cause damage to the operation and development of the institutions.

On primary and secondary education, the Panel had discussed with the Administration on the enhanced School Development and Accountability (SDA) Framework as well as the Academic Value-added Indicator (AVAI) intended to assess the performance of students in schools. Members considered that the Administration should develop a set of territory-wide standards for schools to assess their own performance and in particular, monitor the SDA implementation to increase transparency and public accountability in school education. Members also urged the Administration to monitor the use of AVAI to ensure that schools would not selectively release part of the value-added data with the purpose of boosting student enrolment.

Most members supported the implementation of "small class teaching" in primary schools. Some members expressed reservations about the need to conduct the longitudinal study on "small class teaching" as well as the subsequent proposed study on effective strategies of class and group teaching in schools. They were of the view that since the benefits of "small class teaching" were apparent as it would definitely facilitate class management and improve student-teacher interactions, there was no need for the Administration to conduct any studies which might delay the implementation of "small class teaching". Some members expressed concern about the huge costs incurred for the implementation of "small class teaching". The Administration also pointed out that in view of the substantial resources required for implementing "small class teaching", it needed to conduct a study to find out the relationship between "small class teaching" and its effectiveness on teaching and learning.

On early childhood education, some members pointed out that the quality of pre-primary service was pivotal to the development of the interest to learn among young children. They suggested that the Administration should provide kindergarten teachers and child care workers with education resources centres or websites to exchange views and disseminate successful teaching and learning experiences.

Madam President, I so submit.

PRESIDENT (in Cantonese): Dr TANG Siu-tong will address the Council on the Report of the Panel on Planning, Lands and Works 2002/2003.

Report of the Panel on Planning, Lands and Works 2002/2003

DR TANG SIU-TONG (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Planning, Lands and Works (the Panel), I now present to the Legislative Council a report on the work of the Panel during the period between October 2002 and June 2003.

The report presents the major areas of work of the Panel in the past year. I will now highlight some of them.

In respect of planning, since the existing Town Planning Ordinance was enacted as early as 1939, the Panel considered it necessary to amend the Ordinance in a comprehensive manner so as to improve the statutory planning system. In this connection, the Administration planned to put forward the amendments in stages. While the Panel supported the general direction of the Stage One Amendments to the Ordinance to streamline the town planning process and to enhance the transparency of the planning system, it disapproved of the proposal to shorten the publication period for new plans or amendment to approved plans from two months to one month. As for the proposed amendments of the remaining Stages, the Administration indicated that, subject to the progress of this Council's scrutiny of the Stage One Amendments, the Stage Two Amendments including the amendments relating to the operation of the Town Planning Board (TPB) might be introduced in the 2004-05 Legislative Session. Given the significant role of the TPB in the town planning process, the Panel requested the early introduction of the amendments relating to the TPB. In this connection, the Panel proposed a number of improvements to the composition and operation of the TPB as well as the criteria for appointment of its members. The Administration agreed to consider the suggestions of the Panel.

As regards the Tamar Development Project, the Panel was surprised to note that after it had been consulted by the Administration on the Project in April and presented with the relevant financial proposal for endorsement on 7 May, the Administration announced on 26 May 2003 that it had decided to temporarily put the Project on hold in order to review its expenditure priorities. Members of the Panel criticized the Administration for its way of handling the Project. They opined that the Administration should have considered the financial implications of the Project before submitting it to the Panel. If the Project was considered financially not viable, the proposal should not have been presented to the Panel for consideration. Members of the Panel also expressed concern

about the impact of the Administration's abrupt decision on the faith of the public in the Government, the construction industry, the five prequalified applicants for the Project, this Council, and the progress of construction of the Sha Tin to Central Link. Bearing in mind the concerns of Panel members, the Administration indicated that it would decide on the way forward after the completion of the review.

As for the further development of Tseung Kwan O, the Panel did not support further reclamation and further housing development in Tseung Kwan O. As Tseung Kwan O was flooded with housing blocks, the Panel was of the view that in planning the further development of Tseung Kwan O, consideration should be given to improving the urban design and quality of life, and reducing the population density. The provision of additional open space and amenity facilities was preferable. The Panel also considered it important to strengthen the transport network of Tseung Kwan O to cope with the long-term traffic demand.

In the light of the recent cases of Villa Pinada and The Aegean, the Panel examined the existing system for the pre-sale of uncompleted residential flats under the Land Department's Consent Scheme. The Panel urged for improvement of the Consent Scheme to ensure that flat purchasers would own title to the units, to enhance the transparency of the Consent Scheme, to avoid conflict of interest of the parties concerned, and to ensure proper disbursement of money held in the stakeholder's account. The Administration undertook to consult the relevant professional bodies and concerned parties on the possible measures to improve the existing system. At the request of the Panel, the Administration also undertook to provide progress reports on the review of the existing system.

As regards land registration, the Panel deliberated on the Administration's proposed amendments to the Land Registration Regulations to empower the Land Registrar to remove entries that had become stopped deeds six months after the delivery of the instrument for registration into the land register. In view of the advice given by the Hong Kong Bar Association and the Legal Service Division of the Legislative Council Secretariat, the Panel requested the Administration to review the necessity of effecting the legislative proposals through amendments to the principal ordinance. The Administration undertook to examine this matter.

The Panel would continue to monitor the progress of work of the Urban Renewal Authority (URA). In this connection, the Panel examined the URA's

second five-year Corporate Plan and the annual Business Plan for 2003-04. In order to resolve the ageing of urban areas and to improve the living environment of residents of old districts, the Panel urged the URA to expedite its urban renewal projects.

The Panel would also continue to monitor the Administration's flood control and prevention strategy. Although the overall situation had been improved by flood mitigation projects, the Panel expressed concern that the flooding problem was still not fully resolved. The Panel urged the Administration to adopt an effective approach to tackle the flooding problem at root, that is, to tackle the problem at the planning stage. The Panel also urged the Administration to adopt effective measures to ensure timely relief during flooding and the activation of the mechanism for emergency evacuation of villagers affected by flooding.

Lastly, I wish to take this opportunity to thank members of the Panel for their contribution to the work of the Panel and to sincerely thank the Legislative Council Secretariat for its assistance.

Madam President, I so submit.

PRESIDENT (in Cantonese): Dr LAW Chi-kwong will address the Council on the Report of the Panel on Welfare Services 2002/2003.

Report of the Panel on Welfare Services 2002/2003

DR LAW CHI-KWONG (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Welfare Services (the Panel), I now present to the Legislative Council a report on the work of the Panel during the year 2002-03, and highlight some of the major areas of work of the Panel.

In May 2003, the Administration reported to the Panel the work of the Social Welfare Department (SWD) in assisting vulnerable members of the community during the outbreak of Severe Acute Respiratory Syndrome (SARS).

Members of the Panel were particularly concerned about the preventive measures for residential care homes for the elderly (RCHEs). Members noted

that most of the SARS patients from RCHEs had been infected by visitors to the homes or when they were hospitalized, and some elderly patients might not show any symptoms of SARS when they were infected. Since RCHEs generally lacked isolation facilities, members were worried that the elderly patients on their return to the homes after receiving treatment for other diseases at hospitals might pose danger of infection to other elders.

Following the death of two RCHE employees who contracted SARS, the Panel urged the Administration to review the disease notification mechanism, isolation facilities, as well as the outreach support for RCHEs. The Administration agreed that there was a need for such a review which would be carried out as soon as practicable.

The Panel was also concerned about the community support services for elders and the Fee Assistance Scheme for residential care services for frail elders.

Noting that a means test might be introduced under the Fee Assistance Scheme, some members expressed concern that some elders might not pass the test if all the income of the family members was to be included in the means test. Members shared the view that the assets and income limits had to be carefully set in view of the impact on elders and their families.

The Panel discussed in February 2003 the progress made to prevent and tackle family violence and recent developments. The progress made in respect of some of the issues was based on comments and suggestions made by members during the discussion in March 2003.

With reference to legal advice and the views of the Privacy Commissioner for Personal Data, the Administration had taken on board the Panel's suggestion for referral of family violence cases by the police for welfare services without the consent of the victims. The police had also completed a comprehensive review on the police procedures for handling cases of family violence and the revised procedures had been enforced since January 2003.

The Administration agreed with members' view that no matter how much resources were put into remedial services, the problem of family violence could not be satisfactorily tackled if more timely intervention and assistance were not provided to families in crisis. To this end, some of the resources previously put into providing remedial services had been diverted to preventive services such as

stepping up public education on family violence, installing more hotlines and strengthening outreaching work.

Other issues discussed by the Panel included the Community Investment and Inclusion Fund, residence requirements for social security benefits, the Integrated Neighbourhood Projects in old urban areas, services and support for people with disabilities, adjustment of the Comprehensive Social Security Assistance rates, financial assistance for older persons, implementation of the information technology strategy for the social welfare sector, and operation of residential care homes for the elderly in commercial premises. Moreover, the Panel was consulted on the planned introduction of the Adoption (Amendment) Bill 2003 and the proposed residential training complex for juveniles in Tuen Mun.

Thank you, Madam President.

PRESIDENT (in Cantonese): Mr SIN Chung-kai will address the Council on the Report of the Panel on Information Technology and Broadcasting 2002/2003.

Report of the Panel on Information Technology and Broadcasting 2002/2003

MR SIN CHUNG-KAI (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Information Technology and Broadcasting, I present the report on the work of the Panel during the year, and speak on several major issues.

Regarding telecommunications services, the Panel expressed concern about two unexpected incidents and explored the Type II interconnection policy. The Panel was gravely concerned about the incident in which some carriers, due to the additional access charge levied by mainland operators, raised at short notice their IDD tariffs, and subsequently lowered or reverted to their previous charges. In response, the Government undertook that it would endeavour to protect the interest of consumers and ensure that carriers will not abuse the existing mechanism, provide misleading information, and transfer their additional costs onto customers. Given the impact of any sudden surge in access charge on the economic activities between Hong Kong and the Mainland, the Administration agreed to reflect our concern to the Ministry of Information Industry on the Mainland.

The Panel expressed enormous concern about the serious congestion experienced by telephone networks on 11 September 2002 when Hong Kong was hit by a typhoon. The Panel learned from the Administration's review report that the reserve capacity of fixed and mobile networks in Hong Kong was comparable to international standards. Members of the Panel expressed their hope to see the implementation of various improvement measures, including better co-ordination in the dissemination of information on typhoons, encouraging the use of telecommunications alternatives such as mobile phone short message service and e-mails, improved communication between the Administration and operators, and so on.

As regards the review of the policy on Type II interconnection, the Panel studied the consultation paper issued in late May. The paper sought to explore whether the policy could facilitate competition and promote investment. While some members concurring with the policy suggested the Administration to analyse the complaints on Type II interconnection received over recent years to improve future regulation, some suggested to set performance indicators for the purpose of determining the effectiveness of the policy.

In reviewing the Electronic Transactions Ordinance (ETO), the Panel expressed concern about the interface of the ETO with other legislation which provided for the use of other forms of electronic signature. The Administration pointed out that the ETO would merely provide a general legal framework and bureaux and departments could enact legislation to cater for their specific needs in promoting electronic services. Furthermore, the Panel urged the Administration to implement measures to develop a more competitive market for recognized certification authorities (CAs) by such means as opening the platform for the Smart Identity Card for the purpose of embedding e-Cert issued by CAs other than Hongkong Post, in order to promote electronic transactions. The Administration undertook to carry out a review in the light of future operation and study this proposal. The relevant Bill was tabled to this Council on 25 June.

The Panel supported the Administration's initiative in conducting the surveys on application of information technology (IT) on an annual basis. Members of the Panel were also concerned about the relatively low IT application and penetration rates among small and medium enterprises (SMEs). Some members highlighted the need for the Administration to, in supporting IT application by SMEs, refrain from competing directly with private providers.

The Administration assured members that it would only seek to fill the gap by providing SMEs with services not available on the market.

Insofar as the E-government programme is concerned, the Panel urged the Administration to take into consideration the implications of E-government initiatives on staffing, such as any possible deletion of posts or staff redundancy. The Panel also urged the Administration to ensure that persons who lacked the means or knowledge to make use of computer would not be denied access to government services. The Panel also explored the progress of various related initiatives, including the establishment of an Interoperability Framework, the setting up of Information Technology Management Units in individual departments, the adoption of a Common Look and Feel for government websites, and so on.

As regards film services, the Panel met with various industry bodies and sought their views on the proposed Film Guarantee Fund (FGF) and other issues of concern to the industry. Members of the Panel generally supported the establishment of the Fund, though they were of the view that the Administration should, in the light of its experience, review the adequacy of the maximum amount of loan guarantee. Furthermore, members urged the Administration to endeavour to promote Hong Kong as a filming location for overseas productions and encourage more overseas productions to come to Hong Kong. They also hoped the Administration could assist the local film industry to open up the mainland market through fostering closer co-operation with the Mainland, combating rampant piracy on the Mainland, and protecting the intellectual property rights of the local film industry.

The Panel was briefed on the public views received on the services provided by the two commercial sound broadcasters and exchanged views with the Government with respect to the complaint handling procedures of the Broadcasting Authority (BA). In response to members' concerns, the Government stated that the BA would consider public views on programme diversity and quality, and positive programme requirements, and so on, before concluding its recommendations on licence renewal to the Administration. The Administration also took note of members' concern about whether representatives of the Government should be appointed as members of the BA and its committees. The Panel would keep in view the developments and outcome of the licence renewal exercise.

In reviewing the progress and key activities of the Cyberport project, the Panel sought updates from the Administration on the profiles of the tenant companies. It was meant to ensure that the Cyberport could meet its original development target, rather than competing with other developers for office tenants at cheap rent. The Administration emphasized to the Panel that the Cyberport would attract prospective tenants by its state of the art facilities, not by offering cheap rent. The tenant company's business profile was a major factor of consideration in the screening of tenancy applications. Given the enormous interest shown by overseas participants of TELECOM Asia 2002 in the Cyberport, the Administration was optimistic about the tenancy take-up rate in future.

With respect to the digital media centre (DMC) established in the Cyberport, the Administration stated that the DMC would seek to provide assistance to small start-up companies which might lack the capital and resources to develop multimedia capabilities in their products and services by making use of the facilities available at the DMC. In response to members' concerns, the Administration pointed out that the DMC's objective was different from that of some tertiary institutions in providing similar facilities. Neither will the DMC compete for business opportunities with similar privately funded establishments. The Panel will continue to follow up the future development of the Cyberport.

The report has given a detailed account on the work of the Panel in other areas during the Session. I would like to take this opportunity to thank the Secretariat for its support for the Panel. I so submit.

PRESIDENT (in Cantonese): Dr LO Wing-lok will address the Council on the Report of the Panel on Health Services 2002/2003.

Report of the Panel on Health Services 2002/2003

DR LO WING-LOK (in Cantonese): Madam President, in my capacity as Chairman of the Panel on Health Services, I now present to the Legislative Council the report on the work of the Panel during the year 2002-03, and highlight a few major areas of work of the Panel.

Since April 2003, the Panel had been monitoring the handling of the Severe Acute Respiratory Syndrome (SARS) outbreak by the Government and the Hospital Authority (HA) through its weekly special meetings with the Administration, because we needed to have a better understanding of the work of the HA in handling the SARS outbreak. Members also made use of these meetings to provide feedback from the community on the measures taken by the Administration to control the spread of the epidemic and their suggestions for improvement.

From the outset, members had been very much concerned about continued infection of health care workers in public hospitals. Of the 1 755 SARS cases in Hong Kong, 386 or 22% involved health care workers and medical students. Among them, eight, including six medical and health care workers of public organizations and two private medical practitioners, died in succession as a result of this epidemic. The Panel is deeply grieved about their passing away.

Members also urged the HA management, particularly the middle management of hospitals, to provide front-line health care workers with suitable gear to help them work with ease of mind.

Apart from the question of protective gear, members were also concerned whether front-line health care workers were given sufficient rest to recover from the heavy pressure of work in taking care of infected patients. Members suggested that the health care workers concerned should be required to work shorter shifts.

Members also expressed concern about the lack of isolation facilities for the control of infectious diseases, which made it difficult to effectively prevent cross-infection. Members urged that isolation wards should be provided in existing hospitals for infection control as soon as possible in case another SARS outbreak should occur later in the year. At the meeting on 25 June, the Administration submitted a paper on enhancing the short-term isolation facilities in nine public hospitals. The authorities will apply for funding from the Finance Committee in July in the hope that works would be commenced in July for completion in October.

As many medical experts were of the view that there would be another outbreak in winter this year, the Panel requested the Administration to submit a comprehensive paper to explain in detail measures that would be taken to deal

with another possible resurgence. The Panel will discuss this issue at next week's meeting.

The Panel passed a motion at its meeting on 14 May 2003 proposing that a select committee be set up by the Legislative Council to inquire into the handling of the outbreak of SARS by the Government and the HA and to conduct a comprehensive review of the whole process. The House Committee discussed the relevant proposal on 30 May 2003 and passed a motion demanding the Government to appoint an independent Commission of Inquiry in or before October to conduct an investigation into the SARS outbreak and if the Government refused to do so, the House Committee would consider setting up a select committee.

Furthermore, members were also very much concerned about the notification mechanism for infectious diseases between Guangdong and Hong Kong. In view of the large number of people travelling daily between Guangdong and Hong Kong, it is essential that there should be an effective notification mechanism. Members have made repeated requests to the Administration to furnish more details on the mechanism.

Following media reports of cases of encephalitis B in Meizhou in Guangdong Province, the Panel sought information from the Administration on whether any notification had been received regarding the disease. The Administration pointed out that encephalitis B was an endemic disease and was not in the agreed list of notifiable diseases. The Administration eventually agreed that there was room for improvement in the notification mechanism and would discuss the issue in more detail with the Guangdong health authorities. We are pleased that after the Panel meeting, officers of the Department of Health immediately went to Guangzhou to follow up this issue with the relevant officials and encephalitis B has been included in the agreed list of notifiable diseases.

Another issue of concern to members is the liver transplant arrangement of the HA. The majority of members questioned the rationale for the HA's designation of only one liver transplant centre in Hong Kong. They were concerned whether after the merger of the respective centres in the Prince of Wales Hospital (PWH) and the Queen Mary Hospital (QMH), the merged centre would still be able to maintain the existing capacity of 80 operations per annum and how the HA would protect the interest of the liver disease patients of the PWH after the merger.

The Panel finally passed a motion urging the HA to freeze the decision to close the liver transplant centre at the PWH with immediate effect and to implement the arrangement of "one registry, two transplant centres" as soon as practicable.

As regards other matters discussed by the Panel, they were set out in detail in the report.

The workload of the Panel became extremely heavy due to the SARS outbreak and we had to work overtime. I would like to thank members for their unstinting participation and enthusiastic input.

Thank you, Madam President.

PRESIDENT (in Cantonese): Miss CHOY So-yuk will address this Council on the Report of the Panel on Environmental Affairs 2002/2003.

Report of the Panel on Environmental Affairs 2002/2003

MISS CHOY SO-YUK: Madam President, as Chairman of the Panel on Environmental Affairs, I wish to report on the work of the Panel during the 2002-03 Legislative Session. The Panel continued to monitor the various measures to improve the quality of water and air in Hong Kong, and to tackle the problems in relation to noise pollution, landfills and sustainable development.

Sewage treatment remained high on the agenda of the Panel. Members continued to monitor the progress of the three trials on the feasibility of compact sewage treatment technologies under the Harbour Area Treatment Scheme and visited the Stonecutters Island Sewage Treatment Works. Given the high cost of Biological Aerated Filter technology and the non-satisfactory performance of Submerged Aerated Filter plus de-nitrification technology, members considered that efforts should be made to explore other suitable alternative technologies. The propriety of centralizing treatment at the Stonecutters Island Sewage Treatment Works should also be reviewed. There was also unanimous view among members that tertiary treatment should be applied in new sewage facilities. The Panel also examined the feasibility of effluent reuse.

On water quality, members studied matters in relation to the protection of reservoirs and improvements works for Shing Mun River.

On air quality, the Panel was gravely disappointed with the Administration's decision to shelve the introduction of liquefied petroleum gas (LPG) light vans and light goods vehicles into Hong Kong on grounds of inadequate filling supporting infrastructure. This decision constituted a policy change and was contrary to the Chief Executive's pledge in his earlier policy address to improve air quality through the introduction of more environmentally-friendly vehicles. Members were skeptical that this change in policy was probably attributed to the mounting budget deficit as duty was imposed on diesel but not on LPG.

As regards traffic noise impact of existing roads, there were divergent views on the mitigating measures. Despite that noise barriers were commonly used as a means to mitigate traffic noise, members generally did not agree that it was the best solution. Nevertheless, members supported the five guiding principles proposed by the Administration for erecting noise barriers. Some members urged that other engineering and non-engineering measures, such as traffic management schemes, should be mapped out. Notwithstanding the concern about the impact on the transport trade if traffic restrictions were to be implemented on major roads and flyovers, there was support for the ban given the severe impact of traffic noise on the neighbouring community, and on the understanding that vehicles could be diverted to at-grade road.

On waste management, the Panel continued to monitor the progress of measures to tackle the problem of construction and demolition (C&D) waste and municipal waste. Members considered that the Administration should set up sorting facilities adjacent to existing landfills to facilitate separation of inert materials from mixed C&D waste. Efforts should also be made to encourage the private sector to actively take part in the sorting and separation of C&D materials to avoid dumping in the landfills. To enhance separation and recovery of municipal waste, members held the view that apart from waste separation bins, refuse storage chambers and chutes should be provided in residential blocks. Efforts should also be made to promote public awareness on waste prevention and reduction. As regards the phased implementation of the Landfill Charging Scheme to target only C&D waste in the first phase, members agreed that it would not be appropriate to introduce the Scheme for the time being when the community had yet to recover from the impact of Severe Acute Respiratory Syndrome.

The Panel welcomed the establishment of the long-awaited Council for Sustainable Development. Members considered that the Council for Sustainable Development should also assume a co-ordinating role in resolving conflicting interests of different government departments, and to perform policy audit to ensure that sustainable development objectives were met. The Panel also commented on the establishment of the Sustainable Development Fund and the guidelines for funding applications to include activities such as research.

For details of other aspects of work of the Panel, Members may wish to refer to the report. Madam President, I would like to express my sincere gratitude to Panel members and the Secretariat for their unfailing support over the past year. Thank you.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Industrial Safety of Working in Inclement Weather

1. **MS LI FUNG-YING** (in Cantonese): *Madam President, on 7 June this year, three workers working outdoors at a site were struck and injured by lightning while the thunderstorm warning was in force. One of them subsequently died. In this connection, will the Government inform this Council:*

(a) of the number of casualties caused by industrial accidents involving workers working outdoors in inclement weather over the past three years, together with a breakdown by the causes of the accidents; and

(b) whether it has reviewed if the laws and guidelines on industrial safety need to be amended to further protect the safety of workers working outdoors in inclement weather?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President,

(a) According to the Labour Department (LD)'s record of fatal accidents in the past three years, three employees were killed while

working in inclement weather between 2000 and end June 2003. All three were killed by lightning. One of them was killed in 2001 while the other two died in the accident on 7 June this year.

(b) We are very concerned about the safety of employees at work in inclement weather. The LD publicizes through various channels issues to which employers and employees should pay attention concerning work in inclement weather. The publicity effort is conducted on three fronts:

(i) The LD arranges for the broadcasting of TV Announcement of Public Interest to remind employers and employees to make prior arrangements for work in inclement weather.

(ii) Through publishing the "Code of Practice in times of Typhoons and Rainstorms", the LD reminds employers and employees of the need to draw up prior work arrangements and contingency measures when the rainstorm warning is in force. The Code also mentions their liabilities under the Occupational Safety and Health Ordinance. The Code has been distributed widely to the relevant employers' associations and workers' unions. Copies are also available at the LD's various offices and the District Offices of the Home Affairs Department. The Code has also been uploaded onto the homepage of the LD for online browsing.

(iii) In routine inspections and safety committee meetings, Occupational Safety Officers of the LD remind employers and contractors of the need to conduct risk assessments of various work processes and working conditions, and to put in place a safe system of work, including arrangements for work in inclement weather, including in times of typhoons or thunderstorms. Occupational Safety Officers also remind employers and contractors that should it be unavoidable for employees to work outdoor in inclement weather, they should ensure that outdoor work is only performed under close supervision and in accordance with the stipulated safety working procedures. The LD will take enforcement action, including prosecution, against any person in breach of the safety legislation.

At present, the "Code of Practice in times of Typhoons and Rainstorms" advises employers, having considered the actual circumstances, to arrange for employees to suspend work. To enhance the work safety of employees engaged in outdoor work during times of thunderstorms, the LD will consider amending the existing Code so that when a thunderstorm warning is issued during working hours, employers will be required to suspend all outdoor work immediately and arrange, as far as practicable, for their employees to take shelter in a safe place, except in circumstances where the outdoor work is of an emergency nature that must continue. The LD will consult the Tripartite Committee on Construction Industry and the Labour Advisory Board on the proposed amendment.

MS LI FUNG-YING (in Cantonese): *Madam President, part (a) of my main question is about the numbers of injuries and casualties but the Secretary has only provided the numbers of casualties but not injuries. I wonder if the Secretary can supplement the relevant information.*

My follow-up question is: Given the Secretary has mentioned in part (b) (iii) of his main reply that the Labour Department will take enforcement actions including prosecution against people in breach of the legislation, did the LD take prosecution actions in past cases in which construction site workers died after being struck by lightning? If yes, what was the outcome?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I would like to give an explanation first. As far as the record of accidents are concerned, taking accidents with work-related injuries as an example, the LD did record the cause of death in each case in the past, so I can reply Ms LI Fung-ying that three employees died after being struck by lightning in the past. As for general cases of injuries, the LD has not categorized such cases or recorded whether the injuries were caused by inclement weather. Therefore, I could not give a reply to that. Nevertheless, I have reminded LD colleagues to carry out categorization in greater detail in future, for example, cases such as inclement weather and thunderstorm as I have just mentioned.

Ms LI Fung-ying has also asked about the numbers of prosecutions. For the reasons given above, I cannot provide the relevant numbers but we have initiated prosecutions by invoking the general liability provisions under the Occupational Safety and Health Ordinance and the Factories and Industrial Undertaking Ordinance. Although we have not made any categorization, they were related to safety.

The numbers of convictions under these two ordinances are as follows: 69 cases in 2000, 95 cases in 2001, 80 cases in 2002 and 30 cases in the first quarter this year.

MR CHAN KWOK-KEUNG (in Cantonese): *Madam President, the Secretary said just now there were three deaths, but he did not answer Ms LI Fung-ying how many workers were injured. May I ask whether the injuries and casualties were caused by inadequate safety measures taken, or they happened despite safety measures had been taken?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I have just said that there were three cases of death. The first case took place in 2001. Let me elaborate the relevant situation. In that accident, an engineer was killed while working in a tunnel. He was around 4 km from the exit of the tunnel. Unfortunately, the thunderstorm struck a signal cable at the exit of the tunnel, and the electric currents were transmitted into the tunnel via the signal cable, killing the engineer. It was a very rare accident. Having said that, however, we initiated prosecution still because we thought that the safety measures could have been done better.

The accident that took place at a construction site in Sha Tin on 7 June this year is still under investigation and the testimony of witnesses is being recorded. On the basis of preliminary information, when the three workers arrived at the construction site and prepared for work, the weather was very bad and it was raining heavily. They took shelter from the rain in a temporary structure in the construction site but the temporary structure was struck by thunderstorm when they were hiding from the rain there, resulting in the accident.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, concerning the case just mentioned by the Secretary, I was in the hill on that day. The Government issued an Amber Rainstorm Warning, indicating that thunderstorm was imminent. So, there was advance warning, but people like me who love trekking went trekking undeterred. As the Secretary said just now, the three workers were struck by thunderstorm at a covered place, so, very obviously, their employers did not know that a warning had been issued and had still required them to work. The Secretary has mentioned in the second paragraph of part (b)(iii) that the Government would consider amending the existing Code. May I ask if the Government has proposed amending the Code because of the above case in which workers had to work though a warning had been issued, ultimately resulting in their death? What is the content of the amendment?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, the case just mentioned by Miss CHAN Yuen-han is now being investigated. Preliminary information shows that the workers only prepared to work upon arrival at the construction site, but they had entered the temporary structure because it was raining heavily and they had not started working then. Since the incident is still under investigation and prosecution may be initiated in the future, it is inconvenient for me to make comments here.

According to the existing Code, employers should make arrangements for employees to suspend working according to the actual situation, and it is not a must to stop working. Insofar as thunderstorms are concerned, we have considered whether we should require the employers of workers working outdoor to allow workers to suspend working and try their best to arrange for them to take temporary shelter at a safe place. However, we think that we should build in more flexibility, and decisions should be made in the light of the actual situation. We now propose that workers should in general be allowed to suspend working at once. Of course, we will consult the Tripartite Committee on this.

MR LEUNG YIU-CHUNG (in Cantonese): *Madam President, the Secretary has said in part (b)(iii) of the main reply that a consultation will be made in respect of the present Code. May I ask the Secretary to what stage the consultation has proceeded now and whether the Code will become a statutory code after consultation and enforced on a compulsory basis?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, the accident took place on 7 June and we had done something at once that week. In fact, before Ms LI Fung-ying asked this question, I have already instructed them to conduct a review and examine whether the Code should be enforced more stringently in case of thunderstorm. We wish to consult the Tripartite Committee within the next week or two. In other words, we wish to conduct a consultation within this month.

Mr LEUNG Yiu-chung asked if the Code is legally binding, and I can tell him that the Code itself does not have any legal effects, but if the Occupational Safety and Health Ordinance and the Factories and Industrial Undertaking Ordinance are applied, employers are responsible for ensuring employees' safety during and in the course of work. In other words, if the situation just mentioned is already known, employers should consider whether workers should be required to work in inclement weather or whether they should stop working at once as specified in the Code and whether arrangements should be made for workers to take shelter from the rain or thunderstorm at a place with the lowest exposure to risk. I believe it depends upon whether employers have taken these measures. If, in defiance of a guideline given under the Code, an employer still fails to take any measures and still requires employees to work under such circumstances, superficially, there are enough grounds for the LD to take enforcement actions and initiate prosecution.

MR LEUNG FU-WAH (in Cantonese): *Madam President, just as the Secretary has said, and indeed I also find after listening to him that the existing Code has loopholes. Although the Code requires employers to take actions, it also specifies that employers should do so only if the relevant actions are essential. We know that under the existing Occupational Safety and Health Ordinance, employers are responsible for providing a safe and healthy working environment. Can we say that the accidents were caused because the Government had been insufficiently stern towards the employers in enforcing the relevant ordinance?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, according to the existing Code, employers should arrange for the time at which employees should suspend working in the light of the actual situation. However, we have to consider that many thunderstorm

warnings will be issued each year. I have looked up the past records and found that more than 100 thunderstorm warnings are issued each year and sometimes the warnings may last a very long time. Some even last for more than 20 hours. But on average, it will last for an hour. So, we have to consider that some work must be carried out, for instance, the work on the apron at the airport. This kind of work may be carried out under close supervision and the parties concerned can get very accurate information on the weather, such as when there will be lightning. Thus, if there is very stringent supervision and safety measures have been taken, can we allow workers to continue working?

Members should not forget that a lot of work is carried outdoor such as medical care, public transport, policing and fire fighting work. Taking into account the urgency of such work, should outdoor work not be carried out at all because of the Code? I believe consideration should be made in the light of the actual situation. We now wish to specify that employees working outdoors and in open areas should generally suspend working unless the relevant work outdoor is very urgent and it is actually necessary for the work to continue.

PRESIDENT (in Cantonese): This Council has spent more than 15 minutes on this question. Last supplementary.

DR RAYMOND HO (in Cantonese): *Madam President, the Secretary has stated in part (b)(iii) of his main rely that Occupational Safety Officers will remind employers and contractors that they should observe the Code in inclement weather. However, employers will very often say that the work procedures cannot be stopped, such as grouting or placing prefabricated components on viaducts. Contractors employ these Occupational Safety Officers and they are their staff, so they will very often fail to perform monitoring functions. In view of this, will the Secretary consider revising the system?*

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Cantonese): Madam President, I think that we should look up the Code for the requirements before acting in accordance with the two ordinances mentioned earlier, that is, the Occupational Safety and Health Ordinance and the Factories and Industrial Undertaking Ordinance. Employers should perform according to the general liability clauses and decide in the light of the actual situation whether

such work as grouting, as mentioned by Dr Raymond HO, should be carried out in thunderstorm or heavy rain, or whether it should be suspended.

I believe that even if there are no safety officers, workers or employers should know what to do. I think that arrangements should be made in advanced as soon as possible, and decisions should also be made in the light of the actual situation. As regards the ultimate decision to initiate prosecution, we have to look at the facts of the case and understand what happened at that time and what measures should be taken, and why the workers had not left at once and taken shelter at a safe place.

PRESIDENT (in Cantonese): Second question.

Squatter Control Duties of Housing Department

2. **MS EMILY LAU** (in Cantonese): *Madam President, with the transfer of its squatter control duties in Hong Kong, Kowloon and Islands areas to the Lands Department in April last year, the Housing Department (HD) is currently responsible for squatter control in the New Territories only. It is learnt that despite the persistent sharp decline in the number of residents rehoused as a result of clearance operations and the number of illegal structures demolished in recent years, the staff costs of the HD budgeted for this year still exceed $300 million with its establishment approaching 900. In this connection, will the executive authorities inform this Council:*

(a) of the HD's staff establishment and strength for clearance operations as well as the number of squatters and temporary housing units demolished by these staff in each of the past three years;

(b) whether the staff responsible for clearance operations also take up duties relevant to squatter population control, and of the manpower required for carrying out this area of work, and the specific duties involved; and

(c) whether, in the light of the reduction in workload, staff have been redeployed to take up other areas of work and whether other measures have been taken to reduce expenditure?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, my reply to the three-part question is as follows:

(a) The Operations Section of the HD is responsible for squatter control and clearance. The staff establishment, actual strength and the number of squatters and temporary housing structures cleared in the past three years are at the Annex.

(b) The Operations Section handles all squatter-related matters, covering the following five categories of regular duties:

(i) to undertake squatter clearance operations and rehouse the affected clearees, including registration of squatter occupants and making rehousing arrangements;

(ii) to patrol squatter areas in the New Territories regularly to prevent, detect and immediately demolish new illegal structures;

(iii) to rehouse occupants of illegal rooftop structures affected by enforcement actions of the Buildings Department;

(iv) to maintain and improve facilities in squatter areas until their clearance, such as erecting or repairing lamp posts, setting up refuse collection points, fixing public toilets, and so on, and

(v) to provide interim accommodation and rehouse victims of natural disasters or emergencies. In the past three years, the Operations Section had conducted 88 emergency operations, providing assistance to 550 squatter households affected by fire, flooding and landslide.

With reduced waiting time for public rental housing and rigorous squatter control and clearance over the past years, the number of illegal structures has reduced significantly. As a result, some

squatter control staff have become surplus to requirements. We estimate that we still need around 300 to 400 staff to carry out the duties described above.

(c) To address the problem of staff surplus, the HD has been keeping the staffing establishment under constant review to examine arrangements to cut down surplus staff without forced redundancy. Recently, we have conducted a comprehensive and thorough review on the organizational structure of the HD. We propose to significantly downsize the HD through de-layering and streamlining, with staff reductions by almost 30% from 1 October 2002 to 31 March 2007. The outbreak of Severe Acute Respiratory Syndrome has precipitated an urgent need for additional manpower resources. The HD took the opportunity to redeploy 150 staff members of the Operations Section to prepare two housing estates for use as temporary isolation quarters for medical workers, for example, inspecting the accommodation and arranging supplies. Some have been tasked to clear shop-front obstructions in public housing estates.

At present, we are planning to deploy another 400 staff from the Operations Section to assist in estate management duties and implementation of Team Clean initiatives in public housing estates, for example, stepping up enforcement against littering and spitting, and taking part in special cleaning operations for public housing estates, shopping centres and carparks. Through these manpower redeployment arrangements, the HD is able to strengthen the management and cleansing of public housing estates without increasing staffing resources, while reducing surplus staff for squatter clearance and control.

As for cost-saving measures, eight Housing Officer posts were deleted in April this year, representing a saving of $3.1 million. Together with other streamlining and re-engineering efforts, it is expected that an overall saving of $6.8 million in squatter control and clearance can be achieved in this financial year.

Annex

Establishment and Strength of the HD's Operations Section in the Past Three Years

	2000-01	2001-02	2002-03
Establishment	1 190	1 145	910
Strength	1 180	947	705

Squatters and Temporary Housing Handled by the Operations Sections in the Past Three Years

Clearance of squatter areas, temporary housing areas and cottage areas[1]	No. of clearance exercises	150	144	162
	Affected families	6 300	3 560	2 400
Assistance to the Buildings Department's enforcement against rooftop structures	No. of buildings	420	570	1 440
	Affected families	1 000	1 100	1 700
Squatter control	No. of structures demolished	2 000[2]	860	460[3]

1 Clearance of all temporary housing areas and cottage areas was completed in 2001-02.

2 Including structures vacated as a result of the Direct Offer of Public Rental Housing Units Scheme, which allowed rehousing of squatters in the urban areas to public rental housing.

3 Squatter control in the urban areas and Islands have been transferred to the Lands Department.

MS EMLY LAU (in Cantonese): *Madam President, the Secretary has pointed out that the establishment and strength of the HD's Operations Section was 910 and 705 respectively during the last financial year. According to the Secretary, by rough estimation (I am not sure why he has to make a rough estimation, and I really hope that he can tell us the actual strength required), the strength required*

is around 300 to 400 persons, that is, almost more than half the required strength. Madam President, now that work to be done has been greatly reduced, and the Secretary has admitted in his main reply that there is a serious staff surplus, so why was the squatter control work in Hong Kong, Kowloon and Islands areas transferred to the Lands Department (LD) last April? Was it because there is abundant staff in the LD? However, the HD's workload has been reduced afterwards. The Secretary is now saying that 400 staff will be deployed for management and cleansing work at the shopping centres of public housing estates, so is there a serious lack of staff in that respect or is there sufficient staff for such work? Surplus staff is after all surplus staff, regardless of whether they are surplus staff here or there.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I believe Members will understand, and I have explained in my main reply a while ago, that as a result of various developments and reasons, the numbers of squatter huts have continuously decreased. This is mainly because of the increased public housing construction and the subsequent increase in the number of public housing residents. Their waiting time has also been shortened, thus the work of squatter clearance and control can be relieved. Yet, this has resulted in the problem of staff surplus and the numbers just cited by Ms Emily LAU precisely reflect the problem that we are now facing.

We have planned to solve the problem thoroughly. As Ms LAU also knows, the Audit Commission and the Public Accounts Committee have expressed concern for this problem during the past few years. We will conduct a comprehensive review of the overall operation and staff expenditure of the whole department, and we will not only pinpoint squatter clearance and control but also the overall impact. The atypical pneumonia incident that broke out during our comprehensive review exposed that we had a serious staff shortage in respect of estate cleansing and enforcement, such as the prosecution of spitters and litter bugs. Such work is necessary.

Next week, Mr C M LEUNG, the Director of Housing, will appear before the Legislative Council and explain to Members the future plan of the HD for staff reduction. We plan to reduce around 30% of our staff, more than the requirement imposed by the Government on us. We mainly wish to achieve our objective through natural wastage and non-renewal of staff contracts to minimize the repercussions among staff.

As regards the staff within the Government's establishment, we will try our best to arrange new work types for them. I have stated in my main reply that we need to complement the work of the Team Clean. That is additional work and I must admit that we have not considered that before. Since we have to carry out such work now and we have not earmarked staff for that, allowing us to do so on the premise of reducing staff and financial resources by 30% is precisely killing two birds with one stone.

I have stated explicitly in my main reply that we estimate that around 400 staff can be redeployed to perform the relevant work. I have just made a rough estimate because we cannot very accurately know how many staff is required. We can only say that around 300 to 400 persons are needed to carry out squatter control, thus, we have deployed these 400 staff to take up additional work. We have not considered doing so in the past and it can be said that it is a more satisfactory solution to the problem. We often say that "everything will be fine at the end", and it has been proven again that this saying is true this time.

PRESIDENT (in Cantonese): Ms Emily LAU, has your supplementary not been answered?

MS EMILY LAU (in Cantonese): *Yes, Madam President. SARS has saved the Secretary but he has still not answered the simplest question in part (a). Now that the HD has a staff surplus, why did it decide to hand over squatter control work in Hong Kong, Kowloon and Islands areas to the LD last April? If there is a staff surplus and some staff do not have work, why is the work transferred to other people?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, the work transferred to the LD only involves the urban areas and the outlying islands but not the New Territories, and the squatter control work in the New Territories is still under the charge of the HD. At present, the work is under the charge of two structures and Members must understand why there is such a difference. It is mainly because of the very limited number of squatters in the urban area and the staff transferred to the LD is responsible for land clearance and other necessary work. We have transferred our resources and staff to the LD to assist in the relevant work.

MR FREDERICK FUNG (in Cantonese): *Madam President, I wish to follow up the issue of work transfer. As the squatter control work in the urban areas was transferred to the LD last year, theoretically, the most satisfactory method is for the HD staff originally in charge of squatter control to be transferred to the LD at the same time. Why was all such staff not transferred then? They are now asked to be in charge of cleansing which is not their expertise, is the deployment arrangement not a mismatch?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, from this angle, this is certainly a mismatch because they used to deal with squatter control. However, as I have just explained, the workload in this respect is decreasing gradually and insufficient to absorb so many people. Thus, we have to face up to the problem. As conceived in the past, the solution to the problem is natural wastage or to allow them to apply for early retirement. Nevertheless, after this kind of scheme has been implemented several times, the wastage is not obvious. We also considered at that time, if that was unfeasible, we might have to take some extreme measures. Yet, as I have said in answering Ms LAU's question, we seem to have found a solution now that will let us have the cake and eat it. Though they no longer take charge of their previous work, the work is similar. Actually, we have fully consulted our staff and the trade unions on the proposal and they also understand that this is not a perfect solution to everybody. Nonetheless, we agree that, under the present circumstances, it is after all a win-win proposal that can enable them to keep their jobs.

DR TANG SIU-TONG (in Cantonese): *Madam President, the HD has transferred to the LD the squatter control work in Hong Kong, Kowloon and Islands areas, but the LD also has a serious staff shortage for it takes quite long to vet and approve small house applications. Will the Secretary inform this Council if there has been an increase in the number of squatters in such areas to date since April last year? Would it be the case that there has been an increase in rooftop structures, only that the Government is not aware of it? Has the Government done any follow-up?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, we are not aware of any deterioration in the problem of illegal

structures. In fact, we think that the problem is gradually waning and staff for this respect can be reduced progressively.

