OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 25 April 2007

The Council met at Eleven o'clock

MEMBERS PRESENT:

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

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

THE HONOURABLE ALBERT HO CHUN-YAN

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

THE HONOURABLE LEE CHEUK-YAN

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

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

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

DR THE HONOURABLE LUI MING-WAH, S.B.S., 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 CHAN YUEN-HAN, J.P.

THE HONOURABLE BERNARD CHAN, G.B.S., J.P.

THE HONOURABLE CHAN KAM-LAM, S.B.S., 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, J.P.

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

THE HONOURABLE WONG YUNG-KAN, J.P.

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 LAU CHIN-SHEK, J.P.

THE HONOURABLE LAU KONG-WAH, J.P.

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

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

THE HONOURABLE CHOY SO-YUK, J.P.

THE HONOURABLE ANDREW CHENG KAR-FOO

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

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

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

THE HONOURABLE LI FUNG-YING, B.B.S., J.P.

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE FREDERICK FUNG KIN-KEE, S.B.S., J.P.

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

THE HONOURABLE VINCENT FANG KANG, J.P.

THE HONOURABLE WONG KWOK-HING, M.H.

THE HONOURABLE LEE WING-TAT

THE HONOURABLE LI KWOK-YING, M.H., J.P.

DR THE HONOURABLE JOSEPH LEE KOK-LONG, J.P.

THE HONOURABLE DANIEL LAM WAI-KEUNG, S.B.S., J.P.

THE HONOURABLE JEFFREY LAM KIN-FUNG, S.B.S., J.P.

THE HONOURABLE MA LIK, G.B.S., J.P.

THE HONOURABLE ANDREW LEUNG KWAN-YUEN, S.B.S., J.P.

THE HONOURABLE ALAN LEONG KAH-KIT, S.C.

THE HONOURABLE LEUNG KWOK-HUNG

DR THE HONOURABLE KWOK KA-KI

DR THE HONOURABLE FERNANDO CHEUNG CHIU-HUNG

THE HONOURABLE CHEUNG HOK-MING, S.B.S., J.P.

THE HONOURABLE WONG TING-KWONG, B.B.S.

THE HONOURABLE RONNY TONG KA-WAH, S.C.

THE HONOURABLE CHIM PUI-CHUNG

PROF THE HONOURABLE PATRICK LAU SAU-SHING, S.B.S., J.P.

THE HONOURABLE ALBERT JINGHAN CHENG

THE HONOURABLE KWONG CHI-KIN

THE HONOURABLE TAM HEUNG-MAN

MEMBER ABSENT:

THE HONOURABLE MIRIAM LAU KIN-YEE, G.B.S., J.P.

PUBLIC OFFICERS ATTENDING:

THE HONOURABLE RAFAEL HUI SI-YAN, G.B.S., J.P.
THE CHIEF SECRETARY FOR ADMINISTRATION

THE HONOURABLE HENRY TANG YING-YEN, G.B.S., J.P.
THE FINANCIAL SECRETARY

THE HONOURABLE WONG YAN-LUNG, S.C., J.P.
THE SECRETARY FOR JUSTICE

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

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

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

THE HONOURABLE AMBROSE LEE SIU-KWONG, I.D.S.M., J.P.
SECRETARY FOR SECURITY

DR THE HONOURABLE YORK CHOW YAT-NGOK, S.B.S., J.P.
SECRETARY FOR HEALTH, WELFARE AND FOOD

CLERKS IN ATTENDANCE:

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

MRS VIVIAN KAM NG LAI-MAN, ASSISTANT SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

PRESIDENT (in Cantonese): Clerk, please ring the bell.

(After the summoning bell had been rung, a number of Members entered the Chamber)

PRESIDENT (in Cantonese): A quorum is present, the meeting starts now.

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.*
Public Health and Municipal Services (Setting Aside Places for Use as Public Pleasure Grounds) Order 2007……	57/2007
Public Health and Municipal Services Ordinance (Amendment of Fourth Schedule) Order 2007……	58/2007
Antiquities and Monuments (Declaration of Proposed Monument) (No.128 Pok Fu Lam Road) Notice ……	59/2007

Other Papers

No. 88 — Hong Kong Tourism Board
2005-2006 Annual Report

No. 89 — Kowloon-Canton Railway Corporation
Annual Report 2006

Report of the Bills Committee on Shenzhen Bay Port Hong Kong Port Area Bill

Report of the Bills Committee on Building Management (Amendment) Bill 2005

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Questions. First question.