PRESIDENT (in Cantonese): This Council has spent more than 15 minutes on this question. Last supplementary.

MISS CHAN YUEN-HAN (in Cantonese): *Madam President, part (c) of the main reply is about a staff surplus and the HD will continuously review its establishment and consider how it can continue to reduce staff. The Secretary said earlier that the problem would be solved by natural wastage and non-renewal of contracts with staff. In the SARS incident, we saw that problems had evidently emerged in such housing estates as Ngau Tau Kok and Tung Tau the management of which had been outsourced by the Government a few years ago, and the situation in these estates was entirely different from the effects of management by the Government. When summing up the SARS epidemic, how will the Government as an organization owning almost half of the residential housing in Hong Kong look at the problem? Will it still adhere to the established strategy and reduce staff substantially?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, the greatest enlightenment given by the epidemic is that we should attach importance to keeping clean and strengthen day-to-day management. We also have to make residents realize the importance a conscientious effort to keep the environment clean and hygienic. We think it does not matter whether the management of these aspects are carried out by us or contracted out. People have such impressions perhaps because the management work of the affected public housing estates have just been contracted out. Yet, we actually fail to figure out why there are such incidents in public housing estates the management work of which has just been contracted out. It may only be coincidence. In any case, the problems are not too serious and a situation similar to that at Amoy Gardens has not emerged in our public housing estates. We all know that, according to the Government's report, the principal cause of the epidemic at Amoy Gardens is patients and pipes in disrepair. Thus, we should learn the lesson and carry out a lot of repair works in public housing estates. That is why we have to deploy staff for such work. In my view, it is not directly related to whether the management work of public housing estates is contracted out.

However, perhaps we have to reconsider the outsourcing of management of public housing estates in future because we may make existing HD staff to take up heavier duties. This may cut expenditure because we have to use our resources if we wish to contract out the management of newly built housing estates. We may save resources if the work is taken up by existing staff. Of course, it mainly depends upon whether they can cope with the relevant workload.

PRESIDENT (in Cantonese): Third question.

Appointment of EOC Chairperson

3. **DR YEUNG SUM** (in Cantonese): *Madam President, will the Government inform this Council of the procedure adopted for the appointment and reappointment of the Chairperson of the Equal Opportunities Commission (EOC), and whether the procedure provides that notice of reappointment or otherwise be given to the incumbent Chairperson and that discussions be held with him on the relevant arrangements no later than a certain period prior to the completion of his current term of office?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the Government has always advocated the principle of equal opportunities to foster a caring and just society, and to ensure that every person can fully realize his abilities and potentials and participate actively in various economic and social activities. Hence, the Sex Discrimination Ordinance was enacted in July 1995 stipulating that it is unlawful to discriminate against others on the grounds of sex, marital status or pregnancy in specified fields such as employment, education, provision of goods, facilities or services, disposal of premises, club activities and government activities. The Ordinance also stipulates that sexual harassment, any discriminatory practices and publication of discriminatory advertisements are unlawful. In August of the same year, the Government enacted the Disability Discrimination Ordinance to protect disabled persons from discrimination in respect of the above specified fields.

To implement the above Ordinances, the EOC was established under the Sex Discrimination Ordinance in May 1996. The EOC's mission is to eliminate

discrimination on the grounds of sex, marital status, pregnancy, disability and family status, as well as to promote equal opportunities between women and men, between persons with and without a disability and irrespective of family status. Its functions include handling complaints, conciliation, strategic litigation, policy development and research; providing training and consultancy; and public education.

The EOC is our key partner in the promotion of equal opportunities and the elimination of discrimination. Under the Sex Discrimination Ordinance, the EOC shall comprise of one Chairperson and not more than 16 members. We attach great importance to the appointments to the EOC and ensure that its composition is broadly representative and conducive to performing its functions. At present, the EOC comprises talents from various sectors, including women's groups, rehabilitation groups, business and employee sectors, the academia and professionals. They provide a lot of valuable advice to the EOC, and contribute to the promotion of equal opportunities by joining forces with various sectors of the community.

When the EOC was established in 1996, the concept of anti-discrimination legislation was not prevalent in Hong Kong. Public views on the EOC were diverse and we had to be very cautious in the appointment of its Chairperson so as to appoint a candidate with the right calibre to open up a new era of equal opportunities. In 1996, we decided to launch an open recruitment exercise for the post of EOC Chairperson. We placed advertisements in local and overseas newspapers and set up a selection panel for conducting selection interviews, and so on. Consequently, the then Governor appointed, upon the recommendation of the selection panel, the first EOC Chairperson for a term of office of three years. Under the leadership of the first Chairperson, the EOC has risen to the challenges by formulating procedures for handling complaints and launching public education. It has also drawn up Codes of Practice on Employment under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance. A solid foundation for the work of EOC was laid.

The second Chairperson was appointed through internal selection before the expiry of the first Chairperson's term of office. The incumbent Chairperson, a member of the EOC since 1996, assumed office on 1 August 1999 for a term of three years. Last year, her contract was renewed for another year. In the past four years, the issue of equal opportunities has been thoroughly debated by the community. In general, people from different sectors of the community have

gained a deeper understanding of the anti-discrimination legislation. The work and the value of the EOC have also received great acclaim, which represents a major step forward in the development of equal opportunities. It reflects that ideal candidates can be found by open recruitment or through other means of selection.

Just as other advisory or statutory bodies, the turnover of members and the Chairperson is a normal practice to ensure that there is a gradual turnover in membership. The Chief Executive would consider all the relevant factors before making a decision on the appointment of the Chairperson.

Under the Sex Discrimination Ordinance, the Chairperson of the EOC shall be appointed by the Chief Executive. The law provides for the basic criteria for the office of the EOC Chairperson, that is, the Chairperson shall be appointed on a full-time basic, shall not be a public officer and the term of each office shall not exceed five years. Under this broad framework, we can recruit the suitable candidate with flexibility, including by means of open recruitment. The existing Ordinance does not provide for the appointment or reappointment procedures. We attach great importance to the role of the EOC and see it as our partner. Hence, we would fully consider all factors pertinent to the appointment of the Chairperson of the EOC so as to find the ideal candidate. The final decision shall be made by the Chief Executive.

Under the exiting procedures, the Government is not required to give notice of reappointment or otherwise to the incumbent Chairperson within a stated period prior to the expiry of his/her current term of office or to discuss with him/her on the relevant arrangements. Although it is provided in the contract of the Chairperson that the Chief Executive may renew the contract with the Chairperson three months prior to the expiry of his/her current term of office, the contract does not impose a deadline by which discussions should be held with the Chairperson on reappointment or otherwise. This contract term has been adopted since the first Chairperson's term of office. Nonetheless, we would try our best to inform the incumbent Chairperson about the relevant matters as soon as practicable.

DR YEUNG SUM (in Cantonese): *Madam President, the Secretary explained in the last paragraph of his main reply that the contract did not impose a deadline by which discussions should be held with the Chairperson on reappointment or*

otherwise. Having regard to the direction and continuity of the EOC's work, the Government has not made any arrangement or discussed with the incumbent Chairperson about the candidate of the third Chairperson yet. May I ask the Secretary whether or not this indicates that the Government is ignoring the importance of the work of the EOC and trying to deal a blow to the morale of the work of relevant persons?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, with regard to the issue of whether the Government is dealing a blow to the morale of the staff of EOC, my reply is, there is no such thing and we have no such intention. We have given the incumbent Chairperson notice about the relevant arrangement and made public the relevant arrangement as early as possible. The valuable contribution made by the incumbent Chairperson in the past four years is well recognized and highly appreciated. The EOC Chairperson is an important post which undertakes the important task of promoting equal opportunities and eliminating discrimination. With regard to the appointment to the office, careful consideration should be made in order to find the right candidate who can keep on leading the EOC to explore new frontiers of equal opportunities.

MS AUDREY EU (in Cantonese): *Madam President, the last part of the main question mentioned "notice of reappointment or otherwise be given to the incumbent Chairperson and that discussions be held with him on the relevant arrangements". This is a part of the main question, but no answer could be found in the main reply with regard to this issue. We have just learnt from the television newscast that the incumbent Chairperson would not be reappointed. The new Chairperson would be Mr Michael WONG Kin-chow, a retired Judge. Madam President, since the main reply mentioned repeatedly of finding the ideal candidate, in that case, with regard to the main reply and the main question, may I ask the Secretary, in which way is the incumbent Chairperson not ideal, and in which way is Mr Michael WONG Kin-chow a better choice than the incumbent Chairperson?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, with regard to chairpersons and members of any statutory or advisory body, there would surely be turnover, and this is not unique to the EOC. This time around,

the turnover is just a normal practice. In other words, the EOC used to have its Chairperson replaced, thus, there is no difference from the past this time around. Today the Government has just announced the appointment of the new Chairperson. We are glad that Mr WONG has accepted the appointment as the EOC Chairperson. Just as Ms EU said, Mr WONG is a retired Justice of Appeal of the Court of Appeal of the High Court, who is highly reputable and widely respected. Apart from his strong legal background, Mr WONG has also been in active involvement in community services including those relating to the disabled. We believe that, under the leadership of Mr WONG, the EOC will continue to uphold the principle of equal opportunities and meet new challenges ahead.

The incumbent Chairperson has made valuable contribution in the past four years, and her achievements in promoting equal opportunities are obvious to all and well recognized and highly appreciated. We look forward to her continuous support of the work of the EOC.

MR TOMMY CHEUNG (in Cantonese): *Madam President, the Secretary has explained in the last part of his main reply that it is provided in the contract of the Chairperson that the Chief Executive may renew the contract with the Chairperson three months prior to the expiry of his/her current term of office. May I ask the Secretary whether, if there is no news about discussions will be held with the incumbent Chairperson on reappointment or otherwise three months prior to his/her current term of office, it means that he/she will not be reappointed? Since it is a full-time job, I think the incumbent Chairperson should be informed so that he/she can find another job. In fact, will the incumbent Chairperson be informed that he/she will not be reappointed so as to allow him/her to have adequate time to find another job?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the Chairperson contract has stipulated the reappointment or otherwise of the Chairperson and when the Government should discuss the relevant arrangement with him/her. Although it is provided in the Chairperson contract that the Chief Executive may renew the contract with the Chairperson within the three months prior to the expiry of the Chairperson's current term of office, the Government is not required to discuss with the incumbent Chairperson of reappointment or otherwise. Just as any contract, it will expire upon its expiry.

PRESIDENT (in Cantonese): Mr Tommy CHEUNG, has your supplementary question not been answered?

MR TOMMY CHEUNG (in Cantonese): *Madam President, the Secretary has not answered my supplementary. If the Chairperson is not going to be reappointed, will the Government give him/her any prior notice, so that he/she can find another job and need not wait until the end of the contract? That is, the Government announces the appointment of the new Chairperson today, but the incumbent Chairperson was only informed of that the night before, then he/she will have no time to find another job.*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, we will inform the relevant party as early as we can.

DR LO WING-LOK (in Cantonese): *Madam President, the Secretary mentioned in his main reply that the term of office the EOC Chairperson should not exceed five years. The first EOC Chairperson was appointed for a term of office of three years while the second Chairperson was appointed for a term of office of three years plus one. I find this arrangement somewhat strange, because under normal circumstances, the probation period of a job would be shorter, and when the probation period has expired and the incumbent is considered satisfactory, a longer term of office would be offered. May I ask the Secretary why it was not a one-year plus four arrangement so as to allow the EOC Chairperson to concentrate fully on the duties in the next four years?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the contract provides that the term of each office shall not exceed five years as the law prescribes the five-year limit. The first and second Chairpersons of the EOC were appointed for a term of office of three years respectively. As to why the incumbent Chairperson was reappointed for one year, it was due to needs of the circumstances then, and, she was therefore reappointed for one more year to complete the tasks within her term of office.

MR JAMES TIEN (in Cantonese): *Madam President, both of the offices of the first and second Chairpersons of the EOC were taken up by ladies, and a gentleman can only assume office of EOC Chairperson in the third term. May I ask the Secretary if it means that a gentleman will assume office of the fourth EOC Chairperson? (Laughter)*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the appointment of the EOC Chairperson is subject to major conditions relating to office of the EOC Chairperson under the Sex Discrimination Ordinance, that is, the Chairperson should be appointed on a full-time basic, who should not be a public officer and the term of each office should not exceed five years. As to the gender of the Chairperson, the Ordinance certainly has no stipulation on it. The principle of equal opportunities is that the office of the Chairperson should be taken up by an ideal candidate, only a candidate with the right calibre will be appointed. For that reason, the appointment will be considered regardless of gender, so as to manifest the importance of equal opportunities.

MR YEUNG YIU-CHUNG (in Cantonese): *Madam President, the Secretary explained that the turnover of the Chairperson was a normal practice. May I ask the Secretary whether the Government has set a limit for the number of reappointment of the chairperson of a statutory body? Furthermore, is it common that the chairperson is not reappointed after the first term of office?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, as I have explained earlier, just as the appointment of chairpersons of other statutory or advisory bodies, when consideration is made in appointing the ideal candidate who possesses the right calibre to assume the office of EOC Chairperson, the Chief Executive will adhere to the same principle of appointing a person with abilities. Generally speaking, according to the guidelines for statutory or advisory bodies relating to the period of appointment, a "six-year rule" is in place, that is, the term of office of chairpersons and members will not exceed six years.

PRESIDENT (in Cantonese): This Council has spent more than 17 minutes on this question. Since many Members are still waiting to ask supplementary questions, I can therefore allow a Member to raise one last supplementary question.

MR ALBERT HO (in Cantonese): *Madam President, one of the major tasks of the incumbent EOC Chairperson is to enact laws to ban racial discrimination. Everybody knows that it is a tough job. The incumbent Chairperson has been in office for four years and was only reappointed for one short year. During her term of office, she has challenged government policies several times, which included the election of village representatives. She has also successfully sued the Government for violating the Disability Discrimination Ordinance. Moreover, the incumbent Chairperson has also made severe criticisms of education policies, such as the unfairness of the points system of secondary school places allocation which has caused discrimination against schoolgirls. She has been working as EOC Chairperson for four years and now the Government decided to replace her and not to reappoint her. May I ask the Secretary how the Government can make the public accept the fact that the replacement of the incumbent Chairperson made by the Chief Executive is not due to her boldness in challenging the Government, as a result, the Government has praised her superficially but in fact it is pleased to see her departure?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, in the past four years, the issue of equal opportunities has been a constant debate in the community. In general, people from different sectors of the community have gained a deeper understanding of anti-discrimination legislation. The work and the value of the EOC have also received great acclaim. The general public should have a final conclusion about the credibility of the EOC in their minds. For that reason, I can tell Mr HO here that irrespective of whoever assumes office as EOC Chairperson, the Government definitely hopes to find the ideal candidate.

PRESIDENT (in Cantonese): Fourth question.

Unauthorized Occupation of Government Land

4. **MR NG LEUNG-SING** (in Cantonese): *Madam President, will the Government inform this Council:*

(a) of the number of cases of unauthorized occupation of government land in the past year, the number and total area of land involved, broken down by district; among these cases, the number of those in respect of which the authorities have instituted prosecutions;

(b) whether it has reviewed the adequacy and effectiveness of the existing legislation and relevant enforcement actions to prevent unauthorized occupation of government land; and

(c) of the measures to improve the management of the government land mentioned in (a), in order to prevent such lands from adversely affecting the environment and the residential areas in the neighbourhood?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, my reply to the three parts of the question is as follows:

(a) There were 3 427 cases (involving 294 600 sq m of land) of unauthorized occupation of government land from April 2002 to March 2003. A breakdown by district is at Annex. About 91% of these cases have been rectified after posting of the relevant notice under the Land (Miscellaneous Provisions) Ordinance (Cap. 28). Among these cases, six have been prosecuted under Cap. 28 and the offenders were convicted with fines ranging from $1,000 to $1,500. Actions are being taken to recover the illegally occupied sites in the remaining 9% of the cases.

(b) Under section 6 of Cap. 28, the Director of Lands is empowered to take action to clear any unauthorized occupation of government land, to prosecute the person identified for the offence, and to recover the cost of any clearance action taken.

If government land is occupied without permission, a notice will be posted on the site concerned requiring the alleged offender to cease the unauthorized occupation within a specified period. If the unlawful occupation continues after the expiry of the specified period, the District Lands Office concerned will consider taking further action such as:

(i) evicting the persons (if any) from the land;

(ii) taking possession of any property or structure on the land;

(iii) demolishing the structure(s) on the land; and/or

(iv) prosecuting the person(s) identified for the offence.

After the land is cleared, where appropriate, the area will be fenced off or bollards will be erected to prevent recurrence of unauthorized occupation.

As over 90% of cases have been rectified after posting of relevant notice, it is therefore considered that Cap. 28 and the enforcement actions outlined above are generally adequate and effective in dealing with the problem of unauthorized occupation of government land.

(c) Apart from the aforementioned enforcement actions against unauthorized occupation of government land, the Lands Department also undertakes proactive measures in land control. Sites which are prone to unauthorized occupation are fenced off. If the intended permanent development of the sites is unlikely to take place for some time, they may be put to temporary uses through the letting of short-term tenancies. Such arrangement will help prevent unauthorized occupation of vacant government land. If no short-term uses can be identified for the vacant sites, the Administration will improve their environment by implementing some greening measures as far as practicable.

Annex

Cases of Unauthorized Occupation of Government Land
(1 April 2002 to 31 March 2003)

District Lands Office	*No. of Cases Discovered*	*Area of Government Land Involved (sq m)*
Hong Kong East	134	2 200
Hong Kong South	255	20 000
Hong Kong West	253	500
Kowloon East	162	30 000
Kowloon West	471	15 000
Islands	377	5 600
Kwai Tsing	146	73 000
North	212	16 600
Sai Kung	185	5 100
Sha Tin	241	1 200
Tuen Mun	124	17 700
Tai Po	80	6 900
Tsuen Wan	247	12 400
Yuen Long	540	88 400
Total	3 427	294 600

MR NG LEUNG-SING (in Cantonese): *Madam President, we can note from part (a) of the Government's main reply that there are over 3 400 cases of unauthorized occupation of government land within one year, that is, nearly eight to 10 cases per day. Besides, they involve as much as 300 000 sq m of land, which is almost 3 000 000 sq ft, and each case involves 8 000 sq ft of land. At present, convicted offenders have to pay a fine ranging from $1,000 to $1,500. In view of this, is the fine level too low that it has very little deterrent effect or is it not so effective?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, there are numerous cases involving unauthorized occupation

of government land, with some occupying more and some less. For example, cases of larger-scale unauthorized occupation of government land include making the lot a private garden or conducting farming, vehicles dumping, refuse or waste dumping activities. As to other circumstances, such as the erection of structures, it really depends on the size of the relevant structures. Action is being taken to pinpoint these offences. As I explained just now, about 91% of these cases were rectified after posting of the relevant notice. With regard to cases where prosecution has to be instituted, the Court would sentence the offender a fine according to the evidence provided by us and the relevant circumstances so as to achieve deterrent effect. According to our records, 91% of unauthorized occupation cases were rectified after posting of the relevant notice. We therefore consider the deterrent effect does exist.

MISS CHOY-SO-YUK (in Cantonese): *Madam President, as far as I know, some of the sites have been occupied for several years and used as private car parks, but nobody has intervened. May I ask the Secretary, in general, how unauthorized occupation of government land is found? Will the Government send staff to carry out inspections? Why did the abovementioned unauthorized occupation take place, that is, why some people could brazenly run private businesses on government land without authorization for a very long period without being discovered?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, car parking is a special issue. With regard to the car parks we can see, most of them are let on short-term tenancies by the Lands Department, so they are subject to government control. Of course, it does not mean that there is no unauthorized use at all. For example, there were 14 cases of unauthorized occupation of government land as car parks last year. Staff of district lands offices would carry out inspections as part of their day-to-day duties to see if there are any such cases. Among the 14 cases discovered last year, the Government has successfully resumed the relevant government land, while the remaining three cases are still being dealt with. With regard to the conduct of car parking business on government land without authorization, if there is no specific land boundary or other complications, then the relevant district land office could take actions of land control quickly by taking possession of those sites. For that reason, the problem that we are facing in that respect is not so serious.

MR NG LEUNG-SING (in Cantonese): *Madam President, in the final part of the main reply the Secretary stated that "If no short-term uses can be identified for the vacant sites, the Administration will improve their environment by implementing some greening measures as far as practicable". The implementation of greening measures entails high costs, so has the Government ever considered contracting out the temporary vacant government land to estate agents? If the land is contracted out, estate agents can seal short-term tenancies for the Government more quickly and efficiently, but what the Government have to pay at most would just be the commission.*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as I explained to Miss CHOY So-yuk just now, the Government itself is capable of making temporary uses of the land, moreover, we have our own lawyers and colleagues to deal with matters in relation to the letting of short-term tenancies. We would usually gazette notices and invite interested parties to participate in open tenders. For that reason, we have the capability of dealing with matters in this respect and we just wish to obviate outside involvement with a view to saving public money.

DR RAYMOND HO (in Cantonese): *Madam President, the Secretary mentioned that last year there were over 3 400 cases of unauthorized occupation of government land involving around 300 000 sq m of land, but over 90% of cases were rectified after posting of relevant notice. May I ask the Secretary whether the Government has information on all government land? Why this notice is not posted on every government lot? Had this been done, none of these circumstances should have occurred. Will the Government exert more efforts in this respect?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, as we all know, government lands are scattered all over the territory. I have explained in my main reply that for sites which are prone to unauthorized occupation, we have adopted deterrent measures such as fencing them off or erecting notice on them. I think Honourable Members should have seen these measures in many places. With regard to remote places in the New Territories, the situations mentioned by Dr Raymond HO just now are more likely to take place. Of course, we hope to take some remedial measures and straighten them up.

MISS CHOY-SO-YUK (in Cantonese): *Madam President, the Secretary mentioned that there were over 3 000 cases of unauthorized occupation of government land. How many of them were discovered by the Government on its own initiative and how many of them were reported by the public before the Government realized that some people had occupied government land without authorization?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I am sorry that I do not have the accurate and detailed figures at hand, but I know that most of the cases were discovered by our colleagues in their routine work. Of course, we do not dismiss the possibility that we could only obtain the relevant information upon receipt of reports from the public. I would provide detailed information in this respect in writing if Honourable Members deem it necessary. (Appendix I)

MR NG LEUNG-SING (in Cantonese): *Madam President, some actions mentioned in the main reply involve government expenditure. Considering the tight financial position, should the cost of demolishing the structures erected on the relevant land be recovered from the unauthorized occupant afterwards?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, I have made it very clear in the main reply that the Government would recover the cost from the relevant parties.

PRESIDENT (in Cantonese): Fifth question.

Recycling of Waste Tyres

5. **DR RAYMOND HO** (in Cantonese): *Madam President, it has been reported that in order to reduce waste loads to landfills, the Government launched a recycling programme for waste tyres and awarded a half-year contract to a contractor in April this year. In this connection, will the Government inform this Council of:*

(a) the average number of waste tyres collected and the average cost involved in using the waste tyres for landfill in the past three years;

(b) the estimated waste loads to landfills that can be reduced annually as a result of the above programme; and

(c) the support given to the contractor concerned?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President,

(a) In the past three years, the Government handled an average of about 10 000 tonnes of waste tyres each year. The recurrent costs for handling these tyres, including the operation costs of landfills and refuse transfer stations, were about $900,000 per year. To save landfill space, all waste tyres have to be cut into two halves before disposal. Of the waste tyres handled, over 3 000 tonnes have not been cut, and thus need to go through the cutting process before disposal. This process costs about $5 million each year.

(b) To reduce the number of waste tyres disposed of at landfills so as to save landfill space and the costs involved, we consider that a pilot programme to recycle waste tyres should be carried out. The pilot programme commenced in early April this year and will last six months. Under the programme, we estimate that the contractor will recover about 1 200 tonnes of waste tyres, most of which are uncut tyres. This represents about two thirds of such tyres collected in the same period. The programme will not only reduce the use of landfill space, but will also help the Government save $800,000 to $900,000 within the six months.

(c) Under the contract, the Government will pay the contractor $878 per tonne. The total amount to be paid over the six-month contract period will be about $1 million.

DR RAYMOND HO (in Cantonese): *Madam President, many parts of the main reply are very unclear, and the figures provided are particularly confusing. It*

is mentioned by the Secretary in part (a) of the main reply that in the past three years, the Government handled an average of 10 000 tonnes of waste tyres each year, 3 000 tonnes of which were not cut. The purpose of cutting a waste tyre into two halves is to save landfill space. May I therefore ask the Secretary why 3 000 tonnes of waste tyres are not cut each year?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, what I was trying to say is that the 3 000 tonnes of waste tyres have not gone through the cutting process upon their arrival. This simply means that of the 10 000 tonnes of waste tyres, 3 000 tonnes have yet to go through the cutting process, and 25% of these tyres are collected by the Food and Environmental Hygiene Department from various public places. Another 10% came from government departments. We will need to further handle these tyres. That is why I have said that it is necessary to commission a contractor for the cutting process.

PRESIDENT (in Cantonese): Dr HO, has your supplementary question not been answered?

DR RAYMOND HO (in Cantonese): *Madam President, let me state my supplementary question once again. There are 10 000 tonnes of waste tyres a year, to be handled at a cost of $900,000, and 3 000 tonnes of these tyres are uncut. May I ask whether this is the case every year? Or, is this just the case this year? The reply is not very clear in this respect.*

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

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, this is just a yearly average, not the specific figure for this year. There are 3 000 uncut waste tyres on average each year, all collected by ourselves. In the case of waste tyres transported to landfills for disposal, we will request the garages and companies concerned to cut them into two halves beforehand, so as to save our costs. However, for those waste tyres collected from public places or abandoned on road sides, the Government will

have no alternative but to spend huge costs on cutting them into two halves before transportation to landfills.

MS MIRIAM LAU (in Cantonese): *Madam President, I wish to follow up the supplementary question asked by Dr Raymond HO. There are some 3 000 tonnes of uncut waste tyres a year, and the Government has to cut them after recovery at a cost of $5 million a year. If that is really the case, why is it said in part (b) of the main reply that the contractor will recover only 1 200 tonnes in a period of six months, instead of 1 500 tonnes, that is, half of the 3 000 tonnes in total? The Government can hand over the waste tyres it has recovered to the contractor, and the latter can also recover more waste tyres from various other sources. This means that the contractor will at least be able to recover 1 500 tonnes instead of 1 200 tonnes. May I ask the Government why there is such a discrepancy in the figures?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, there are 3 000 tonnes of waste tyres a year, and the quantity for six months will be half of this volume, that is, 1 500 tonnes. But our computations aim only to give the contractor a rough figure, or even a figure on the low side of estimation. We will pay the contractor for each tonne of waste tyres actually handled, and the volume of 1 200 tonnes is by no means compulsory for the contractor. It is just an estimate.

MISS CHOY SO-YUK (in Cantonese): *Madam President, I am sure that the Government already knows what actions to take, because it has been handling this type of work for a long time. But I must point out that the commissioning of a contractor for the cutting process will enable us to save public money. Originally, the cost of handling some 3 000 tonnes of waste tyres is $5 million, and that of handling 1 200 tonnes is also as high as some $2 million. And, the Government will need to pay only $1 million to the contractor for the cutting process, because the contractor can sell the recycled products. That being the case, may I ask the Government why it still wants to conduct a pilot programme instead of outsourcing the whole process to the contractor direct? Why does the Government not outsource the whole process to the contractor and simply pay to get the work done?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, this is just a pilot programme, and we must first ascertain the reliability of the rubbersoil technology and its financial and commercial viability before making a decision on its extensive application. I am not saying that the Government must do it itself, but I think Miss CHOY will also appreciate the many problems associated with waste recovery. In case the contractor does not consider that recycling is financially viable, it may simply dispose of its recovered waste everywhere, or even burn them in the open. That is why there must be a pilot programme under which the contractor is offered some incentive. I mean, after the contractor has recovered a certain quantity of waste tyres, we will first confirm that it has actually recycled a specified tonnage of waste tyres before paying it the fee of $878 per tonne. We will of course do this only under the pilot programme. Once economic efficiency and commercial viability are ascertained, we will extend the scope and outsource the whole work to commercial organizations.

MR NG LEUNG-SING (in Cantonese): *Madam President, may I ask the Secretary whether the pilot programme is in fact necessitated by the fact that no other countries in the world have ever tried the recycling of waste tyres before? Or, can the Government actually study and learn from the waste tyre recycling practices adopted by other countries or places?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, rubber recycling has indeed been tried in many places, such as Southeast Asian countries and even the Mainland. This is a labour-intensive and highly polluting process, because the conventional process is to grind black rubber tyres into fine powder for melting and subsequent recycling. The process is anything but clean, and one walking out of the plant afterwards will literally be blackened. That is why we wanted to conduct tests on this new technology. This is an innovative technology project jointly undertaken by the Hong Kong University of Science and Technology and a commercial firm. It involves a new method, whereby rubber tyres are cut into bits instead of being ground into fine powder. The cutting process will not cause serious air pollution and the recycled products are also different. I hope that the organizations concerned can conduct more tests on replacing crushed stones by bits of rubber in laying the liner layers of roads. We have tried this material on a certain road in Ma On Shan with apparent effects. We will have

to test this material on its safety, durability and extent of wear under heavy rain. If the material meets the various requirements, and once it is ascertained to be a suitable replacement, we may try to use it together with tar or simply use it alone. Actually, this technology is not new to the world; we are just trying to improve it, to make the process cleaner.

MISS CHOY SO-YUK (in Cantonese): *Madam President, this programme is indeed a very good one because while it can help us save expenditure, and it is also environmentally friendly. Did the Secretary, may I ask, expect that long-term subsidy would have to be offered when the contract was awarded to the contractor? Or, was it her aim to make the organization concerned operate on a self-financing basis once the feasibility and commercial viability of this industry were ascertained?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, during the six-month trial period, besides checking whether the contractor can apply the technology, we will also seek to ascertain the financial and commercial viability of the programme. If the contractor can operate on a self-financing basis or even make profits, the Government will of course cease the provision of subsidy. Besides, we also hope that the contractor can expand its operation, because that way, it will definitely achieve economy of scale. The Director of the Guangdong Environmental Protection Bureau has told me that the Hong Kong University of Science and Technology and a certain company are planning to construct a plant in the Mainland for this process, and they also wish to conduct an environmental impact assessment. I hope that the organizations concerned can expand this industry. The conduct of this process in the Mainland will lead to lower costs, and the recycled product may also be used for the construction of roads there. That is why I believe the Government will not have to continue to subsidize this in the future.

DR RAYMOND HO (in Cantonese): *Madam President, the recycling of waste tyres into a material for laying road surfaces has also been tested in other countries and the Mainland. This is nothing new, but perhaps because the climate of Hong Kong is different, it is considered necessary to conduct some trials. I agree to this. But I also think that in order to find out how the*

elements of weather will affect the material, the trial period must at least cover all the four seasons. Is the trial period of six months now being implemented a bit too short? Will the Government consider the possibility of lengthening the pilot programme to 12 months?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, as an engineer, Dr Raymond HO will of course understand the rationale. I suppose he just wants to give me a test of some kind. In many places in the world, rubber is also recycled into various construction materials. Under our pilot programme, we will take account of local driving conditions, road surface undulation, gradient and the conditions of slopes. Our intention is to use rubbersoil in place of gravels for laying the liner layers of roads. And, in the case of slopes, we also intend to use rubbersoil in place of soil-cement plaster and shotcrete. I agree that the trial period should last longer than six months. I do not have any information on the actual duration of the trial period now. But it is said in the paper that the period should be longer than six months. When I get the information on the actual duration of the trial period, I shall inform Dr HO. (Appendix II)

MR NG LEUNG-SING (in Cantonese): *Madam President, the Secretary mentioned that there are many vehicles in the Pearl River Delta and Guangdong Province, and following the completion of a bridge link, the dealings between the Mainland and Hong Kong will increase, leading to a higher usage rate of vehicles. May I ask whether it is necessary to make waste tyre disposal a project of co-operation between Guangdong and Hong Kong?*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, Madam President, there are already many projects of co-operation. We in fact always welcome commercial co-operation. Under the investment project I have mentioned, for example, the contractor will establish a plant in Guangdong, and it is also working with some of the relevant authorities there. The Government will not take any part in this connection. But after the trial period, the Hong Kong Government will adopt an open attitude of encouragement. Our plan is to promote the programme in the Mainland and other places only after the recycled product can be used for practical purposes. We do encourage people to consider co-operation projects from commercial perspectives.

PRESIDENT (in Cantonese): Last oral question.

Reservoir Offices of WSD

6. **MISS CHOY SO-YUK** (in Cantonese): *Madam President, I have learnt that the Water Supplies Department (WSD) has offices at a number of reservoirs. In this connection, will the Government inform this Council:*

(a) of the locations, sizes, numbers of staff and construction dates of the reservoir offices, broken down by whether or not the offices have been listed as statutory monuments; whether the authorities have assessed which of the reservoir offices not so listed could be considered for being listed as statutory monuments; if so, of the assessment results; and

(b) whether it has considered adopting the mode of development for the former Marine Police Headquarters in Tsim Sha Tsui to convert some of the reservoir office sites of historical value into tourist spots with facilities such as heritage hotels?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President,

(a) The WSD has eight waterworks with offices in the reservoir areas. The location, size, number of staff and year of construction of each of these waterworks are listed in the main reply:

Waterworks	*Location*	*Site Area (sq m)*	*Number of Staff*	*Year of Construction/ Commissioning*
Shek Lei Pui Water Treatment Works	4.5 Milestone Tai Po Road	910	5	1928
Aberdeen Raw Water Pumping Station	Aberdeen Lower Reservoir	70	-	1931

Waterworks	*Location*	*Site Area (sq m)*	*Number of Staff*	*Year of Construction/ Commissioning*
Tai Tam Tuk Raw Water Pumping Station	Tai Tam Reservoir Road	1 100	3	1935
Tai Po Road Water Treatment Works	4.5 Milestone Tai Po Road	900	4	1956
Tai Lam Chung Raw Water Pumping Station	16.5 Milestone Castle Peak Road, Tai Lam Chung	430	-	1963
Tai Mei Tuk Raw Water Pumping Station	Bride's Pool Road, Tai Mei Tuk, Tai Po	1 600	2	1968
High Island Raw Water Pumping Station	High Island Reservoir, Pak Tam Chung, Sai Kung	2 100	2	1975
Lower Shing Mun No. 2 Raw Water Pumping Station	Lower Shing Mun Road, Sha Tin	1 400	2	1983

None of the buildings, including offices premises, offices, of the above waterworks have been listed as "statutory monuments" under the Antiquities and Monuments Ordinance. The Antiquities Advisory Board has assessed the historical and architectural values of the buildings of individual waterworks previously and has finally listed the Tai Tam Tuk Raw Water Pumping Station at Tai Tam Reservoir Road as a Grade I historical building and the Shek Lei Pui Water Treatment Works at 4.5 Milestone Tai Po Road and the Aberdeen Raw Water Pumping Station at Aberdeen Lower Reservoir as Grade III historical buildings for reference in carrying out heritage conservation work.

(b) All of the above waterworks are still operational and there are various electrical and mechanical installations in the buildings concerned. Since we have no plan to vacate or abandon these

buildings at this stage, we have not considered converting the buildings of higher historical value into tourist sites. However, the WSD is willing to consider allowing individual groups or organizations to visit those buildings of higher historical value by appointment, provided that water supply is not disrupted.

MISS CHOY SO-YUK (in Cantonese): *Madam President, the locations of some of the waterworks can be seen in the table shown in part (a) of the main reply. For instance, with a site area of 2 100 sq m, the High Island Reservoir, a former pumping station, has only two employees and is no longer used for pumping purposes. Many places are actually being wasted. For instance, the surroundings of the Tai Tam Tuk Raw Water Pumping Station are very beautiful. Though it has a site area of more than 1 000 sq m, only three employees are working there. May I ask the Secretary whether the Government will, apart from receiving individual groups or organizations to visit those buildings, consider using them for other purposes such as exhibition venues, eco-tourism promotion, and so on? With their backs facing a reservoir, both the High Island Reservoir and the Tai Tam Reservoir are set against a tranquil environment. If small inns can be built here, I believe people who love admiring the ecological environment of the countryside will be extremely pleased to stay there.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): Madam President, let me cite the Tai Mei Tuk Raw Water Pumping Station mentioned by Miss CHOY So-yuk earlier as an example. Although the Station seems to be quite large, all automated systems are housed there. As such, the area taken up by the machinery is quite large, despite the fact that only a small staff is required. Unless with an overhaul or replacement by some new electronic control devices, it is necessary for the machinery to take up so much space. As regards Miss CHOY's proposal of building an inn at the pumping station, I believe travellers might not like the idea of staying in it if there is a pump house beside it because the pump house will generate a very disturbing noise. As such, there is a problem of co-existence. We are examining the feasibility of partially opening certain reservoirs not used for supplying potable water, such as those used for supplying water for irrigation or flushing purposes, for the development of eco-tourism. A number of additional recreational facilities, such as small boats, fishing facilities, and so on, have now

been installed at the Pok Fu Lam Reservoir. Actually, we are studying the matter with the departments under Secretary Stephen IP.

PRESIDENT (in Cantonese): Oral question time ends here.

WRITTEN ANSWERS TO QUESTIONS

Government Spending on Announcements in the Public Interest

7. **MR TIMOTHY FOK**: *Madam President, will the Government inform this Council of the amount of government spending per annum on announcements in the public interest over the past five years, broken down by the advertising media including newspapers, magazines, radio, television, Internet and so on?*

SECRETARY FOR HOME AFFAIRS: Madam President, my reply to the Honourable Timothy FOK's question is as follows:

Depending on the themes and target recipients of the message, bureaux and departments launch their publicity programmes through different media in the form of announcements in the public interest. Generally speaking, announcements made by bureaux and departments via television or radio are eligible for free air time provision as specified in the Broadcasting Ordinance (Cap. 562). Except for major publicity campaigns co-ordinated by the Information Services Department in the past, charges for announcements are paid by relevant bureaux and departments. Such expenses are usually charged to the specific project votes, the "Publicity", or even "Other Professional Charges" or "Miscellaneous" votes, and so on.

This question asks for data on expenses on specific publicity items in the last five years. These data are not readily retrievable from a single expenditure item of the government account. Extensive checking of individual project files involving substantial manpower and time is required. Despite this, with the assistance of various bureaux and departments, we manage to obtain data from 72 bureaux and departments. These are now listed at the Appendix.

Appendix

Expenditure on Placing Announcements in the Public Interest in the Following Media

Year	*Newspapers ($)'000*	*Magazines ($)'000*	*Media Radio ($)'000*	*Television ($)'000*	*Internet ($)'000*
1998-99	1,087	78	300	51	68
1999-2000	1,500	527	200	896	151
2000-01	2,150	225	727	309	296
2001-02	2,222	29	102	641	620
2002-03	1,706	122	1,207	2,397	1,158

Remarks: The above data only reflect the placement expenses incurred by 72 bureaux/departments, and do not include publicity expenses incurred by bureaux/departments for individual performance/activity/exhibition, tendering activity, recruitment and so on.

Protecting Interests of Buyers of Uncompleted Residential Flats

8. **DR DAVID CHU** (in Chinese): *Madam President, on 16 May this year, two subsidiaries of a listed company were placed in receivership due to debt troubles, and the receivership included the two companies' two uncompleted residential property development projects (that is, Villa Pinada and The Aegean). At one time, there were doubts as to whether buyers of the uncompleted residential flats in question would be able to obtain the right of ownership of the properties they purchased upon completion of the projects, and the public also expressed concern about whether loopholes exist in the system for the pre-sale of uncompleted residential flats. In this connection, will the Government inform this Council:*

(a) of the details of the assistance rendered by the relevant government departments to such buyers;

(b) whether it has assessed if there are loopholes in the existing system for the pre-sale of uncompleted residential flats that have rendered

the interests of the buyers concerned not being fully protected; if so, of the assessment results; and

(c) of the comprehensive and concrete measures in place to prevent the recurrence of similar incidents, so that public confidence in home ownership will not be dampened?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese): Madam President, my reply to the question raised by Dr the Honourable David CHU is as follows:

(a) On the Villa Pinada and The Aegean cases, the Administration has sought from the solicitor's firms acting on behalf of the developers relevant information pertaining to the projects under construction, such as details of the disposal of the sale proceeds. We have also met with representatives of the flat buyers and exchanged views with them on their legal rights and actions they could take.

The Administration has also kept in close touch with the Receivers on the progress of the cases. The Receivers issued statements on the Villa Pinada and The Aegean cases on 26 May and 10 June 2003 respectively, indicating their intention to arrange for the completion of the developments and the sale and purchase agreements with the buyers as soon as possible. On 23 June 2003, the Receivers issued another statement that they needed to follow up on a claim by a company of its priority rights over Villa Pinada. The Administration will continue with its contact with the Receivers and would closely monitor the development of the matter.

(b) The objective of the Consent Scheme is to regulate sale of uncompleted flats and to protect buyers. Under the Consent System, developers have to prove that they have adequate financial ability to complete the project. Before consent for pre-sale of flats is given, the Lands Department would ensure that the concerned professionals have submitted the required documents certifying the progress of the construction works and the financial position of the developer.

In the light of the problems revealed in the Villa Pinada and The Aegean cases, the Administration has started a review of the Consent Scheme. The preliminary findings indicate that there is a need to ensure that perspective buyers who have paid for the cost of the flat will be able to obtain legal ownership of the completed flats irrespective of any problems which the developer might face, resulting in receivership as in the present case. In this connection, the Administration is consulting the concerned organizations on the possibility of inserting a clause in the standard sale and purchase agreement, to enable the buyers to obtain legal ownership upon their full payment of the purchase price. We are also exploring improvement measures on other concerns relating to the conflict of interests under the Consent Scheme and the operation of the stakeholder's account.

(c) The Administration has briefed the Legislative Council Panel on Housing and the Panel on Planning, Lands and Works on 18 June 2003 on the outcome of the Administration's preliminary review. We would study the views expressed by Legislative Council Members and would continue to consult concerned professional bodies and organizations on possible improvement measures to the Consent Scheme. We have had initial discussions with the Independent Commission Against Corruption and they have indicated an intention to conduct a study on the Consent Scheme from the angle of corruption prevention. We will also work with the Consumer Council on ways to enhance consumer protection in the purchase of flats. We will report to the Legislative Council on the outcome of our review.

The Administration has written to the developers of the 44 developments that are currently covered by the Consent Scheme and 17 developments for which applications for the Consent Scheme are being processed. The developers are required to submit updated information on their developments, for example, stage of the construction works, the pre-sale situation, the disposal of the sale proceeds, and so on. The updated information will help ensure that the approved pre-sale arrangements are operating in compliance with the relevant rules so that the interests of flat buyers are protected.

Hawker Control in Public Housing Estates

9. **MR IP KWOK-HIM** (in Chinese): *Madam President, it has been reported that the problem of illegal hawking in public housing estates (PHEs) in districts such as Kwai Tsing, Sha Tin and Tuen Mun has deteriorated since the Housing Department (HD) contracted out the estate management of those estates. As the estate management contractors (contractors) are not empowered to arrest hawkers and confiscate their goods, a Mobile Operations Unit (MOU) has been set up by the HD to clear hawkers doing business within the premises of PHEs. However, the MOU will only be deployed upon request by the contractors and the HD will charge the contractors concerned a fee of several thousand dollars and such requests will be recorded as reference for future consideration of contract renewal. The contractors are hence generally reluctant to call the MOU for assistance in clearing hawkers, resulting in the failure to resolve the hawking problems in PHEs. In this connection, will the Government inform this Council:*

(a) whether it will consider disregarding making reference to the record of contractors' requests for the deployment of MOU to clear hawkers for renewal of their contracts;

(b) how the level of fees for the deployment of MOU are determined and whether it will consider lowering the fees; and

(c) other than deploying the MOU to clear the hawkers, whether the HD will consider other alternatives to assist the contractors in solving the problem of illegal hawking; if it will, of the details?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese): Madam President, my reply to the three-part question is as follows:

(a) Under their management contracts with the HD, property services companies are expressly required to ensure that the PHEs under their charge are free from hawker nuisance. Generally speaking, most companies are able to curb illegal hawking effectively through manpower deployment or hiring additional hawker control guards. For estates where illegal hawking persists, the HD will, on property services companies' request or on its own initiative, deploy the MOU to conduct anti-hawking operations.

To encourage property services companies to try their best to maintain a good living environment for tenants of PHEs, their effectiveness in combating hawkers is one of the indicators for performance appraisal. Nevertheless, assistance rendered to a property services company by the MOU is not taken into account in determining contract renewal.

(b) The level of charge for the MOU's service is determined on a cost-recovery basis and calculated from the number and rank of staff deployed and duration of the operation. If hawking problem already exists before a property services company takes over the management of an estate, the HD will undertake thorough hawker clearance operations free of charge prior to handing over. For subsequent operations, the MOU will be deployed on an "act first, recover costs later" basis.

(c) In addition to deploying the MOU for hawker clearance operations, the following measures have also been put in place to combat illegal hawking:

(i) to carry out joint operations and formulate enforcement strategies in conjunction with the police and the Food and Environmental Hygiene Department;

(ii) to conduct headcounting surveys to update the hawking profile for the purpose of strategic planning; and

(iii) to encourage neighbouring property services companies to establish a mechanism for information exchange or to conduct joint operations so as to enhance the overall effectiveness and the deterrent effect of hawker control measures.

Applications for Development of Private Land in New Territories

10. **DR TANG SIU-TONG** (in Chinese): *Madam President, regarding matters relating to the applications for land development lodged by the owners of private land in the New Territories, will the Government inform this Council:*

(a) whether the authorities have, over the past three financial years, objected to applications from these owners to the Town Planning Board (TPB) for land development or change in land use for development or rejected applications from indigenous residents of the New Territories for building small houses on private land, on the ground that the land concerned is reserved for infrastructure or housing projects; if so, of the details of the relevant policies in this regard and the respective numbers of applications objected to or rejected over the above period; and

(b) whether land resumption has taken place in respect of those applications which had been objected to or rejected by the authorities concerned; if so, the respective dates of objection or rejection by the authorities and of the land resumption notices published in the Gazette; if not, the reasons for that?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese): Madam President,

(a) In considering the planning applications or proposals for change of land use, the TPB would take into account various factors including the planning intention and the impacts of the developments on the environment, traffic, landscape and infrastructure of the surrounding areas. Over the past three financial years, seven planning applications and three proposals for change of land use were rejected by the TPB which involved the reason that the Government has plans to implement infrastructure projects on the concerned land and initiate land resumption.

In the past three financial years, the Lands Department rejected 103 small house applications which involved the reason that the Government has plans to implement infrastructure or public housing projects on the concerned land and initiate land resumption. Under the existing policy, small house applications will not be approved if the proposed sites are located within the area to be resumed for infrastructure or public housing projects. If the applicant could identify a suitable alternative site within 12 months from the date of rejection, the priority accorded to the original application would be retained.

(b) The dates of rejection and gazetted dates of land resumption in respect of the above-mentioned planning applications, proposals for change of land use and small house applications which were turned down are as follows:

Date of rejection[(Note)]	*Gazetted date of land resumption*
24 May 2000 (five cases)	16 January 1999
26 June 2000 (three cases)	4 June 2001
28 June 2000 (seven cases)	4 June 2001
21 September 2000	16 January 1999
21 September 2000	6 March 2001
21 September 2000	7 March 2002
2 February 2001 (three cases)	5 December 2002
9 March 2001	5 December 2002
4 April 2001	9 November 2001
1 June 2001	18 July 2002
5 October 2001	27 June 2002
11 October 2001	3 October 2000
14 November 2001 (three cases)	3 October 2000
3 January 2002	10 April 2003
24 June 2002	9 November 2001
4 October 2002	7 March 2003
4 March 2003 (two cases)	5 December 2002
21 March 2003	18 July 2002

(Note) As it takes considerable time to process the large number of small house applications, there may be cases in which the date of rejection is later than the gazetted date of land resumption.

As for other rejected applications or proposals which are not listed above, the Government has yet to gazette notices for land resumption mainly because the concerned government departments are still in the process of handling objections raised by the public to the infrastructure projects, reviewing the boundaries for land resumption, or reviewing the concerned infrastructure or public housing projects.

Impact of Kowloon Southern Link on Hong Kong Cultural Centre

11. **MS CYD HO** (in Chinese): *Madam President, it has been reported that the alignment of the Kowloon Southern Link (KSL) proposed by the Kowloon-Canton Railway Corporation (KCRC) is 50 m away from the Hong Kong Cultural Centre (HKCC), and that the KCRC will provide a special double-floating track slab inside the tunnel sections along Salisbury Road to ensure that the facilities of the adjacent HKCC do not suffer noise or vibration in excess of statutory limits. In this connection, will the Government inform this Council whether it will:*

(a) ensure that the concert hall and theatre of the HKCC will not be affected by the noise and vibration arising from the construction and operation of the KSL mentioned above; and

(b) invite experts outside the Government to assess, from the perspective of the stringent requirements which the facilities of performing venues have to meet, whether the impacts of the construction and operation of the KSL on the above performing venues are acceptable or not; if so, whether the culture sector will be consulted on the experts to be invited; if invitations will not be made, the reasons for that?

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Chinese): Madam President,

(a) We fully appreciate that the HKCC is a very important venue for cultural performances. The KCRC will do whatever it is necessary to protect the HKCC from the noise and vibration arising from the construction and operation of the KSL.

As the KSL is a designated project under the Environmental Impact Assessment Ordinance, the KCRC is required to submit an Environmental Impact Assessment (EIA) report which, among other things, will assess the impact of noise and vibration and identify appropriate mitigation measures where necessary. The KCRC is still working on the EIA report.

(b) In preparing the EIA report, the KCRC has employed reputable acoustic specialist consultants to advise on the design of the railway tunnel and carry out measurements using highly specialized systems. The KCRC will consult the Advisory Council on the Environment, the Leisure and Cultural Services Department and affected parties on the EIA report when it is completed.

Dissolution Procedure of Government-appointed Ad Hoc Committees or Committees of Inquiry

12. **MR HENRY WU** (in Chinese): *Madam President, will the Government inform this Council:*

(a) of the normal dissolution procedure and subsequent arrangements for ad hoc committees or committees of inquiry appointed by principal officials and comprising non-government members only; the person(s) responsible for the retention and management of the relevant documents (including minutes of meetings and submissions) after the dissolution of these committees; the period and location for storing the relevant documents, the destruction procedure and the criteria for releasing them;

(b) whether the arrangements for the relevant documents of the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure (Expert Group) appointed by the Financial Secretary after its dissolution have been the same as those mentioned above; if not, of the details of and reasons for the discrepancies; and

(c) whether the authorities will make public the names of the individuals or organizations which have had interviews with or presented submissions to the Expert Group and the contents of all their views expressed orally or in writing, provided that they do not object doing so; if not, of the reasons for that?

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY (in Chinese): Madam President,

(a) Ad hoc committees or committees of inquiries, together with their secretariats, will normally be disbanded upon completion of their specified tasks. There is, however, no fixed procedure for their dissolution and hence the management of the relevant documents. Upon the dissolution of the committees, documents or records handled by the committees would be managed subject to the committee's specific advice, if any, or by the relevant bureaux or departments.

(b) As mentioned in the reply to (a) above, there is no fixed procedure for the dissolution of ad hoc committees or committees of inquiries and hence the management of the relevant documents. Therefore, the question of whether the handling of the relevant documents of the Expert Group after its dissolution is in line with the fixed procedures does not arise.

(c) According to the report of the Expert Group published on 21 March 2003, the Expert Group has received 28 written submissions. Details concerning the groups and individuals that have sent in written submissions are set out in the Annex to the report. The report also stated that the Expert Group has met with 33 interested groups and individuals and conducted 65 personal interviews. The respondents, including those who sent in submissions or met with the Expert Group, included the Government, the Securities and Futures Commission, the Hong Kong Exchanges and Clearing Limited, industry associations, Legislative Council Members, institutional investors both local and international, retail investor representatives, overseas regulators, small broker associations, investment banks, commercial banks, enforcement agencies, members of the legal and accounting professions, academics, listed companies both large and small, members of various regulatory committees and bodies, and others. Members may wish to refer to the report for details.

The Expert Group has made it clear in the report that its observations and conclusions represented a distillation of the views

expressed and that it had not attributed specific opinions or proposals except in cases where the respondent has approved its doing so. We respect the Expert Group's way of handling the content of the views expressed to it.

Salary Adjustment on Contract Renewal for Non-Civil Service Contract Staff

13. **MR LEUNG FU-WAH** (in Chinese): *Madam President, I have received a complaint from a non-civil service contract (NCSC) employee that his department lowered his salary by 18.4% on renewal of his contract. In this connection, will the Government inform this Council:*

(a) whether it has issued guidelines to departments on how to determine the rate of salary adjustment for NCSC staff when their contracts are renewed; if so, of the details of the guidelines;

(b) whether it has set a unified standard on the rate of salary adjustment for NCSC staff upon renewal of their contracts in respect of staff of the same grade (for example, the clerical grades) employed by different departments; and

(c) of the average rate of salary adjustment on renewal of contract for those clerical grade staff who had their NCSCs renewed in the past two years?

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Madam President, the Non-Civil Service Contract Staff Scheme is a standing scheme introduced in 1999 to enable Heads of Department (HoDs) to employ staff on fixed-term contracts outside the Civil Service to meet service needs which are short-term, part-time or under review. HoDs have full discretion to decide on the appropriate employment packages for their NCSC staff, subject to the guiding principles that the terms and conditions for NCSC staff should be no less favourable than those provided for under the Employment Ordinance and no more favourable than civil servants in comparable civil service ranks.

The employment of a NCSC staff ends upon expiry of his/her contract. The offer of any further contract is solely at the discretion of the HoD concerned and subject to the prevailing terms and conditions as may be offered.

Against the above background, my replies to the questions are as follows:

(a) We have issued general guidelines to HoDs that they have the discretion to decide on the appropriate level of pay in making new offers and in renewing contracts of serving NCSC staff having regard to the condition of the employment market; management and operational needs of the department; and the pay offered to civil servants of comparable ranks. However, the pay so offered should not exceed the mid-point salaries of comparable civil service ranks or ranks of comparable level of responsibilities.

(b) The objective of the NCSC Scheme is to provide HoDs with the flexibility to engage staff outside the civil service establishment in an efficient manner to meet service needs which are short-term, part-time or under review. To maintain this flexibility, we consider it appropriate to allow individual HoDs to determine the level of pay to be offered to their NCSC staff on renewal of contracts having regard to the guidelines in (a) above. Besides, even for NCSC staff who perform similar types of duties, given the fact that the skills and experiences required, the range and complexity of the duties to be undertaken and the duration of contracts to be offered may vary among different departments, it will not be appropriate to set a unified standard rate for pay adjustment as such. To do so would unnecessarily undermine the flexibility of HoDs in utilizing the NCSC Scheme and is inconsistent with the objectives of the scheme.

(c) Since pay adjustment, if any, upon renewal of contracts of serving NCSC staff is determined by individual HoDs having regard to the guidelines in (a) above, we do not centrally maintain information on the average rate of salary adjustment on renewal of contracts for NCSC staff who perform clerical duties.

Provident Fund Scheme of Hospital Authority

14. **MR MICHAEL MAK** (in Chinese): *Madam President, regarding the Provident Fund Scheme managed by the Hospital Authority (HA) for its staff, will the Government inform this Council whether it knows:*

(a) the rates of return on investment of this Provident Fund Scheme in each of the past two years, the impact of the investment environment on these rates, and how such rates compare to the average rates of return of Mandatory Provident Fund schemes during the same period;

(b) the criteria the HA has adopted in selecting the investment manager, and how it monitors his performance; and

(c) if the HA will consider appointing several investment managers for selection by individual staff members in respect of their own accounts; if it will, of the details of the relevant arrangements, if not, the reasons for that?

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

(a) The investment horizon of the Hospital Authority Provident Fund Scheme (HAPFS), which is a retirement scheme, is essentially long-term. The asset allocation for the HAPFS has been so designed to cater for the different risk-return preferences of Scheme members while achieving capital returns over the long term. The Scheme will therefore not seek to maximize the investment return through "timing" the market and changing the investment benchmark frequently. Historically, an investment cycle could be as long as 10 years, which is considered a reasonable investment horizon when analysing the historical performance of the market, in order to smooth out the short-term fluctuations. Over the last 10 years, the rate of return of the HAPFS ranged from -14.48% in 2002-03 to 28% in 1999-2000, with the average rate of return at 6.04% per year.

The rates of investment return of the HAPFS in the 2001-02 and 2002-03 financial years were -0.21% and -14.48% respectively. The negative return of the HAPFS in 2001-02 and 2002-03 can largely be attributed to the poor performance of the global equity markets. By way of reference, according to the Morgan Stanley Capital International World Index, equity returns in all developed markets fell by 3.88% in 2001-02 and 23.96% in 2002-03. In this connection, about 70% of the assets in the HAPFS are in equities, with the rest in bonds and cash. The negative return in respect of equities in these two years was partly offset by the positive return from investment in bonds and cash.

The rates of return of funds of Mandatory Provident Fund schemes with comparable asset split (that is, with 60% to 80% of assets in equities) as that of the HAPFS ranged from -6.6% to +2.7% in 2001-02 and from -14.7% to -10.3% in 2002-03, with the median rates of return at -4.5% and -13.4% respectively.

(b) The HAPFS is managed by a Board of Trustees which comprises a Chairman, three HA Board Members, three HA employee representatives and two independent trustees appointed by the HA Board in accordance with the Trust Deed of the HAPFS. Normally, if the HAPFS needs a new investment manager, the Board of Trustees would retain the services of an investment consultant to conduct a search in their proprietary databases for suitable investment managers and develop a long list of candidates, perform reviews on the identified managers on the long list, and then make a recommendation to the Board of Trustees on the candidates to be shortlisted. In general, candidates are evaluated on the basis of their people, process and performance. While the detailed selection criteria may vary slightly from one selection exercise to another depending on the required style of the investment manager and the type of investment asset the manager is required to manage, they usually focus on the following six areas:

- Organization - financial backing, stability, profitability of business, funds under management

- Investment process - investment philosophy and approach, consistency, research capability, decision making process, implementation of the decision, risk management and monitoring

- Investment staff - experience, staff turnover, key personnel, continuity and succession plans

- Reporting - transparency, responsiveness, commitment to serving the account

- Performance - track record for similar mandates, risk taken, patterns of out/under-performance, reasons for out/under-performance

- Other conditions - fees, contractual requirements, compliance with the Occupational Retirement Schemes Ordinance

The HA monitors the performance of the investment managers of the HAPFS on an ongoing basis through the online facilities provided by the master custodian appointed by the Board of Trustees and through the regular reports prepared by the investment managers. It should however be noted that the investment managers are not assessed by its short-term performance. The HA would look at their performance over a complete business cycle, typically around three years, so as to ensure that the assessment is unbiased and that any external factors that may have affected the performance are taken into account.

(c) Currently, the HAPFS is managed using a "specialist" approach, whereby investment managers who are "the best" for managing an investment asset for a particular region or sector will be selected. Depending on the size of the asset class, two or more managers may be appointed. In such cases, the managers selected will have styles complimentary to each other (for instance, growth biased as against value biased) to fit the Scheme's overall risk budget. There are at

present 17 investment managers managing the assets of the HAPFS. Since the asset split under the HAPFS is determined by the Board of Trustees and not subject to the choice of individual Scheme members, the account of each Scheme member is in effect managed by all 17 investment managers. The HA intends to give Scheme members a choice of different investment funds with different risk profile starting October 2003. This notwithstanding, the Scheme will continue to be managed using the "specialist" approach.

Introduction of Postcode System

15. **MR SIN CHUNG-KAI** (in Chinese): *Madam President, in response to my question at the Council meeting on 12 January 2000, the Government advised that the Hong Kong Post Office (HKPO) was examining the introduction of a postcode system. Moreover, according to a document entitled "100 Projects for Better Services 2002/2003" issued by the HKPO, it would propose a postcode structure for Hong Kong and formulate strategies for the launching of a postcode system in 2002-03. In this connection, will the Government inform this Council:*

(a) of the findings of the study on the introduction of a postcode system; and the timetable for releasing the details of the study findings;

(b) of the details and progress of the formulation of the postcode structure; apart from postal services, whether the postcode will be applicable to services provided by other government departments or organizations; if so, of the departments and kinds of organizations which will take the lead in adopting the postcode;

(c) whether it will co-operate with other organizations to develop and provide other value-added services on the basis of the postcode system; and

(d) of the details, timing and the amount of money required to implement strategies for the launching of the postcode system?

SECRETARY FOR ECONOMIC DEVELOPMENT AND LABOUR (in Chinese): Madam President, the Government has completed the study on the introduction of a postcode system. Generally speaking, the objective of introducing a postcode system is to improve the efficiency of the postal operation so that letters can be sorted to their delivery sequence, thus improving the read rate of the Optical Character Recognition System used in letter sorting and obviating the need for a postman to sort the letters before delivery.

The postcode adopted in overseas countries consists typically of five to seven digits, denoting the buildings by district and by street. Our study concludes that assigning a postcode to each building in Hong Kong will not achieve such benefits. Instead a separate postcode has to be assigned to each address (that is, each unit in a building).

Against this background, we have the following constraints in terms of designing the code:

(i) Hong Kong is a city with high density development. To assign a separate postcode to each of the 2.5 million postal addresses in Hong Kong, the postcode of Hong Kong could involve up to 15 digits;

(ii) a possible alternative is to have a postcode with random numbers. But such a postcode gives no indication of the actual address;

(iii) to allocate a separate postcode to each of the 2.5 million postal addresses in Hong Kong, we need a postcode with seven random numbers; and

(iv) to help detect input errors, an additional "checksum digit" will have to be included in the postcode. Consequently, the possible postcode would have to contain eight random digits.

The Economic Services Panel of this Council agreed at its meeting in June 2000 that the use of the postcode should be on a voluntary basis. Given the constraints on the postcode design, we consider that:

(i) the use of the postcode by business organizations will depend on their line of business, the volume of mail they handle, their need for address data management and whether they have the necessary IT infrastructure. The use of the postcode by the general public will also influence these organizations' use of the postcode. If the usage among the general public is low, we could not expect the postcode to be widely adopted by commercial organizations;

(ii) a postcode with eight random digits is not user-friendly to the public because a person wishing to use the postcode would have to memorize not only his or her own postcode, but also those of the recipients of the mail. It is likely that people will be inclined to use the postal address as at present.

Having the majority of letters postcoded is a prerequisite to achieving the benefits of introducing a postcode in Hong Kong. In view of the constraints above, we do not expect popular adoption of an eight-digit postcode in Hong Kong. In addition, the HKPO will replace the existing letter sorting machine in 2005 to achieve efficiency in the sorting of mail. The Optical Character Recognition System of the new letter sorting machine will have a better read rate, and reduce correspondingly the benefits to be obtained from the adoption of the postcode. Bearing in mind the above factors, we consider that it is not suitable to introduce a postcode system in Hong Kong for the time being.

Plagiarism Committed by Academic Staff of Tertiary Institutions

16. **MS EMILY LAU**: *Madam President, regarding plagiarism committed by the academic staff of University Grants Committee (UGC)-funded institutions, will the executive authorities inform this Council whether they know:*

(a) the mechanisms adopted by such institutions for handling complaints about plagiarism;

(b) the number of such complaints received by each institution in the past three years;

(c) the average length of time taken for investigating such complaints;

(d) the number of complaints found to be substantiated in the past three years, the names of those academics found to have committed plagiarism, as well as the actions taken against them; and

(e) the measures that the institutions have taken to curb plagiarism?

SECRETARY FOR EDUCATION AND MANPOWER: Madam President,

(a) All the eight UGC-funded institutions have established mechanisms, procedures and guidelines for handling complaints about plagiarism. Although there are variations in the details, in general, the institutions will set up inquiry panels for investigation and disciplinary committees for conducting hearings to determine the appropriate disciplinary actions.

(b) In the past three academic years from 1999-2000 to 2001-02, the eight UGC-funded institutions had altogether recorded six complaints about plagiarism by academic staff. The detailed breakdown by institution is at Annex I.

(c) On average, about 2.25 months were spent on the investigation of each complaint.

(d) Among the six cases, five of them were substantiated. The concerned institutions have taken appropriate actions against the academic staff, details of which are summarized at Annex II. The institutions consider it inappropriate to release the names of the academic staff concerned.

(e) As reflected in the above statistics, the situation about plagiarism has not been serious in the UGC sector. Nevertheless, the institutions consider plagiarism a serious misconduct. They have

published guidelines or handbooks on their policy in respect of plagiarism. Codes of practice and policies on academic integrity are promulgated among all members of the academic staff. For transparency, the disciplinary procedures are also made known to all members of staff.

Annex I

Number of complaints about plagiarism by academic staff received by the UGC-funded institutions

	Academic Year			
Institution	*1999-2000*	*2000-01*	*2001-02*	*Total*
CityU	0	2	0	2
HKBU	0	0	0	0
LU	0	0	0	0
CUHK	0	1	0	1
HKIEd	0	0	0	0
PolyU	1	0	1	2
HKUST	0	0	0	0
HKU	1	0	0	1
				6

Note:

CityU : City University of Hong Kong
HKBU : Hong Kong Baptist University
LU : Lingnan University
CUHK : The Chinese University of Hong Kong
HKIEd : The Hong Kong Institute of Education
PolyU : The Hong Kong Polytechnic University
HKUST : The Hong Kong University of Science and Technology
HKU : The University of Hong Kong

Annex II

Actions taken against the concerned academics

Institution	*Academic Year*	*Actions Taken*
CityU	2000-01	Case 1 : A verbal warning was given to the staff member and recorded in his personal file.
		Case 2 : A serious warning letter was issued to the staff member and he was banned from external teaching for at least one year. He was also requested to substantially reduce his student supervision load at Master and Doctorate levels until he demonstrated that he could provide good quality supervision to students. A Strategic Research Grant was terminated and the award of a Strategic Research Grant was withdrawn. He was also barred from submitting any internal grant applications until the end of September 2004.
CUHK	2000-01	The staff member was reprimanded in writing and temporarily suspended from service. Salary was reduced when he resumed duty.
PolyU	1999-2000	The management responsibilities of the staff member were removed.
HKU	1999-2000	The staff member was formally reprimanded.

Crimes Committed by Illegal Entrants

17. **MR LAU KONG-WAH** (in Chinese): *Madam President, it has been reported that in mid-May this year, the police arrested a gang of 23 persons who had come to Hong Kong from Vietnam with the intent of committing crimes, and*

seized a large amount of firearms during the arrest. Regarding criminals coming to Hong Kong with the intent of committing crimes, will the Government inform this Council of:

(a) the number of illegal entrants arrested for alleged offences other than those prescribed under the Immigration Ordinance in each of the past three years, together with a breakdown by the types of offences, as well as the number of resultant casualties and property losses; and

(b) the new measures in place to crack down on criminals coming to Hong Kong with the intent of committing crimes?

SECRETARY FOR SECURITY (in Chinese): Madam President, on 15 May 2003, the police arrested 23 illegal immigrants (IIs) from Vietnam on Hong Kong Island and seized two detonators and 39 rounds of ammunitions. Some of the arrested persons were also found to possess knives. The police had not found any firearms in this operation.

(a) In the past three years, the number of IIs arrested for crimes other than those outlawed under the Immigration Ordinance and the types of offences committed are listed below:

Crimes	*2000*	*2001*	*2002*
Robbery	102	115	116
Burglary	140	128	114
Possession of Offensive Weapons	85	75	69
Miscellaneous Theft	63	66	55
Others	271	255	203
Total	661	639	557

The police do not maintain statistics on the number of casualties caused by crimes committed by IIs. In the past three years, the number of IIs arrested for crimes involving casualties (including murder, manslaughter, wounding and serious assault) are as follows:

	2000	*2001*	*2002*
Number of IIs arrested for crimes involving casualties	52	23	23

The amounts of property lost in crime cases committed by IIs are as follows:

	2000	*2001*	*2002*
Property losses	$949,884	$1,411,192	$1,785,960

(b) The most effective measure to combat crimes committed by IIs is to prevent them from coming to Hong Kong illegally. In 2002, the police adopted a series of measures to intercept illegal entrants. These measures include:

- upgrading the Boundary Fence and installing electronic detecting devices;

- deploying surveillance barges of Marine Police in Deep Bay;

- strengthening intelligence exchanges with the mainland law enforcement departments on matters related to illegal entry and cross-boundary crimes;

- holding regular and ad hoc meetings with the mainland law enforcement authorities in order to understand the latest trend of illegal immigration and make assessment and appropriate deployment; and

- increasing the intensity of police's enforcement action and conducting joint operations continuously with other government departments to combat illegal entry.

The Security Bureau often provide the Vietnamese Government with latest relevant information on illegal immigration. The Security Bureau had informed the Vietnamese Consul-General of the case referred to in the question immediately and requested them to take

actions, including strengthening border control, preventing the reoccurrence of similar incidents in future.

With the implementation of the above measures, the number of mainland IIs arrested dropped significantly from 8 476 in 2000 to 5 362 in 2002. This is the lowest figure in the past 10 years. The number of IIs from Vietnam also continue to decrease. In 2002, 241 Vietnamese IIs were arrested by the police. This represents a reduction of 338 persons when compared with the figure for 2000.

Implementation of Strategy on IT in Education

18. **DR RAYMOND HO** (in Chinese): *Madam President, it has been reported that in order to move with the times, the Government has implemented the strategy on information technology (IT) in education for five years, but so far the effectiveness of the strategy has not been obvious. In this connection, will the Government inform this Council:*

(a) of the total allocation of resources for implementing the strategy and the main areas in which resources have been committed over the past five years;

(b) of the reasons for the effectiveness of the strategy's not being obvious, and how the authorities deal with such a situation; and

(c) whether guidelines and support have been provided for primary and secondary schools in the course of implementing the strategy; if so, of the details?

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

(a) The Government announced a series of new initiatives to promote the use of IT in school teaching in 1997, and resources have been allocated for the implementation of such initiatives. From 1998 to June 2003, a total of $2.08 billion was provided, mainly for

procurement of computing facilities ($1.205 billion), installation and related works services ($438 million), teacher training ($372 million) and development of educational software ($30 million). In addition, since 1998, over $1.5 billion have been allocated from the Quality Education Fund to support various IT projects in schools, including the "Digital Bridge" scheme which aimed to provide poorer students with computers and the establishment of the "HKEdCity" website.

(b) The Education and Manpower Bureau introduced the "Five-Year Strategy on Information Technology for Learning in a New Era" in 1998. Under the Strategy, specific measures have been drawn up to promote IT in education and assist teachers and schools in improving the quality of teaching through IT application. Over the last five years, a number of related projects have been successfully completed with substantial results. In a study conducted by the University of Hong Kong commissioned by the Government in 2001, that is, the "Preliminary Study on Reviewing the Progress and Evaluating the Information Technology in Education Projects", the Strategy has been considered apt in upgrading students' competence in basic computer operations and Internet usage, as well as significantly improving the IT competency of teachers. Some schools have successfully adopted innovative pedagogical practices where IT is employed to support curriculum and teaching reforms. There is a wealth of cases relating to IT in education pooled by the Education and Manpower Bureau and the schools over the past five years, from which teachers may draw for experience sharing or reference. Besides, the "HKEdCity" is becoming a full-fledged website. It has repeatedly been elected one of the most popular and healthy websites in Hong Kong with the average hit rate reaching as high as two million pages per day. During the period of class suspension with the outbreak of atypical pneumonia, many schools capitalized on the use of Internet e-Learning platforms to continue teaching and learning. All these show that IT is becoming increasingly popular in facilitating teaching and learning. The Government will continue to strengthen teacher training as well as co-operation with schools and the industry with a view to further promoting IT in education.

(c) In the course of implementing the Strategy, the Government has supported schools in many ways. These include providing guidelines and regular information updates to schools on procurement of computing facilities, channels to obtain technical support, network security, and so on. In addition, there are seminars, experience sharing sessions and school visits, through which seconded teachers from the Regional Support Section of the Education and Manpower Bureau will provide professional support to other teachers in promoting wider use of IT to enhance teaching and learning. In the school year 2002-03, the Education and Manpower Bureau has called on 18 schools to form a network of "Centers of Excellence on IT in Education" to provide support for schools in various districts and to promote IT in education. Public sector schools have also been granted resources for hiring IT Co-ordinators for two years to enable the effective use of IT across the curriculum. Starting from September 2003, schools will be granted cash allowance to arrange for their own computer technical support services which have been provided by the Education and Manpower Bureau contract service providers since January 1999.

Arrest of Armed Persons

19. **DR DAVID CHU** (in Chinese): *Madam President, it has been reported that on 20 May this year, a man locked himself up in his apartment after assaulting and wounding a police officer serving him a court summons. Subsequently, he assaulted and seriously injured three of the police officers with a knife when they tried to arrest him after breaking into his apartment. He was finally brought under control with the aid of pepper spray. In this connection, will the Government inform this Council whether:*

(a) the police officers handling the case had considered taking more effective actions to bring the man under control before breaking into the apartment so as to avoid being attacked and injured, and of the reasons for not using the pistols they carried to subdue the man when he attacked them with a knife; and

(b) the police has reviewed the way the case was handled; if so, of the outcome of the review?

SECRETARY FOR SECURITY (in Chinese): Madam President, the suspect in the case is facing criminal charges in court. I therefore cannot discuss details of the case now as this may prejudice the legal proceedings. I will address this question by referring to the general practices of the Police Force in the use of force in violent situations.

(a) The Police Force provides adequate training and equipment to its officers of all levels. This enables police officers to handle emergency situations effectively and protect people from the threat of violence and harm.

The principle governing the use of force by police officers in law enforcement is that only the minimum force necessary to achieve the purpose may be used. The force used must be reasonable in the circumstances.

In determining the level of force to use, the police officers have to assess the actual situation and potential developments at the scene. Oleoresin Capsicum (OC) foam is one of the various forms of force that the police may use in law enforcement. If the relevant police officers' assessment shows that the use of OC foam can effectively keep people's lives away from threats, they will not resort to the use of force at a higher level, for example, firearms.

(b) As an established practice, the Police Force regularly review and follow up relevant cases so as to bring about continuous improvements to its work. If any case warrants a further review or calls for adjustment to police policies and procedures, the Police Force will conduct an immediate study. Appropriate actions will then be taken to ensure that the most effective ways to protect the public and the police officers at the scene are adopted.

On this particular case, a review has been conducted. However, as mentioned before, I cannot discuss details of the case at this stage.

Performance of Property Services Companies Engaged in Management of Public Housing Estates

20. **MR IP KWOK-HIM** (in Chinese): *Madam President, I have learnt that some District Council members consider that the contracting out of management services of certain public housing estates (PHEs) to property services companies (PSCs) has led to the deterioration of estate management, the lack of channels for residents to lodge complaints and their confusion about the standards of management services. In this connection, will the Government inform this Council:*

(a) of the names of PHEs whose management services have been contracted out and of the PSCs managing these estates;

(b) of the number and types of complaints against such PSCs; and

(c) as the performance of PSCs is assessed regularly on the basis of an objective scoring scheme, of the scoring standards and the details of the scheme?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese): Madam President, my reply to the three-part question is as follows:

(a) The PHEs under the management of PSCs and their names are at Annex A.

(b) Since outsourcing of estate management and maintenance services in October 2000, the Housing Department (HD) has received 7 600 complaints against PSCs. Details are at Annex B.

(c) The HD monitors the performance of PSCs through monthly assessments and spot checks conducted from time to time. Scores are given against the Key Performance Indicators set out in the management contract and the performance pledges undertaken by the PSC concerned. Most of the Key Performance Indicators are quantitative criteria specifying time limits, frequencies and scope of services, for example, number of security guards and frequency of patrols, frequency of refuse collection and cleansing of facilities,

inspection and maintenance arrangements for estate facilities and building services, response time for handling tenants' complaints and efficiency in dealing with tenancy matters, and so on. Details of the assessment criteria and their relative weightings vary according to the circumstances of individual estates. Broad aspects of assessment are outlined at Annex C.

The scores given by the HD only account for 50% of the overall performance appraisal on a PSC. The remaining scores comprise 20% given by members of the Estate Management Advisory Committee and 30% from quarterly customer satisfaction surveys conducted by independent companies. This arrangement is aimed at ensuring that the scoring system is objective and takes into account tenants' feedback.

Annex A

PHEs under the Management of PSCs

Estate	*PSC*	*Contract Period*	
		From	*To*
Sau Mau Ping	East Point Properties Limited	1 October 2000	30 September 2003
Tsing Yi Tin Chak	Infolink Management Limited	1 October 2000	30 September 2003
Hing Tin Po Tat	East Point Properties Limited	1 October 2000	30 September 2003
King Lam Oi Tung	Urban Property Management Limited	1 October 2000	30 September 2003
Leung King Tin Yuet	Hsin Chong Real Estate Management Limited	1 December 2000	30 November 2003
Lower Wong Tai Sin (I) Fu Cheong	Parkland Property Management Limited	1 December 2000	30 November 2003

Estate	*PSC*	*Contract Period*	
		From	*To*
Kwong Yuen Wah Lai	Chevalier Property Management Limited	1 December 2000	30 November 2003
Tin Yan Tin Heng	Hsin Chong Real Estate Management Limited	31 January 2001	31 January 2004
Pok Hong Cheung Kwai Chung On Nga Ning Court	Urban Property Management Limited	1 May 2001	30 April 2004
Cheung Wang Tin Yat	Urban Property Management Limited	4 September 2001	3 September 2004
Shek Lei (II) Kwai Hing Kwai Shing (East)	Funing Property Management Limited	1 May 2001	30 April 2004
Tai Yuen	Creative Property Services Consultants Limited	1 July 2001	30 June 2004
Cheung Shan	Eternal Union Development Limited	1 July 2001	30 June 2004
Cheung Hang Cheung Ching	Easy Living Property Management Limited	1 July 2001	30 June 2004
Cheung Wah Ka Fuk Wah Sum	Good Yield Property Management Limited	1 July 2001	30 June 2004
Chuk Yuen South Choi Wan (II)	Nice Property Management Limited	1 July 2001	30 June 2004
Lei Cheng Uk Tai Hang Tung	Hong Kong Housing Society	1 December 2001	30 November 2004

Estate	*PSC*	*Contract Period*	
		From	*To*
Tsui Ping North Tsui Ping South	Good Excel Consultants Limited	1 December 2001	30 November 2004
Tai Ping Shun On Lei Yue Mun Upper Ngau Tau Kok Phase 1 Tung Tau (II) Ma Tau Wai	Hong Kong Housing Society	1 December 2001	30 November 2004
Lei Tung	Vigers Property Management Services Hong Kong Limited	1 May 2002	28 February 2005
Shan King Shui Pin Wai	Top One Limited	1 May 2002	30 April 2005
Po Lam Hau Tak	New City Property Management Limited	1 May 2002	30 April 2005
Fu Shin Choi Yuen	Infinity Services Limited	1 September 2002	31 August 2005
Long Ping	Crown Management Limited	1 September 2002	31 August 2005
Cheung Fat Nam Cheong	Kai Fu Property Services Company Limited	1 September 2002	31 August 2005
Tsui Lam Kwong Tin	Concord Property Management Limited	1 September 2002	31 August 2005
Tsz Man Tsz Hong Fu Shan	Pioneer Management Limited	1 December 2002	30 November 2005

Estate	*PSC*	*Contract Period*	
		From	*To*
Tsz Lok Tsz On Phase 3	Mandarin Property Services Company Limited	1 December 2002	30 November 2005
Kin Ming Choi Ming Shopping Centre	KMW Property Services Company Limited	1 December 2002	30 November 2005
Kwong Fuk	Modern Living Property Management Limited	1 December 2002	30 November 2005
Mei Lam	Sunbase International Properties Management Limited	1 December 2002	30 November 2005
Lung Tin Kam Peng Ngan Wan Part of Tung Chung Area 31 Siu Sai Wan Ma Hang Sai Wan Wang Tau Hom Choi Fai Tin Yiu (I) Tin Yiu (II)	Hsin Chong Real Estate Management Limited	1 April 2003	21 March 2006
Kwai Fong	Fullsky Management Limited	1 June 2003	31 May 2006
Lower Wong Tai Sin (II)	Tak Po Property Services Company Limited	1 June 2003	31 May 2006
Shek Lei (I) Lai Yiu	Champion International Management Development Limited	1 June 2003	31 May 2006

Annex B

Complaints Against PSCs

Category of Complaints	*1 October 2000 to 31 March 2001*	*1 April 2001 to 31 March 2002*	*1 April 2002 to 31 March 2003*	*1 April 2003 to 31 May 2003*	*Number*
Cleaning Services	17	296	1 019	624	1 956
Security	8	100	298	180	586
Repair and Maintenance	48	601	1 971	957	3 577
Others	21	314	723	423	1 481
Total	94	1 311	4 011	2 184	7 600

Annex C

Broad Aspects of Assessment on PSC's Performance

1. Estate Management Office
2. Administrative Duties
3. Pre-Management Obligations
4. Intake and Management Duties
5. Play Equipment Maintenance
6. Tenancy Control and Enforcement
7. Environmental Control
8. Safety and Security
9. Community Services
10. Landscaping and Horticulture
11. Repair and Minor Maintenance
12. Building Services
13. Emergency Plan
14. Revenue Collection
15. Management Account
16. Project Management Functions
17. Slope Maintenance
18. Vacant Flat Refurbishment

(Dr YEUNG Sum rose and intended to speak)

PRESIDENT (in Cantonese): Dr YEUNG Sum, please sit down first. Members, when Dr YEUNG Sum spoke on the Report of the Panel on Education 2002/2003, I received at the same time a letter from Dr YEUNG Sum, seeking my permission to allow him to move a motion under Rule 16(2) of the Rules of Procedure to adjourn the Council after the conclusion of the oral question time. However, as I had been presiding over the meeting since Dr YEUNG Sum presented his written request, I did not have time to consider his request. I think that this request merits my careful and prudent consideration as usual before coming to a decision. Therefore, I now suspend the meeting and hope that the Council can resume in 15 minutes.

5.31 pm

Meeting suspended.

6.09 pm

Council then resumed.

PRESIDENT (in Cantonese): Members, during the course of the meeting this afternoon, Dr YEUNG Sum sought in writing my permission to move, without notice, a motion under Rule 16(2) of the Rules of Procedure to adjourn the Council. In the first letter I received, the issue he was prepared to raise for debate was "How Hong Kong should deal with the strong demands made by over 500 000 people yesterday, so as to avoid Hong Kong sinking into a political crisis". He also called on the Government to shelve the plan to resume the Second Reading debate on the National Security (Legislative Provisions) Bill on 9 July, and to expeditiously conduct a review of the political system, so as to respond to the demand of residents for the return of power to the people. Subsequently, Dr YEUNG proposed another issue for the motion which he intended to move, that is, "The Special Administrative Region Government should immediately, positively and genuinely respond to the strong demands made by over 500 000 people yesterday". Meanwhile, Dr YEUNG also called

on the Government to shelve the plan to resume the Second Reading debate on the National Security (Legislative Provisions) Bill on 9 July, to expeditiously conduct a review of the political system, so as to respond to the demand of residents for the return of power to the people.

I have carefully and prudently considered Dr YEUNG's request. During the suspension of the meeting, he also made representation of his reason in person to me and gave me a supplementary note afterwards. I have considered the reason put forward by him and his subsequent supplementary note.

First of all, I would like to tell Members the nature of the motion for the adjournment of the Council moved under Rule 16(2). Although the adjournment motion allows Members to express freely their own opinions, by the very nature of such a motion, when Members finally vote on it, and if the motion is passed, today's meeting will end there and then, and all the remaining business on today's Agenda cannot be proceeded with until the next Council meeting. This is the nature of the adjournment motion.

The second thing I would like to tell Members is that when I considered Dr YEUNG Sum's request, I also considered the clear stipulation under Rule 16(2) of the Rules of Procedure, that the issue for debate must be an issue of urgent importance. I am satisfied that this issue is important, but I have to consider whether it is urgent.

I have asked myself this question: If we do not debate this issue today, would it cause any irreversible consequences? My answer is "No". I have also considered that if this issue and Dr YEUNG Sum's other requests were not discussed in today's Council meeting, does it mean that the Council would not discuss this issue in the foreseeable future? I am aware, so are Members, that the Council will resume the Second Reading debate on the National Security (Legislative Provisions) Bill on 9 July. According to the Rules of Procedure, each Member has a right, in the course of the debate, to propose without notice a motion to adjourn the debate. If such a motion is passed upon voting, the motion on the Second Reading cannot be proceeded with, and must be submitted to the Council at an appropriate time again. The Rules of Procedure allow Members to request on 9 July that the resumption of the Second Reading debate on the Bill on that day be shelved, and Members may also propose a motion to adjourn the Second Reading debate. Therefore, there is neither a necessity nor any urgency to discuss the issue today as requested by Dr YEUNG Sum.