Public Processions

1. **MR LEUNG KWOK-HUNG** (in Cantonese): *Early last month, the police objected to the League of Social Democrats (the League) holding a public procession in the evening of the 10th of last month, on the grounds that the procession might cause serious traffic inconvenience and pose a threat to public safety. In the said evening, the police even deployed hundreds of police officers to stop the League from holding the procession, and warned those present that the police could arrest them under the Public Order Ordinance (POO) should they insist on holding the procession. In this connection, will the Government inform this Council:*

(a) given that there were past cases in which the police did not stop the holding of public processions to which they objected (but reserved the right to institute prosecution afterwards), why the police adopted a different practice in handling the aforesaid procession, and whether guidelines have been issued to front-line police officers on the handling of public processions to which the police object;

(b) in respect of each of the past five years, of the respective numbers of public processions and public meetings to which the police objected, a breakdown of such numbers by the reasons for objection, the respective numbers of public processions held in the evening to which the police objected and did not object (including processions commencing in the afternoon), the basis on which the relevant decisions were made, as well as the reasons for objection; and

(c) whether it will consider amending the POO by repealing the provisions empowering the police to object to the holding of public processions and public meetings, so as to give effect to the right to peaceful expression of views enshrined in the International Covenant on Civil and Political Rights (ICCPR)?

SECRETARY FOR SECURITY (in Cantonese): Madam President, like other metropolitan cities, Hong Kong has legislation to regulate public meetings and processions. The purpose of such legislation is to maintain a proper balance between protecting an individual's freedom of expression and right to assembly, as well as safeguarding the broader interest of the community. In this connection, the police have always been committed to facilitating the conduct of lawful and peaceful public meetings and processions.

Our reply to the three parts of the question is as follows:

(a) In handling any public meetings or processions, just as I said right now, the aim of the police is to strike a proper balance between protecting an individual's rights and the broader interest of the community.

The police would not allow a procession to continue if they have already raised objection to it. Nevertheless, some of the organizers might proactively contact the police, suggesting changes to the number of participants, routing, time or venue, in order to reduce the inconvenience that might be caused to the public. If the police assessed that the changes proposed by the organizers could suitably address the reasons for their original objection, the police would allow the organizers to continue with their procession. Taking 2002 to 2006 as an example, the police raised objections to six cases of notified processions. Among them, organizers of three cases subsequently reached agreement with the police on the routing or number of participants and hence the police allowed the processions to continue. As for the remaining three cases of processions to which objections were raised, the activities were eventually cancelled.

Regarding the public activity scheduled to be held in the evening of 10 March this year (Saturday) as referred to in the question, it consisted of two parts, namely a public meeting and a public procession. The police did not object to the part concerning a public meeting. But for the procession, as the proposed routing would run through very busy road sections and the procession was scheduled to start in the evening peak hours, the police objected to

the procession on public safety and public order grounds and suggested the organizers to advance the procession to the afternoon of the day. However, the police's suggestion was not accepted by the organizers, who subsequently appealed to the Appeal Board on Public Meetings and Processions (the Appeal Board). After hearing the grounds of appeal put forward by the organizers, the Appeal Board dismissed the appeal on 7 March.

I would like to point out that, as far as public meetings and processions are concerned, all police officers have been instructed to discharge their duties in accordance with the law in a fair and just manner. In addition, as we reported to the Panel on Security of the Legislative Council on 22 February 2006, the police have promulgated the "Guidelines on the approach to the Public Order Ordinance in relation to public meetings and public processions" among front-line police officers. The Guidelines clearly explain the meaning of important terms under the POO, supply additional guidance on the terms used on the limits to police discretion, and enhance the consistency of the criteria with the Basic Law's requirements of legal certainty.

(b) Over the past five years, a total of 11 110 public meetings and processions were held in Hong Kong. During this period, only in respect of five meetings and six processions did the police raise prohibitions or objections. A detailed breakdown is at Annex.

The police do not have ready figures on the number of public processions held in the afternoon or evening. According to limited records available, from 2004 to 2006, the police received notifications on 137 processions which were to start at 6.00 pm or thereafter. Although these processions were to be held in the afternoon or evening, their actual routing, number of participants, as well as the day of the week on which they were to be held were different from those of the event mentioned in the question. After assessing the risk of these cases, the police did not raise objection to them as the police had reasons to believe that the events would pose no serious threat to public order and public safety.