Moreover, in his two letters, Dr YEUNG Sum mentioned his request for an expeditious review of the political system, and the word "expeditious" does not mean that the review has to be conducted immediately.

Having considered all the aspects I can think of — Dr YEUNG, I will let you speak later, my ruling is that I will not grant Dr YEUNG Sum's request. Of course, I cannot deprive Dr YEUNG Sum of an opportunity to speak. I have made this ruling, nevertheless, I would still let Dr YEUNG Sum speak. But please do not make it too lengthy.

DR YEUNG SUM (in Cantonese): Madam President, thank you for giving me this opportunity to say a few more words, as I would like to, on behalf of the Democratic Party, ask you, Madam President, to reconsider your views as presented just now. The President has mentioned two points, that is, from the procedural point of view, the issue proposed by me is not very urgent, and the President has also mentioned that we are calling on the Government to conduct a review of the political system. Certainly, a review of the political system is not very urgent, as we do not even have a green paper at this moment. However, I hope that the President can revisit the issue proposed by me because even though those requests are additional, the issue is very simple, that is, the SAR Government should immediately, positively and genuinely respond to the strong demands made by over 500 000 people yesterday. Although I have not mentioned what those demands are, this is basically the situation. We are requesting that this Council hold a debate on the need for the Government to immediately, positively and genuinely respond to the strong demands made by over 500 000 people yesterday, instead of conducting a review of the political system. This is the point I have added in my letter. The issue is not a review of the political system. Rather, it is about the need for the Government to respond to the demands of the people made yesterday, and among all, the most important one is that the people oppose the enactment of laws on Article 23 of the Basic Law (Article 23)……

PRESIDENT (in Cantonese): Dr YEUNG, if you wish to speak at great lengths……

DR YEUNG SUM (in Cantonese): I still have one simple point to make.

PRESIDENT (in Cantonese): Please be concise.

DR YEUNG SUM (in Cantonese): Madam President, another kind of urgency refers to "public importance", that is, it is urgent to the public, not to the Council. If one says that 500 000 people taking to the streets in opposition to the Government enacting laws on Article 23 does not represent any degree of urgency to the public, then, Madam President, forgive me for being stupid and ignorant, I cannot think of a second example which is more urgent than this one. Madam President, I hope you can spend some more time to consider the matter carefully.

PRESIDENT (in Cantonese): I will not allow other Members to speak because the President will not engage in a debate with Members. I have already explained my ruling very clearly. Let me say it once again. Just now when Dr YEUNG Sum discussed with me, he also mentioned one of the points, that is, the urgency to the public. In fact, I have told Dr YEUNG Sum, and I am going to say it again to the other Members. As the President, I cannot consider the urgency in terms of politics. I can only consider whether any irreversible consequences will be caused if this issue is not discussed today. I respect your views, but it was after careful consideration that I came to this decision. I believe some Members may not agree, but I will not allow Members to carry on a debate with me. If Members want to discuss and debate the matter with me, you will be more than welcome to come to my office after the meeting to discuss any matter with me.

The Council now resumes the Second Reading on Chemical Weapons……

MR JAMES TO (in Cantonese): Madam President……

PRESIDENT (in Cantonese): Mr James TO, I have told you that I will not debate with Members. Therefore, you must have a very obvious point of order for me to discuss with you.

MR JAMES TO (in Cantonese): Madam President, it is a point of order. Could you please clarify what you meant when you said just now that you would "not consider political factors"? Since Rule 16(2) of the Rules of Procedure reads "discussing a specific issue of urgent public importance", can we take an urgent public concern to mean "urgent public political importance"? May I ask if this point has been ruled out?

PRESIDENT (in Cantonese): No. I have just stated to you clearly that as the President, I must ask myself if the issue is not discussed today, will irreversible consequences be caused? With regard to this question, my answer is "No". Therefore, there is no urgency with this issue.

The Council now resumes the Second Reading debate on the Chemical Weapons (Convention) Bill. Chairman of the Bills Committee responsible for scrutinizing the above Bill, Ms Cyd HO……

MR JAMES TO (in Cantonese): Just a moment, Madam President.

PRESIDENT (in Cantonese): You cannot be like this. I have already answered your question. I think you should……

MR JAMES TO (in Cantonese): I have another point of order.

PRESIDENT (in Cantonese): Fine. What is it?

MR JAMES TO (in Cantonese): Madam President, there are precedents in which the President allowed Members to raise oral questions on certain so-called urgent circumstances or motions. With regard to this issue, I do not know if you can suspend the meeting for five minutes for us to persuade you again? The reason is I do not wish to engage in an open debate.

PRESIDENT (in Cantonese): Sorry, Mr James TO, I know you keenly hope that I can grant the request, but I have already made a ruling. The ruling was not made impromptu. Rather, it was after spending almost half an hour of the Council listening to Dr YEUNG Sum's representations and deliberating it over and again among several secretaries, the Legal Adviser and myself that the ruling was made. Therefore, I hope that you can accept this ruling. If you do not, there is nothing I can do. I can only tell you that the ruling of the President is final.

BILLS

Second Reading of Bills

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Chemical Weapons (Convention) Bill.

CHEMICAL WEAPONS (CONVENTION) BILL

Resumption of debate on Second Reading which was moved on 7 November 2001

PRESIDENT (in Cantonese): Ms Cyd HO, Chairman of the Bills Committee on the above Bill, that is, the Chemical Weapons (Convention) Bill, will address this Council on the Report of the Bills Committee.

MS CYD HO (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on the Chemical Weapons (Convention) Bill, I present the Bills Committee's report. As the deliberations of the Bills Committee have been set out in detail in the Report, so I would speak only on the key issues in the deliberations made by the Bills Committee.

The object of the Chemical Weapons (Convention) Bill is to put into force an international convention in Hong Kong which aims at prohibiting the development, production, stockpiling and use of chemical weapons as well as

providing for their destruction. Given that the general public is not familiar with chemical weapons, the Bills Committee has examined in depth the chemicals covered by the Bill and the impact of the Bill on the general public as well as industrial and other establishments that need to acquire or use chemicals. In this connection, the Bills Committee has carefully examined the provisions, in particular those on (a) chemicals covered by the Bill; (b) prohibited activities under the Bill; (c) powers of seizure, detention and forfeiture by the Commissioner of Customs and Excise; and (d) on the appointment of "in-country escorts" by the Central People's Government and the Government of the Hong Kong Special Administrative Region (SAR) in assisting the inspection teams sent by Secretariat of the Convention to conduct inspections.

On the chemicals covered by the Bill, the Bills Committee notes that the Bill regulates and monitors chemicals listed in the three Schedules annexed to the Convention (the Scheduled chemicals) and the production of and activities related to specified organic chemicals not listed in the Schedules. However, Scheduled chemicals intended for industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes are not regarded as chemical weapons. In other words, peaceful activities involving the Scheduled chemicals are not prohibited.

On the prohibited activities under the Bill, the Bills Committee notes that all the core prohibitions of the Convention have been reflected in clause 5 of the Bill. A person who contravenes clause 5 commits an offence and is liable on conviction on indictment to imprisonment for life.

Under clause 5(a), (b), (c) and (d) of the Bill, no person shall use, develop or produce a chemical weapon; have a chemical weapon in his possession; or participate in the transfer of a chemical weapon. The Bills Committee is concerned that while people in industrial and other establishments may be able to differentiate chemicals being used as chemical weapons from chemicals being used for peaceful purposes, members of the public who acquire or retain the Scheduled chemicals may not be able to differentiate between the two and may inadvertently contravene clause 5(a), (b), (c) or (d). The Bills Committee is advised by the Administration that the Scheduled chemicals which pose high or significant risk are either hardly or not readily accessible by members of the public; and save for very few exceptions, the Scheduled chemicals are not known to have any household uses. In addition, though some of the Scheduled chemicals are toxic chemicals, the handling of which is beyond

the ability of a layman. The Administration considers it inconceivable that members of the public would acquire or use the Scheduled chemicals, therefore, the chance that innocent citizens are caught by these subclauses will be extremely rare. The Bills Committee is also advised by the Administration that as a safeguard, clause 29(2) provides that it is a defence if a person charged with an offence relating to clause 5(a), (b), (c) or (d) can prove that he neither knew nor suspected nor had reason to suspect that the article involved was a chemical weapon, or he knew or suspected the article to be a chemical weapon and had taken all reasonable steps to inform an authorized officer of his knowledge or suspicion.

Clause 5(f) of the Bill provides that no person shall assist, encourage or induce, in any way, anyone to engage in any activity prohibited under the Convention. The Bills Committee has examined clause 5(f) in depth, in particular the need for this subclause and whether it is appropriate to use the term "encourage" in this subclause. The Bills Committee queries the need for clause 5(f) as the offences concerned are already covered under section 89 of the Criminal Procedure Ordinance (CPO). The Administration is unable to find any judicial interpretation which indicates complete overlap of the terms "encourage" and "induce" in clause 5(f) with the terms "counsel" and "procure" in section 89 of the CPO. The Administration considers that it is conceivable that there may be some aspects of the first two terms that are not covered by the second two, or *vice versa*. The Administration therefore maintains its view that clause 5(f) should be retained to replicate in full the prohibitions prescribed in the Convention.

The Bills Committee is concerned that if clause 5(f) is retained, an offender would be prosecuted twice under both clause 5(f) of the Bill as it is now drafted and section 89 of the CPO. The Bills Committee is advised by the Administration that whether an offence should be prosecuted under clause 5(f) of the Bill or section 89 of the CPO would have to be considered taking into account the circumstances of the case. Previous court rulings held that where the legislation provides a specific offence to cover a person who assists another person to commit an offence, he can only be charged with that specific offence and not as an aider and abetter of that other person. By the same token, a person, who commits an offence that could be prosecuted under both clause 5(f) of the Bill and section 89 of the CPO, can only be charged under the relevant offence provision in the Bill and not under section 89 of the CPO. Where a person commits an offence that is covered under either clause 5(f) of the Bill or

section 89 of the CPO only, he will be prosecuted in accordance with the relevant legislation accordingly.

Some members of the Bills Committee have great reservations about using the term "encourage" in clause 5(f). Members consider the meaning of the term "encourage" not precise. They note that in a previous court case, the ruling held, *inter alia*, that encouragement could cover an unintentional act. Madam President, I would like to state that we are talking about the term "encouragement" here, not the term "encourage". Though these two terms have a similar meaning, please note that one is a noun while the other is a verb. Members are also concerned that as the term "encourage" is not commonly used in common law legislation, the use of the term in the Bill would become a precedent. Given that the term is not tailor-made for common law jurisdictions; that the United Kingdom has not incorporated the term "encourage" into its domestic legislation implementing the Convention and this has not been challenged by the international organizations concerned, so members do not see the need to adopt the exact wording from the Convention. Members therefore suggest that the term "encourage" be replaced by "incite" and they also request the Administration to confirm whether the suggested amendment would constitute a breach of the Convention or failure to fulfil any obligation under the Convention.

Whilst the Administration considers that "encourage" has a meaning similar to that of "incite", there is no authoritative interpretation indicating a complete overlap of "encourage" and "incite". If "encourage" is replaced by "incite", there arises a risk of the SAR being challenged for not fully discharging its obligations under the Convention. The Administration is of the view that the term "encourage" should be retained and it has not directly addressed members' question on the United Kingdom domestic legislation not using the exact wording from the Convention.

At the request of the Bills Committee, the Administration agrees that the Secretary for Commerce, Industry and Technology will state, in his speech when the Second Reading debate on the Bill is resumed, the reason for retaining the term "encourage" and that the use of the term in the Bill would not become a precedent.

On the powers of seizure, detention and forfeiture by the Commissioner of Customs and Excise, the Bills Committee considers that such powers should be

clearly set out in the Bill to safeguard the interest of the law enforcement authority and the owners of the seized articles. In this connection, the Bills Committee has suggested a number of amendments to improve on the provisions and procedures. The Administration has accepted the suggestions and agrees to amend clause 21(3) so that a notice of seizure should be issued by the Commissioner of Customs and Excise regardless of whether the article, vessel or vehicle is seized in the owner's presence and that the owner concerned should be informed of the following through the notice of seizure:

(a) the list of seized articles, vessels or vehicles;

(b) the reasons for the seizure;

(c) the grounds on which the seized article, vessel or vehicle is liable to forfeiture;

(d) the owner concerned may, under clause 21(7), claim that the article, vessel or vehicle is not liable to forfeiture within 30 days from the date of the notice of seizure;

(e) if no notice of claim is given to the Commissioner under clause 21(7), then the article, vessel or vehicle will be forfeited to the Government under clause 21(12); and

(f) the Commissioner is required under new clause 16(5) to restore the seized article, vessel or vehicle not liable to forfeiture to the owner concerned when it is no longer required for the purpose of any criminal proceedings or investigation under the Bill or any other enactment.

Some members of the Bills Committee consider that the agreed administrative arrangement between the Central People's Government and the SAR Government for appointing "in-country escorts" for inspection in the SAR should be stated in the Bill. The Administration points out that there is no regulation of the appointment mechanism under the Convention, so it considers it not necessary to prescribe in law the above arrangement.

At the request of the Bills Committee, the Administration agrees to state clearly the appointment arrangements and the reasons for not prescribing the

arrangements in the Bill in the Secretary for Commerce, Industry and Technology's speech when the Second Reading of the Bill is resumed.

The Bills Committee also notes that the Central People's Government and the SAR Government have confirmed the arrangements for specifying officers as "in-country escorts" in writing. However, the Administration considers it inappropriate to release the written agreement to persons outside the Administration, including the Bills Committee. While the Administration claims that this is a general practice governing the handling of the SAR Government's correspondence with other governments, members consider that the relationship between the SAR Government and the Central People's Government should be different from that between the SAR Government and other governments. Given the implementation of "one country, two systems" in the SAR and the need of Legislative Council Members to monitor the issues arising from the agreed arrangement between the SAR and the Central People's Government, members do not accept the Administration's view that it is inappropriate to release the written agreement to the Bills Committee. The Bills Committee agrees that this issue of concern should be referred to the Legislative Council Panel on Administration of Justice and Legal Services and the Panel on Constitutional Affairs for follow-up action.

Lastly, the Bills Committee supports the Committee stage amendments proposed by the Administration.

Madam President, now I would like to speak in my personal capacity.

Under the principle of "one country, two systems", Articles 150, 151, 152 and 153 of the Basic Law provide for the manner in which Hong Kong may participate in international organizations. Under Article 151, Hong Kong may on its own maintain and develop relations and conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, tourism, cultural and sports fields.

The SAR may also participate in international organizations limited to states, but the form of participation is subject to discussions made by the Central People's Government with the international organization concerned.

The Bill is formulated in accordance with Article 153 of the Basic Law, for China is a signatory to the Convention and so Article 153 is invoked to extend the application of the Convention to Hong Kong. The Bill is proposed to enact legislation to provide for the necessary legal authority to fulfil the requirements of the Convention in the SAR.

I understand that in fulfilling international obligations, there is only limited room to discuss the basic procedures and requirements, for after all, this is an international agreement and we are obliged to fulfil our obligations and comply with its details. In terms of these details, there are some which we may not make any substantial changes.

Legislation is a rigorous business and we need to exercise extreme caution in enacting our own legislation. To implement international agreements under the "one country, two systems" principle would involve more considerations. That is why we should be more careful and we should look at the matter from different perspectives as to how international obligations can be fulfilled under the "one country, two systems" principle and as members of delegations of China.

I have talked much about clause 5(f), for the clause uses the exact wording as used in the Convention. What members of the Bills Committee are most concerned about is the term "encourage". The term "encourage" is seldom used in our laws. As to what it means, will a look, a glance or an absence of any expression showing objection be regarded as to encourage? Will this catch many people in the ambit of this term "encourage"? Members of the Bills Committee have made in-depth and repeated discussions on this term and in this connection I would like to thank the officials who attended the meetings of the Bills Committee for their patience in discussing this issue with us. We have a very great difference in this respect. It is because while common law is practised in Hong Kong, not all the signatories to the Convention come from common law jurisdictions. We are also aware of the fact that when international agreements are made, some compromise would be made to accommodate different needs so that more countries will agree to become signatories. So if the agreement is on human rights, the safeguards to human rights will be set at a minimum so that more countries will become signatories. Or when the agreement is on some international obligations related to defence, the obligations will tend to be set in a very loose manner. We are concerned for as Hong Kong practises the common law, when there are certain new terms the meaning of which is not precise (there are some other existing terms whose

meaning is clear and readily comprehensible), we would tend to hope that wordings already used in our domestic legislation will be adopted. That is why we have held three or four meetings to resolve the disputes arising from the use of the term "incite" and "encourage", in the hope that when the legislation is enforced, or when people from the legal profession read the provisions concerned, the meaning of the term can be easily comprehended.

One example of this is that in the course of our deliberations, we learnt that the United Kingdom has not "copied" the exact wording of the related provisions. We have asked the Administration whether or not the United Kingdom has been accused of contravening the Convention and not fulfilling its international obligations for it has not "copied" from the wording of the Convention. However, the Administration has not addressed our query and only said that we will not be reflecting the spirit of the Convention if we do not "copy" the exact wording of the Convention. As a matter of fact, Hong Kong is a signatory to many international agreements, for example, the human rights conventions. When these are applied in Hong Kong, there are some reservations, for example, in the Convention on the Rights of the Child, there are provisions stating that the authorities will have the final power on immigration matters; the International Covenant on Civil and Political Rights also has some reservations on not implementing universal and equal elections. Very often we would ask the Government when will these saving clauses be abolished as we need to fulfil these international obligations. There have even been some occasions on which the Human Rights Commission of the United Nations strongly criticizes Hong Kong of not fulfilling its obligations. The SAR Government would reply that there are different interpretations to these provisions and they are not legally binding.

When we look at these matters together, we would question why the Government applies two sets of different standards with respect to fulfilling its international obligations. Sometimes the Government will say that we have different interpretations of these provisions and there is no need to put all these into force. But on some other occasions, the Government will refuse to settle for anything less than "copying" the exact wording from the international agreements. That is really baffling to us. However, on the issue of the powers of a government, we can see that there is only one principle. When dealing with matters on protecting the powers and rights of the people, the Government will tend to put the least restraints on the powers of the executive authorities, even to the extent of taking these restraints away. But when it comes to laws on the powers to govern, they will be enacted in a most loose

manner so that maximum powers can be obtained. In view of that, personally I am most unhappy about it.

I am convinced that with respect to this topic, different panels will have to take follow-up actions in a systematic way, for the scope of those international agreements to which Hong Kong is a signatory may fall into different bureaux. I hope the panels will do the following with respect to the international agreements which belong to their terms of reference: first, ask the relevant Policy Bureau to make a response; second, ask the Chief Secretary for Administration, being the person in charge of all the Policy Bureaux, to explain to this Council the position of the Government on this topic.

Madam President, I would also like to mention here that there has been some pleasant experience in the course of deliberating on this Bill. For example, on the issue on seizure, detention and forfeiture, we have had very constructive discussions with the executive authorities and the Commissioner of Customs and Excise has also accepted many of the amendments suggested by the Bills Committee. As a result, there are some very clear definitions with respect to the procedure of seizure, detention and forfeiture as found in this Bill which is not found in other existing ordinances. We therefore urge that the authorities to continue to use this mechanism which we have set up under such pleasant experiences and extend it to other ordinances so that they can be amended expeditiously. Thank you, Madam President.

MR HUI CHEUNG-CHING (in Cantonese): Madam President, on behalf of the import and export sector and the Hong Kong Progressive Alliance, I speak in support of the Chemical Weapons (Convention) Bill to ban the development, production, possession and transfer of chemical weapons. The Bills Committee has spent more than one year on the scrutiny of provisions in relation to prohibited activities under the Bill, the application for a permit, appeals against decision of the Director-General of Trade and Industry, and the powers of seizure, detention and forfeiture by the Commissioner of Customs and Excise. I think the Bill is unlikely to become an obstacle to industries and establishments which practically need to acquire or use chemicals while effectively giving effect to the relevant international convention.

In the course of deliberations, the controversies arising from two issues are particularly worthy of attention. One is the term "encourage" which is used in the relevant convention on chemical weapons. This is a very important term

but its meaning is somewhat confused. In a previous court case, the term "encourage" was interpreted to mean "incite", and the term "encourage" has also been interpreted as having the possibility of covering unintentional acts. The interpretation of this term, therefore, varies. This will lead to a problem and that is, when the Administration, in drafting a bill to implement the international convention, comes across critical terms in the convention, it might find it rather difficult to define such terms accurately; or when the terms are not commonly used in local legislation and other common law legislation, must the authorities adopt the exact wording in the convention in order to be considered as implementing the convention in full? Insofar as this Bill is concerned, I welcome the Secretary stating in his speech the reason for retaining the term "encourage" and that the use of the term in the Bill will not become a precedent. In the meantime, I also hope that the Government will continue to look into how international conventions not tailor-made for common law jurisdictions can be incorporated into the common law if similar problems are encountered in the implementation of other conventions.

Another issue of concern is whether the term "in-country escorts" should be specifically defined. The Government considered that officials of the Central Government specified as "in-country escorts" would come from the relevant departments under the State Development and Reform Commission, Ministry of Foreign Affairs and Ministry of National Defense. In the case of the Government of the Hong Kong Special Administrative Region, "in-country escorts" would come from the Commerce, Industry and Technology Bureau, Customs and Excise Department, Trade and Industry Department and Government Laboratory. However, the Government considered it unnecessary to set out the specific arrangements concerning "in-country escorts", but it will clearly explain the relevant arrangements in the speech during the resumption of the Second Reading debate. I agree with the way in which the Government has handled the matter because the organization of government departments will change from time to time, whether they are government departments of Hong Kong or the Mainland. In this era of rapid changes, the renaming and restructuring of government departments are set to become all the more frequent. If legislative amendments are required whenever a department is renamed or reorganized, that will cause too many troubles. Therefore, I consider it unnecessary to prescribe in law administrative arrangements that may change from time to time.

Madam President, I so submit.

MR LAU KONG-WAH (in Cantonese): Madam President, chemical weapons possess formidable power of destruction. Although Hong Kong has never come under any terrorist attack before, in view of the chaotic international situation in recent years and frequent terrorist attacks reported elsewhere in the world, we may face serious consequences if we do not take early precautions by formulating stringent regulatory measures against chemical weapons or the relevant chemicals, lest such weapons or chemicals should fall into the hands of terrorists.

On the other hand, the relevant Convention has come into effect since 1997. As the Central People's Government is a signatory to the Convention, it is only proper and fitting that the application of the Convention should be extended to the Hong Kong Special Administrative Region (SAR), and it has become the rightful duty of the SAR Government to enact law to implement the Convention in Hong Kong. Therefore, in the interest of fulfilling international obligations or that of actual security needs, the Democratic Alliance for Betterment of Hong Kong (DAB) will support the resumption of Second Reading of the Chemical Weapons (Convention) Bill (the Bill).

In review of the process of scrutinizing the Bill, though the vast majority of the chemicals regulated by the Bill would seldom be accessible by the people of Hong Kong (the impact is minimal even for the industrial or academic sectors), yet as this is a new Bill, all the members of the Bills Committee still put a lot of efforts into improving it as much as possible.

The Bills Committee has discussed a number of issues and made a lot of amendments. I would like to express my views on several controversial issues which have arisen in the course of deliberating the Bill.

Firstly, the issue of whether the word "encourage" should be used in clause 5(f) of the Bill. I accept the present approach of the Government, though with some reluctance, in continuing to use the word "encourage" in order to implement the Convention fully.

I fully understand the worries of Honourable Members from legal sector about the usage of the word. Even in the two examples provided by the Government, the interpretations of the word were inconsistent. However, it seems that we have no other alternative if we wish to implement the Convention fully and avoid causing confusions.

The second aspect I would like to mention is the provisions regarding actions of seizure, detention and forfeiture. In fact, when the Government drafted such provisions, it is believed that it must have made reference to other laws or even copy the other existing laws. However, we still spent a lot of time on making a lot of suggestions, such as specifying the time limit for detaining vehicles, and requiring the service of notice of seizure with reasons to owners of articles. We have been meticulous in presenting our suggestions just because we hope that a balance can be struck between the protection of the rights and interest of the persons concerned and the provision of reasonable enforcement authority to the Administration. I believe the authorities will understand that we were not trying to be difficult with them.

Madam President, the world is progressing. Correct practices in the past may have become obsolete now. Likewise, procedures that used to be considered appropriate may now require updating and improvement so as to comply with the standards of our times now. Although legislation is by no means a living being, it still has to undergo the process of "rejuvenating" in order to cope with the needs of society. Therefore, I hope the authorities can make reference to the approach of the Bill in future when considering amending other ordinances which involve seizure, detention and forfeiture and make improvement to them.

The third aspect is on "in-country escorts". When the SAR Government engages itself in actual enforcement operations in future, it may have to conduct inspections in conjunction with officials of the Central Government. Therefore, it is necessary for us to specify the departments which may come to Hong Kong to take enforcement actions, thereby enabling all parties concerned to understand future arrangements clearly. This is very important. In the course of deliberations, the Government has already spelt out the intention of the Central People's Government, though it has no intention to reflect it in the provisions. As a result, all the members have accepted that, for record purpose, the Secretary may make a specific announcement in the resumption of Second Reading.

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

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

(No Member indicated a wish to speak)

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, first of all, I would like to thank Ms Cyd HO, the Chairman of the Bills Committee on Chemical Weapons (Convention) Bill, and members of the Bills Committee for their hard work over the past 14 months. The Bills Committee held 15 meetings to scrutinize the Chemical Weapons (Convention) Bill (the Bill) in detail and put forward many constructive and valuable views to further prefect the contents of the Bill.

The purpose of the Bill is to implement the "Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction" (the Convention) in the Hong Kong Special Administrative Region (SAR). The Convention is an international treaty that aims at banning the development, production, use and retention of chemical weapons. As the People's Republic of China is a signatory to the Convention, the Central People's Government has since 1 July 1997 extended the application of the Convention to the SAR by virtue of Article 153 of the Basic Law.

The Bill mainly provides for the legal authority to:

(a) ban the use, development, production, acquisition, stockpiling, retention and transfer of chemical weapons;

(b) seize chemical weapons found in the SAR for destruction in accordance with the provisions in the Convention;

(c) control and monitor the production and related activities pertinent to scheduled chemicals and unscheduled discrete organic chemicals;

(d) require the submission of information from manufacturers, research and medical institutions, testing laboratories, and so on, for the purposes of compiling annual declarations to the Secretariat of the Convention; and

(e) enable the inspection teams sent by the Secretariat of the Convention to conduct inspections of facilities in Hong Kong.

Clause 5(f) of the Bill provides that no person shall encourage, assist, or induce, in any way, anyone to engage in any activity prohibited under the Convention. In the course of scrutinizing the Bill, the Bills Committee discussed at length whether the term "encourage" ("鼓勵") should be retained in

clause 5(f) as in the original text of the Convention, the definition of the term "encourage" and whether the term "incite" could be used to replace the term "encourage".

Our policy is to fulfil the obligations of the SAR faithfully and effectively in accordance with the provisions in the Convention. We, therefore, think that the provisions on major issues of prohibition in the Convention, that is, paragraph 1 of Article I of the Convention, should be reproduced in full in clause 5 of the Bill. Paragraph 1(d) of Article I states that each State Party to the Convention undertakes never under any circumstances …… to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.

We have also looked up previous court cases, in the hope of confirming the judicial interpretation of the term "encourage". A court case confirms that "encouragement does not necessarily amount to aiding and abetting" ("鼓勵不是必然地相等於協助和教唆"). The term "encourage" could cover unintentional act. However, another court ruling defined "encourage" as "to intimate, to incite to anything, to give courage, to inspirit, to embolden, to raise confidence, to make confident" ("提示、煽惑某人做某事、使有勇氣、激勵、使壯膽、使增強信心、使有信心"). Another court ruling held that the term "encourage" was interpreted to merely mean "incite" ("煽惑").

From the above cases, it can be noted that there is no authoritative interpretation indicating a complete overlap of "encourage" and "incite". It is possible that certain acts, such as intimate ("提示"), inspirit ("激勵") may be covered by "encourage" but not "incite". Nevertheless, there is no case authority holding that the scope of "encourage" is necessarily wider than that of "incite" either. It is possible that, in certain context, "encourage" merely means "incite".

Therefore, we consider the best way to ensure compliance with the Convention is to retain the term "encourage" in clause 5(f) of the Bill. If we replace "encourage" by "incite", there arises a risk of us being challenged for not fully discharging our obligations under paragraph 1(d) of the Convention. On the other hand, for the purpose of clause 5(f), we consider that "encourage" has a meaning similar to that of "incite".

Some Members asked the Administration to explain how we would interpret the term "encourage". As explained above, we consider "encourage" to have a meaning similar to that of "incite" under clause 5(f). I hope this would help address Members' concern. Moreover, under the judicial system of Hong Kong, the presiding Court may, with the help of case law available at that particular point in time, interpret whether the prosecution has proven that a defendant has actually committed the act of "encouragement" under the Chemical Weapons (Convention) Ordinance. The independence of our judicial system would provide a safeguard against any arbitrary definition of the term "encourage".

Some Members have also expressed concern that "encourage" is rarely used in common law legislation, and the use of the term in the Bill would become a precedent. In fact, the term "encourage" is also used in the Laws of Hong Kong, for example, section 5 of the Offences Against the Person Ordinance (Cap. 212), section 26A of the Summary Offences Ordinance (Cap. 228), sections 53 and 54 of the Disability Discrimination Ordinance (Cap. 487) and sections 53 and 54 of the Sex Discrimination Ordinance (Cap. 480) and sections 135 and 136 of the Crimes Ordinance (Cap. 200). Moreover, the wording of each piece of legislation should be determined by the purposes of that legislation, rather than the wording of other legislation. The term "encourage" is used to implement the Chemical Weapons Convention in full in Hong Kong. Therefore the use of the term "encourage" here would not become a precedent.

Ms Cyd HO pointed out earlier that the United Kingdom has not used the term "encourage" in its domestic legislation on implementing the Convention. However, I would like to take this opportunity to point out that certain common law jurisdictions such as Australia, Singapore, New Zealand and Canada do use the term "encourage" in their domestic legislation on implementing the Convention. From this, it is evident that the term "encourage" is not prohibited under common law. We do not consider it necessary to confirm with the Organization for the Prohibition of Chemical Weapons that whether failure to use the term "encourage" would be deemed a breach of the Convention. On the contrary, countries that have failed to use the term "encourage", such as the United Kingdom as mentioned earlier, once their legislation is challenged, would have to explain why they have not followed the provisions of the Convention.

I would now like to talk about the arrangements on "in-country escorts". Under the Convention, it is a State Party's obligation to grant to the inspection team sent by the Organization for the Prohibition of Chemical Weapons the requisite access to conduct inspections of the chemical facilities within its border. In this connection, "in-country escorts" would mean persons who are specified by the inspected State Party to accompany and assist the inspection team in the inspected State Party.

For inspections to be conducted in the SAR, the Central Government and the SAR Government have agreed that, the SAR may, under normal circumstances, nominate SAR officers as "in-country escorts" for endorsement by the Central Government. Where necessary, the Central Government may, in consultation with the SAR, specify Central Government officers to be "in-country escorts" along with the SAR officers.

We understand that Central Government officers specified as "in-country escorts" would come from the relevant departments under the State Development and Reform Commission, Ministry of Foreign Affairs and Ministry of Defense. As in the case of the SAR Government, "in-country escorts" would come from the Commerce, Industry and Technology Bureau, Customs and Excise Department (C&ED), Trade and Industry Department and Government Laboratory.

According to the Convention, the inspected State Party may specify "in-country escorts" to assist the inspection team in the course of inspections to be conducted in its territory. Apart from this, there is no further regulation of the appointment mechanism under the Convention. The Administration therefore does not consider it necessary to prescribe in the Bill the above administrative arrangements between the Central Government and SAR Government on appointing "in-country escorts". Moreover, the organization of government departments may change from time to time. If the government departments from which "in-country escorts" would come from were prescribed in law, any subsequent reorganization changes affecting these named government departments would entail amendments to the Ordinance.

After consultations with the Bills Committee, we agreed to move a number of amendments to the provisions in the Bill on seizures by the C&ED. Such amendments include the specification of the time limit for detention of vehicles

for search, the extension of detention powers and the essential details in the notices of seizure, in order to set out clearly the authority of the C&ED and to enhance transparency, so as to further enhance protection for the interests of vessel and vehicle owners.

As a responsible trade regime, we hope to, after the Bill is passed and becomes effective, strengthen the work of Hong Kong in preventing the proliferation of chemical weapons. Finally, I would like to thank the Bills Committee again for supporting the resumption of the Second Reading debate of the Bill. After the Bill is passed and the corresponding arrangements of the relevant departments come into effect, we would bring the law into effect as soon as possible.

Here, I implore Members to support the Bill and the amendments that I shall move at a later stage. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Chemical Weapons (Convention) 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): Chemical Weapons (Convention) Bill.

Council went into Committee.

Committee Stage

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

CHEMICAL WEAPONS (CONVENTION) BILL

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

CLERK (in Cantonese): Clauses 6, 11, 12, 13, 17 to 20, 25 to 29, 31 to 34, 36, 37, 39, 41, 42 and 43.

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 5, 7 to 10, 14, 15, 16, 21 to 24, 30, 35, 38, 40 and 44.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, I move the amendments to the clauses read out just now as printed on the paper circularized to Members. These amendments, which are mostly technical amendments, have been scrutinized in detail and endorsed by the Bills Committee.

The amendment to clause 1 seeks to reflect the change in the post title of the Secretary for Commerce and Industry to the Secretary for Commerce, Industry and Technology following the implementation of the Accountability System for Principal Officials on 1 July 2002.

The amendments to clause 2 are mostly related to the proposed deletion of Schedule 1 to the Chemical Weapons (Convention) Bill (the Bill). Schedule 1 sets out the full text of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. To ensure clarity after the deletion of the Schedule, we propose to add the definitions of a number of critical terms to reflect their interpretations in the Convention.

The amendment to clause 3 is a textual amendment.

The heading of clause 4 is amended to clarify the purpose of the clause, that is, appointment by the Director-General of Trade and Industry (the Director) of public officers to exercise powers and perform duties conferred or imposed on the Director by the Bill. Moreover, in response to members' concern, clause 4 is also amended to remove the delegation of powers and duties to officers in the Clerical Officer Grade. Members were concerned that given the sensitivity of the matters involved, the proposed delegation of powers to the Clerical Officer Grade may not be appropriate or necessary. While we consider the delegation of powers and duties to the Clerical Officer Grade appropriate and consistent with the existing practice, in view of the relatively small number of permit applications and taking into account members' views, we consider that we can cope with a system without delegation of powers and duties to the Clerical Officer Grade. We, therefore, propose this amendment.

The amendment to clause 5 seeks mainly to the effect that clause 5(c) will read no person shall "acquire, stockpile or retain a chemical weapon". With this amendment, the major prohibitions in paragraph 1 of Article I of the Convention, which are the core elements of the Convention, will be reflected in clause 5 of the Bill.

The amendment to clause 7 seeks to add the word "reasonably" as a criterion for believing that an article is a chemical weapon, because it is difficult for an ordinary citizen to determine that an article is a chemical weapon. Furthermore, it is not in the public interest if the law enforcement agency is notified only when an article is confirmed as a chemical weapon. Besides, with

the addition of "police officers", members of the public can notify a general police officer when they find an article which they believe to be a chemical weapon.

The amendment to clause 8 seeks to remove the objective test for determining the likelihood of the production, use, and so on, of Scheduled chemicals during a certain year. It is because the operator of the facility should be in a better position than an ordinary person to make such determination.

The amendment to clause 9 seeks to provide for the payment of a fee for a permit application. The level of fee payable is set out in the new Schedule 4 to the Bill.

The amendments to clauses 10 and 14 are made to their Chinese texts to ensure consistency with the English texts.

In respect of clause 15, amendments are made to its Chinese text to ensure consistency with the English text. The clause is also amended to include a time limit for detention of vehicles for search and to empower the Commissioner of Customs and Excise (the Commissioner) to extend such limit.

The amendment to clause 16 seeks to add a new subclause (5) to the effect that the Commissioner should return those seized articles not liable to forfeiture to the owner concerned or the authorized agent of the owner when they are not required for the purpose of any criminal proceedings or investigation under the Bill or any other enactment. The amendment clearly provides that the Commissioner shall, as soon as is reasonably practicable, restore the article, vessel or vehicle to the owner concerned or the authorized agent of the owner. This will provide greater protection to the owner concerned.

The amendment to clause 21 seeks mainly to provide that the Commissioner shall issue to the owner concerned a notice of seizure not later than 30 days beginning on the date of the seizure of article, vessel or vehicle, regardless of whether the article, vessel or vehicle is seized in the owner's presence. Besides, the Commissioner is also required to specify in the notice of seizure the reasons for the seizure, the grounds on which the article is liable to forfeiture, and that the owner concerned may claim that the article is not liable to forfeiture within 30 days from the date of the notice of seizure. Moreover, an amendment is made to the English text to make it consistent with the Chinese text.

The amendment to clause 22 seeks to provide that when a claim is made by the person concerned and the article, vessel or vehicle concerned has not been restored pursuant to section 21, the Commissioner shall apply to court for the forfeiture.

The amendment to clause 23 seeks to empower the Court to determine the amount of money paid as security for an application made under section 22(1) in respect of vessel or vehicle that is liable to forfeiture.

The amendment to clause 24 is made to the English text of the clause to make it consistent with the Chinese text.

The amendment to clause 30 is consequential to the removal of the objective test in clause 8.

The amendment to clause 35 seeks to add the word "wilfully", so that a person commits an offence only if he wilfully obstructs a member of the Customs and Excise Service or an authorized officer in the exercise of any power or the performance of any duty conferred on them.

The amendment to clause 38 specifies that an appeal against any decision of the Director in respect of a permit shall be made to the Chief Executive in Council.

The amendment to clause 40 is consequential to the addition of three new Schedules of chemicals pursuant to the deletion of the original Schedule 1. Besides, the Financial Secretary is also empowered to revise the fee for a permit application under clause 9 as listed in Schedule 4.

The amendment to clause 44 is consequential to the addition of four new Schedules before the original Schedule 2. Thank you, Madam Chairman.

Proposed amendments

Clause 1 (see Annex I)

Clause 2 (see Annex I)

Clause 3 (see Annex I)

Clause 4 (see Annex I)

Clause 5 (see Annex I)

Clause 7 (see Annex I)

Clause 8 (see Annex I)

Clause 9 (see Annex I)

Clause 10 (see Annex I)

Clause 14 (see Annex I)

Clause 15 (see Annex I)

Clause 16 (see Annex I)

Clause 21 (see Annex I)

Clause 22 (see Annex I)

Clause 23 (see Annex I)

Clause 24 (see Annex I)

Clause 30 (see Annex I)

Clause 35 (see Annex I)

Clause 38 (see Annex I)

Clause 40 (see Annex I)

Clause 44 (see Annex I)

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 Commerce, Industry and Technology 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 5, 7 to 10, 14, 15, 16, 21 to 24, 30, 35, 38, 40 and 44 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): Schedules 1 and 2.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam Chairman, I move the amendments to Schedules 1 and 2, as set out in the paper circularized to Members.

The amendments are comprised of three parts. The first is the deletion of the full text of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (the Convention). The second is the addition of four schedules and the last is an amendment to the original Schedule 2.

Since the public can access the Convention through other channels, we therefore propose the deletion of the text of the Convention from the Bill. After doing so and for the sake of clarity, we will add to the Bill three Schedules on chemicals in the Convention, which will become Schedules 1 to 3 after amendment. Schedule 4 prescribes the fee for permit application provided for under clause 9. After amendment, the original Schedule 2 will become Schedule 5 and the amendments are all technical and consequential in nature.

The amendments are made after detailed discussion with the Bills Committee which has endorsed them. I implore Members to support the amendments. Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex I)

Schedule 2 (see Annex I)

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 Commerce, Industry and Technology be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1 and 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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

CHEMICAL WEAPONS (CONVENTION) BILL

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

Chemical Weapons (Convention) 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 Chemical Weapons (Convention) 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): Chemical Weapons (Convention) Bill.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Copyright (Amendment) Bill 2001.

COPYRIGHT (AMENDMENT) BILL 2001

Resumption of debate on Second Reading which was moved on 19 December 2001

PRESIDENT (in Cantonese): Mr SIN Chung-kai, Chairman of the Bills Committee scrutinizing the said Bill, will address this Council on the Report of the Bills Committee.

MR SIN CHUNG-KAI (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on the Copyright (Amendment) Bill 2001 and the Copyright (Amendment) Bill 2003, I wish to report on the deliberations made by the Bills Committee on the Copyright (Amendment) Bill 2001 (the Bill).

The main objects of the Bill are to remove the civil and criminal liabilities under the Ordinance related to parallel importation of and subsequent dealings in articles which have embodied in them computer programmes with or without other copyright works. As proposed in the Bill, the types of products that will fall within the scope of liberalization include software products for business application; publications in electronic format like e-books, software products for educational and entertainment purposes and interactive computer software such as computer games, and so on. Nevertheless, clause 3 excludes certain copies of works, that is, movies, television dramas or television movies, music sound recordings and musical visual recordings from being regarded as copies of associated works. The objective is to avoid unintentionally lifting the restrictions on parallel importation of products the principal use of which is to be viewed or listened as a movie, television drama, television movies or a musical visual or sound recording.

The Bills Committee has deliberated at length the scope of liberalization of computer software products and the various ways of defining the scope. In this connection, the Bills Committee notes that findings of the consultation made by the Administration in May 2001 showed an overwhelming public support for liberalizing parallel importation of all types of computer software products including educational and recreational computer software. Some members are of the view that the scope of liberalization should be as wide as possible so as to maximize the benefits of parallel imports to consumers. However, the Bills Committee also notes the concern expressed by the business software and computer games industries which consider that liberalization may affect local distributors that provide after sales services and that the development of the computer games industry in Hong Kong may be impeded. The Administration reiterates the importance of widening the scope of liberalization to benefit more consumers and points out that there is no evidence that such liberalization would impede the development of the computer games industry in Hong Kong.

The Bills Committee is aware of the grave concern of the music, movie and publishing industries about the scope of the liberalization of parallel

importation. The industries point out that with the advances in technology, a computer software product often embodies other copyright works such as music and film recordings as well as e-books in addition to the computer programme. The industries are concerned that the proposed liberalization will seriously undermine the development of these industries. The authorities point out that there are provisions in the Bill which exclude movie and music clips embodied in computer software products from the scope of liberalization. To enhance protection given to copyright owners, the authorities will move an amendment to clause 3, specifying that the types of articles to be excluded from liberalization will include:

(i) computer software products with full-length movie or television drama or the same with a viewing duration of more than 15 minutes or 10 minutes respectively or embodied with movie clips; and

(ii) computer software products with an e-book, a movie, a television drama or television movie, a musical sound recording or musical visual recording embodied together with a computer programme, and which a user, in acquiring the article, is likely to acquire it for acquiring the first mentioned works more so than for all other works (including the computer programmes).

The Bills Committee notes that the amendment is accepted by the industries concerned and is of the view that it has catered for and safeguarded copyright works and the development of multimedia products which have embodied computer programmes.

Some members and The Law Society of Hong Kong have expressed concern that the authorities' approach has set out in a negative manner, the types of articles that fall outside the scope of liberalization, while the types of computer software products that fall within the scope of liberalization are not set out. They consider that clarity is lacking in such an approach. The authorities explain that the negative approach is more appropriate for it can ensure that the scope of liberalization is extensive enough and save for the specified exceptions, parallel importation of other articles which have embodied computer programmes will be liberalized. The approach is consistent with the policy objective of liberalizing parallel imports of computer software products and can offer exceptions to protected works.

The use of computer software products usually involves the copying of the whole or part of the software into the computer's hard disk. The act of copying requires permission from the copyright owner. To avoid developers of computer software defeating the effect of the proposed liberalization by imposing a condition in the end-user licence agreement prohibiting the use of the software product in Hong Kong, clause 4 adds new section 118A to provide that for the purpose of any proceedings for an offence of parallel importation, the acts permitted under sections 60 and 61 will be permitted in relation to a copy of a computer programme despite any term of the end-user licence agreement prohibiting or restricting the use of the programme in Hong Kong. The Bills Committee supports clause 4 that removes the end-user liability that arises as a result of the violation of such a geographical restriction so as to ensure that the objective of the liberalization will not be defeated. Regarding the software industry's concern that the proposed section 118A is wider in scope than intended and may affect the criminal liability arising from licensing conditions other than those on geographical restriction, the Bills Committee welcomes the Administration's Committee stage amendment to clause 4 to clarify that section 118A will apply to geographical restriction only.

Madam President, the Bills Committee has examined and raised no objection to the Committee stage amendments proposed by the Administration. The Bills Committee has not proposed any Committee stage amendments. I hereby propose the resumption of the Second Reading debate on the Bill.

Madam President, next I would like to say a few words in my capacity as the representative of the information technology constituency. On the issue of liberalizing parallel importation of computer software products, most software users and developers of software programmes raise no objection to it. The only objection is, I think, raised by some international business associations which sell computer games software in Hong Kong. In fact, vendors of software products for business applications generally apply universal pricing for products around the world and there is little difference in prices between different regions. Though sometimes we may find some price differences between different regions, but that only reflect the differences in retail costs.

Madam President, in my opinion, copyright restrictions are geographical and they are imposed according to the specific conditions of the place, evident in the restrictions imposed by different countries. With changes in time, amendments will be made to these restrictions. Since 2001, the Copyright Ordinance has been amended a number of times, reflecting frequent changes in

policy. I would think that the Government should exercise great care on the issue of amendments to be made to the Ordinance. Thoughts must be given to the proper positioning of Hong Kong. As Hong Kong is a base for creative industries, the Government should devise policies to promote the development of creative industries like software and computer games development, as well as the audio-visual and movie industries. There is also a need to enhance copyright protection laws and, more importantly, to enforce them. As I have mentioned, the software business associations object to the liberalization of parallel importation. Their greatest concern is not liberalization, but the enforcement of anti-piracy laws. In my opinion, the efforts made by the Customs and Excise Department (C&ED) are not enough and if greater efforts can be made to crack down on piracy in, for example, computer games software, then the industry will benefit more than non-liberalization of parallel importation. When compared to our neighbours, we have better anti-piracy laws and this is shown in the marked fall in our piracy rate for 2001. However, as pointed out by the Business Software Alliance, there were signs that piracy rate had been rising again in 2002. In this regard, what the Government should consider should not be confined to the laws but how the C&ED should enforce them. I urge that the C&ED should be instructed to take tougher actions against piracy. Both the Democratic Party and I support the passage of the Bill.

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

MR MA FUNG-KWOK (in Cantonese): Madam President, the Government proposed liberalizing the parallel importation of computer software in 2001 and the legislative intent was to reduce the prices of computer software and improve the popularization of computer software as well as reducing the operating costs of small and medium enterprises. Its objective was to cater for the interests of consumers and promote the application of information technology in Hong Kong, which is worth supporting. However, when the bill was proposed, there was a very big hidden loophole that lawless elements may pass off pirated copies of copyright video and audio works as parallel imports of computer software, avoiding punishment according to law and seriously threatening the interest of the relevant industries.

As an international city, Hong Kong has won wide acclaim for its efforts in protecting intellectual property rights and combating piracy. However, the

SAR Government has actually done very little in protecting the intellectual property rights of local creators overseas. Some neighbouring countries and regions often exercise insufficient monitoring and control of copyright piracy, so, pirated goods are passed off as copyright goods and openly sold on the market, seriously injuring the interest of the copyright owners. At present, pirated goods, especially audio-visual works are still rampant in many mainland cities. Since local copyright owners do not have the rights to directly produce copyright works on the Mainland and they have to authorize mainland factories to do so, Hong Kong businessmen cannot directly monitor and control the production, thus, unscrupulous factories on the Mainland can capitalize on the opportunity to secretly manufacture copies of those goods. Under the present circumstance and given such a situation, the sector is virtually helpless.

Let us imagine this, as some neighbouring regions can pass off pirated goods as copyright goods, once the parallel import of computer software, embedding audio-video products, is permitted, the lawless elements may pass off pirated audio-video products as parallel import computer software. Under the law, to prove the authenticity of certain goods, it must first be proven in the place of origin that the goods are counterfeit products according to the local copyright decree before combating actions can be taken in Hong Kong. The relevant procedures are so complicated that ordinary small and medium enterprises can hardly cope with, and even the Customs may not be able to clarify the authenticity effectively. When the relevant legislation was initially proposed, the Government proposed that the parallel import of computer software and the comprising associated works could be permitted, which precisely provided the lawless elements with a loophole.

Therefore, during our scrutiny that took more than two years, the sector kept fighting for the explicit distinction between computer software and audio-visual products. The Government promised to propose an amendment only at the last stage of our scrutiny of the Copyright (Amendment) Bill 2001 (the Bill), to add a provision on the protection of copyright to the Copyright Ordinance. It proposed specifying that the audio-visual products embedded in computer software should be deemed as copyright works if they offer viewing of more than a specified duration, and the parallel import of such works could not be allowed. It also proposed prescribing a test to confirm that a consumer buys a computer software mainly because of the audio-visual products within computer software or software. If his objective was inclined towards the latter, parallel import should not be allowed. Besides, e-books were excluded from the scope of

permitted parallel import, and it was specifically defined that the definition of lawful manufacture overseas must really be compatible with the interests of copyright owners.

Actually, along with the continuous expansion of the development of computer technologies and the creativity of mankind, the creativity in the future may transcend the present form of existence as audio-visual music transmission. For instance, computer virtual reality is frequently applied to computer games and there is ample room for development. The scope of protection specified in the Bill may not necessarily cover all creations. We should know that creativity has no limits while the law has. Thus, the most satisfactory method is to specify that, with the exception of computer software used as tools, the parallel import of all other computer software embodying copyright works should not be allowed. Exemption can be given only to some products with particular needs, which is a suitable approach. This can put an end to ambiguity. The sector has only reluctantly accepted the contents of the present amendment Bill.

The Chief Executive has indicated in his policy address that creative industries should be developed. On this premise, it is increasingly important to appropriately protect intellectual property rights. Yet, I personally think that the Government has so far been insufficiently active. The Government's lack of knowledge in this respect has been exposed in the formulation of the Bill. While protecting consumer interests, it has not sufficiently considered the interests of copyright creative industries and copyright owners. In fact, the Government should review the relevant policies; otherwise, it may be unfavourable to the long-term development of local creative industries.

With these remarks, I support the Bill.

MR CHAN KAM-LAM (in Cantonese): Madam President, the DAB has always supported protecting consumer interests through the promotion of market competition, which will bring forth more reasonable prices and more choices. For this reason, I support the resumption of Second Reading debate on the Copyright (Amendment) Bill 2001 (the Bill).

With the rising popularity of computer application, the demand for computer software has also been increasing. Precisely because of this, sales agents often set very high prices for their products. Since consumers do not

have any choices, they are forced to put up with the unreasonable prices. I think Members should still remember that following the implementation of the legislation criminalizing the possession of pirated items on 1 April 2001, there was a rush to buy commercial software, and the resultant speculative activities led to very high product prices. One of the reasons for this was inadequate supply. So, increased product supply and market forces are the only means to bring product prices down to reasonable levels. This explains why we maintain that it is necessary to liberalize parallel imports.

In recent years, the Government has been vigorously promoting the application of information technology in enterprises. However, when it comes to investments in computer equipment, a set of commercial software will very often cost several thousand dollars, a sum which small and medium enterprises can hardly afford, particularly under the current business conditions. Liberalizing the parallel import of computer software will reduce the expenses incurred on purchasing computer software, and this will help enterprises computerize their business operation and thus upgrade their competitiveness.

The question of widening the scope of parallel import liberalization was discussed in the Bills Committee several times. Some members were worried that liberalizing the parallel import of certain products might stifle the development of the industries concerned. But we maintain that the broad policy direction should be to foster consumer interests as much as possible without infringing on intellectual property rights. Hence, we think that the scope of parallel import liberalization should be widened as much as possible to benefit the greatest number of consumers, and should not be confined to commercial software. According to the proposals in the Bill, with the exception of five specified categories of items, other items embedded with computer programmes will also be brought within the scope of parallel import liberalization. We agree that this non-prescriptive approach is the most appropriate way to maximize the scope of liberalization. We also welcome the fact that after listening to the views of the Bills Committee, the Government has tightened the definitions of the items excluded from liberalization, that is, films, television dramas, music, music videos and e-books. We think that depending on the market situation in the future, the scope of liberalization may be widened further to cover more items. It is believed that this will not hinder the development of the industries concerned.

Circumstances permitting, no one will like to use pirated software of poor quality. The only problem is that there are now too few choices of computer software, and the prices are too high. That is why the proposals contained in the Bill are supported by software users. It is believed that after the parallel import of computer software has been liberalized, the prices of copyright software will be kept at more reasonable levels. Consumers will then be more willing to use legitimate products. In this way, intellectual property rights will be given due attention and protection, and pirated software will have no room for survival.

Madam President, I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam President, the purpose of the Copyright (Amendment) Bill 2001 (the Bill) is to liberalize the parallel importation of computer software products so as to promote the free flow of goods and increase the availability of products in the market, and offer more choices and lower prices for consumers. This is conducive to encouraging enterprises, in particular, small and medium enterprises, to purchase legitimate computer software products. Products that fall within the scope of liberalization include computer software products for business application and software products for educational and entertainment purposes. However, products that embody a computer programme but mainly belong to the category of movies, television dramas, television movies, music videos or sound recordings and e-books will be excluded from the scope of liberalization.

The Bills Committee has studied the Bill in detail and offered with many valuable opinions. Here, I would like to take the opportunity to express my heartfelt gratitude to Mr SIN Chung-kai, Chairman of the Bills Committee, and other members of the Committee. With the consent of the Bills Committee, I shall move some amendments to certain provisions of the Bill at the Committee stage. Let me now outline in brief the original proposals of the Bill and the amendments we are going to move after taking into account the views of the industry.

As a result of technological convergence, apart from computer programmes, computer software products in general also contain other copyright works such as art works and sound recordings. Therefore, in addition to removing the civil and criminal liabilities in relation to parallel importation and dealings in the sale of computer programmes, we also have to liberalize restrictions on other copyright products embodied in the same computer software product that contain a computer programme, otherwise, we cannot effectively achieve the desired policy objective. However, on the other hand, as more and more movies, television dramas, television movies and music recordings embody a computer programme, and are packaged and sold as digital multimedia products, we have to carefully delineate the scope of liberalization, so that we will not inadvertently remove the regulation of the abovementioned products.

We originally proposed to exclude products that contain computer programmes which also embodied copies of copyright works such as movies, television dramas or television movies and the viewing duration of such copies exceed a specific limit from the scope of liberalization. For musical visual sound recordings, we propose that an economic value test should be adopted. If the product concerned contains copies of musical sound and visual recordings and the economic value of that product is predominately attributable to the economic value of the recordings, then such copies will be excluded from the scope of liberalization.

In the course of the Bills Committee's deliberations, the focus of the discussion was on how to delineate the scope of liberalization of parallel importation. The local publishing, music and film industries are worried that according to the proposed method of delineation, the scope of liberalization may be so broad as to cause negative impact on the future development of creative industries. In this connection, they have made two proposals:

Firstly, to exclude e-books from the scope of liberalization.

Secondly, to revise the method which is based on the two criteria of economic value test and the viewing duration test on deciding whether various types of works should be included in the scope of liberalization, because this approach is not conducive to the long-term development of multimedia products.

After rounds of discussion with the representatives of the industry and taking into account the views of the Bills Committee, the Government has taken on board the suggestions and will move Committee stage amendments to this Bill. As regards the details of the amendments, I shall talk about them again at the Committee stage. Simply put, under the new definition, all parallel importation of computer software products will be liberalized. However, if the objective of a certain user in acquiring a product for his own use is mainly for the purpose of acquiring the movies, television dramas, television movies, musical sound and visual recordings or e-book, then the parallel importation of this software product will not be liberalized. Furthermore, for computer software products that are embodied with movies, television dramas and television movies, if the copies of such works embodied the work in its entirety, or the viewing of the relevant copies exceed a specified duration, then the parallel importation of such products will not be liberalized.

The government proposals were accepted by the publishing, film and music industries as well as the Bills Committee. However, we are aware that certain individual organization still believe that the scope of liberalization should be further narrowed, for example, only computer software products for business application should be liberalized or, as a Member also proposed earlier, that electronic games should also be excluded from the scope of liberalization. We believe that in deciding the scope, we should not ignore the interests of consumers. We think that the existing new proposals will meet our policy objectives and also cater for the future development of multimedia products and at the same time strike a proper balance between the protection of intellectual property rights, encouragement on the development of creative industries and the promotion of consumer interests. We will monitor the future developments and keep the situation under review, so as to ensure that the relevant balance will be consistent with the actual developments.

During the course of the Bills Committee's scrutiny, some Bills Committee members and members of the industry expressed the worry that the liberalization of parallel importation will be disadvantageous to the development of creative industries. As Mr MA Fung-Kwok and Mr SIN Chung-kai said earlier, I have to reiterate that the target of our liberalization is merely the parallel importation of legitimate products that contain a computer programme. Our policy on protection of intellectual property rights and crackdown on piracy remains unchanged. In fact, in order to encourage the development of creative industries, apart from effectively protecting intellectual property rights, it is

equally important to help the industry to develop new products and open up new markets. The Government has already introduced a lot of measures in these two areas.

For example, as regards the film industry, under the newly concluded "Mainland/Hong Kong Closer Economic Partnership Arrangement", starting from 1 January next year, Chinese language movies produced by Hong Kong can enter the mainland market without quota restriction. For movies co-produced by Hong Kong and the Mainland, the proportion of Hong Kong staff can be increased and the movies can be released on the Mainland as mainland movies.

Furthermore, in addition to setting up a Film Services Office to provide one-stop services and allocating two lots in Tseung Kwan O for the film industry to build a film production centre, the Government has also established a Film Development Fund to offer financial assistance to projects that are beneficial to the long-term development of the local film industry. Furthermore, we also set up a $50 million Film Guarantee Fund at the end of April, and it is hoped that by offering guarantees on loans, we can assist local film production companies to obtain financing from lending institutions for the purpose of film production and also take this opportunity to promote the development of a financing infrastructure for the film industry in Hong Kong.

In supporting the development of the digital entertainment industry, the Government will set up a digital entertainment centre at the Cyberport to provide tenants and related industries of the Cyberport with facilities and technical support for the creation of digital media contents. Through the provision of relevant facilities, technical support and business facilitating services, we expect that the Digital Media Centre will be conducive to the development of the local digital entertainment industry. The Centre will be completed in two phases in December this year and February next year.

The Government also actively encourages and subsidizes the digital entertainment companies to take part in local and overseas market promotion activities to help the local industry to develop overseas markets. For example, since September last year, we have displayed the products of Hong Kong's digital entertainment companies in designated areas at the Digital Entertainment Exposition in Tokyo, Los Angeles and Hong Kong to enhance the knowledge of people over the world on the local digital entertainment industry.

In the course of our discussions on the Bill, some members expressed the view that the liberalization of parallel importation of computer software products may aggravate the existing piracy problem. We do not share this view. We think that computer software products imported through parallel importation are legitimate products and the liberalization of the flow of legitimate products will not aggravate the piracy problem. Furthermore, there is also no evidence at the moment to show that the liberalization of parallel importation will lead to more serious piracy. According to information provided by the Consumer Council, after the parallel importation of sound recording products was liberalized at the end of the '90s, the piracy problem of relevant products in Australia has not worsened.

Having said that, however, the Customs and Excise Department (C&ED) will continue to work closely with copyright owners and the industry in endeavouring to crack down on piracy offences. Last year, the C&ED cracked more than 11 000 cases of infringement of copyrights and seized more than $330 million worth of articles. In the first four months of this year, the C&ED has cracked about 3 200 relevant cases and seized articles worth about $64 million in total. In the future, the C&ED will continue to work hard and make persistent efforts, so as to further control the piracy problem in Hong Kong.

In the long run, the solution to the piracy problem is public awareness of the importance of intellectual property rights. In this regard, the Intellectual Property Department has vigorously inculcate messages on the importance of intellectual property rights protection to members of the public and people from various sectors.

Madam President, I shall move a number of amendments to the Bill at the Committee stage, including proposals mentioned by me earlier. All proposed amendments have been discussed and agreed by the Bills Committee. Subject to the passage of these amendments, I recommend that this Bill be passed.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Copyright (Amendment) Bill 2001 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): Copyright (Amendment) Bill 2001.

Council went into Committee.

Committee Stage

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

COPYRIGHT (AMENDMENT) BILL 2001

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Copyright (Amendment) Bill 2001.

CLERK (in Cantonese): Clauses 1 to 5.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam Chairman, I move the amendments to clauses 1 to 5 as set out on the paper circularized to Members.

Since the implementation of the Accountability System for Principal Officials on 1 July last year, the statutory duties of the Secretary for Commerce and Industry have been transferred to the Secretary for Commerce, Industry and Technology. This motion seeks to introduce a consequential amendment to clause 1 of the Bill, substituting the reference to Secretary for Commerce and Industry with Secretary for Commerce, Industry and Technology.

In regard to clause 2 of the Bill, the amendments proposed are purely technical in nature, aiming to improve the wording of a number of provisions in the Chinese version of the principal Ordinance. Besides, since the definition of "lawfully made" in section 35(9) of the principal Ordinance will be moved to other parts of the Ordinance, the amendment is made to repeal section 35(9).

Clause 3 of the Bill seeks to define the scope of liberalization of parallel importation. As I pointed out at the resumption of Second Reading, the Bills Committee and the relevant industries offered many valuable opinions to us on how the scope of liberalization should be defined. Having studied these opinions in detail, we have decided to amend the original provisions in the Bill, so as to introduce a new definition of the scope of liberalization. To put it simply, with the amendment, a parallel imported copy of a computer programme, or of certain other works embodied in the same article as a computer programme, will not be treated as an infringing copy. This means that the civil and criminal liabilities related to the parallel importation of and subsequent dealings in the aforesaid copies will be removed. However, if an article with a computer programme also embodies a specified copy of work, that is a copy of a movie, a television drama, a musical audio or visual recording, or an e-book specified in section 35A(2)(b), and if such a specified copy falls within the description in section 35A(4), then the existing legal liabilities related to parallel importation shall continue to apply to the specified copy of work. In brief, subsection (4) provides that if the article in which the specified copy is embodied is likely, in being acquired by a person for his own use, to be acquired for the purpose of acquiring the specified copies of works that are embodied in it more so than for the purpose of acquiring the copies of works other than specified copies that are embodied in it, then the parallel importation of the specified copy of work concerned shall continue to be subject to restrictions.

In addition, in order to retain the protection for movies or television dramas originally provided for in the Bill, when an article containing a copy of a computer programme also embodies a copy of the whole or a part of these works, and if all those parts of copies which are embodied in the article together constitute the whole or substantially the whole of the movie or television drama, or if the viewing duration of all those parts of copies which are embodied in the article exceed the specified time limits, then the existing legal liabilities related to parallel importation shall continue to apply to these copies. In the case of a movie, the specified time limit is 15 minutes in aggregate, and in the case of a television drama, the limit is 10 minutes in aggregate.

Moreover, we will also propose to move the definitions of a movie, a television drama or a musical sound recording and a musical visual recording to section 118 of the Copyright Ordinance, so that these definitions can also be applied to other provisions of the Copyright Ordinance. Therefore, these definitions will be removed from section 35A. I shall add these definitions to section 118 by introducing new clauses.

In view of the possibility that developers of computer software may possibly defeat the effect of liberalization by imposing a condition in the end-user licence agreement prohibiting the use of the software in Hong Kong, clause 4 proposes to remove the end-user criminal liability that arises as a result of the violation of any geographical restriction, so as to prevent any such restriction from defeating the objective of liberalization. The amendment is made in response to Members' request for improvements to the wording of this clause. Besides, we also propose to make consequential amendments to this clause to bring it in line with the amendments to clause 3 of the Bill. However, the legal effect of this clause will remain unchanged.

Clause 5 of the Bill seeks mainly to make transitional arrangements for criminal liabilities arising from the parallel importation of and subsequent dealings in articles embodying computer programmes. To put it simply, this means the removal of criminal liabilities for acts where no conviction has yet been recorded. The amendment being proposed is purely technical, aiming to add the transitional arrangements to the new Schedule. Later on, during the Second Reading of the new clauses, I shall recommend Members to add the transitional arrangements to the new Schedule. All the amendments mentioned above have been discussed and endorsed by the Bills Committee. I hope the Committee will support their passage. Thank you, Madam Chairman.

Proposed amendments

Clause 1 (see Annex II)

Clause 2 (see Annex II)

Clause 3 (see Annex II)

Clause 4 (see Annex II)

Clause 5 (see Annex II)

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 Commerce, Industry and Technology 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 5 as amended.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): New clause 4A Minor definitions

New clause 4B Index of defined expressions

New clause 4C Meaning of "infringing fixation"

New clause 6 Schedule 6 added.

SECRETARY FOR COMMERCE, INDUSTRY AND TECHNOLOGY (in Cantonese): Madam Chairman, I move that the new clauses read out just now, as set out in the paper circularized to Members, be read the Second time. The amendments are all technical in nature. In the proposed new clause 4A, the definitions of movie, television drama, musical sound recording and musical visual recording are included in section 198 of the existing Copyright Ordinance. In addition, we have also transferred the definition of "lawfully made" from section 35(9) of the existing Copyright Ordinance to this clause and slightly amended the wording of this definition to make its original meaning clearer. The proposed clause 4B is a consequential amendment arising from clause 4A. In addition, we propose adding clause 4C to improve the wording in the Chinese version of section 229(5)(a) in the existing Copyright Ordinance.

Finally, through the proposed clause 6, a new Schedule is added to the Copyright Ordinance and all transitional provisions in the Bill are incorporated into it. Moreover, we have also adopted the views of the legal adviser to the Bills Committee and deleted some unnecessary provisions in the original Bill. All of these amendments have been discussed and endorsed by the Bills Committee. I hope the Committee will support their passage. Thank you, Madam Chairman.

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.

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 4A, 4B, 4C and 6.

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

Proposed additions

New clause 4A (see Annex II)

New clause 4B (see Annex II)

New clause 4C (see Annex II)

New clause 6 (see Annex II)

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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

COPYRIGHT (AMENDMENT) BILL 2001

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

Copyright (Amendment) Bill 2001

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 Copyright (Amendment) Bill 2001 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): Copyright (Amendment) Bill 2001.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Companies (Amendment) Bill 2002.

COMPANIES (AMENDMENT) BILL 2002

Resumption of debate on Second Reading which was moved on 30 January 2002

PRESIDENT (in Cantonese): Ms Audrey EU, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report.

MS AUDREY EU: Madam President, as Chairman of the Bills Committee on Companies (Amendment) Bill 2002 (the Bills Committee), I wish to report on the work of the Bills Committee.

The Companies (Amendment) Bill 2002 (the Bill) seeks to implement 17 recommendations of the Standing Committee on Company Law Reform (SCCLR) in relation to the enhancement of shareholders' rights, updating directorship requirements, simplifying registration requirements, and modernizing the Companies Ordinance (the Ordinance).

The Bills Committee welcomes the proposal to reduce the threshold for circulating requisitionists' proposals to shareholders. Members, however,

consider that it will run contrary to the legislative intent of enhancing shareholders' participation if the expenses arising from circulation of requisitionists' proposals are too high. At members' request, the Secretary for Financial Services and the Treasury agrees to give an undertaking during his reply at this debate that the Administration will examine the issue of cost implications for requisitionists, including the feasibility of introducing provisions such as a forfeitable deposit requirement to defray costs.

In updating directorship requirements, the Bill proposes to define "shadow director" more clearly in the Ordinance. "Shadow director" is to be defined as a person in accordance with whose directions or instructions the directors or a majority of directors of a company are accustomed to act. The Bills Committee has examined the policy intent of the definition of "shadow director" and the impact of the proposal. In this respect, the Administration has clarified the rationale behind the concept of "shadow director" and the impact on *de facto* directors of family-owned companies, foreign investors, trustee companies, trustees and nominee directors of offshore companies registered in Hong Kong as well as receivers or managers appointed by secured creditors to manage a company's property for repayment of debts.

In the course of our study, we have noticed that under the Ordinance, a company is required to file with the Registrar of Companies particulars of its directors, including shadow directors. Given that shadow directors do not wish to be known, question has been raised on the practicality of such a filing requirement. In this connection, the Administration was prepared to remove the requirement. The Bills Committee, however, is concerned that in the absence of any filing requirement, it will be difficult, if not impossible, for auditors to include in their reports loans to shadow directors whom they have no knowledge of. In the light of members' request, the Administration agrees to shelve the proposal to remove the filing requirement. In addition, the Administration will move a Committee stage amendment requiring any shadow director of a company and any person who has at any time during the preceding five years been a shadow director of the company to give notice in writing to the company of particulars of relevant transactions as may be necessary for inclusion in the accounts of loans to directors.

Regarding the scope of "loans", the Bills Committee notes that section 157H of the Ordinance prohibits, with limited exceptions, a company from making loans to or providing security for loans to directors. The Bill proposes

to extend the existing regime to cover quasi-loans and credit transactions. There is concern that the proposal may complicate the disclosure requirement. Given that a company may, in the normal course of business, have carried out numerous transactions which fall within the expanded scope, the requirement for disclosure of all particulars of every such transaction can be unduly onerous and in practice overload financial statements with details which would not be useful to most users. Taking into account members' views, the Administration agrees to move a Committee stage amendment to the effect that items of similar nature can be disclosed in aggregate, and that details of such transactions should be entered and maintained in a register of the company for inspection by its members for a period of 10 years.

The Bills Committee notes that in proposing the extension of "loan" to cover quasi-loans and credit transactions, reference has been made to the United Kingdom Companies Act 1985. Members, however, note that the Bill as drafted will extend the prohibition to directors of private companies which are excluded from the United Kingdom Companies Act 1985. The Administration agrees that the proposed extension should not apply to a private company except when it is a member of a group of companies, one of which is a listed company. A Committee stage amendment will be moved to that effect.

On credit transaction, the Bill proposes to define it as a transaction between a company and its director under which the company, *inter alia*, sells goods or land to the director under a conditional sale agreement. According to the Administration, "conditional sale agreement" refers to an agreement for sales for goods or land under which the purchase price or part of it is payable by instalments, and the property in the goods or land is to remain in the seller until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

Much of the deliberation is on whether the term "conditional sale agreement" includes the usual agreement for sale and purchase of land. According to the Administration, "conditional sale agreement" is not meant to cover the usual agreement for sale and purchase of property currently used in Hong Kong. The Government says that there is no provision in the agreements for sale and purchase on uncompleted properties under the Lands Department's Consent Scheme for the purchaser to be given possession of the property prior to payment of the balance of the purchase price, and there does not appear to be a common practice for a purchaser of property in the secondary property market to

be given possession of the property prior to payment of the balance of the purchase price.

Members, however, remain of the view that the definition of "conditional sale agreement" as drafted is likely to cover the usual agreement of sale and purchase of land currently used and cannot reflect the policy intent. In this connection, the Bills Committee has consulted the Hong Kong Bar Association, the Law Society of Hong Kong, the Real Estate Developers Association of Hong Kong and the Estate Agents Authority which also share members' concern. After repeated requests, the Administration eventually agrees to move a Committee stage amendment to redefine the definition of "conditional sale agreement".

On civil consequences of transactions contravening section 157H, the Bills Committee notes that a guarantee entered into or security provided by a company in breach of section 157H shall be unenforceable against the company. However, the interest in any property which has been passed by the company to any person by way of security provided in connection with any transaction or arrangement will not be affected. Members are gravely concerned about the confusion that the security given in a transaction in contravention of section 157H is valid but not enforceable. It is not clear as to how a chargee (such as a bank) can exercise its property rights under the security document in relation to a security provided by a company in breach of section 157H if the director fails to repay the loan. The situation will be further aggravated if the notice of contravention only comes after the property or the relevant mortgage is sold to a *bona fide* purchaser for value. It is questionable how the interests of the innocent third party can be protected. Despite the Administration's explanation that the question of unenforceability has never arisen in the past, members consider that the issue warrants further consideration. In order not to delay the passage of the Bill and in the light of members' repeated requests, the Secretary for Financial Services and the Treasury agrees to give an undertaking in his reply at this debate that the policy and drafting of the provisions on civil consequences of transactions contravening section 157H will be looked into by the Administration and referred to the SCCLR, taking into account members' views and the equivalent provisions in the United Kingdom Companies Act 1985.

On formation of a company by one person, the Bills Committee supports in principle the proposal but is concerned about the predicament which the

company or any officer of the company may face upon the death of the sole member and director. While acknowledging the Administration's explanation that there are existing provisions dealing with registration of transmission of shares to directors, members consider that such process may take a long time, particularly for a one-member company that has no director as a result of the death of the sole member and director. In response to members' request, the Administration agrees to move a Committee stage amendment to the effect that for a one-member company where the member is its sole director, the company may nominate a reserve director who shall be deemed to be a director of the company for all purposes upon the death of the sole member and director until such time as a person is formally appointed as a director of the company.

On the definition of "manager", the Bill proposes that the term will cover persons occupying a position under the immediate authority of the board of directors. Members, however, point out that the scope is too wide and may catch those who are not managers but receive direct instructions from directors as in the case of one-member company. In the light of members' concern, the Administration agrees to amend the term to cover those who exercise managerial functions under the immediate authority of the board of directors.

On reduction of share capital by a redesignation of the par value to a lower amount, members express concern that the Bill as drafted may permit the reduction of the capital of a company for any purpose, including the elimination of losses, without the sanction of the Court. The Administration agrees to move Committee stage amendments to make it clear that the Court's confirmation can only be dispensed with if the sole purpose of the reduction is to redesignate the nominal value of the shares of the company to a lower amount provided that, *inter alia*, all issued shares are fully paid-up and the amount of the net assets of the company is not less than its paid-up share capital.

The Bills Committee has also examined other aspects of the Bill in relation to removal of directors by ordinary resolution, repealing the right to resort to Court to amend objects clause in memorandum of association, making directors vicariously liable for acts and omissions of their alternates, allowing companies to indemnify officers and auditors, replacing the filing requirements of statutory declarations or affidavits processed by the Companies Registry with written statements, and so on.

Madam President, as the Bill will bring improvement to the rights of shareholders and duties of directors, the Bills Committee supports the Second Reading of the Bill.

DR ERIC LI (in Cantonese): Madam President, the Companies (Amendment) Bill 2002 (the Bill) covers a wide range of issues, and the Chairman of the Bills Committee has explained clearly just now the many issues covered by the Bill. However, I would like to focus on the terminology of the initial draft, in particular terms, that are used extensively and have aroused general concern in the accounting profession and other professions in Hong Kong.

In the Hong Kong Society of Accountants (HKSA), for example, we made three written submissions to the Bills Committee in respect of the Bill, and appointed our Chairman and senior office-bearers to attend meetings held at the Legislative Council. The HKSA has also asked me to speak on their behalf several times.

Concerning our views on the Bill, generally speaking, we consider the Bill worth supporting and oriented in the right direction. However, some of the provisions may easily cause legal disputes, and may cause enormous difficulties in enforcement, particularly on the part of professionals. I would like to highlight section 158(10)(a) and section 161B of the Companies Ordinance (the Ordinance), which deal mainly with the statutory definition of "shadow director".

The HKSA was concerned about the definition on "shadow director" as proposed in the Bill to mean a person in accordance with whose directions or instructions the directors or a majority of the directors of the company are accustomed to act. In this respect, we have accepted the Administration's explanation that the rationale behind the concept of "shadow director" is to prevent the evasion of legal liabilities by persons who control the company but choose to remain in the shadow.

However, section 158 of the Ordinance requires a company to file with the Registrar of Companies particulars of its directors, including shadow directors. On this issue, as mentioned by the Chairman of the Bills Committee, we have had heated discussions, so I just wish to add a few more words about it.

Regarding "shadow director", we all know that Hong Kong, as an international financial centre which sees the concentration of many overseas investors, is in a unique position. Very often, shareholders of some overseas companies may not be willing to assume the responsibilities of a director in an unfamiliar place or country, thus they may usually appoint their subordinate or representative to assume the office of director. However, how extensive is the scope of "shadow director", and should the senior management of overseas head offices be also included? Given the present scope, it is rather ambiguous and not readily understandable. Certainly, we do appreciate why the Government has to do that. Firstly, the policy intent is to prevent any person from manipulating a company behind the scene. Secondly, most often, a company will not initiate any investigation. There will be thorough investigation only when irregularities have been discovered or liquidation becomes necessary to confirm whether any improper act has been committed. Eventually, we consider the method of enforcement proposed by the Government acceptable.

However, how can the "shadow directors" be identified? We have two concerns in this respect. Firstly, unlike overseas countries, such as registrars of the United Kingdom who have sufficient enforcement power and enormous resources, the Companies Registry in Hong Kong is only vested with limited enforcement power. In this respect, we think the Achilles' heel of the Ordinance is the shortage of resources for enforcement to ensure that companies are afforded genuine protection.

(THE PRESIDENT'S DEPUTY, MRS SELINA CHOW, took the Chair)

Secondly, having heard the views of members, the Government noted the unique situation in Hong Kong. Besides, the proposal requiring "shadow directors" who do not wish to be known to make public the details of their status is impracticable for they may not be willing to do so. For some time, these people had simply thought of not registering or filing their particulars with the Companies Registry. However, considering that if these people do act in this way, accountants may encounter great difficulty in enforcing section 161B, for they should not be responsible for checking these procedures or identifying who the "shadow directors" are in the course of auditing. The HKSA has also expressed grave concern about this. In the absence of particulars clearly filed

or submitted to the company or the Companies Registry, it will be almost impossible for auditors to identify by any procedures the so-called "shadow directors" of the company concerned of whom they have no knowledge. If those shadow directors conceal their status from the public deliberately, they will certainly conceal such information from the auditor.

However, section 161B of the Ordinance requires that accountants have the responsibility to make this kind of disclosure and imposes such a duty on accountants. In this case, we find the requirement extremely unfair, for many people do know about the operation of the company. In addition to the management, lawyers, company secretaries and senior staff of the company may also know who the shadow directors are. The bank providing loans to the company may also know about this, for it must know who the boss is behind the scene before granting any loan. Other directors of the company should also know more about this than accountants do. It is extremely unfair to hold accountants, without the reference of any contract or the proper procedure to follow, responsible for the inclusion of such information. This is also impracticable. I think accountants should not be required to make groundless guesses unilaterally on their part, the so-called "witch-hunting" as discussed during our meetings, for the efficiency and fairness of such an arrangement is really questionable. The Bills Committee has had several debates on this issue. I am glad that the Administration, taking into account the HKSA's views, finally agreed to shelve the original proposal of requiring the filing of particulars with the Companies Registry. Now, the proposal has also been withdrawn. I think this is a relatively satisfactory solution to the issue.

Another issue giving rise a relatively great dispute is the scope of loans. Just as the Chairman of the Bills Committee also mentioned just now, the Administration originally intended to extend the scope of loans to cover the provision of financial assistance to all directors and to include the same in the scope of disclosure. However, many international companies and even mainland private enterprises established in Hong Kong may have extensive connections. In the cases of some large-scale international corporations, if all the transactions or related transactions must be disclosed, the books of account that have to be disclosed may contain hundreds of pages or even more. However, the content so disclosed is not useful to the general public. This, on the contrary, has a drawback, that is important information may be hidden in the disclosed records. Thanks to repeated explanations by us, the Government eventually noted and accepted our views. I am grateful about this. The

Government has agreed to move a Committee stage amendment to adopt a more reasonable approach, to the effect that such items may be disclosed in aggregate provided that such content of disclosure is maintained in a register of the company for inquiry and inspection by its members for a period of 10 years.

On allowing companies to insure for directors and auditors, improvement on the proposal has been made. At present, the ambit of a company's liability to exempt or indemnify its officers, management staff or auditors under the Ordinance is not clear. I welcome the recommendations of the Standing Committee on Company Law Reform, proposing to state explicitly in the Bill that provisions in a company's articles or a contract granting exemptions or indemnities by a company to its officers or auditors against liability for negligence, default, breach of duty or breach of trust to the company or a related company shall be void. However, a company may indemnify its officers or auditors in defending any proceedings in which judgement is given in their favour or in which they are acquitted. In this connection, I think the entire issue has been clarified clearly.

On the proposal to insure auditors against any liability to the company, we do appreciate, on the part of accountants, the Government's proposal for providing additional protection to the profession by allowing a company to obtain insurance for its auditors' liabilities. However, as a professional accountant, I have to remind the Legislative Council Members concerned and to make public our worries on this account. I wish our worries would be proved unnecessary and would not happen. Some people consider that should companies take out insurance for auditors against liabilities in different aspects, auditors with their liability insured may be induced to relax accounting standards to suit the needs of the company. Will this arrangement become a deal with the management, with the management insuring more for the auditors' liabilities and the auditor adopting a more lenient approach in the conduct of audit? Certainly, we do not think that professionals should act like this. We also hope that our worries are unjustified. However, the Government has stated clearly that the liabilities related to the relevant proposal, that is, the taking out of insurance against certain acts, put officers on the par with auditors, and the two should thus be considered together. The proposals of taking out insurance will not only provide protection to senior management staff, but also to auditors. Therefore, the Government considers that the practice should be continued. Given this, I will not oppose the proposal, and I will support the relevant provisions proposed in the Bill. I just think that I have the responsibility to voice the worry of our sector, that is,

the proposal to insure auditors against liability to the company may affect the independent role of auditors or give rise to conflict of interest. I thus openly raise the issue to Members.

The HKSA has made many suggestions on the Bill. Although there have been heated discussions on our suggestions and detailed explanations by us, the Government has eventually accepted our suggestions and solved our problems. Now, on behalf of the accounting profession, I have to thank the Government for the co-operation on different fronts, and I hope that this spirit of co-operation will be maintained.

I would like to express my gratitude to members, in particular, the Chairman of the Bills Committee who has demonstrated tremendous patience, for the deliberation of the Bills Committee has kept members occupied, causing delay to their other commitments. Eventually, we have come up with a win-win proposal, which, objectively speaking, is an acceptable proposal. I am very glad to welcome the proposal. I hereby support the Second Reading of the Bill and all the amendments.

MS MIRIAM LAU (in Cantonese): Madam Deputy, it is essential for Hong Kong as a major international financial centre to make continuous efforts to improve the quality of corporate governance and supervision to cope with the needs of the business sector and the general trend of the world. For this reason, the Liberal Party welcomes the Government's amendments to the Companies Ordinance (the Ordinance) in accordance with the recommendations made by the Standing Committee on Company Law Reform (SCCLR) for the purpose of further perfecting legislation and strengthening corporate governance. Nonetheless, there are a few points I would like to raise here.

To start with, "shadow director" is now defined as anyone who can influence the whole board of directors. The Companies (Amendment) Bill 2002 (the Bill) tightens this requirement by defining "shadow director" to mean a person who is accustomed to influence a majority of directors of a company. Obviously, the definition of "shadow director" will catch more people after the passage of the Bill. This amendment serves to further enhance the transparency of a company and prevent the evasion of liabilities by persons who control the company but choose to remain in the shadow. This is worthy of support indeed. However, many companies in Hong Kong are family-owned businesses. Very

often, the older generation, even after passing their businesses to the younger generation, will still give instructions to the younger generation from time to time. In doing so, they will easily be caught by the definition of "shadow director" unknowingly. As such, the Government should, after the passage of the Bill, enhance publicity in the business sector so that the new definition of "shadow director" will become widely known.

Furthermore, under the present legislation, companies are not allowed to provide "guarantee for loans" for their directors. The Bill expands this provision so as to prevent companies from providing their directors with any forms of financial assistance. This can be considered as an effort to plug some of the loopholes in existing legislation. The Liberal Party is greatly supportive of the Bills Committee's proposal that this requirement should not cover private companies. This is because similar financial transactions conducted by private companies do not necessarily involve fraud. Neither is public interest involved too. In addition, it is clearly spelt out in relevant provisions in the United Kingdom Companies Act 1985 that directors of private companies are excluded. It is therefore unjustified for Hong Kong to act in a more radical manner than the United Kingdom. At present, many private companies, particularly smaller ones, find the Ordinance extremely cumbersome already. Despite our objective of strengthening corporate governance, it is unnecessary to extend all provisions for regulating listed companies to pure private companies, and thereby aggravate their burden. The Liberal Party will support the amendments to be proposed by the Government at the Committee stage later.