I would like to reiterate that the hour that a procession is held is only one of the considerations of the police. The premise is to strike a proper balance between protecting an individual's rights and the broader interest of the community.

(c) At the constitutional level, Article 27 of the Basic Law guarantees the freedom of association, of assembly, of procession and of demonstration, while Article 17 of the Hong Kong Bill of Rights gives domestic effect to the provisions of Article 21 of the ICCPR. The provisions of the POO in respect of the right to assembly were specifically framed with a view to conformity with Article 21 of the ICCPR. All decisions made under the POO are subject to the Basic Law, Article 39 of which provides that the provisions of the ICCPR as applied to Hong Kong shall remain in force.

Furthermore, in *Leung Kwok Hung & Others v Hong Kong Special Administrative Region*, the Court of Final Appeal (CFA) also observed that the right of peaceful assembly involved a positive duty on the part of the Government to take reasonable and appropriate measures to enable lawful assemblies to take place peacefully. It also accepted that the present system is both necessary and proportionate, and it therefore satisfies the constitutional obligations and requirements.

In view of the above, we have no plan to amend the part in the POO relating to the discretion of the Commissioner of Police to object to the holding of public meetings and public processions.

Annex

Breakdown of Figures on Police's Prohibitions/Objections to Public Processions and Public Meetings between 2002 and 2006

Reason/Basis for Prohibition/ Objection	*2002*		*2003*		*2004*		*2005*		*2006*	
	Public Meetings	*Public Processions*	*Public Meetings*	*Public Processions*	*Public Meetings*	*Public Processions*	*Public Meetings*	*Public Processions*	*Public Meetings*	*Public Processions*
(1) Causing serious inconvenience and obstruction to traffic and/or road users	1	2	0	0	0	0	0	0	0	0

Reason/Basis for Prohibition/ Objection	*2002*		*2003*		*2004*		*2005*		*2006*	
	Public Meetings	*Public Processions*	*Public Meetings*	*Public Processions*	*Public Meetings*	*Public Processions*	*Public Meetings*	*Public Processions*	*Public Meetings*	*Public Processions*
(2) Posing danger to the safety of participants of the events, members of the public and police officers on duty	0	0	0	1	0	0	0	0	0	0
(3) (1) and (2) above occurring together	1	2	0	0	0	0	0	0	0	0
(4) Breach of police's conditions by event participants	1	0	0	0	0	0	0	0	0	0
(5) The police have reasons to believe that serious breach of the peace may occur during the event	2	1	0	0	0	0	0	0	0	0
Total	5*	5#	0	1#	0	0	0	0	0	0

Note: * Among the above five public meetings which were prohibited by the police, two of them were allowed to continue as the organizers changed the number of participants.

\# Among the above six public processions which were objected by the police, the organizers of two of them changed the routing and one changed the number of participants, and the processions were allowed to continue.

MR LEUNG KWOK-HUNG (in Cantonese): *President, as pointed out in the judgement handed down by the CFA, the POO enacted before the reunification only empowered the Commissioner of Police to prohibit and restrict processions or assemblies on the ground of public order or public safety. And, these two reasons have been clearly and specifically explained in common law. However, in 1997, the Provisional Legislative Council further empowered the police to*

prohibit and restrict processions or assemblies for the purpose of protecting the rights and freedoms of other people. The meaning of these two reasons is uncertain and the discretion conferred on the police is too wide, so they do not comply with the explicit and specific legal provisions of the Basic law. Therefore, the four Judges ruled that the relevant wordings of sections 14(1), 14(5) and 15(2) of the POO were in contravention of the Basic Law. I can still remember this ruling because I am a party to the proceedings. Given that the CFA had explained so clearly the legislation in question, why did the Government and the Secretary for Security not respond to the CFA Judges' suggestion of making amendments?

SECRETARY FOR SECURITY (in Cantonese): Madam President, in the case of *Leung Kwok Hung & Others v Hong Kong Special Administrative Region*, the CFA ruled that: with the exception of the part relating to "public order" (*ordre public*), the mechanism under the POO on the whole is constitutional. It enables members of the public to exercise their freedom of assembly and procession, as well as ensures public order and safeguards other public interests. Therefore, we do not think there is any urgent need to conduct a comprehensive review of the POO.

As regards the CFA's decision to change the interpretation of "*ordre public*" within the meaning of "public order", the relevant amendments have been included in the Statute Law (Miscellaneous Provisions) Bill 2007, which will be introduced into the Legislative Council for First and Second Readings later today.

MS EMILY LAU (in Cantonese): *President, the Secretary advised in the main reply that a total 11 110 meetings and processions were held in Hong Kong over the past five years, which means that more than 2 200 meetings and processions were held each year. This is indeed a record. Given that six meetings and processions were held per day on average, the authorities should examine why Hong Kong people were so angry.*

President, I would like to ask about the procession on 10 March. The Secretary said that he had objected to the procession scheduled to be held in the evening in consideration of public safety and public order. President, I have to declare that members of The Frontier and I had also attempted to force our way

out of the Victoria Park to join the procession, but some unknown hundreds of policemen..... Will the Secretary later inform us how many hundreds of policemen enveloped us on that day? But, may I ask why processions scheduled to be held in the afternoon were allowed, but those scheduled for a few hours later would involve the consideration of public safety and public order? President, you should know that the place is crowded with people at all times, be it 4.00 pm, 5.00 pm, 6.00 pm, 7.00 pm or 8.00 pm, it is the same. So, why would processions scheduled to be held a bit earlier be allowed, but those scheduled for a little bit later would be objected?

SECRETARY FOR SECURITY (in Cantonese): Madam President, according to the information obtained from the organizer's application, it was estimated that the procession would have 500 to 1 000 participants on that day, which thus necessitated the deployment of 100 policemen. The police did not object to the proposal of holding a public meeting and procession on that day. Our objection to it was simply because it was scheduled on a Saturday evening, and the routing would run through some very busy streets. Furthermore, there would be a large number of vehicles running on the roads on that day and therefore would result in very heavy traffic. Coupled with the comparatively lower visibility in the evening and the large number of participants anticipated — the organizer said that there would be 500 to 1 000 participants in his original application — the police therefore suggested the organizer to advance the procession to 4.00 pm of the day after considering all factors. By so doing, the necessary arrangements to be made by the police in relation to deployment and the assessed risk would be reduced. The Appeal Board also agreed to these views. Following the police's objection to the application, the organizer concerned appealed to the Appeal Board which nonetheless agreed to the views of the police. It also agreed to the holding of the procession in question, but suggested that the organizer should advance the time of commencement to the afternoon of that day.

MS EMILY LAU (in Cantonese): *President, the Secretary did not answer whether it was due to the significant increase in pedestrian and traffic flow within that few hours that made it possible for the procession to be held at 4.00 pm but not at around 7.00 pm or 8.00 pm.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, just as I said earlier, the comparatively lower visibility in the evening makes it more

difficult for the police to maintain order. Furthermore, the pedestrian and traffic flow is also comparatively heavier in the evening.

MR ALBERT CHAN (in Cantonese): *President, I wonder if the Secretary is aware that the police's prohibition of and objection to that procession became the laughing stock of the world and an insult to the police officers. The authorities objected in consideration of public safety and public order, but I wonder if the Secretary can recall that during the 1989 pro-democracy movement, hundreds of thousands of people were in procession until as late as 12.00 midnight, let alone 7.00 pm; whereas the procession held on 1 July 2003 where 500 000 people took to the streets also ended after 8.00 pm. The police did not prohibit members of the public from taking to the streets in those few processions, then why were they given the green light at that time but not now? Was the procession in question not accepted by the police because it relates to the Chief Executive Election with the main theme of opposing small-circle election? Will the Secretary explain if certain places in Causeway Bay are really taken charge of by some triad societies after 12.00 midnight, just like what they said? Is the Government of Hong Kong no longer the person-in-charge of Causeway Bay after 7.00 pm for the time being?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, I must first point out that the police's objection to that procession has nothing to do with the Chief Executive Election at all. Just as I said in the main reply, all applications would be assessed by the police in the light of the prevailing circumstances, the scheduled time, the number of participants and the surrounding environment. It is not at all appropriate to compare different public meetings and processions.

MR ALBERT CHAN (in Cantonese): *The Secretary has not answered my supplementary question. I asked him if the Hong Kong Government was no longer the person-in-charge of Causeway Bay after 7.00 pm. Does it mean that the Hong Kong police were unable to safeguard public safety and public order in Causeway Bay after 7.00 pm?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, this is absolutely not the case. First of all, I do not agree to the remark made by Mr

Albert CHAN that it was a so-called laughing stock of the world and an insult to our police officers. We totally disagree with such a remark.