Given the unclear definition of "conditional sale agreement" in the Bill, we questioned whether it would be able to cover the usual agreement for sale and purchase of land currently used. The Administration later agreed to move a Committee stage amendment to reflect the policy intent of prohibiting the taking of possession of property before full payment of purchase price. The Liberal Party will therefore support this amendment.

We have however noted the civil consequences of transactions contravening section 157H of the Ordinance. A guarantee entered into or security provided by a company in breach of section 157H is, though valid, not enforceable. Although this provision is the same as the existing requirement, the Liberal Party holds the view that it is likely to lead to some complicated and confused legal implications. We very much hope the Government can honour its undertaking to the Bills Committee by actively following-up and resolving this issue.

At present, each company must have at least two shareholders and directors. The Bill proposes an amendment to allow the establishment of a one-man company and the sole member in this company can be the director as well. This is worth supporting. Actually, there is no inherent correlation between corporate governance and the number of directors. As such, relaxing the rule governing the number of shareholders and directors should not impact on corporate governance. On the contrary, it will enhance the flexibility of company formation. Nevertheless, the Liberal Party is concerned about the operation of a company in the absence of a director in the event of the death of the sole member and director. Despite the Government's proposal on nomination of a reserve director for a one-man company, this arrangement, which is not mandatory, cannot guarantee that all problems that might arise can be resolved. Since one-man company is a new attempt in Hong Kong, the Liberal Party hopes the Government can pay attention to the relevant developments after the new law takes effect and expeditiously carry out a review if and when necessary.

In conclusion, the Liberal Party is of the view that the Bill, after detailed discussions and deliberations, can not only enhance the transparency of local companies and the quality of corporate governance, but also raise flexibility in setting up companies, and so on. This is helpful to Hong Kong in further perfecting its financial law regime.

With these remarks, Madam Deputy, I support the Bill on behalf of the Liberal Party.

MR CHAN KAM-LAM (in Cantonese): Madam Deputy, since the Bills Committee and the Government share the major objective of perfecting and updating the Companies Ordinance, the scrutiny of the Companies (Amendment) Bill 2002 (the Bill) has on the whole been very smooth despite some arguments on technicalities in the Bills Committee.

The Bill has been discussed for a long time, and the Government has accepted many proposals of the Bills Committee, which is why Members consider the amendments proposed in the Bill generally agreeable. Like everybody, the DAB will support the resumption of Second Reading for the Bill. But I wish to add that the Bill is basically the same in spirit as the Securities and Futures Ordinance which came into effect in April this year, the aim of both being to enhance the protection for company shareholders. The DAB hopes

that with the implementation of all these new ordinances, the protection for the interests of small shareholders in Hong Kong can be greatly enhanced. That way, corporate governance in Hong Kong can be further improved to encourage people to make investments in the stock market again, thus providing a new impetus to the sound development of the Hong Kong stock market.

To enhance shareholders' rights, the Bill proposes a number of amendments. Under the existing Ordinance, a company must circulate the requisitionists' proposal to shareholders on request by holders of not less than 5% of the voting rights or not less than 100 shareholders holding shares on which there has been paid up average sum of not less than $2,000 per person. The Bill now proposes to reduce the existing threshold to 2.5% of the voting rights or 50 shareholders.

This is a good amendment, but practically, there are still a number of inadequacies. Since 90% of Hong Kong enterprises are small and medium in size, it can be said that the majority of Hong Kong enterprises are of low par value. As result, the requirement on the paid-up sum of $2,000 per shareholder may very likely fail to achieve the aim of circulating the requisitionists' proposals to shareholders. Therefore, the Government may not necessarily achieve its objective of increasing shareholders' participation in company affairs. Naturally, I hope that the Government can review this further in the future.

I believe the Bill will be passed smoothly today. After the completion of the first-phase amendments, the second-phase amendments to the Companies Ordinance will shortly be tabled before the Legislative Council. I hope that the scrutiny by the Legislative Council can further improve our business environment and corporate governance.

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

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

MR ALBERT HO (in Cantonese): Madam Deputy, on behalf of the Democratic Party, I rise to speak for the resumption of Second Reading of the Companies (Amendment) Bill 2002 (the Bill).

As explained to me by the Government, the Bill has been put forward as a response to the report published by the Standing Committee on Company Law Reform (SCCLR) on the recommendations of a consultancy report of the review of the Companies Ordinance. The report published by the SCCLR on the review of the Companies Ordinance sets out many amendments which are intended to be implemented in four phases of reform. The Bill belongs to the first phase.

We naturally welcome all the amendments and reforms introduced in this phase. But as I have repeatedly pointed out in the Legislative Council, when compared with the company laws of many advanced common law jurisdictions, ours has lagged many years behind. We need to introduce many reforms before we can bring our company law provisions in line with those in advanced common law jurisdictions. Actually, another piece of relevant legislation has already been submitted to the Legislative Council. Following this, other bills containing amendments to implement the reforms of the third and fourth phases will also be put before the Legislative Council very soon. In spite of this, I must stress once again that the Government should still commit more resources to implementing all the company law reforms as early as possible. It is always said that Hong Kong should maintain its reputation and status as a financial and commercial centre of the world, so we certainly do not want our company law to be so backward.

At first glance, many of the amendments proposed in the Bill are trivial, having no direct connections with one another. However, during our scrutiny, we found that even though some proposals did not appear to be contentious, it still took us more than a year to scrutinize them. Many meetings had to be held, and besides that, the Bills Committee Chairman also had to put in lots of efforts, meeting with various organizations and listening to the views of different sides. The scrutiny process took longer than expected, and many detailed technical amendments were involved. What was so unexpected was that the discussions brought out many questions of principle which we had never thought about before. Anyway, we are still very happy, because after our negotiations with the relevant industries and representatives of many organizations, and also following the discussions among members of the Bills Committee, we have basically come to a consensus at last.

To begin with, the Democratic Party supports the underlying principle of the Bill, not least because we can see that the protection for individual investors

and shareholders will be further enhanced. For example, the amendments to section 157H provide for regulation on the conflicts of interest between a director and his company, a problem we wish to avoid. This will bring forth clearer provisions and hence increased clarity.

Many other clauses will also further streamline company operation and bring about increased transparency. As I pointed out just now, I believe the core of all reforms will be the provision of legal protection for individual shareholders (covering lawsuits which we think may arise) in the next phase. We hope that all this can be implemented as soon as possible to provide genuine investors with the kind of protection which we think they deserve.

In regard to many existing provisions, as pointed out by the Bills Committee Chairman (I mean Ms Audrey EU) in her report, some problems remain not solved. Section 127 is an example, because this is copied from a United Kingdom Act made several decades ago. As pointed out by the Law Reform Commission of the country in its report, some of the provisions are just draft legal provisions which have not even been implemented. This shows that there are indeed many problems with the existing section 157H. There are also cases of irregularity. If, for example, a director makes an encumbrance, and such an encumbrance may not necessarily be enforceable, how will the rights of the mortgagee related to the encumbrance be affected? If a third party purchases the property from the mortgagee, what will happen to the rights of this third party? In many ways, there are no clear definitions. Although the Government has tried very hard in its explanations, members of the Bills Committee still think that all these ambiguities should be tackled as soon as possible in the next phase. We are willing to refrain from moving any Committee stage amendments in this connection. We hope that the Government can consider all these problems thoroughly and engage in further consultations with the SCCLR, so that they can be ironed out at the next meeting.

The case of one-member companies is very similar. One-member companies are a new concept, and we also find it acceptable, because it can bring Hong Kong's system in line with those in advanced countries. But under the existing ordinance, the operation of one-member companies is different from that of non-one-member companies. The relevant provisions are found in different parts of the company laws; some may affect one-member companies, while others are not applicable to them. Honestly, I think that it will be better to set down a specific set of provisions especially for one-member companies. This

will make it easier for company law users in the future to understand more easily which parts of the Companies Ordinance are solely for one-member companies. I hope that the Government can consider this point in the future.

The last point is about the operation of the Companies Registry, and this is also a matter of concern to members of the Bills Committee. To begin with, although some of the legal provisions mentioned in the company laws are set out very clearly, they have never been enforced because the Companies Registry lacks the manpower and resources required. This is a concern to us. The Government should consider once again how it can convince the public that it is serious in law enforcement. It should show people that it will not just enact some laws, and then neglect to enforce them, reducing them to a mere scrap of paper with no binding effect. I think this will give a very bad impression to member of the public. That is why I hope that the Secretary can consider how best to enhance people's confidence, so as to convince them that once a law is enacted, the Companies Registry will have the ability and determination to enforce it.

I of course think it very important for the Companies Registry to go electronic in operation. I hope that this can be implemented as early as possible. Actually, during the scrutiny of the Bill, we also touched upon many problems that would emerge following the implementation of e-operation. For example, how are meetings going to be conducted through electronic media? And, what regulation should be imposed? Or, what will things be like when meetings are held at different places through electronic media? Although the Bill does not touch upon these questions directly, it has brought them out for our discussions. With advances in technology, we are sure that e-meetings, that is, video-conferencing or other forms of tele-conferencing may likely emerge. What is the legal status of these meetings? How can we set out their legality clearly to avoid unnecessary lawsuits? This is also a concern of Bills Committee members. I have raised these points, in the hope that the Secretary can put them on record for the Bureau's consideration in the future. That way, it may refer to the relevant views when putting forward other bills in the ensuing phases of reform.

I so submit. Thank you.

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

MS EMILY LAU (in Cantonese): Madam Deputy, I speak in support of the resumption of the Second Reading of the Companies (Amendment) Bill 2002.

Madam Deputy, in fact, Ms Audrey EU, Chairman of the Bills Committee, already said what I wish to say just now. She made a conclusion as well. Just as Mr Albert HO said, we have had lengthy deliberations on the Bill and altogether we have held 26 meetings, but there have not been many disputes in the Bills Committee. Madam Deputy, the members are well aware of the need to proceed with this as quickly as possible, and that is why in the last few meetings, we had to complete a lot of things and that was really hectic. We had a lot of issues that we wanted to consult the industry and the business sector, but we were short of time. There was even one occasion on which the Law Society of Hong Kong sent us a letter on this situation, for we had given them only a very short time to answer our questions. So in their letter they said in a not so courteous way that they could not do anything if we pressed them like that. However, they were certainly unaware of the kind of situation we were in. I think this event indeed shows that members would like to see very much that this Bill can be passed before the summer recess. Why, Madam Deputy? It is because the whole thing has dragged on for too long.

The Bill is based on a report by the Standing Committee on Company Law Reform (SCCLR) which was released in February 2002. On what is the report based? On the views of the consultants. At that time, two consultants were hired to study and examine the issue. They came to Hong Kong before the handover. At that time, the Financial Secretary was Hamish McCLEOD. When the report was released and submitted to the SCCLR, most of contents were discarded and so millions of dollars were wasted. The Secretary may like to talk about this later. So the taxpayers' money was squandered. After the report was completed, the SCCLR studied it and published a report in February 2002. In a meeting of the House Committee in February 2002 — Madam Deputy, at that time you were the Chairman of the House Committee — a decision was reached to set up this Bills Committee. So more than one year has passed. So, Madam Deputy, what I wish to say has already been said by Ms Miriam LAU and that is, if Hong Kong is going to become an international financial hub and a business centre, we have to catch up with the times on many fronts. Now the proposals represent only some very minor reforms. Of course, we cannot put all the blame on Secretary Frederick MA, but the progress has really been very slow. And if we count the number of years that have

passed, it must be six, seven or even eight years before we are making this first step now.

Madam Deputy, I notice that in the last meeting of the House Committee, the authorities said that they hoped priority would be accorded to the next phase. It is true, for when it comes to June next year, the Legislative Council will rise and nothing can be done. I wish to tell the Secretary now that we are very anxious and we are under great pressure. The eyes of the public are watching us. Madam Deputy, some people who may not know the truth may think that we have been causing the delays and they will say that we are slow. That is why I have to tell them the history of the whole issue. Actually, the matter has been making very slow progress, dead slow I would say. I think Secretary Frederick MA may have to reprimand some people for such procrastination. The Enroy incident is a big shock to the whole world and now people's attention has turned to corporate governance and how things can be made better to boost investors confidence. That is why I hope the Secretary can take action at once and we in the Legislative Council will do our best to match his actions. But Members should be given ample time to deliberate and, given the many necessary amendments, we need to consult people from all quarters.

I think Ms Audrey EU will mention the fact that the authorities have often been deaf to our opinions and those of the industry as well. Things had to be done in a hurry at the last minute. Madam Deputy, this is no good at all. For we have our obligations and we do not want to come to a situation where after the law is passed, something goes wrong and we have to freeze the law.

I agree very much with Ms Miriam LAU's point on "shadow directors". I would of course like to see maximum transparency. The word shadow, however, tells us that there is no transparency whatsoever. So Dr Eric LI had all my sympathies when he talked about "witch-hunting". Madam Deputy, some results have finally come out of this. At first, they said that they were going to oppose it and even threatened to walk out. But now things have settled. Ms Miriam LAU was right in saying that the present definition might catch more people. I hope the Secretary will conduct more publicity and tell people about it, for this will prevent some people from saying that they know nothing about it in case of incidents. But people will still be arrested even if they say they are ignorant. I really hope that this can be done and that the Secretary can put in more efforts in respect of the reform. With these remarks, I support the resumed Second Reading.

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

(No Member indicated a wish to speak)

DEPUTY PRESIDENT (in Cantonese): If not, then I will call upon the Secretary for Financial Services and the Treasury to speak in reply. After the Secretary has made his reply, the debate will come to an end.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY: Madam Deputy, I would like to thank Members for their speeches on the Companies (Amendment) Bill 2002 (the Bill).

The Bill seeks to implement the recommendations put forward by the Standing Committee on Company Law Reform (SCCLR) relating to shareholders' rights, requirements regarding directorship and technical matters. The opportunity is also taken to simplify the filing requirements, to improve the charge registration procedures, and to make technical amendments to certain winding-up provisions under the Companies Ordinance (the Ordinance).

(THE PRESIDENT resumed the Chair)

Some of the changes in the Bill are related to the electronic filing, storage and processing of records at the Companies Registry (the Registry), which is expected to be completed by the end of 2004. Phase I of the Registry's Integrated Companies Registry Information System is expected to be completed by the end of 2003, upon which the Registry's customers may conduct online searches on the current company data and the digitized images of all registered documents kept by the Registry.

I would like to express my sincere gratitude to the Honourable Audrey EU, Chairman of the Bills Committee, and members of the Bills Committee for their hard work, their meticulous scrutiny of the Bill as well as their valuable comments on how some of the provisions in the Bill could be refined. The efforts and time they have devoted to the deliberations at the 26 Bills Committee

meetings are deeply appreciated. I would also like to thank all those who have written to the Bills Committee on the Bill. Their constructive comments have contributed to the deliberations of the Bills Committee.

I will propose amendments to a number of provisions in the Bill at its Committee stage. All the proposed amendments have been considered and discussed by the Bills Committee. I would like to give a brief account of the major amendments and address a number of major issues over which the Bills Committee has deliberated.

The Bills Committee has devoted a considerable amount of effort to considering the legislative amendments to the existing prohibition on financial assistance to directors by companies. These amendments proposed in the Bill are based on the SCCLR's recommendation that the existing prohibition, which is confined to loans, is unduly restrictive and should be extended to cover modern forms of credit. In implementing this recommendation, we have decided to follow the United Kingdom approach by extending the prohibition to cover quasi-loans and credit transactions.

The Bills Committee has expressed concern that the proposed extension to cover quasi-loans and credit transactions would have too much impact on private companies. The Bills Committee has made reference to the United Kingdom regime, under which a similar prohibition applies only to public companies and related companies. We did not follow a similar approach when drafting the Bill on the grounds that the existing regime in Hong Kong was fundamentally sound and unlike the United Kingdom regime, ours did not prohibit a private company (other than one that is a member of a group of companies one of which is a listed company) from making loans, quasi-loans or entering into credit transactions if that had been approved by the company in general meeting.

The Bills Committee, whilst noting our explanations, is concerned about the impact of the proposed extension on private companies. To address such concern, I will propose an amendment to confine the application of the proposed extension to public companies and those private companies which are members of a group of companies one of which is a listed company. As we have indicated to the Bills Committee, should the situation warrant, we would re-examine the scope of the prohibition provisions in future with a view to expanding the scope.

Credit transactions as defined in the Bill include conditional sale agreements. In response to the Bills Committee's request, I will move an amendment to define the term "conditional sale agreement". The original wording of the proposed definition of the term was the same as that of the definition used in the United Kingdom. The Bills Committee has expressed concern that the wording might include the normal sale and purchase agreements in respect of property under which the buyer does not take possession of the property before he pays the vendor the full purchase price.

The wording now used in the relevant Committee stage amendment is different from that of the United Kingdom definition and would put it beyond doubt that such property transactions do not fall within the definition of the term "conditional sale agreement". A company can continue to sell any property to its director provided that the possession of the property cannot be delivered to the buyer prior to the payment of the full price. This should not pose any major difficulty to either the company or its directors.

During its deliberations on the legislative amendments to the prohibition on the provision of financial assistance to directors by companies, the Bills Committee was particularly concerned about the policy and the drafting of section 157I of the Ordinance, which is amended by clause 59 consequential to the proposed extension of the prohibition to cover quasi-loans and credit transactions. Let me explain the policy intent of section 157I.

Section 157I of the Ordinance sets out the civil consequences of transactions contravening section 157H, which at present prohibits loans to directors. One of the civil consequences relates to the enforceability of a guarantee entered into or any security provided by a company in contravention of the prohibition in section 157H. Such guarantee or security shall be unenforceable against the company unless the guarantee was entered into or the security provided in connection with a loan to a person who is not a director of the company or of its holding company; and the person to whom the guarantee was given or the security provided did not know the relevant circumstances at the time of the transaction. The unenforceability shall not affect an interest in any property which has been passed by the company to any person by way of security provided in connection with any loan.

The policy intent behind these provisions is that first, since a transaction contravening the prohibition is an illegal contract, we believe that the person who

obtains a security from the company in connection with the transaction should not be able to enforce such security against the company. However, if the borrower is not a director of the company or of its holding company and the person to whom the security was provided did not know the relevant circumstances at the time of the transaction, the enforceability of the security will not be affected.

Second, although the transaction contravenes the law, we do not think that it should therefore be void. As the lender has provided consideration on the transaction, it appears that to achieve a fair balance of the interests between the company and the lender, the passing of interest in any property under the security document should not be disturbed; otherwise, the lender will be left with no security to cover against the risk of non-payment by the director. We believe that the lender's inability to enforce the security against the company is already a serious consequence that suffices to deter the lender from lending money in contravention of the prohibition.

As we explained to the Bills Committee, the section is basically a reinstatement of an existing provision that has been in the law since 1984. The section aims to strike a balance between the interests of a company who has given a security in contravention of the prohibition and the interests of a chargee who has been given such security. The Hong Kong Association of Banks supports this section as it strikes a fair balance. The Hong Kong Mortgage Corporation Limited also supports this section. The Company and Financial Law Committee of the Law Society of Hong Kong is not aware of any serious injustice caused to mortgagees/chargees by virtue of this section. It also supports the proposal to extend the prohibition to cover more modern forms of credit and believes it is reasonable that section 157I is amended to tie in with the extension.

I am aware that the Bills Committee is concerned about the question of whether and how section 157I protects the interests of an innocent third party to whom a mortgagee has sold a property that is subject to a mortgage which is unenforceable by reason of section 157I(2). This question is likely to be more academic than real for a number of reasons. For example, solicitors acting for the intended purchaser usually ask for an order for possession or an order for sale as an evidence of good title. Where the mortgagee is aware of the fact that the mortgage is unenforceable, it is very unlikely that the mortgagee and its legal adviser will go to court and apply for an order for possession or order for sale

and run the risk of concealing from the Court the crucial fact that the mortgage is unenforceable, in which case no order for possession or order for sale should have been granted. Further and more importantly, lending institutions in Hong Kong do act prudently and are aware of the prohibition in section 157H.

This notwithstanding, in view of the Bills Committee's concern, I am prepared to look at the policy and the drafting of section 157I and to refer the matter to the SCCLR, taking into account the views of the Bills Committee and the United Kingdom equivalent of the provision, to which the Bills Committee has referred.

A company the ordinary business of which includes the entering into of loans, quasi-loans or credit transactions would be allowed to enter into such transactions with a director of the company subject to certain conditions, one of which is that the amount of the transaction together with that in respect of other outstanding loans to the director does not exceed the limit. In response to the Bills Committee's suggestion, I will propose an amendment to increase the existing limit from $500,000 to $750,000 to take into account inflation since the enactment of the existing provision in 1984.

Another amendment to be proposed in response to the Bills Committee's comments is to provide that the proposed prohibition on financial assistance to directors by companies does not apply to a tenancy agreement unless the agreement contains terms more favourable than those it is reasonable to expect the company to have offered to a person who is unconnected with the company.

The Bills Committee has also expressed concern about the proposed requirement that a company should disclose in its accounts the particulars of relevant quasi-loans and credit transactions it has entered into. As the number of such transactions can be large, the requirement can be onerous and in practice overloads the accounts with details which would not be useful to most users. I will propose amendments to address the Bills Committee's concern by giving the company an option to present the particulars in the accounts on an aggregate basis. If the company opts to do so, the company is required to keep a register of the particulars so that members of the company may inspect them. The particulars are required to be retained in the register for 10 years.

To further improve the provisions in the Bill, I will propose amendments to clarify that the disclosure requirements in respect of loans to officers of a

company in its accounts under new section 161B shall apply to its shadow directors in addition to its directors and other officers; to clarify the extent of duty of the directors and other officers to make disclosure for the purposes of section 161B; and to impose the same duty on shadow directors.

On the legislative amendments permitting the formation of a company by one person and permitting a private company to have one director, the Bills Committee has pointed to the need to provide for a statutory mechanism to deal with issues arising from the death of the sole member of a company pending the grant of legal representation. Our position is that we should address members' concern but at the same time avoid interrupting the established framework in respect of the grant of legal representation as this may prejudice the interests of concerned parties in the deceased's property.

Under existing law, there are several ways of dealing with the issues in question. For example, a person can be appointed in advance by the company, who, upon the death of the sole member and director, would be empowered to carry out the functions of a director for such period and subject to such terms as may be stated in the appointment. The merits of this alternative are that the scope of the power vested in the appointee could vary, depending on the wishes of the sole member and director and the relevant circumstances of the company. This notwithstanding, the Bills Committee is of the view that we should adopt a more user-friendly system than those in other common law jurisdictions like the United Kingdom and Australia and provide for a statutory mechanism to deal with the issues.

I understand the Bills Committee's concern and will propose amendments to provide that where a private company has one member and that member is the sole director of the company, the company may in its general meeting, notwithstanding anything in its articles, nominate a reserve director who shall be deemed to be the director upon the death of the sole member and director (member/director) of the company until he resigns from office or a new director is appointed. The nomination of the reserve director shall be valid as long as the sole member/director at the time of nomination remains to be the sole member/director. In the interest of transparency, the company shall be required to file the particulars of its reserve director with the Registrar, who will keep the particulars in an index for public inspection.

These amendments do not seek to impose a requirement for the company in question to nominate a reserve director. We believe that whether to nominate a reserve director should best be left to the company to decide. We note that some members of the Probate Committee of the Law Society of Hong Kong are against a mandatory system as one-person companies might have other options. For example, it is possible to pass a resolution before the death of the sole member/director appointing a manager or some other person to deal with the assets of the company upon the death of the sole member/director until a new director is appointed.

New section 153A, added by clause 53, provides that a private company shall have at least one director. The company and every officer of the company shall be liable for any default in respect of the requirement unless the default is caused by reason of the office of any director being vacated and the default ceases within two months from the day on which the office is vacated.

The Bills Committee considers it unfair to hold the company or its officers liable for the default if this is caused by the death of the sole member (who is also the sole director) of the company. Moreover, the proposed two-month period may not be sufficient for cases where the legal personal representative of the deceased member/director needs to apply to the Court for an order to call a meeting to appoint a director.

To address the Bills Committee's concern, I will move an amendment to provide that the company or its officers shall not be liable for any default under the section until the default continues for four months from the date of the grant of probate of the will, or of letters of administration of the estate, of the deceased director.

One of the legislative amendments in the Bill is to reduce the threshold for shareholders' proposals from holders of not less than 5% of the voting rights or not less than 100 shareholders, as at present, to holders of 2.5% of the voting rights or 50 shareholders. Whilst the Bills Committee is content with this proposal, it has asked the Administration to examine the issue of the cost implications for requisitionists, including the feasibility of introducing provisions such as a forfeitable deposit requirement to defray costs, and to indicate the timetable for this.

Besides, the rationale behind the difference in the treatment of expenses relating to the convening of an extraordinary general meeting upon members' request and that relating to the circulation of resolutions upon members' request should also be reviewed.

As we indicated to the Bills Committee, I am prepared to review the above matters. Members may wish to note that the issue of cost implications for requisitionists has been addressed in the consultation paper issued by the SCCLR in June 2003 on Phase II of its Corporate Governance Review. Allowing time for public consultation and consideration of the comments received, I expect that a decision is to be made on this issue in early 2004.

The Bills Committee has deliberated over the proposed definition of "shadow directors". The existing definition refers to a person in accordance with whose directions or instructions the directors of a company are accustomed to act. The SCCLR has recommended that this should be amended to refer to a person in accordance with whose directions or instructions the directors or a majority of the directors are accustomed to act, and this is reflected in the Bill. The Bills Committee has expressed concern about the practicality of enforcing the existing requirement under section 158 for a company to file particulars of directors and shadow directors with the Registrar.

Whilst I acknowledge the Bills Committee's concern, I believe there are merits in keeping this requirement. Similar requirements are found in the company legislation in other common law jurisdictions such as the United Kingdom and Australia. If a shadow director of the company is identified, prosecution may be taken against him under the section. The Hong Kong Society of Accountants is of the view that the retention of this requirement is necessary for auditors to carry out their duty under new section 161B(9) regarding disclosure of particulars in respect of loans and similar transactions under new section 161B in their report.

Madam President, the Bill when enacted will improve our corporate governance standard in areas of enhancing shareholders' rights and requirements regarding directorship. In response to the Honourable Albert HO's point, I want to point out that we are committed to enhancing corporate governance standard in Hong Kong — which is crucial to reinforce Hong Kong's status as an international financial centre. For that matter, I introduced the Bill on 25 June

this year. One of the key components of the Bill is to enhance shareholders' remedy in the Ordinance. I totally agree with the Honourable Emily LAU that we should speed up the amendment of the Ordinance. I am as anxious as Honourable Members to speed up the process and I would take your points into serious consideration. This Bill will also make our company law more business-friendly by simplifying the filing and procedural requirements. It will also tie in with the implementation of Phase I of the Companies Registry's Integrated Companies Registry Information System towards the end of the year. I urge Members to support the Bill and the amendments I will propose at the Committee stage. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Companies (Amendment) Bill 2002 be read the Second time. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Companies (Amendment) Bill 2002.

Council went into Committee.

Committee Stage

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

COMPANIES (AMENDMENT) BILL 2002

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Companies (Amendment) Bill 2002.

CLERK (in Cantonese): Clauses 3 to 25, 27, 28, 30, 32, 34 to 43, 45 to 48, 50, 51, 52, 54, 57, 66 to 69, 71 to 75, 77, 78, 80 to 92, 94, 95, 97 to 107, 109, 110, 111 and 113 to 121.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 1, 2, 26, 29, 31, 33, 44, 49, 53, 55, 56, 58 to 65, 70, 76, 79, 93, 96, 108, 112, 122, 123 and 124 and subheadings before clauses 122, 123 and 124.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY: Madam Chairman, I move the amendments to clauses 1, 2, 26, 29, 31, 33, 44, 49, 53, 55, 56, 58 to 65, 70, 76, 79, 93, 96, 108, 112 and 124 and subheading before clause 124, and the deletion of clauses 122 and 123 and the subheadings before them. They have been considered and discussed by the Bills Committee. I wish to briefly elaborate on the major amendments.

I propose to amend the proposed definition of "manager" in clause 2(1)(b) to make it clear that a manager of a company refers to a person who exercises

managerial functions under the immediate authority of the board of directors of the company. Clause 2(1)(b) is also proposed to be amended to add a definition of "reserve director".

I propose to amend clause 26(2) to make it clear that the Court's confirmation of a reduction in the share capital of a company can be dispensed with if the sole purpose of the reduction is to redesignate the nominal value of the shares of the company to a lower amount. Where the reduction arises from a permanent loss in the share capital, the Court's confirmation will continue to be required.

Clause 33 is proposed to be amended to provide the Registrar of Companies (the Registrar) with the power to require evidence to satisfy himself that a registered charge has been released. The opportunity is also taken to reflect the Registrar's existing practice of accepting applications for the release of registered charges made by a solicitor on behalf of a company. Where an application is made by a person other than the mortgagee or person entitled to the charge, the Registrar would exercise this power and require the application to be accompanied by a document evidencing the release of the registered charge.

The proposed amendments to clauses 44 and 55 clarify respectively the provisions applicable to written records of certain decisions taken by the sole member of a company and those applicable to written records of certain decisions taken by the sole director of a private company.

Clause 53 is proposed to be amended to provide that where a private company does not have any director because of the death of its sole member who is also the sole director, the company or its officers shall not be liable for the default until the default continues for four months from the date of the grant of probate of the will, or of letters of administration of the estate, of the deceased director. It is also proposed to be amended to provide for a mechanism for the nomination of the reserve director and related matters.

The purpose of the amendments to clauses 58 to 60 is to confine the application of the proposed prohibition on financial assistance to directors in the form of quasi-loans and credit transactions to public companies and those private companies which are members of a group of companies, one of which is a listed company. The opportunity is also taken to improve the wording of the provisions, to add the definitions for terms such as "conditional sale agreement",

"hire-purchase agreement" and "land", and to make it clear that the proposed prohibition does not apply to a tenancy agreement unless the agreement contains terms more favourable than those it is reasonable to expect the company to have offered to a person who is unconnected with the company. I also propose to increase the limit of $500,000 to $750,000 under new section 157HA(8) to take into account inflation since the enactment of the existing provision in 1984.

Clause 61 is proposed to be amended to require a company under section 158 to include the particulars of the reserve director in its register of directors and secretaries and to file the particulars with the Registrar. Clause 62 is proposed to be amended to require that the index of directors kept by the Registrar include the reserve director.

The amendments to clause 63 aim to clarify that the disclosure requirements in respect of loans provided to officers of a company in its accounts under new section 161B shall apply to its shadow directors in addition to its directors and other officers. The opportunity is also taken to give the company an option to present in its accounts the particulars of relevant quasi-loans and credit transactions that it has entered into on an aggregate basis. The amendments to clause 64 update the Chinese text of section 161BA.

The amendments to clause 65 clarify the application of proposed section 162B which deals with contracts entered into by a company having only one member with that member who is also a director of the company.

The amendments to clauses 70(2) and 96(2) provide that the Financial Secretary may prescribe any amount that is the minimum debt for which a petition for winding-up may be presented.

The amendment to clause 93 aims to clarify how the lists of members and directors and any other particulars relating to a company having only one director are required to be verified.

The amendments to clause 108(c) aim to clarify the circumstances in which a requirement in the regulations in Table A to the First Schedule to the Companies Ordinance about communication among a company, its directors and members, or about the holding of a meeting may be satisfied by electronic means.

The above amendments are made on the basis of the comments contributed by the Bills Committee. I hope that Members would support these amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 1 (see Annex III)

Clause 2 (see Annex III)

Clause 26 (see Annex III)

Clause 29 (see Annex III)

Clause 31 (see Annex III)

Clause 33 (see Annex III)

Clause 44 (see Annex III)

Clause 49 (see Annex III)

Clause 53 (see Annex III)

Clause 55 (see Annex III)

Clause 56 (see Annex III)

Clause 58 (see Annex III)

Clause 59 (see Annex III)

Clause 60 (see Annex III)

Clause 61 (see Annex III)

Clause 62 (see Annex III)

Clause 63 (see Annex III)

Clause 64 (see Annex III)

Clause 65 (see Annex III)

Clause 70 (see Annex III)

Clause 76 (see Annex III)

Clause 79 (see Annex III)

Clause 93 (see Annex III)

Clause 96 (see Annex III)

Clause 108 (see Annex III)

Clause 112 (see Annex III)

Clause 122 (see Annex III)

Clause 123 (see Annex III)

Clause 124 (see Annex III)

Subheading before clause 122 (see Annex III)

Subheading before clause 123 (see Annex III)

Subheading before clause 124 (see Annex III)

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendments to clauses 122 and 123 and the subheadings before them, which deal with deletion, have been passed, clauses 122 and 123 and the subheadings before them are deleted from the Bill.

CLERK (in Cantonese): Clauses 1, 2, 26, 29, 31, 33, 44, 49, 53, 55, 56, 58 to 65, 70, 76, 79, 93, 96, 108, 112 and 124 and subheading before clause 124 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 13A	Definitions
	New clause 31A	Interpretation
	New clause 39A	Annual return to be made by company
	New clause 57A	Resignation of director or secretary

New clause 61A	Duty to make disclosure for purposes of section 158
New clause 64A	Section added
New clause 64B	General duty to make disclosure for purposes of sections 161 and 161B.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY: Madam Chairman, I move that the new clauses read out just now be read the Second time. They have been considered and discussed by the Bills Committee. I wish to briefly elaborate on the major clauses.

New clause 39A requires an annual return of a company to include the particulars of the reserve director. New clause 57A allows the reserve director or the reserve director being deemed to be a director to resign from office. New clause 61A imposes a duty on the reserve director to make disclosure for the purposes of section 158. New clause 64A requires that if the company opts to present in its accounts the particulars of relevant quasi-loans and credit transactions on an aggregate basis, it is required to keep a register of the particulars so that members of the company may inspect them. The particulars are required to be retained in the register for 10 years. New clause 64B clarifies the extent of duty of the directors and other officers to make disclosure for the purposes of section 161B and to impose the same duty on shadow directors.

The above clauses are proposed on the basis of the comments contributed by the Bills Committee. I hope that Members would support these clauses. Thank you, Madam Chairman.

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.

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 13A, 31A, 39A, 57A, 61A, 64A and 64B.

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY: Madam Chairman, I move that the new clauses read out just now be added to the Bill.

Proposed additions

New clause 13A (see Annex III)

New clause 31A (see Annex III)

New clause 39A (see Annex III)

New clause 57A (see Annex III)

New clause 61A (see Annex III)

New clause 64A (see Annex III)

New clause 64B (see Annex III)

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.

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bill

PRESIDENT (in Cantonese): Bill: Third Reading.

COMPANIES (AMENDMENT) BILL 2002

SECRETARY FOR FINANCIAL SERVICES AND THE TREASURY: Madam President, the

Companies (Amendment) Bill 2002

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 Companies (Amendment) Bill 2002 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Companies (Amendment) Bill 2002.

Resumption of Second Reading Debate on Bill

PRESIDENT (in Cantonese): We will resume the Second Reading debate on the Legislative Council (Amendment) Bill 2003.

LEGISLATIVE COUNCIL (AMENDMENT) BILL 2003

Resumption of debate on Second Reading which was moved on 26 February 2003

PRESIDENT (in Cantonese): Mr Andrew WONG, Chairman of the Bills Committee on the above Bill, should now address the Council on the Committee's Report. However, since Mr Andrew WONG is not in the Chamber at the moment, I can only suspend the meeting and wait for him to return and deliver his speech.

(Mr Andrew WONG entered the Chamber at this juncture)

PRESIDENT (in Cantonese): Mr Andrew WONG, it is great that you can make it just in time. *(Laughter)*

MR ANDREW WONG (in Cantonese): I am sorry, Madam President.

PRESIDENT (in Cantonese): Mr Andrew WONG, please deliver your speech.

MR ANDREW WONG (in Cantonese): Madam President, in my capacity as Chairman of the Bills Committee on the Legislative Council (Amendment) Bill 2003 (the Bills Committee), I would like to report on the major deliberations of the Bills Committee. Members can refer to the report submitted to this Council for the details.

The main objects of the Legislative Council (Amendment) Bill 2003 (the Bill) are firstly, to amend the Legislative Council Ordinance to provide for the composition of the Legislative Council after the expiry of its current term of office; secondly, to introduce a scheme to provide financial assistance to candidates; and thirdly, to reduce the free mailing provided to candidates from two rounds to one.

The Bills Committee held six meetings with the Administration and received a total of 53 submissions. In addition, a total of 10 individuals and organizations also made oral representations before the Bills Committee.

On the number of Geographical Constituencies (GCs), the Bill provides that there shall be five GCs and a total of 30 Members shall be returned from them. The five GCs will be the same as existing ones but the number of seats will be increased from 24 at present to 30. The lower and upper limits for the number of seats per GC are set at four and eight respectively and the number of seats will be proportional to the spread of population. Some members expressed concern that the last candidate to get elected in an eight-seat GC might

be one who only receives limited support. The Administration advised that the last candidate to get elected in a GC is still expected to obtain about 20 000 votes, which remains a reasonable threshold.

The Bills Committee enquired about the number of rounds of free mailing service which candidates had used in past elections. The Administration advised that in the 2000 GC elections, there were 36 lists of candidates. Of them, 20 used up to one round of free mailing service. On average, each list of candidates used 1.3 rounds of free mailing service. In respect of Functional Constituency (FC) elections, there were 57 candidates. Of them, 19 used up to one round of free mailing service. On average, each candidate used 1.9 rounds of free mailing service.

The Administration has proposed to provide financial assistance to candidates standing in the 2004 Legislative Council elections to subsidize some of their election expenses. The rate of subsidy is $10 per vote and the ceiling is 50% of the actual election expenses incurred by the candidate concerned. According to the financial assistance scheme, only elected candidates or candidates who receive 5% or more of valid votes cast are entitled to financial assistance.

In considering the proposal, the Bills Committee noted the rationale for setting the rate of subsidy at $10 per valid vote and the ceiling at 50% of the actual election expenses incurred by the candidate concerned.

The Bills Committee also enquired about the financial implications of the proposed financial assistance scheme. The Administration advised that, using the 2000 Legislative Council elections as an illustration, if the proposal of reducing one round of free mailing service and the proposed financial assistance scheme are implemented, net government expenditure would be increased only by $0.97 million, that is, less than $1 million.

Individual members sought clarification from the Government on the details of implementing the financial assistance scheme. A member considered that it is illogical to adopt different computation formulas in calculating the amount of subsidy in respect of contested and uncontested elections. According to the Administration's proposal, the former (that is, in contested elections), the

amount is obtained by multiplying the total number of valid votes cast by the rate of subsidy of $10, whereas in the latter (that is, in uncontested elections), the amount is obtained by multiplying 50% of the number of registered electors of the constituency concerned by the rate of subsidy of $10.

The Administration has explained that it is fair to extend the financial assistance to candidates who are returned uncontested because they, too, may have incurred election expenses. The Administration considers that it is not unreasonable to base the method of calculation of the subsidy on the assumption that a candidate returned uncontested is able to secure significant support amongst the registered electors in the constituency concerned. I personally think that it is feasible to set the level of financial assistance at either a high or low level. Either way, the rationales are both plausible, therefore they are both acceptable.

The Bill also proposes that financial assistance will still be provided to eligible candidates in the event that an election has failed. In response to members' request, the Administration explained in detail the meaning of "failed election". Regarding the question of whether estate duty will be levied on the financial assistance received by a deceased candidate if an election fails as a result of the death of the candidate, the Administration further advised that under section 5 of the Estate Duty Ordinance, financial assistance received by a deceased candidate which remains unspent at the time of his death will form part of his estate and thus, subject to the value of such estate, will be chargeable with estate duty in accordance with relevant provisions of the Ordinance.

Members expressed concern on whether loans made to a candidate from a political party could be regarded as election donations made to the candidate, and whether political parties should be required to declare the sources of the donations received by them. The Administration explained that under the Elections (Corrupt and Illegal Conduct) Ordinance, a candidate must declare in his election return any election donation he has received, and in the case of each donation of more than $1,000, the particulars of the donor. However, there is no statutory requirement to disclose the donor's financial sources. The law does not make a distinction between a donor which is a political party or organization, a non-political organization, and an individual. According to the Ordinance, a loan will not be regarded as an election donation. However, any interest foregone in respect of an interest-free loan will be treated as donation.

Most of the members support the proposal to reduce one round of mailing service and the proposed financial assistance scheme on the grounds of environmental protection and that the proposed financial assistance scheme would not impose a very heavy financial burden on the Government.

One member concurred with the view of some organizations, that the Government should not incur additional public expenditure to provide financial assistance to political parties, political groups and independent candidates to run in elections, in view of its sizable budget deficit and the prevalent economic climate.

The Bills Committee also made some decisions regarding amendments to the electorate of certain FCs. According to the Administration, the policy intent is that the number and composition of the existing FCs should remain unchanged for the 2004 Legislative Council elections, except for minor amendments to the electorate of certain FCs. Such amendments seek to ensure that the composition of the FCs reflects the latest developments in the relevant sectors.

I would like to mention in particular the amendments in relation to the Tourism FC. A member pointed out that some 30 travel industry members of the former Hong Kong Tourist Association (HKTA) which were previously eligible electors in the Tourism FC are no longer eligible to vote in the FC following the amendment of the name of the HKTA to the Hong Kong Tourism Board and the abolition of the membership system of the HKTA in 2001. Having reviewed the matter, the Administration has proposed to move an amendment to reinstate the status of all organizations which were travel industry members of the former HKTA entitled to vote at the general meetings of the HKTA immediately before the commencement of the Hong Kong Tourist Association (Amendment) Ordinance 2001.

The Bills Committee also discussed in detail the Administration's proposal to add seven umbrella organizations to the Information Technology FC. Since some members have reservations about the eligibility criteria for registration as electors in the proposal, the Administration will move an amendment to standardize the eligibility of the so-called umbrella organizations to become electors to having been in the information technology business for four years.

Madam President, the Bills Committee supports the resumption of the Second Reading of the Bill.

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

MR CHEUNG MAN-KWONG (in Cantonese): Madam President, on the issue of the Legislative Council elections, the Democratic Party has a fundamental and well-known stand, that is, we advocate the early implementation of universal suffrage by "one person, one vote", and we object to any small-circle, privileged, undemocratic electoral systems, including the elections of the Electoral Committee (EC) and functional constituencies.