MR JAMES TO (in Cantonese): *President, I consider this a laughing stock because the Secretary had used visibility as the reason for objection. May I ask the Government if it has any objective justifications? When the Government objected to the application in advance — as the procession was objected by the Government in advance — it should not be able to foretell what visibility will be like. Did the Government mean the possibility of the presence of heavy fog or some kind of smog on that day? Was it because some smog of freedom had shadowed a few dozens of us — Mind you, there are only a few dozens people — in Causeway Bay that made us unable to..... The purpose of the Secretary coming here today is to answer why a few dozens people..... Although the organizer originally said that there would be 500 to 1 000 participants, did the Commander on site have the authority to allow the holding of the procession in a timely and appropriate manner when he discovered that there were only a few dozens people at the scene? Several hundreds of policemen should be able to deal with the few dozens of participants in the procession and enable them to exercise their right freely.*

SECRETARY FOR SECURITY (in Cantonese): Madam President, just as I said in my reply to Mr Albert CHAN's supplementary question, a number of factors had been taken into consideration. Visibility is certainly different between night and day, whereas the number of participants as claimed by the organizer in the application concerned was 500 to 1 000. In consideration of the various factors mentioned by me just now, the police had rejected or objected to that application.

In the past, objection by the police to an application for procession would be followed by law-enforcement actions because Hong Kong is a society where the rule of law prevails. I think the police were entirely acting in accordance with the law, hence I totally disagree with Mr James TO's remark that it was a laughing stock of the world.

MR JAMES TO (in Cantonese): *President, the Secretary has not answered my supplementary question. While the organizer said that there would be 500 to*

1 000 participants in his application, only 100 or so or even a few dozens people could be found at the scene. Then, under the existing legal system, is it possible to grant immediate permission to the procession in a timely and appropriate manner and ensure that this right be exercised peacefully?

SECRETARY FOR SECURITY (in Cantonese): Madam President, just now I said that the police had acted in accordance with the law.

PRESIDENT (in Cantonese): We have spent 19 minutes on this question. Last supplementary question.

MR CHEUNG MAN-KWONG (in Cantonese): *President, using low visibility as a reason for objecting a procession scheduled to be held in the evening is really inconceivable. I believe many Members of this Council have organized a number of processions held in the evening, with the number of participants ranging from a few hundred, a few thousand, tens of thousands to hundreds of thousands and even 1 million. Why was "low visibility" not used as a reason on those occasions? Can the Government confirm that, in the numerous processions held in the past, even those without advance applications, the police had only given warning at the scene or afterwards, or instituted prosecutions thereafter, but never had it blocked every single exit of the Victoria Park to prohibit anyone from leaving, like what they did in this time's procession in the Park? Is this an act of double standards targeted at the League? Is such act by the Government based on "too low visibility" or "focused target of attack"?*

SECRETARY FOR SECURITY (in Cantonese): Madam President, as mentioned in my replies to Members' supplementary questions, the police had a basket of factors instead of one single factor in considering each application. Different factors would be considered for each individual application, for example, the prevailing situation on that day. Insofar as the supplementary question raised by Mr CHEUNG Man-kwong earlier is concerned, the police were really notified of a number of processions. In these cases, the Commander concerned would consider if organizers who failed to make applications would be allowed to proceed with the procession. Certainly,

public safety and interests of the public must also be considered. In such circumstances, the duty Commander would give warnings and advise that the number of participants in the procession has exceeded the prescribed number in the absence of further notification to the police, who would reserve the right to take appropriate actions or institute prosecutions.

However, insofar as notified processions are concerned, just as I said earlier, six were opposed over the past five years, but three of them were given the green light after the organizer concerned reached agreement with the police by changing the routing and reducing the number of participants. As for the remaining three cases, the processions were cancelled by the organizers themselves. Should the police receive any application for procession from an organizer and subsequently object to it, law-enforcement action must follow. Because it is impossible for the police to object to the application for procession on the one hand, and the Commander subsequently allow it to proceed on the other. The police do not have such precedents. I do not agree that any organization was targeted.