The EC is dead, but the functional constituencies elections will still be going strong in this Legislative Council (Amendment) Bill 2003 (the Bill). The SAR Government shall be able to rally a group of royalists in the Council through functional constituencies, especially those conservative, small-circle and undemocratic functional constituencies. Through the ridiculous system of separate voting, it will continue to stop the people from expressing and reflecting their opinions fully, completely, and accurately in the Legislative Council. Therefore, during the past six years, the Legislative Council has been reduced to a Council of the royalists, which has acted against the aspirations of the people. The voice of the people has only become a vase — an ornament to the undemocratic political scene.

However, there is a limit to the tolerance of the people. When the people have been fooled and suppressed by the twisted system of the Legislative Council, and when the people have completely lost their confidence in the Legislative Council after too many disappointments, the only option left to them is to take to the streets and use their participation in the demonstration as a gesture to express their disapproval of the establishment, of the SAR Government, of TUNG Chee-hwa, and of all the undemocratic Councils and systems.

Yesterday, in defiance of the scorching sun, 500 000 people, young and old alike, took to the streets to express their anger. It has been unprecedented to have so many people taking part in a demonstration since 1989. The participants denounced TUNG Chee-hwa, Regina IP and Antony LEUNG, demanding them to step down. They did it simply because they could not force TUNG Chee-hwa and all the incompetent officials, who caused great discontents among the people, to vacate their offices by the authority of the Legislative Council. They did it simply because the Legislative Council is full of "royalists" formed by Members returned by functional constituencies and the EC.

Therefore, the voices of the people were subdued, suppressed, and when their anger escalated to the extreme, and when their tolerance reached the breaking point, they just took to the streets to express their disapproval of the royalists and their disapproval of TUNG Chee-hwa, and they wanted TUNG Chee-hwa to step down when they had a chance to express their opposition to legislation on Article 23 of the Basic Law (Article 23).

Therefore, when we have to pass the Amendment Bill today, we must be truthful in reflecting the aspirations of the 500 000 people who took to the streets yesterday, that is, we must oppose all the privileged, small-circle, undemocratic systems of functional constituencies. We must fight for election of the Legislative Council by universal suffrage. Do not fool the people. Instead, the Government and the Legislative Council should listen to and attach great significance to the voices of the people, so that the votes of the people could become the peaceful force of reforming the Government or even replacing the Administration.

If the determination of the people is so firm and explicit, if the 500 000 people had already turned a new page in the history of the popular movement in Hong Kong by their participation in the demonstration, the Democratic Party will definitely vote against this Bill on elections of the Legislative Council. We shall vote against its Second Reading, and we shall vote against its Third Reading.

Through our votes against the Bill, the Democratic Party is now giving a warning to the TUNG Chee-hwa Administration: That it is now already lingering at the crater of the volcano of the anger of the people. Even if it can linger on, it will inevitably become a lame-duck administration. It is even more "lame-duck", more pathetic than the British Administration in Hong Kong before the reunification in 1997. It shall have no footing. Wherever TUNG Chee-hwa goes, he will certainly be greeted with the boos and jeers of the people of Hong Kong who demanded his stepping-down, if not the blandishments of boot-lickers.

If an administration still has some senses, caught in the political crisis arising from the opposition of 500 000 people, it would surely withdraw its legislative proposal to implement Article 23. If not, it will face a sure path of demise. After withdrawing the legislative proposal to implement Article 23, the Government should review the electoral system of the Legislative Council as soon as possible and conduct an election by universal suffrage in 2008, ……

PRESIDENT (in Cantonese): Mr CHEUNG, can you please speak on the Bill?

MR CHEUNG MAN-KWONG (in Cantonese): Definitely. The next sentence is: Abolish all the functional constituencies, and return the political power to the people.

This is the only way out for the TUNG Chee-hwa Administration. This is also the only way for the TUNG Chee-hwa Administration to reconcile with the people. May I ask the TUNG Chee-hwa Administration to think twice about this!

Madam President, I so submit.

MR LEUNG YIU-CHUNG (in Cantonese): Madam President, I think yesterday's march has sufficiently and specifically told us that this Legislative Council (Amendment) Bill 2003 under scrutiny today is a gross alienation from public sentiments, because under the Bill, constitutional reforms will still be implemented at a snail's pace in accordance with the timetable in the Basic Law. However, in the march yesterday the demands of the people for the return of political power to them and the immediate implementation of full universal suffrage by the TUNG Chee-hwa Administration could not have been more articulate. So, I think the authorities should immediately withdraw the Bill and then submit to this Council a proposal on a fully directly-elected Legislative Council which truly answers the aspirations of the people. If the Government continues to impede the development of democracy in Hong Kong, it would only alienate itself from the people, inciting more people to take to the streets to express their dissatisfaction towards the Government.

Insofar as we understand it, that the Government of the Hong Kong Special Administrative Region (SAR) is facing much criticism today not only because the TUNG Chee-hwa Administration, supported only by Beijing and major consortia, is minded to protect their vested interests, but more importantly, the SAR Government lacks a popular mandate and its policy objectives have always run counter to the people, resulting in today's scenario of boiling public anger. To extricate the Government from the present predicaments, the only way is to implement universal suffrage, allowing the people to elect all Members of the Legislative Council and the Chief Executive by "one person, one vote" and

providing a clear channel for expression of public opinions to facilitate the embodiment of public opinions in government policies.

Much to our regret, the march that took place yesterday with 500 000 people taking part in it still has not induced a change in the attitude of the TUNG Chee-hwa Administration. Mr TUNG issued a statement last night, making it clear that he was unwilling to speed up the pace of democracy. I think this is another significant insult to public opinions. It also shows that the TUNG Chee-hwa Administration is determined to stand against the people. The statement issued last night mentioned that the Government would continue to proceed in a gradual and orderly manner in the development of democracy in accordance with the Basic Law. That is, the small-circle Election Committee system will be abolished only seven years after the reunification. The case for functional constituencies is even worse, for their abolition will not be realized in the near future, and no one knows when this can be achieved. We must ask: For how much longer must Hong Kong people wait before a fully democratic system can be realized? The majority of the people who took to the streets yesterday were young people. It is really not my wish that these young people, like me, will not see full direct elections in Hong Kong's democratic system even when their hair has turned grey.

Some people may think that there is actually improvement in the 2004 election because at least, the seats returned by the Election Committee will be abolished then, which means that the election of six Members of the Legislative Council by 800 people will not exist any more. But just take a look at the case of functional constituencies and we will see that small-circle election actually still exists. Five, or one sixth of the 30 functional constituencies have less than 200 voters. The people must ask: Why is it that over 100 000 voters can elect only one representative in the case of direct elections, but in some functional constituencies, they can return one representative although they have only a hundred or so voters? How can this be considered fair and reasonable?

Indeed, while the Government always stresses the need to enhance cohesion in the community, this system of functional constituencies is obviously creating division in society. As group interest is more explicit and bears a direct relation with votes, whereas the overall interest of the community is comparatively ambiguous, representatives of functional constituencies very often accord priority to the interests of their own sectors in their consideration. However, such sectoral interests are not necessarily consistent with the overall

interest of society. When the Legislative Council has 30 such representatives and when 30 different interest blocs are competing for public resources, how can there be common interests for society to build up cohesion and pursue development together?

Moreover, the functional constituency system is basically a continuation of the practice previously adopted by the colonial government to absorb elites into the establishment. But the questions of who qualify as elites and who should be absorbed often generate divisions and competition. Functional constituencies are caught in the same dilemma: Who are the people qualified with the "functions" to sit in the Legislative Council? In the course of discussions over the Bill, many organizations of Chinese medical practitioners continuously fought for their inclusion as part of the Medical Functional Constituency or their becoming an independent functional constituency. But they have yet been given the chance to be represented in this Council until a review scheduled in 2007. This reflects the lack of objective criteria for the definition of functional constituencies. This has resulted in so many problems and led to more disputes in society. Regrettably, the Government still panders to bygone values in its attitude towards these problems, turning a blind eye to such problems that have already emerged in society.

The Government often thinks that some institutions can facilitate its governance. Take functional constituencies as an example. The Government manipulates the so-called power to define functions, using this to draw some organizations over to its side and to entice their support. Unfortunately, the Government only sees the favourable side of such practices, without conducting any in-depth studies to find out the resultant problems in society.

The Bill has also introduced a scheme under which subsidies will be provided in proportion to the number of votes obtained. Insofar as the aspirations of the democratic camp are concerned, aspirations that they have continuously striven for, this is of course a good thing. But I find it regrettable that this has come only 13 years after direct elections have been implemented for the Legislative Council. Madam President, insofar as timing is concerned, I think this has come very late. But of course, it is always better late than never. Indeed, this policy can on the one hand give incentive to the people to run in elections. On the other hand, there will not be a substantial increase in the additional expenditure incurred, because the Government has decided to cut one

round of free mailing service in tandem with the implementation of this policy. This policy is considered the only benevolent policy of Secretary Stephen LAM since he assumed office. We certainly hope that there will be more benevolent policies to come, particularly in relation to the elections of the Chief Executive and the Legislative Council by universal suffrage. We hope that a proposal will be submitted to the Legislative Council as soon as possible for discussion.

Another issue in relation to the Bill is the arrangement for withdrawal and the list system. Some people are concerned that in the absence of a withdrawal system, once a candidate must withdraw due to problems on his part, the other candidates on the same list will then be affected. But the Government, though faced with this problem, is still unwilling to make any improvement. Colleagues have proposed that an open list system be introduced so that if there are problems with a candidate on the list, the voters can still choose the other candidates on the same list. The Government, however, considered the proposed system complicated and turned down the proposal. If the Government wants a simple voting system, I think no other electoral system can be simpler than the "single-seat, single-vote" system. But when the Government decided to adopt the more complicated proportional representation system, why did it not consider the system complicated and reject it? I think when the Government decides to implement or not to implement any policy, it should present to the public honest and genuine justifications. Only in this way can the people be convinced of its decision. Otherwise, it would only lead to greater dissatisfaction among the people towards the operation of the Government and the direction of its policies.

Madam President, the Bill has also reflected that the Government has no intention whatsoever to speed up the pace of democratization in Hong Kong. It is unwilling even to make the slightest amendment to the existing electoral system. Regarding constitutional reforms, the Government has still adopted a resistant attitude. So, we must ask: For how much longer will the Government reject public opinions? Premier WEN Jiabao said yesterday before his departure from Hong Kong that in this trip to Hong Kong, he would like to say that this Hong Kong of Hong Kong people is a Hong Kong that faces the world. But it is a pity that the SAR Government does not think the same way, and this Government of Hong Kong people is a government that does not face the world. I think this is indeed regrettable. In fact, the march joined by 500 000 people yesterday to fight for their rights, particularly political openness, is indeed a

clear expression of public opinions. Regrettably, the Government has not included these issues on its agenda, not giving any thoughts to them at all. Worse still, it has continued to impede the development of democracy in Hong Kong by all means. Those people who are on the side of TUNG Chee-hwa still bury their heads in the sand, refusing to listen to public opinions and saying all the time that the public has been misled. I think this is nothing more than an attempt to shoe-shine the Government, hoping that with some shoe-shining, Hong Kong will be doing fine again. Indeed, they are just sinners who stand in the way of social development. The power of the people will certainly sweep all these remarks of flattery and adulation into the rubbish bin of history using their right to vote. Here, let me tender a piece of advice to the Government: It had better hold back before it is too late, listen to public opinions, withdraw the Bill, immediately carry out constitutional reforms and implement a democratic system expeditiously. Madam President, I so submit.

MR IP KWOK-HIM (in Cantonese): Madam President, on behalf of the DAB, I speak in support of the resumption of the Second Reading of the Legislative Council (Amendment) Bill 2003 (the Bill).

According to Annex II to the Basic Law, for the third term Legislative Council elections of the Hong Kong Special Administrative Region (SAR) to be held next year, the seats to be returned by Election Committee will all be removed, but the seats to be returned by geographical constituencies through direct elections will be increased from 24 to 30. The number of seats will also be adjusted accordingly to accommodate the growth in population in newly developed districts. The present amendments proposed are exactly in line with the stipulation of the Basic Law for the implementation of the relevant requirements stated in the Basic Law. The DAB acknowledges that democratic development has to proceed in a gradual and orderly manner by increasing the number of Members returned by geographical constituencies progressively.

The Bill has made two proposals of concern, including the provision of financial assistance to candidates, and the printing of the names and emblems of the candidates' parties or organizations or the candidates' photographs on ballot papers.

Madam President, all along, the people of Hong Kong have been criticized of being politically apathetic. Therefore, given the present political system in

Hong Kong, all political parties are not sufficiently experienced and are small in scale. Even the DAB, which is renowned for having the largest number of members in the territory, has only got some 2 000 members. Moreover, the younger generation interested in politics will rather join the Government as Administrative Officers than joining political parties. Besides, all along, no measures have been taken by the Government to promote the development of political parties, and such development has really been hindered. Regarding the present legislative proposal on providing financial assistance to political parties in relation to election activities, the public may query that given the enormous fiscal deficit the Government is now facing, is it a right move to use public money to finance the development of political parties in election? In this connection, we have to rely on public education to lead the public to recognize that facilitating the development of political parties is in the interest of the future development of a democratic political system in Hong Kong. No doubt, the attitude of the Government and society towards political parties will hinder the development of political parties in some measure. This time, the Government has followed the practice of overseas countries, like Australia, to provide financial assistance to political parties or candidates obtaining 5% or more of votes for each vote they have obtained. I believe the proposal will encourage more public-spirited people to participate in election, which will be conducive to the development of local political parties and political groups.

The arrangement of printing the names and emblems of the candidates' parties or organizations or the candidates' photographs on ballot papers is a good start. In the past few years, the DAB has put forward similar proposals to the Government time and again. The DAB believes that the arrangement will help to reinforce the voters' impression of the candidates, and this will naturally help to avoid the problem of voting for the wrong candidates by mistake.

In the course of our scrutiny of the Bill, we have raised two issues for discussion — firstly, the withdrawal mechanism; and secondly, the arrangement for by-election. On the first issue, the Government has stated clearly that the establishment of such a system will not be considered. For the latter, the Government has made an undertaking to conduct further studies in future. Regarding by-election, under the requirement of the existing legislation, a by-election will not be conducted within the four months prior to the end of the current term of the Legislative Council. I think this arrangement should be subject to further review in the interest of resource management and practical need, for a by-election often costs about tens of thousands to over a million

dollars of public money. Regarding the time limit, setting the limit at four months is really impractical. To date, three by-elections have been conducted since the beginning of the year. The fourth by-election, a typical example, will be held in Sham Shui Po District. The period the seat had been vacated has just exceeded four months, but according to the prescribed arrangement, the by-election can only be held in early August. However, the second term District Council elections will be held in November, and the District Council of the current term will cease operation around October. That means the term of office of the successful candidate returned by the by-election will only last for more than a month. Before settling down in the new office, the newly elected member has to prepare to run for another election in November. This arrangement will cause problems in electoral arrangements indeed. I thus hope that the Government can consider and study the by-election arrangement.

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

PRESIDENT (in Cantonese): Honourable Members, it is now three minutes to ten o'clock in the evening. I believe it is unlikely that the remaining items on the Agenda can be finished before midnight. I will thus allow one more Member to speak, and other Members wishing to speak will have to wait until tomorrow.

MISS MARGARET NG: Madam President, democratization is the clear wish of the community. If proof is needed, then yesterday's demonstration of 500 000 people is surely strong enough proof. The people have shown themselves to be deserving of a government truly of the people, for the people and by the people, including a directly elected Chief Executive and a wholly directly elected Legislative Council. A Legislative Council (Amendment) Bill should aim at implementing such a system so far as the legislature is concerned. The Bill before this Council falls short of this aim.

Even if it is passed today, all that is achieved is that 30 of the 60 seats of this Council will be directly elected. The other 30 seats will be elected by functional constituencies. In a document provided by the Government to the Bills Committee, it is shown that the total electoral size of the functional constituencies is under 300 000 individuals and corporations. By comparison, the electoral size for direct election is over 3 million people. This is a blatantly unfair system unworthy of the modern society that Hong Kong is.

The result is that the collective will of this Council can be controlled by a small minority in this community, a minority with its vested interest. Moreover, the constituents of many of the functional constituencies are not individuals but organizations and corporations, for example, in the functional constituencies of agriculture and fisheries, of insurance, of transport, of finance, just to name some of them.

This is all the more unacceptable because not all of these organizations or corporations are representative of the individuals within their sectors. Nor do they always follow democratic procedures to ensure that their positions reflect the views of those in their sectors. Therefore, functional constituency seats do not meet even the requirements of indirect election. In an indirect election, at least the representatives elected to the legislature are elected by electors who are themselves democratically elected. The present system is not only unfair in the overall context of the Hong Kong community, it can also be unfair within a functional constituency itself with respect to people in that sector. For example, the Chambers of Commerce together do not represent everyone doing business in Hong Kong.

Madam President, elephants do not forget. I am something of an elephant in the development of representative government in Hong Kong. I remember that functional constituencies were introduced on two pretexts: (1) "indirect election" would be a step towards direct election; (2) the functional constituencies are supposed to preserve the expertise from the different sectors making up Hong Kong. Neither has worked. The dynamics of politics are that functional constituencies have developed into interest groups, and candidates standing for election are increasingly being pressed into promises of putting sectoral interests first. As to progress to direct election, instead of facilitating progress, the system has rather encouraged political groups with votes principally in the functional constituencies to backtrack from full direct election at the earliest time permitted by the Basic Law.

The warning from yesterday's demonstration is loud and clear: maintain the present unfair system at your own peril. The indication of voting in this Council on Article 23 legislation stands in opposition to the will of 500 000 people, and it is the present composition of this Council which makes such an anomaly possible. A legislature which turns its back on the people will be abandoned by the people. Every act of such a legislature will lack authority and legitimacy. Where, then, will be the rule of law and the stability of the Special Administrative Region?

Madam President, the scope of this Bill before us does not allow us to make any amendment which significantly broadens the base of the functional constituencies, let alone replacing them with directly elected seats. The Bill gives effect to the Basic Law by replacing the six Election Committee seats with directly elected seats. While this is certainly some progress, certainly we are a long way behind what this community and the world expect. Thus, while I must support the Bill, I do so with discontent and dissatisfaction.

I note that many of my democratic colleagues are opposing the Second Reading of this Bill. I respect the reasons for their stance and I understand the justification. That I vote differently represents my own limitation, not theirs.

Thank you, Madam President.

SUSPENSION OF MEETING

PRESIDENT (in Cantonese): I now suspend the meeting until 9.00 am tomorrow.

Suspended accordingly at three minutes past Ten o'clock.

Annex I

CHEMICAL WEAPONS (CONVENTION) BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce, Industry and Technology

Clause	Amendment Proposed
1(2)	By deleting "and Industry" and substituting ", Industry and Technology".
2	(a) In subclause (1) -
	(i) in the definition of "claimant", by deleting "or petitions";
	(ii) in the definition of "Convention", by deleting "set out in Schedule 1" and substituting "in force from time to time";
	(iii) in the definitions of "Schedule 1 chemical", "Schedule 2 chemical", "Schedule 2 permit threshold", "Schedule 3 chemical" and "unscheduled discrete organic chemical", by deleting "to the Convention" wherever it appears;
	(iv) by adding -
	""chemical weapons" (化學武器) means -
	(a) toxic chemicals and their precursors, except where the toxic chemicals and their precursors are -

Clause | Amendment Proposed

(i) intended for purposes not prohibited under the Convention; and

(ii) in types and quantities consistent with those purposes;

(b) munitions and devices, specifically designed to cause death or other harm through the toxic properties of toxic chemicals -

(i) specified in paragraph (a); and

(ii) which would be released as a result of the employment of the munitions and devices; or

(c) any equipment specifically designed for use directly in connection with the employment of the munitions and devices specified in paragraph (b);

"discrete organic chemical" (特定有機化學品) means any chemical -

(a) belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates; and

Clause Amendment Proposed

(b) identifiable by -

(i) chemical name;

(ii) structural formula, if known; and

(iii) Chemical Abstracts Service registry number, if assigned;

"facility" (設施) means any plant site, plant or unit;

"in-country escort" (國內陪同人員) means individuals specified by the inspected state party and, if appropriate, by the People's Republic of China, if they so wish, to accompany and assist the inspection team during the period from the arrival of the inspection team at a point of entry into Hong Kong until the inspection team's departure from Hong Kong at a point of entry;

"inspected state party" (被視察締約國) -

(a) subject to paragraph (b), means the state party -

(i) on whose territory or in any other place under its jurisdiction or control an inspection pursuant to the Convention takes place; or

(ii) whose facility or area on the territory of the People's

Clause | Amendment Proposed

Republic of China is subject to such an inspection;

(b) does not include the state party specified in Part II, paragraph 21, of the Annex on Implementation and Verification to the Convention;

"inspection team" (視察組) means the group of inspectors and inspection assistants assigned by the Director-General of the Technical Secretariat of the Organization to conduct a particular inspection;

"Organization" (本組織) means the Organization for the Prohibition of Chemical Weapons established pursuant to Article VIII of the Convention;

"plant" (車間) means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, including any -

(a) small administrative section;

(b) storage or handling areas for feedstock and products;

(c) effluent or waste handling or treatment area;

(d) control or analytical laboratory;

(e) first aid service or related medical section; and

Clause Amendment Proposed

(f) records associated with the movement into, around and from the area, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate;

"plant site" (廠區) means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, including any -

(a) administration and other offices;

(b) repair and maintenance shops;

(c) medical centre;

(d) utilities;

(e) central analytical laboratory;

(f) research and development laboratories;

(g) central effluent and waste treatment area; and

(h) warehouse storage;

"precursor" (前體) -

(a) means any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical; and

Clause | Amendment Proposed

(b) includes any key component of a binary or multicomponent chemical system;

"purposes not prohibited under the Convention" (《公約》不禁止的目的) means -

(a) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(b) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare;

(d) law enforcement including domestic riot control purposes;

"restore" (歸還), in relation to an article, vehicle or vessel, includes arranging for the restoration of the article, vehicle or vessel;

"toxic chemical" (有毒化學品) means any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals, regardless of -

Clause Amendment Proposed

(a) its origin or method of production; and

(b) whether it is produced in facilities, in munitions or elsewhere;

"unit" (單元) means the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical;".

(b) By adding -

"(3A) For the purposes of -

(a) Schedules 1, 2 and 3, whenever reference is made to groups of dialkylated chemicals, followed by a list of alkyl groups in parentheses, all chemicals possible by all possible combinations of alkyl groups listed in the parentheses are considered as listed in the respective Schedule as long as they are not explicitly exempted;

(b) Schedule 2, a chemical marked "*", is subject to special thresholds for declaration and verification, as specified in Part VII of the Annex on Implementation and Verification to the Convention.".

Clause	Amendment Proposed
3(c)	By deleting "Ordinance" and substituting "Ordnance".
4	(a) By deleting the heading and substituting "**Power of Director to appoint public officers to exercise powers and perform duties conferred or imposed on the Director by this Ordinance**". (b) By deleting "or in the Clerical Officer Grade". (c) By deleting "責任" and substituting "職責".
5	(a) By deleting paragraph (c) and substituting - "(c) acquire, stockpile or retain a chemical weapon;". (b) In paragraph (f), by deleting "the Convention" and substituting "this section".
7	(a) In subclause (1) - (i) by adding "reasonably" before "believes"; (ii) by deleting "or an authorized officer" and substituting ", an authorized officer or a police officer". (b) In subclause (2), by deleting "or an authorized officer" and substituting ", an authorized officer or a police officer".
8(1)	By deleting ", in all the circumstances of the case, a reasonable person would conclude that".

Clause	Amendment Proposed
9	By adding "and accompanied by the fee specified in Schedule 4" after "Director".
10	By deleting subsection (3) and substituting -

"(3) The Director may -

(a) by notice in writing served on the holder of a permit and, subject to subsection (5), with effect from the date specified in the notice, revoke or suspend the permit, amend conditions specified in the permit, add conditions to the permit, or delete conditions specified in the permit, if the Director is satisfied that -

(i) the holder has failed to comply with -

(A) any of the provisions of this Ordinance applicable to or in relation to the facility; or

(B) any conditions specified in the permit; or

(ii) it is appropriate to do so for the purpose of implementing the requirements of the Convention;

(b) by notice in writing served on the holder of a permit and with effect from the date specified in the notice, revoke the permit, amend conditions specified in the permit, add conditions to the permit, or delete conditions specified in the permit, at the request of the holder; or

Clause | Amendment Proposed

(c) by notice in writing served on the holder of a permit and, subject to subsection (5), with effect from the date specified in the notice, revoke or suspend the permit if the applicant has furnished to him any false, misleading or inaccurate information in connection with the application for the granting of the permit.".

14 In the Chinese text, by deleting subsection (1)(e) and substituting -

"(e) 在任何與(c)(i)、(ii)或(iii)段提述的任何許可證或文件有關的資料或(c)(iv)段提述的任何資料符合以下說明的情況下 —

(i) 該等資料是載於根據本條進入或登上的處所、地方、船隻、航空器或車輛之內或之上的電腦內的，或是載於可從該處所、地方、船隻、航空器或車輛接達到的電腦內的；或

(ii) 該等資料是載於根據本條進入或登上的處所、地方、船隻、航空器或車輛之內或之上發現的任何裝置內，且該等資料是能夠在電腦上檢索的，

要求於該處所、地方、船隻、航空器或車輛之內或之上的電腦以可見可讀的形式出示該等資料，和查驗該等資料；".

15 (a) In the Chinese text, by deleting subsection (2)(a) and substituting -

"(a) 有下述情況 —

Clause | Amendment Proposed

(i) 在任何處所或地方之內或之上有根據第 16 條可予檢取的物品；或

(ii) 在任何處所或地方之內或之上有載有屬第 16(2)條指明種類的資料的電腦，或可從任何處所或地方接達到載有該等資料的電腦，或在任何處所或地方之內或之上，有任何以能夠在電腦上檢索該等資料的形式載有該等資料的裝置；及”.

(b) In subclause (4) -

(i) by deleting "subsection (5)" and substituting "subsections (5) and (6)";

(ii) in paragraph (a), by deleting "or";

(iii) in paragraph (b), by deleting "aircraft." and substituting "aircraft; or";

(iv) by adding -

"(c) the detention for more than 12 hours of any vehicle.".

(c) In subclause (5) -

(i) by deleting "subsection (4)" and substituting "subsection (4)(a)";

(ii) by deleting "that subsection" and substituting "subsection (4)(b)".

(d) By adding -

Clause	Amendment Proposed
	"(6) The Commissioner may, by order in writing under the hand of the Commissioner, detain a vehicle referred to in subsection (4)(c) for further periods of not more than 12 hours each, and any such order made by the Commissioner shall state the times from which and for which the order shall be effective.".
16	By adding -
	"(5) Where any article, vessel or vehicle seized by a member of the Customs and Excise Service or an authorized officer under this section -
	(a) is not, or is no longer, required for the purposes of any investigation or criminal proceedings under this Ordinance or any other enactment; and
	(b) is not liable to forfeiture under this Ordinance or any other enactment,
	then the Commissioner shall, as soon as is reasonably practicable, restore the article, vessel or vehicle to the person who appears to him to be the owner thereof or the authorized agent of the owner.".
21	(a) By deleting subclauses (3) and (4) and substituting -
	"(3) The Commissioner shall, not later than 30 days beginning on the date of the seizure of an article, vessel or vehicle, serve a notice of the seizure -

Clause | Amendment Proposed

(a) on a person who was to the knowledge of the Commissioner at the time of, or immediately after, seizure, an owner of the article, vessel or vehicle; and

(b) specifying -

(i) the reasons for the seizure;

(ii) that the article, vessel or vehicle is liable to forfeiture if -

(A) in the case of the article, the ground stated in subsection (1)(a) is applicable to the article;

(B) in the case of the vessel or vehicle, the ground stated in subsection (1)(b) is applicable to the vessel or vehicle;

(iii) that if no notice of claim in respect of the article, vessel or vehicle is given to the Commissioner under subsection (7),

Clause | Amendment Proposed

then the article, vessel or vehicle will be forfeited to the Government under subsection (12); and

(iv) that the Commissioner is required by section 16(5) to restore the article, vessel or vehicle to the person who appears to him to be the owner thereof or the authorized agent of the owner as soon as is reasonably practicable after the article, vessel or vehicle -

(A) is not, or is no longer, required for the purposes of any investigation or criminal proceedings under this Ordinance or any other enactment; and

(B) is not liable to forfeiture under this Ordinance or any other enactment,

Clause Amendment Proposed

and the notice shall be accompanied by copies of section 16(5) and this section.

(4) Subsection (3) shall not apply in relation to an owner who does not have a permanent address in Hong Kong at the time of seizure.".

(b) In subclause (5), by deleting "Notwithstanding anything in subsection (4)(a), where" and substituting "Where".

(c) By deleting subclause (7) and substituting -

"(7) If an article, vessel or vehicle is liable to forfeiture under subsection (1), the owner or the authorized agent of the owner of the article, vessel or vehicle or a person who was in possession of the article, vessel or vehicle at the time of seizure, or a person who has a legal or equitable interest in the article, vessel or vehicle, may within 30 days beginning, where notice under subsection (3) or (5) is -

(a) served by delivery to the person to be served, on the date of service;

(b) sent by registered post, on the third day after the date of posting; or

(c) exhibited as described in subsection (6)(c), on the first day it is so exhibited,

give notice in writing to the Commissioner claiming that the article, vessel or vehicle is not liable to

Clause	Amendment Proposed
	forfeiture and of his full name and address for service in Hong Kong.".
	(d) In subclause (13)(b), by deleting "lacks the knowledge mentioned in that subsection" and substituting "does not know who is the owner of the article".
	(e) By adding -
	"(14) It is hereby declared that nothing in this section shall prevent the Commissioner from restoring any article (other than a chemical weapon), vehicle or vessel mentioned in subsection (2) to a person or agent mentioned in that subsection -
	(a) in response to a notice under subsection (7); and
	(b) on or after the expiration of the 30 days mentioned in subsection (2).".
22	(a) In subclause (1), by adding "and the article, vessel or vehicle concerned has not been restored pursuant to section 21(2) or (14)" after "section 21(7)".
	(b) In subclause (7)(c), by deleting "summons of" and substituting "summons or".
23(1)	By deleting "not less in amount than the value of the seized vessel or vehicle, as assessed by the Commissioner or an authorized officer" and substituting "of such amount as the court thinks fit in all the circumstances of the case".

Clause	Amendment Proposed
24	By deleting subsection (2) and substituting - "(2) The court to which an application has been made under subsection (1)(c) shall not make an order under that subsection unless it is satisfied that - (a) in the case where the application is made before the expiry of the period for making a claim under section 21(7), the persons referred to in section 21(3), (4) and (5) have been given notice of the application for an order to sell the article; or (b) in case where the application is made after the expiry of the period referred to in paragraph (a), the persons who have given notice to the Commissioner have been given notice of the application for an order to sell the article.".
30	(a) In subclauses (1)(b), (2)(b) and (3)(b), by adding "intentionally or recklessly" after "such a permit,". (b) By deleting subclause (6).
35(1)(a)	By adding "wilfully" before "obstructs".
38	(a) By deleting subclause (1) and substituting -

Clause | Amendment Proposed

"(1) The holder of, or the applicant for, a permit to which a relevant decision applies may appeal in writing to the Chief Executive in Council -

(a) against the decision; and

(b) not later than 28 days after notice of the decision was served on the holder or the applicant, as the case may be.

(1A) In subsection (1), "relevant decision" (有關決定) means a decision of the Director to which section 10(4) applies.".

(b) In subclause (2), by adding "in Council" after "Executive".

40 By deleting the clause and substituting -

"**40. Power to amend Schedules**

(1) The Secretary for Commerce, Industry and Technology may by order amend Schedule 1, 2 or 3 in order to effect changes made to the Convention under Article XV of the Convention.

(2) The Financial Secretary may by order amend Schedule 4.".

44 By deleting "Schedule 2" and substituting "Schedule 5".

Schedule 1 By deleting the Schedule and substituting -

Clause Amendment Proposed

"SCHEDULE 1 [ss. 2 & 40]

CHEMICALS LISTED FOR THE PURPOSES OF THE DEFINITION OF "SCHEDULE 1 CHEMICAL"

		CAS registry number
A.	Toxic chemicals:	
(1)	O-Alkyl ($<C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates	
	e.g. Sarin: O-Isopropyl methylphosphonofluoridate	(107-44-8)
	Soman: O-Pinacolyl methylphosphonofluoridate	(96-64-0)
(2)	O-Alkyl ($<C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates	
	e.g. Tabun: O-Ethyl N, N-dimethyl Phosphoramidocyanidate	(77-81-6)
(3)	O-Alkyl (H or $<C_{10}$, incl. cycloalkyl) S-2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts	
	e.g. VX: O-Ethyl S-2-diisopropylaminoethyl methyl phosphonothiolate	(50782-69-9)

Clause | Amendment Proposed

(4) Sulfur mustards:

2-Chloroethylchloromethylsulfide	(2625-76-5)
Mustard gas: Bis (2-chloroethyl) sulfide	(505-60-2)
Bis (2-chloroethylthio) methane	(63869-13-6)
Sesquimustard: 1, 2-Bis (2-chloroethylthio) ethane	(3563-36-8)
1, 3-Bis (2-chloroethylthio) -n-propane	(63905-10-2)
1, 4-Bis (2-chloroethylthio) -n-butane	(142868-93-7)
1, 5-Bis (2-chloroethylthio) -n-pentane	(142868-94-8)
Bis (2-chloroethylthiomethyl) ether	(63918-90-1)
O-Mustard: Bis (2-chloroethylthioethyl) ether	(63918-89-8)

(5) Lewisites:

Lewisite 1:	2-Chlorovinyldichloroarsine	(541-25-3)
Lewisite 2:	Bis (2-chlorovinyl) chloroarsine	(40334-69-8)
Lewisite 3:	Tris (2-chlorovinyl) arsine	(40334-70-1)

(6) Nitrogen mustards:

HN1:	Bis (2-chloroethyl) ethylamine	(538-07-8)
HN2:	Bis (2-chloroethyl) methylamine	(51-75-2)
HN3:	Tris (2-chloroethyl) amine	(555-77-1)

(7) Saxitoxin (35523-89-8)

(8) Ricin (9009-86-3)

B. Precursors:

(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides

e.g.	DF:	Methylphosphonyldifluoride	(676-99-3)

Clause Amendment Proposed

(10) O-Alkyl (H or $<C_{10}$, incl. cycloalkyl)
O-2-dialkyl
(Me, Et, n-Pr or i-Pr)-aminoethyl alkyl
(Me, Et, n-Pr or i-Pr) phosphonites and
corresponding alkylated or protonated salts

e.g. QL: O-Ethyl O-2-diisopropylaminoethyl methylphosphonite (57856-11-8)

(11) Chlorosarin: O-Isopropyl methylphosphonochloridate (1445-76-7)

(12) Chlorosoman: O-Pinacolyl methylphosphonochloridate (7040-57-5)

SCHEDULE 2 [ss. 2 & 40]

CHEMICALS LISTED FOR THE PURPOSES OF THE DEFINITION OF "SCHEDULE 2 CHEMICAL"

CAS registry number

A. Toxic chemicals:

(1) Amiton: O, O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate (78-53-5)
and corresponding alkylated or protonated salts

(2) PFIB: 1, 1, 3, 3, 3-Pentafluoro-2-(trifluoromethyl) -1-propene (382-21-8)

(3) BZ: 3-Quinuclidinyl benzilate (*) (6581-06-2)

Clause | Amendment Proposed

(B) Precursors:

(4) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms,

e.g. Methylphosphonyl dichloride (676-97-1)
Dimethyl methylphosphonate (756-79-6)

Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphonothiolothionate (944-22-9)

(5) N, N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides

(6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates

(7) Arsenic trichloride (7784-34-1)

(8) 2,2-Diphenyl-2-hydroxyacetic acid (76-93-7)

(9) Quinuclidin-3-ol (1619-34-7)

(10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts

(11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts

Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts (108-01-0)

N,N-Diethylaminoethanol and corresponding protonated salts (100-37-8)

Clause | Amendment Proposed

(12)	N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts	
(13)	Thiodiglycol: Bis (2-hydroxyethyl)sulfide	(111-48-8)
(14)	Pinacolyl alcohol: 3,3-Dimethylbutan-2-ol	(464-07-3)

SCHEDULE 3 [ss. 2 & 40]

CHEMICALS LISTED FOR THE PURPOSES OF THE DEFINITION OF "SCHEDULE 3 CHEMICAL"

		CAS registry number
A.	Toxic chemicals	
(1)	Phosgene: Carbonyl dichloride	(75-44-5)
(2)	Cyanogen chloride	(506-77-4)
(3)	Hydrogen cyanide	(74-90-8)
(4)	Chloropicrin: Trichloronitromethane	(76-06-2)
B.	Precursors:	
(5)	Phosphorus oxychloride	(10025-87-3)
(6)	Phosphorus trichloride	(7719-12-2)
(7)	Phosphorus pentachloride	(10026-13-8)
(8)	Trimethyl phosphite	(121-45-9)

Clause	Amendment Proposed		
	(9)	Triethyl phosphite	(122-52-1)
	(10)	Dimethyl phosphite	(868-85-9)
	(11)	Diethyl phosphite	(762-04-9)
	(12)	Sulfur monochloride	(10025-67-9)
	(13)	Sulfur dichloride	(10545-99-0)
	(14)	Thionyl chloride	(7719-09-7)
	(15)	Ethyldiethanolamine	(139-87-7)
	(16)	Methyldiethanolamine	(105-59-9)
	(17)	Triethanolamine	(102-71-6)

SCHEDULE 4 [ss. 9 & 40]

FEE TO ACCOMPANY APPLICATION FOR PERMIT UNDER SECTION 9 OF THIS ORDINANCE

$495".

Schedule 2

(a) By deleting "SCHEDULE 2" and substituting "SCHEDULE 5".

(b) In section 1, in the proposed item 19, by deleting "possessing" and substituting "acquiring, stockpiling, retaining".

Clause Amendment Proposed

(c) In section 2, in the proposed section 2(3), by deleting "the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, signed at Paris on 13 January 1993, as set out in Schedule 1 to" and substituting "section 2(1) of".

(d) By adding -

"**Customs and Excise Service Ordinance**

3. Ordinances referred to in sections 17 and 17A

Schedule 2 to the Customs and Excise Service Ordinance (Cap. 342) is amended by adding -

"Chemical Weapons (Convention) Ordinance (of 2003)".".

Annex II

COPYRIGHT (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for Commerce, Industry and Technology

Clause	Amendment Proposed
1(2)	By deleting "and Industry" and substituting ", Industry and Technology".
2	(a) By adding - "(1A) Section 35(4)(a) and (i) and (5)(a) is amended by repealing everything from "某國家" to "該處是" and substituting "製作它的所在國家、地區或地方".".
	(b) By deleting subclause (2) and substituting - "(2) Section 35(9) is repealed.".
3	By deleting proposed section 35A and substituting - "**35A. Copy of a computer program, or of certain other works embodied in the same article as a computer program, not an "infringing copy" for the purposes of section 35(3)** (1) A copy of a work to which this subsection applies is not an infringing copy for the purposes of

Clause Amendment Proposed

section 35(3) if it was lawfully made in the country, territory or area where it was made.

(2) Subsection (1) applies to -

(a) a copy of a computer program; or

(b) except as provided in subsection (3) or (4), a copy of a work other than a computer program, which copy is embodied in an article that also embodies a copy of a computer program,

that, but for subsection (1), would be an infringing copy for the purposes of section 35(3).

(3) Subsection (1) does not apply to any copy of a work described in subsection (2)(b) -

(a) that is a copy of the whole or substantially the whole of a movie or a television drama; or

(b) that is a copy of a part of a movie or a television drama if -

(i) all those parts of the movie or television drama copies of which are embodied in the article together constitute the whole or substantially the whole of the movie or television drama; or

Clause Amendment Proposed

(ii) the viewing time of all those parts of the movie or television drama copies of which are embodied in the article is, in the case of a movie, more than 15 minutes in aggregate or, in the case of a television drama, more than 10 minutes in aggregate,

and in paragraphs (a) and (b)(i), reference to a television drama, in the case of a television drama comprising one or more episodes, is reference to an episode of the television drama.

(4) Subsection (1) does not apply to any copy of a work described in subsection (2)(b) that is -

(a) a copy of a movie or a television drama (other than a copy to which subsection (3) applies);

(b) a copy of a musical sound recording or a musical visual recording; or

(c) a copy that forms part of an e-book,

(a "specified copy of a work") if the article in which the specified copy is embodied is likely, in being acquired by a person for his own use, to be acquired for the purpose of acquiring the specified copies of works that are embodied in it more so than for the purpose of acquiring the copies of works other than specified copies that are embodied in it.

Clause Amendment Proposed

(5) For the purposes of subsection (4), in considering the extent to which an article is likely to be acquired for the purpose of acquiring a particular copy of a work that is embodied in it, a copy of those parts of any computer program the function of which is to provide a means of -

(a) viewing or listening to a specified copy of a work that is embodied in the article (or, where that work is in encrypted form, a means of decrypting it so as to enable such viewing or listening); or

(b) searching for any specific part of a specified copy of a work that is embodied in the article,

shall be regarded as part of the specified copy of a work.

(6) In this section, "e-book" (電子書) means a combination of copies of works embodied in a single article and comprising -

(a) one or more copies of each of -

(i) a computer program; and

(ii) a literary work (other than a computer program), a dramatic work, a musical work or an artistic work ("main work"),

so arranged as to provide for the copy of the main work to be presented in the form of an electronic

Clause | Amendment Proposed

version of a book, magazine or periodical; and

(b) where a main work is accompanied for illustrative purposes by any copy or copies of films or sound recordings, that copy or those copies.

(7) For the avoidance of doubt, reference in this section, other than subsection (6), to a copy of a work is reference to a copy of the whole or a substantial part of a work.".

4 By deleting proposed section 118A and substituting -

"**118A. Application of sections 60 and 61 to offences under section 118(1)**

For the purpose of any proceedings for an offence under section 118(1) -

(a) a person is a lawful user of a computer program for the purposes of sections 60 and 61 if he has a contractual right to use the program in any place in or outside Hong Kong, and section 60(2) shall have effect accordingly; and

(b) sections 60 and 61 apply in relation to a copy of a work other than a computer program to which section 35A(1) applies as they apply in relation to a copy of a computer program and, accordingly, any act that may under section 60 or 61 be

Clause	Amendment Proposed
	done in relation to a copy of a computer program without infringing the copyright in the program may be done in relation to a copy of a work other than a computer program to which section 35A(1) applies without infringing the copyright in the work.".
New	By adding -

"**4A. Minor definitions**

(1) Section 198(1) is amended by adding -

""movie" (電影) means a film of the kind commonly known as a movie;

"musical sound recording" (音樂聲音紀錄) means a sound recording the whole or a predominant part of which consists of the whole or any part of a musical work or a musical work and a related literary work;

"musical visual recording" (音樂視像紀錄) means a film with an accompanying sound-tract, the whole or a predominant part of which sound-track consists of the whole or any part of a musical work or a musical work and a related literary work;

"television drama" (電視劇或電視電影) means a film of the kind commonly known as a television drama;".

Clause | Amendment Proposed

(2) Section 198 is amended by adding -

"(3) For the purposes of this Part, "lawfully made" (合法地製作), in relation to a copy of a work, does not include a copy that was made in a country, territory or area where there is no law protecting copyright in the work or where the copyright in the work has expired.".

4B. Index of defined expressions

Section 199 is amended, in the Table, by adding -

"lawfully made	section 198(3)
movie	section 198(1)
musical sound recording	section 198(1)
musical visual recording	section 198(1)
television drama	section 198(1)".

4C. Meaning of "infringing fixation"

Section 229(5)(a) is amended by repealing everything from "在製作" to "地方是" and substituting "是在製作它的所在國家、地區或地方".".

5 By deleting the clause and substituting -

"**5. Section added**

The following is added -

Clause | Amendment Proposed

"**282. Transitional provisions and savings**

Schedule 6 contains transitional provisions and savings in relation to certain amendments made to this Ordinance.".

New | By adding -

"**6. Schedule 6 added**

The following is added -

"SCHEDULE 6 [s. 282]

TRANSITIONAL PROVISIONS AND SAVINGS

Transitional provisions and savings in relation to amendments effected by the Copyright (Amendment) Ordinance 2003 (of 2003)

1. Interpretation

(1) In this Schedule, unless the context otherwise requires -

"amendment Ordinance of 2003" (《2003年修訂條例》) means the Copyright (Amendment) Ordinance 2003 (of 2003);

"Suspension Ordinance" (《暫停條例》) means the Copyright (Suspension of Amendments) Ordinance 2001 (Cap. 568).

Clause | Amendment Proposed

(2) In this Schedule, a reference to this Ordinance as it applied immediately before the commencement of the amendment Ordinance of 2003 is a reference to this Ordinance as read together with the Suspension Ordinance, as those Ordinances applied immediately before that commencement.

2. Application of section 35A of this Ordinance to previously imported copies

(1) This section applies to a copy of a work that is an infringing copy for the purposes of section 35(3) of this Ordinance as it applied immediately before the commencement of the amendment Ordinance of 2003, and is such an infringing copy by virtue only of an importation or proposed importation into Hong Kong that occurred before that commencement.

(2) For the purpose of any act done after the commencement of the amendment Ordinance of 2003 in relation to a copy of a work to which this section applies (including any act alleged to constitute an infringement of copyright or an offence under this Ordinance), section 35A of this Ordinance shall have effect as if it had been enacted before the occurrence of the importation or proposed importation referred to in subsection (1) and, accordingly, the copy is not to be regarded as an infringing copy unless, having regard to section 35A of this Ordinance, it would also be an infringing copy for the purposes of section 35(3) of this Ordinance if the importation

Clause Amendment Proposed

or proposed importation into Hong Kong had occurred immediately after that commencement.

(3) For the avoidance of doubt, nothing in this section or in the amendment Ordinance of 2003 affects any right of action in relation to an infringement of copyright that occurred before the commencement of the amendment Ordinance of 2003.

3. Exemption from criminal liability previously incurred in respect of "parallel-imported" copies of works to which section 35A of this Ordinance applies

(1) This section applies to a copy of a work that is an infringing copy for the purposes of section 35(3) of this Ordinance as it applied immediately before the commencement of the amendment Ordinance of 2003, and is such an infringing copy by virtue only of an importation or proposed importation into Hong Kong that occurred before that commencement.

(2) As from the commencement of the amendment Ordinance of 2003, a person shall not be liable to conviction for an offence under section 118(1) of this Ordinance, as that section applied immediately before that commencement, in respect of an act done before that commencement in relation to a copy of a work to which this section applies unless, having regard to section 35A of this Ordinance, the copy would also be an infringing copy for the purposes of section 35(3) of this Ordinance if the importation

Clause Amendment Proposed

or proposed importation into Hong Kong had occurred immediately after that commencement.

4. Exemption from criminal liability previously incurred in respect of a back-up copy of, or necessary copying or adapting of, a copy of a work to which section 35A of this Ordinance applies

(1) This section applies to a copy of a work to which section 35A of this Ordinance applies, where the copy -

(a) was made before the commencement of the amendment Ordinance of 2003; and

(b) is an infringing copy by virtue only of the fact that it was made by a person who did not have a contractual right to use the work for the purposes of sections 60 and 61 of this Ordinance.

(2) As from the commencement of the amendment Ordinance of 2003, no person shall be liable to conviction for an offence under section 118(1) of this Ordinance, as that section applied immediately before that commencement, in respect of a copy of a work to which this section applies unless, for the purposes of proceedings for an offence under section 118(1) of this Ordinance,

Clause	Amendment Proposed
	and having regard to section 118A of this Ordinance, the same copy made immediately after that commencement would be a copy made by a person who did not have a contractual right to use the work for the purposes of sections 60 and 61 of this Ordinance.".

Annex III

COMPANIES (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary for Financial Services and the Treasury

Clause	Amendment Proposed
1(2)	By adding "and the Treasury" after "Services".
2	(a) In subclause (1)(b) -
	(i) in the proposed definition of "manager", by deleting "occupying a position under the immediate authority of the board of directors" and substituting "who, under the immediate authority of the board of directors, exercises managerial functions";
	(ii) by adding -
	""reserve director" (備任董事) means a person nominated as a reserve director of a private company under section 153A(6);".
	(b) In subclause (3) -
	(i) by deleting "(12)" and substituting "(10)";
	(ii) by deleting "(13)" and substituting "(11)".
New	By adding -

Clause | Amendment Proposed

"**13A. Definitions**

Section 47B(2) is amended by repealing "157H(1)" and substituting "157HA(12)".".

26(2) By deleting the proposed section 58(3) and substituting -

"(3) Confirmation by the court of a reduction of the share capital of a company is not required under subsection (1) if the sole purpose of the reduction is to re-designate the nominal value of the shares of the company to a lower amount and the following conditions are satisfied -

(a) the company has only one class of shares;

(b) all issued shares are fully paid-up and the amount of the net assets of the company is not less than its paid-up share capital;

(c) the reduction applies to and affects all shares equally;

(d) the amount arising from the reduction is not less than an amount representing the difference between the amount of the company's fully paid-up share capital immediately before the reduction and the amount of its fully paid-up share capital immediately after the reduction; and

Clause	Amendment Proposed
	(e) the amount arising from the reduction is credited to the share premium account of the company.
	(4) In this section, "net assets" (淨資產), in relation to a company, has the same meaning as in section 157HA(12).".
29	In the proposed section 61A(1)(b), by deleting "the company's compliance with section 58(3)" and substituting "that the conditions set out in section 58(3)(a), (b), (c), (d) and (e) have been satisfied".
31(3)	In the proposed section 70(4), in the definition of "business day", by deleting "the Unified Exchange" and substituting "a recognized stock market".
New	By adding -
	"**31A. Interpretation**
	Section 79A(1) is amended, in the definition of "net assets", by repealing "157H(1)" and substituting "157HA(12)".".
33	By deleting the proposed section 85(1), (2) and (3) and substituting -
	"(1) The Registrar may, on application under this section, where he is satisfied that the debt for which a registered charge was given has been paid or satisfied in whole or in part, enter on the register a memorandum of satisfaction in whole or in part.

Clause Amendment Proposed

(2) The Registrar may, on application under this section, where he is satisfied that the whole or any part of the property or undertaking subject to a registered charge has been released from the charge or has ceased to form part of the company's property or undertaking, enter on the register a memorandum of that fact.

(3) An application under this section shall be made in the specified form and be accompanied by such evidence as the Registrar may require.

(3A) The specified form referred to in subsection (3) shall contain -

(a) such particulars with respect to the debt, charge, property or undertaking in question as may be specified by the Registrar; and

(b) a statement certifying the fact of payment, satisfaction, release or cessation, as the case may be.

(3B) The specified form referred to in subsection (3) shall be signed by -

(a) where it is submitted to the Registrar on behalf of a company -

(i) a director or officer of the company;

(ii) a solicitor of the High Court acting on behalf of the company; or

Clause	Amendment Proposed
	(iii) in the case of an oversea company, a person authorized to accept service of process and notices on its behalf who is registered under section 333(1)(c); or
	(b) in any other case, by the mortgagee or person entitled to the charge.".
New	By adding -
	"**39A. Annual return to be made by company**
	Section 107(2)(i) is amended by repealing "as are by this Ordinance required to be contained with respect to directors and the secretary respectively" and substituting "or a reserve director of the company as are by this Ordinance required to be contained with respect to them".".
44	(a) In the proposed section 116BC(1) -
	(i) by deleting "or that" and substituting "and that";
	(ii) by adding "agreed in accordance with section 116B" after "written resolution";
	(iii) by deleting "30" and substituting "7".
	(b) By adding after the proposed section 116BC(1) -
	"(1A) Where the member provides the company with a written record of a decision in accordance with subsection (1), that record shall be

Clause | Amendment Proposed

sufficient evidence of the decision having been taken by the member.

(1B) A company shall cause a record of all written records provided to the company in accordance with this section to be entered into a book kept for that purpose in the same way as minutes of proceedings of a general meeting of the company.

(1C) Section 120 shall apply to a record made in accordance with subsection (1B) as that section applies to the minutes of proceedings of any general meeting of a company.".

(c) By adding after the proposed section 116BC(2) -

"(2A) If a company fails to comply with subsection (1B), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.".

49 By deleting "單一" and substituting "唯一".

53 (a) In the proposed section 153A(3), by deleting "subsection (4)" and substituting "subsections (4) and (5)".

(b) In the proposed section 153A(4), by deleting "Where" and substituting "Subject to subsection (5), where".

(c) By adding after the proposed section 153A(4) -

"(5) Where the number of directors of a private company having only one director is reduced to zero by reason of the death of that director and the deceased director was, at the date of death,

Clause | Amendment Proposed

the sole member of the company, the company or any officer of the company shall not be liable for any default in respect thereof under this section unless the default continues for a period of 4 months beginning on the date of the grant of probate of the will, or of letters of administration of the estate, of the deceased director.

(6) Where a private company has only one member and that member is the sole director of the company, the company may in general meeting, notwithstanding anything in its articles, nominate a person (other than a body corporate) who has attained the age of 18 years as a reserve director of the company to act in the place of the sole director in the event of his death. Where the company nominates a reserve director, it shall send to the Registrar particulars of the nomination in accordance with section 158(4), (4A) and (4B).

(7) The nomination of a person as a reserve director of a private company ceases to be valid if -

(a) before the death of the director in respect of whom he was nominated -

(i) he resigns as reserve director in accordance with section 157D; or

(ii) the company in general meeting revokes the nomination; or

Clause Amendment Proposed

(b) the director in respect of whom he was nominated ceases to be the sole member and sole director of the company for any reason other than the death of that director.

(8) Subject to compliance with the conditions set out in subsection (9), in the event of the death of the director in respect of whom the reserve director is nominated, the reserve director shall be deemed to be a director of the company for all purposes until such time as -

(a) a person is appointed as a director of the company in accordance with its articles; or

(b) he resigns from his office of director in accordance with section 157D,

whichever is the earlier.

(9) The conditions referred to in subsection (8) are -

(a) the nomination of the reserve director has not ceased to be valid under subsection (7); and

(b) the reserve director is not prohibited by law from

Clause | Amendment Proposed

acting as a director of the company.".

55 By deleting the clause and substituting -

"**55. Section added**

The following is added -

"**153C. Written record of decision of sole director of private company**

(1) Where a private company has only one director and that director takes any decision that may be taken in a meeting of the directors and that has effect as if agreed in a meeting of the directors, he shall (unless that decision is taken by way of a resolution in writing) provide the company with a written record of that decision within 7 days after the decision is made.

(2) Where the director provides the company with a written record of a decision in accordance with subsection (1), that record shall be sufficient evidence of the decision having been taken by the director.

(3) A company shall cause a record of all written records provided to the company in accordance with this section to be entered into a book kept for that purpose in the same way as minutes of proceedings of a meeting of the directors.

Clause	Amendment Proposed
	(4) If the director fails to comply with subsection (1), he shall be liable to a fine and, for continued default, to a daily default fine. (5) If a company fails to comply with subsection (3), the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (6) Failure by the director to comply with subsection (1) shall not affect the validity of any decision referred to in that subsection.".
56(3)	In the proposed section 154(4), by deleting "單一" where it twice appears and substituting "唯一".
New	By adding - "**57A. Resignation of director or secretary** Section 157D is amended by adding - "(4) In this section, "director" (董事) includes a reserve director and a person deemed to be a director under section 153A(8).".
58	(a) By deleting the proposed section 157H(1) and (2) and substituting - "(1) The prohibitions in this section are subject to the exceptions in section 157HA.

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(2) A company shall not, directly or indirectly -

(a) make a loan to a director of the company or of its holding company;

(b) enter into a guarantee or provide any security in connection with a loan made by any other person to such a director; or

(c) if any one or more of the directors of the company holds (jointly or severally or directly or indirectly) a controlling interest in another company -

(i) make a loan to that other company; or

(ii) enter into a guarantee or provide any security in connection with a loan made by any person to that other company.

(2A) A relevant company shall not -

(a) make a quasi-loan to a director of the company or of its holding company;

(b) enter into a guarantee or provide any security in connection with a quasi-loan

Clause | Amendment Proposed

made by any other person to such a director; or

(c) if any one or more of the directors of the company holds (jointly or severally or directly or indirectly) a controlling interest in another company -

(i) make a quasi-loan to that other company; or

(ii) enter into a guarantee or provide any security in connection with a quasi-loan made by any other person to that other company.

(2B) A relevant company shall not -

(a) enter into a credit transaction as creditor for a director of the company or of its holding company;

(b) enter into a guarantee or provide any security in connection with a credit transaction entered into by any other person as creditor for such a director; or

(c) if any one or more of the directors of the company holds (jointly or severally or directly

Clause | Amendment Proposed

or indirectly) a controlling interest in another company -

(i) enter into a credit transaction as creditor for that other company; or

(ii) enter into a guarantee or provide any security in connection with a credit transaction entered into by any other person as creditor for that other company.

(2C) A company shall not arrange for the assignment to it, or the assumption by it, of any rights, obligations or liabilities under a transaction that, if it had been entered into by the company, would have contravened subsection (2), (2A) or (2B).".

(b) In the proposed section 157H(3), by deleting "(2)" and substituting "(2C)".

(c) By deleting the proposed section 157H(4) and substituting -

"(4) A company shall not take part in any arrangement whereby -

(a) another person enters into a transaction or arrangement that, if it had been entered into by the company, would have contravened subsection (2), (2A), (2B) or (2C); and

Clause Amendment Proposed

(b) that other person, in pursuance of the arrangement, has obtained or is to obtain any benefit from the company or its holding company or a subsidiary of the company or its holding company.".

(d) In the proposed section 157H(5) -

(i) by deleting "subsection (1)" and substituting "subsections (2), (2A) and (2B)";

(ii) in paragraph (a), by deleting "in the case of which shares are listed on the Unified Exchange" and substituting "that has any of its shares listed on a recognized stock market".

(e) In the proposed section 157H(7) -

(i) in the definition of "company", by deleting paragraph (b) and substituting -

"(b) any other body corporate that is incorporated in Hong Kong under an Ordinance and that has any of its shares listed on a recognized stock market,";

(ii) in the definition of "credit transaction", by deleting paragraphs (a) and (b) and substituting -

"(a) supplies goods to the borrower under a hire-purchase agreement;

(b) sells goods or land to the borrower under a conditional sale agreement;

Clause | Amendment Proposed

(ba) leases or hires goods or leases land to the borrower in return for periodical payments; or";

(iii) in the definition of "quasi-loan", in paragraphs (a) and (b), by deleting "under an agreement" and substituting "in pursuance of an agreement";

(iv) by adding -

""conditional sale agreement" (有條件售賣協議) means an agreement for the sale of goods or land under which -

(a) the purchase price or part of it is payable by instalments;

(b) the property in the goods or land is to remain in the seller until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled; and

(c) the buyer is (notwithstanding such reservation of property) to be in possession of the goods or land prior to the fulfilment of such conditions;

Clause Amendment Proposed

"hire-purchase agreement" (租購協議) means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee;

"land" (土地) includes any estate or interest in land, buildings, messuages and tenements of any nature or kind whatsoever;

"relevant company" (有關公司) means a company within the meaning of this subsection but does not include a private company other than a relevant private company;

"relevant private company" (有關私人公司) means a private company that is a member of a group of companies of which a company that has any of its shares listed on a recognized stock market is a member;".

(f) In the proposed section 157H(8) -

(i) in paragraph (a), by deleting "and" at the end;

(ii) in paragraph (b), by deleting the full stop and substituting "; and";

(iii) by adding -

"(c) a body corporate is not to be treated as a shadow director of any of its subsidiaries by reason only that the directors or a majority of the directors of

Clause | Amendment Proposed

the subsidiary are accustomed to act in accordance with its directions or instructions.".

(g) In the proposed section 157HA(1), by deleting "Nothing in section 157H shall be construed as prohibiting" and substituting "Section 157H does not prohibit".

(h) In the proposed section 157HA(2) -

(i) by deleting "Nothing in section 157H shall be construed as prohibiting" and substituting "Section 157H does not prohibit";

(ii) by deleting "other than a private company that is a member of a group of companies of which a company in the case of which shares are listed on the Unified Exchange is a member" and substituting "not being a relevant private company".

(i) In the proposed section 157HA(3) -

(i) by deleting "nothing in section 157H shall be construed as prohibiting a company" and substituting "a company is not prohibited by section 157H";

(ii) in paragraph (a), by deleting "or" at the end;

(iii) in paragraph (b)(iii), by deleting the full stop and substituting "; or";

(iv) by adding -

"(c) leasing or hiring goods or leasing land to a director of the company on terms not more favourable than the terms it is reasonable to expect the company to

Clause Amendment Proposed

have offered, if the goods had been leased or hired or the land had been leased on the open market, to a person who is unconnected with the company.".

(j) In the proposed section 157HA(4), by deleting "Subsection (3)(a)" and substituting "The exception specified in subsection (3)(a)".

(k) In the proposed section 157HA(5), by deleting "Subsection (3)(b)" and substituting "The exception specified in subsection (3)(b)".

(l) By deleting the proposed section 157HA(6) and substituting -

"(6) Subject to this section, a company is not prohibited by section 157H(2) from entering into a transaction described in that section if the ordinary business of that company includes the entering into of transactions of that description.

(6A) Subject to this section, a relevant company is not prohibited by section 157H(2A) or (2B) from entering into a transaction described in that section if the ordinary business of that company includes the entering into of transactions of that description.".

(m) In the proposed section 157HA(7) -

(i) by deleting "Subsection (6) operates" and substituting "The exceptions specified in subsections (6) and (6A) operate";

Clause | Amendment Proposed

(ii) in paragraph (a), by adding "or relevant company, as the case may be," after "company";

(iii) in paragraph (b) -

(A) by adding "or relevant company, as the case may be," after "expect the company";

(B) by adding "or relevant company" after "with the company".

(n) By deleting the proposed section 157HA(8) and (9) and substituting -

"(8) Subsections (6) and (6A) do not authorize a company or relevant company, as the case may be, to enter into a transaction described in section 157H(2), (2A) or (2B) if, at the time the transaction is entered into, the relevant amount exceeds $750,000.

(9) For the purpose of subsection (8), "relevant amount" (有關款額) -

(a) in relation to a company that at the time of the transaction in question is subject to the prohibition in section 157H(2) but is not subject to the prohibitions in section 157H(2A) and (2B), means the aggregate of the following amounts -

(i) the amount of the transaction in question;

Clause | Amendment Proposed

(ii) the amount outstanding at that time in respect of principal on all loans made by the company by virtue of subsection (6) to the director or other company concerned (excluding the transaction in question); and

(iii) the amount representing the maximum liability of the company at that time under all guarantees and all security entered into or provided by the company by virtue of subsection (6) in connection with any loans made by any person to the director or other company concerned (excluding the transaction in question); and

(b) in relation to a company that at the time of the transaction in question is subject to the prohibitions in section 157H(2), (2A) and (2B), means the aggregate of the following amounts -

Clause	Amendment Proposed
	(i) the amount of the transaction in question;
	(ii) the amount outstanding at that time in respect of principal on all loans and quasi-loans made by the company to, and all credit transactions entered into by the company as creditor for, the director or other company concerned by virtue of subsection (6) or (6A) (excluding the transaction in question); and
	(iii) the amount representing the maximum liability of the company at that time under all guarantees and all security entered into or provided by the company by virtue of subsection (6) or (6A) in connection with any loans or quasi-loans made by any person to, or any credit transactions entered into by any person as creditor for, the director or other

Clause | Amendment Proposed

company concerned (excluding the transaction in question).

(9A) Subsections (3), (6) and (6A) do not authorize a company to enter into a transaction if, at the time the transaction is entered into, the relevant amount exceeds 5 per cent of the amount of the company's net assets as shown in the latest balance sheet laid before the company in general meeting.

(9B) For the purpose of subsection (9A), "relevant amount" (有關款額) -

(a) in relation to a company that at the time of the transaction in question is subject to the prohibition in section 157H(2) but is not subject to the prohibitions in section 157H(2A) and (2B), means the aggregate of the following amounts -

(i) the amount of the transaction in question;

(ii) the amount outstanding at that time, in respect of principal and interest or otherwise, on all loans made by the company to any of its directors (excluding the transaction in question and any loans made by

Clause | Amendment Proposed

virtue of subsection (1) or (2)); and

(iii) the amount representing the maximum liability of the company at that time under all guarantees entered into by the company, and in respect of all security provided by the company, in connection with any loans made by any person to any of its directors (excluding the transaction in question and any guarantees or security entered into or provided by virtue of subsection (1) or (2)); and

(b) in relation to a company that at the time of the transaction in question is subject to the prohibitions in section 157H(2), (2A) and (2B), means the aggregate of the following amounts -

(i) the amount of the transaction in question;

(ii) the amount outstanding at that time, in respect

Clause | Amendment Proposed

of principal and interest or otherwise, on all loans and quasi-loans made by the company to, and all credit transactions entered into by the company as creditor for, any of its directors (excluding the transaction in question and any loans, quasi-loans or credit transactions made or entered into by virtue of subsection (1) or (2)); and

(iii) the amount representing the maximum liability of the company at that time under all guarantees entered into by the company, and in respect of all security provided by the company, in connection with any loans or quasi-loans made by any person to, or any credit transactions entered into by any person as creditor for, any of its directors (excluding the transaction in question and any guarantees or

Clause | Amendment Proposed

security entered into or provided by virtue of subsection (1) or (2)).".

(o) By deleting the proposed section 157HA(13) and substituting -

"(13) All other terms and expressions used in this section have the same meaning as in section 157H subject to the following exceptions -

(a) for the purposes of subsection (3) of this section, "director" (董事) does not include a shadow director; and

(b) section 157H(5) shall not apply in relation to the references to a director in subsection (3) of this section insofar as that subsection applies in respect of a director of -

(i) a company that has any of its shares listed on a recognized stock market; or

(ii) a company that is a member of a group of companies of which a company referred to in paragraph (a) is a member.".

Clause	Amendment Proposed
59	(a) In subclause (1), in the proposed section 157I(1), by deleting "157H(1), (2) or (4)" and substituting "157H".
	(b) In subclause (2), by deleting "157H(1), (2) or (4)" and substituting "157H".
	(c) In subclause (3) -
	(i) in the proposed section 157I(4), by deleting "157H(1), (2) or (4)" and substituting "157H";
	(ii) in the proposed section 157I(5), by deleting "157H(1), (2) and (4)" and substituting "157H";
	(iii) By deleting the proposed section 157I(6) and substituting -
	"(6) In this section -
	"company" (公司) has the same meaning as in section 157H(7);
	"director" (董事), except in subsection (3), includes a shadow director;
	"the relevant circumstances" (有關情況), in relation to a contravention of section 157H, means all the facts and other circumstances constituting that contravention including, in the case of a transaction or arrangement which but for any fact or circumstance would be authorized by any provision of section 157HA, that fact or circumstance.".

Clause	Amendment Proposed
60	(a) In the proposed section 157J(1) -

(i) by deleting "transaction or arrangement in contravention of section 157H(1), (2) or (4)" and substituting "transaction in contravention of section 157H(2), (2A) or (2B)";

(ii) in paragraph (a), by deleting "or arrangement is entered into in contravention of section 157H(1)(a), (b) or (c)" and substituting "is entered into in contravention of section 157H(2)(a) or (b), (2A)(a) or (b) or (2B)(a) or (b)";

(iii) in paragraphs (b) and (c), by deleting "or arrangement".

(b) By adding after the proposed section 157J(1) -

"(1A) Where a company enters into an arrangement in contravention of section 157H(2C) or (4), the following persons shall, subject to subsection (2), be guilty of an offence -

(a) if the arrangement is entered into in connection with a transaction described in section 157H(2)(a) or (b), (2A)(a) or (b) or (2B)(a) or (b), the company,

(b) any director of the company who wilfully authorized or permitted the arrangement to be entered into; and

Clause Amendment Proposed

(c) any person who knowingly procured the company to enter into the arrangement.".

(c) In the proposed section 157J(4) -

(i) in the definition of "the relevant circumstances", by deleting "157H(1), (2) or (4)" and substituting "157H";

(ii) by adding -

""company" (公司) has the same meaning as in section 157H(7);".

61 By deleting the clause and substituting -

"**61. Register of directors and secretaries**

(1) Section 158 is amended by adding -

"(2B) Where the company is a private company having only one member and that member is the sole director of the company, the register shall contain the following particulars with respect to the reserve director of the company (if any) -

(a) his present forename and surname and any former forename or surname;

(b) any alias;

(c) his usual residential address; and

Clause | Amendment Proposed

(d) the number of his identity card (if any) or, in the absence of such number, the number and issuing country of any passport held by him.".

(2) Section 158(4) is repealed and the following substituted -

"(4) The company shall -

(a) within 14 days from the appointment of the first directors of the company otherwise than by virtue of section 153(2) or 153A(2), send to the Registrar a return in the specified form containing the particulars specified in the register; and

(b) within 14 days from the occurrence of any change in the company's directors, reserve director (if any), secretary or joint secretaries (if any) or in any of the particulars contained in the register, send to the Registrar a notification in the specified form of the change and of the date on which it occurred.

Clause | Amendment Proposed

(4A) The company shall, within 14 days from the appointment of a person as a director, secretary or joint secretary of the company or the nomination of a person as a reserve director of the company, send to the Registrar a notification in the specified form containing all such particulars with respect to that person as are required to be contained in the register with respect to him.

(4B) Subsection (4A) does not apply to an appointment or nomination the relevant particulars of which have been stated in a return or notification sent to the Registrar under subsection (4).".

(3) Section 158(5) is amended -

(a) by repealing "writing" and substituting "the specified form";

(b) by adding "or 153A(2)" after "153(2)".

(4) Section 158 is amended by adding -

"(5A) Where a person is nominated as a reserve director of a private company, the company shall, within 14 days from the nomination, send to the Registrar a statement in the specified form, signed by such person, that he has accepted his nomination and that he has attained the age of 18 years.".

(5) Section 158(6) is repealed.

Clause	Amendment Proposed

(6) Section 158(8) is amended by repealing "(3), (4) or (5)" and substituting "(2B), (3), (4), (4A), (5) or (5A)".

(7) Section 158(10)(a) is amended by repealing "person in accordance with whose directions or instructions the directors of a company are accustomed to act" and substituting "shadow director".".

New — By adding -

"**61A. Duty to make disclosure for purposes of section 158**

Section 158B(1) is amended by adding ", reserve director" after "director".".

62 — By deleting the clause and substituting -

"**62. Registrar to keep an index of directors**

(1) Section 158C(1)(a) is repealed and the following substituted -

"(a) The Registrar shall keep and maintain an index of every person who is a director of a company or a reserve director of a private company.".

(2) Section 158C(1)(b) is amended by adding "or reserve director" after "director" where it twice appears.".

Clause		Amendment Proposed
63	(a)	By adding after the proposed section 161B(1) -

"(1A) In the case of relevant transactions that consist of quasi-loans or credit transactions, there may be included in the accounts of the company, in lieu of the particulars required to be included under subsection (1), a statement showing, with respect to each borrower in relation to whom particulars are required to be given under that subsection -

(a) the name of that person;

(b) if subsection (1)(b) applies in respect of any such relevant transaction of which that person is the borrower, the name of the relevant director;

(c) the aggregate of the amounts outstanding on all such relevant transactions of which that person is the borrower, in respect of principal and interest or otherwise, at the beginning and at the end of the company's financial year; and

(d) the aggregate of the amounts, if any, that, having fallen due, have not been paid and the aggregate of the amounts of any provision (within the meaning of the Tenth Schedule) made in respect of any failure or anticipated failure by that person to pay

Clause | Amendment Proposed

the whole or any part of the principal amount of any such relevant transaction or any other amount owing under it.".

(b) In the proposed section 161B(2), by adding ", subject to this section," after "shall".

(c) By adding after the proposed section 161B(3) -

"(3A) In the case of guarantees entered into or security provided in connection with relevant transactions that consist of quasi-loans or credit transactions, there may be included in the accounts of the company, in lieu of the particulars required to be included under subsections (2) and (3), a statement showing, with respect to each borrower in relation to whom particulars are required to be given under those subsections -

(a) the name of that person;

(b) if subsection (2) applies to any such guarantee or security for a reason given in subsection (3)(a), the name of the relevant director;

(c) the maximum liability of the company, both at the beginning and at the end of the financial year, under all guarantees entered into, and in respect of all security provided, by the company in connection with all such relevant transactions of which

Clause | Amendment Proposed

that person is the borrower; and

(d) the aggregate of the amounts paid and of all liabilities incurred by the company for the purpose of fulfilling the guarantees or discharging the security referred to in paragraph (c) (including the aggregate of all losses incurred by the company by reason of the enforcement of such guarantees or security).".

(d) In the proposed section 161B(4) -

(i) by adding ", subject to this section," after "shall";

(ii) in paragraph (a) -

(A) by deleting "an officer of the company (whether or not he was an officer" and substituting "a director or other officer of the company (whether or not he was a director or other officer of the company";

(B) in subparagraphs (i) and (iv), by adding "director or" before "officer";

(iii) in paragraph (b) -

(A) by deleting "an officer of the company (whether or not he was an officer" and substituting "a director or other officer of the company (whether or not he was a director or other officer of the company";

Clause | Amendment Proposed

(B) in subparagraph (i), by adding "director or" before "officer".

(e) By adding after the proposed section 161B(4) -

"(4A) In the case of quasi-loans and credit transactions, there may be included in the accounts or group accounts of the company, in lieu of the particulars required to be included under subsection (4), a statement showing, with respect to each director or other officer in relation to whom particulars are required to be given under that subsection -

(a) the name of that person;

(b) the aggregate of the principal amounts of all quasi-loans made by the subsidiary to, and all credit transactions entered into by the subsidiary as creditor for, that person;

(c) the aggregate of the amounts outstanding on all such quasi-loans and credit transactions, in respect of principal and interest or otherwise, at the beginning and at the end of the company's financial year;

(d) the aggregate of the amounts, if any, that, having fallen due, have not been paid and the aggregate of the amounts of any provision (within the meaning of the Tenth

Clause | Amendment Proposed

Schedule) made in respect of any failure or anticipated failure by that person to pay the whole or any part of the principal amount of any such quasi-loan or credit transaction or any other amount owing under it;

(e) the aggregate of the principal amounts of all quasi-loans made by any person to, and all credit transactions entered into by any person as creditor for, that person under all guarantees entered into and all security provided by the subsidiary and in respect of which the liability of the subsidiary has not been discharged before the beginning of the company's financial year;

(f) the maximum liability of the subsidiary, both at the beginning and at the end of the financial year, under the guarantees and security referred to in paragraph (e); and

(g) the aggregate of the amounts paid and of all liabilities incurred by the subsidiary for the purpose of fulfilling the guarantees or discharging the

Clause | Amendment Proposed

security referred to in paragraph (e) (including the aggregate of all losses incurred by the subsidiary by reason of the enforcement of such guarantees or security).".

(f) In the proposed section 161B(7)(a)(i) and (ii), by deleting "an officer of the company (whether or not he was an officer" and substituting "a director or other officer of the company (whether or not he was a director or other officer of the company".

(g) In the proposed section 161B(10), by adding ", 161BB" after "161BA".

(h) In the proposed section 161B(11)(a), by deleting "an officer" where it first appears and substituting "a director or other officer".

(i) By adding after the proposed section 161B(12) -

"(12A) For the purposes of this section, a person is connected with a director of a company if, but only if, he is -

(a) that director's spouse, child or step-child;

(b) a person acting in his capacity as the trustee (other than as trustee under an employees' share scheme or a pension scheme) of any trust the beneficiaries of which include the director, his spouse or any of his children or step-children

Clause	Amendment Proposed

or the terms of which confer a power on the trustees that may be exercised for the benefit of the director, his spouse or any of his children or step-children; or

(c) a person acting in his capacity as partner of that director or of any person who by virtue of paragraph (a) or (b) is connected with that director,

and in this subsection a reference to the child or step-child of any person shall include a reference to any illegitimate child of that person, but shall not include a reference to any person who has attained the age of 18 years.".

(j) In the proposed section 161B(13), by adding ", (4A)" after "(4)".

64 (a) By renumbering the clause as clause 64(1).

(b) By adding -

"(2) Section 161BA(7) is amended by adding "該" before "公司" where it secondly and thirdly appears.

(3) In the Chinese text, section 161BA(8) is repealed and the following substituted -

"(8) 就本條所訂的任何罪行而言 —

Clause | Amendment Proposed

(a) 凡該罪行包括沒有採取合理步驟以確保公司遵從本條的規定，在任何就該罪行而針對某人提起的法律程序中，如該人能證明他有合理理由相信而又確實相信，一名合資格而又可靠的人，已獲委以確保該等規定獲遵從的職責並處於能夠執行該項職責的景況，即可以此作為免責辯護；及

(b) 除非處理該案的法院認為該人故意犯該罪行，否則該人不得因上述罪行而被判處監禁。”.

(4) Section 161BA(10) is amended by repealing "公司接獲該項要求翌日起計" and substituting "自公司接獲該項要求之日的翌日起計的".

(5) In the Chinese text, section 161BA(11) and (12) is repealed and the following substituted -

"(11) 如根據本條進行查閱的要求遭拒絕，或根據本條所要求的副本沒有在恰當的期限內送交，則有關公司及其每名失責高級人員均可處罰款，如持續失責，則可處按日計算的失責罰款。

(12) 如有上述拒絕或失責情況，法院可藉命令強迫將有關陳述書立即供查

Clause | Amendment Proposed

閱，或指示將所要求的副本送交要求取得該等副本的人。”．”．

New — By adding -

"**64A. Section added**

The following is added -

"**161BB. Further provisions relating to quasi-loans and credit transactions, etc.**

(1) Where a company includes in its accounts (including group accounts) in respect of a financial year a statement referred to in section 161B(1A), (3A) or (4A), the company shall enter in a register to be maintained by it for the purpose of this section those particulars that would, but for section 161B(1A), (3A) or (4A), be required by section 161B to be shown in its accounts in respect of that financial year, which particulars shall be retained in the register for a period of 10 years.

(2) The register referred to in subsection (1) shall be kept at the same place as the company's register of members.

(3) If any person being a director of a company fails to take all reasonable steps to secure compliance by the company with the requirements of this section, or has by his own wilful act been the cause of any default by the company thereunder, he shall be liable on conviction to imprisonment and a fine.

Clause | Amendment Proposed

(4) As respects an offence under this section -

(a) in any proceedings against a person in respect of such an offence consisting of a failure to take reasonable steps to secure compliance by the company with the requirements of this section, it shall be a defence to prove that he had reasonable ground to believe and did believe that a competent and reliable person was charged with the duty of seeing that those requirements were complied with and was in a position to discharge that duty; and

(b) a person shall not be sentenced to imprisonment for such an offence unless, in the opinion of the court dealing with the case, the offence was committed wilfully.

(5) The register referred to in subsection (1) shall be made available for inspection during business hours (subject to such

Clause	Amendment Proposed
	reasonable restrictions as the company may by its articles or in general meeting impose, so that not less than 2 hours in each day be allowed for inspection) by any member of the company, without charge. (6) Any member of the company may require a copy of the register referred to in subsection (1), or any part thereof, on payment of 25 cents, or such less sum as the company may prescribe, for every 100 words or fractional part thereof required to be copied. The company shall cause any copy so required by any member to be sent to that member within a period of 10 days commencing on the day next after the day on which the requirement is received by the company. (7) If any inspection required under this section is refused or if any copy required under this section is not sent within the proper period, the company and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine. (8) In the case of any such refusal or default, the court may by order compel an immediate inspection of the register or direct that the copies required shall be sent to the member requiring them.".
New	By adding -
	"**64B. General duty to make disclosure for purposes of sections 161 and 161B**

Clause | Amendment Proposed

(1) Section 161C(1) is repealed and the following substituted -

"(1) It shall be the duty of any director of a company to give notice in writing to the company of such matters relating to himself as may be necessary for the purposes of section 161 and of section 161B except so far as it relates to -

(a) loans or quasi-loans made, by the company or by any other person under a guarantee from or on a security provided by the company, to an officer of the company; or

(b) credit transactions entered into by the company as creditor for an officer of the company, or entered into by any other person as creditor for an officer of the company under a guarantee from or on a security provided by the company.".

(2) Section 161C is amended by adding -

"(2A) It shall be the duty of any shadow director of a company and any person who has at any time during the preceding 5 years been a shadow director of the company to give notice in writing to the company of such matters relating to himself as may be necessary for the purposes of section 161B.".

Clause	Amendment Proposed
65	(a) In the proposed section 162B, in the heading, by deleting "**單一**" and substituting "**唯一**".
	(b) By deleting the proposed section 162B(6) and substituting -
	"(6) For the purposes of this section -
	(a) subject to paragraph (b), where the sole member of a company is a shadow director, that member shall be treated as a director of the company;
	(b) a body corporate is not to be treated as a shadow director of any of its subsidiaries by reason only that the directors or a majority of the directors of the subsidiary are accustomed to act in accordance with its directions or instructions.".
70(2)	In the proposed section 178(4), by deleting "an amount greater than $10,000" and substituting "any amount".
76	In the proposed section 228A(18), by deleting "單一" and substituting "唯一".
79(6)	(a) In the proposed section 233(6), by deleting "單一" and substituting "唯一".
	(b) In the proposed section 233(7)(b), by deleting "it" and substituting "the declaration".

Clause	Amendment Proposed
93	By deleting the clause and substituting - "**93. Section substituted** Section 314 is repealed and the following substituted - "**314. Authentication of statements of existing companies** The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be verified by a statement in writing signed by - (a) in the case of a company having only one director, the sole director or a principal officer of the company; and (b) in any other case, any 2 or more directors or other principal officers of the company.".".
96(2)	In the proposed section 327(6), by deleting "an amount greater than $10,000" and substituting "any amount".
108(c)	In the proposed regulation 1 - (a) in the third paragraph, by adding "if the person to whom the communication is given consents to it being given to him in that form" after "electronic record";

Clause	Amendment Proposed

(b) in the fourth paragraph, by deleting "electronic means" and substituting "such lawful electronic means and in such manner as may be agreed by the company in general meeting".

112 (a) In subclause (1), by adding after paragraph (j) -

"(ja) in the entry relating to section 161C(3), in the second column, by adding "or shadow director" after "Director";".

(b) In subclause (2), in the proposed entry relating to section 116BC(2), in the second column, by deleting "單一" and substituting "唯一".

(c) In subclause (2), by adding after the proposed entry relating to section 116BC(2) -

"116BC(2A)	Company failing to enter record of written record of decision provided in accordance with section 116BC	Summary	level 3	$300".

(d) In subclause (2), by adding after the proposed entry relating to section 153A(3) -

"153C(4)	Sole director failing to provide the company	Summary	level 3	$300

Clause	Amendment Proposed			
		with a written record of his decision		
	153C(5)	Company failing to enter record of written record of decision provided in accordance with section 153C	Summary	level 3 $300
	161BB(3)	Director failing to take all reasonable steps to ensure the company keeps a register of particulars relating to quasi-loans and credit transactions, etc.	Summary	level 5 and 6 months -
	161BB(7)	Company failing to permit inspection or to send a copy as required of the register of	Summary	level 3 $300".

Clause		Amendment Proposed
		particulars relating to quasi-loans and credit transactions, etc.
122	(a)	By deleting the subheading "**Stock Exchanges Unification Ordinance**" immediately before the clause.
	(b)	By deleting the clause.
123	(a)	By deleting the subheading "**Securities (Disclosure of Interests) Ordinance**" immediately before the clause.
	(b)	By deleting the clause.
124	(a)	By deleting "**(Clearing Houses)**" in the subheading immediately before the clause.
	(b)	In the heading, by deleting "**由某些交易得來的某些款項**" and substituting "**得自某些交易的某些款額**".
	(c)	By deleting "Section 11(2) of the Securities and Futures (Clearing Houses) Ordinance (Cap. 420)" and substituting "Section 51(3) of the Securities and Futures Ordinance (Cap. 571)".

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Housing, Planning and Lands to Miss CHOY So-yuk's supplementary question to Question 4

The information on the unauthorized occupation of government land in 2002-03 as detected by different sources is as folows:

Sources of Detection	*Number of cases*
- By District Lands Offices	840
- Referrals from other government departments	1 937
- Through public complaints	650
Total:	3 427

Appendix II

WRITTEN ANSWER

Written answer by the Secretary for the Environment, Transport and Works to Dr Raymond HO's supplementary question to Question 5

Please be informed that with regard to the trial of substituting rubber soil for the granular subbase of a temporary road in Ma On Shan, the construction works for the road section concerned was completed in April this year. The work is now under monitoring for seven months. As for the trial of using rubber soil as fill and precasted blocks for surfacing a slope in Shau Kei Wan, the slope stabilization works was completed in July. The work is now under monitoring for one year.