PRESIDENT (in Cantonese): I observe that some Members have put on labels displaying a certain message. If the message relates to the subject under discussion, Members may keep them, otherwise please remove them. Furthermore, Mr LEE Cheuk-yan, I do not think the little pig that you are displaying has anything to do with the subject under discussion. Yet, you may take it out later when you have to show it in your speech.

PRESIDENT (in Cantonese): Second question.

Inspection of Candidates' Returns by Public

2. **MR SIN CHUNG-KAI** (in Cantonese): *President, I have received quite a number of complaints from the public (probably friends of the media whom we are familiar with) that recently, when they went to the Registration and Electoral Office (REO) to inspect the returns lodged by the Chief Executive election candidates in respect of their election expenses and election donations, they were only allowed to read but not write down the particulars. In this connection, will the Government inform this Council whether:*

(a) the REO had allowed members of the public to write down the particulars of the candidates' returns in the past; if so, of the reasons for adopting a different practice for the Chief Executive Election held recently;

(b) it is an offence for members of the public to write down the particulars of the returns lodged by candidates; if so, of the details of the relevant provisions; if not, whether it will consider letting members of the public to do so; and

(c) it will consider uploading copies of the returns lodged by Chief Executive Election candidates onto a government website, so as to facilitate public inspection of the particulars therein; if it will, when it will be implemented; if not, of the reasons for that?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the reply to Mr SIN's question is as follows:

(a) and (b)

According to the Elections (Corrupt and Illegal Conduct) Ordinance (Cap. 554), the REO must keep at its office the election returns lodged by candidates, and make copies available for public inspection, within one year after the publication of the election result. The public may also ask for a copy of an election return or part of a return, and obtain it subject to payment of a copying fee. Since there is no explicit provision in the law which allows the public to write down the particulars when inspecting the election returns or which prohibits them from doing so, the REO took a more cautious approach in the past and did not allow the public to write down the particulars. However, in the light of the views recently expressed by the public on such practice, the REO has, after thorough considerations, relaxed the arrangements, and allowed the public inspecting the election returns to write down the particulars.

(c) At present, the REO has not arranged for copies of the election return forms to be placed on the website. The present

arrangements, whereby the public may inspect the election returns kept at the office of the REO, write down the particulars and obtain copies, have already provided adequate transparency and are in line with the statutory requirements. As to whether such arrangements will be made in future, the matter requires further consideration. If any such arrangements are to be made, they must comply with the provisions of the Personal Data (Privacy) Ordinance.

MR SIN CHUNG-KAI (in Cantonese): *President, the Secretary has not answered whether it was previously allowed, but it was then prohibited and allowed again subsequently. My supplementary question is whether the so-called "write down" include photographing with digital cameras. In society nowadays, we have no reason to write down anything sentence by sentence as it would just be a waste of time and effort. Is the use of electronic mobile phones for photographing regarded as writing down? And, is this allowed?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, since copying is allowed under our law, therefore with the exception of writing down information, photographing is also allowed. And yet, this only applies to the returns.

MR TAM YIU-CHUNG (in Cantonese): *Has consideration been given to the calculation of the copying fee if payment is required for obtaining copies of the returns? That is, how much is the copying fee? What will the authorities do when a large number of people indicate a wish to write down the particulars therein at the same time if members of the public are allowed to do so?*

PRESIDENT (in Cantonese): Mr TAM Yiu-chung, you have raised two supplementary questions.

MR TAM YIU-CHUNG (in Cantonese): *The first supplementary question is: Since the copying fee is considered by some to be too high, what will the authorities do when a large number of people indicate a wish to write down the particulars therein at the same time?*

PRESIDENT (in Cantonese): I see.

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the copying fee is $0.5 per page according to the existing law. The REO will certainly facilitate inspection of the returns by the public and the media by all means as and when circumstances permit, and a few more copies will definitely be made available at the office to facilitate inspection should such a need arise.

DR YEUNG SUM (in Cantonese): *President, it is basically inexplicable that the REO has allowed the public to obtain copies on the one hand, but prohibited them from writing down the information on the other. After all, the Secretary is now amenable to advice. May I ask if the transparency of the relevant information can be further enhanced by uploading them onto the Internet? As we are allowed to write down and obtain copies of the relevant document, it is not so different to have them uploaded onto the Internet.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, this supplementary question should be considered from three perspectives. First of all, the uploading of election returns onto the Internet must comply with our electoral laws and the Personal Data (Privacy) Ordinance. The second perspective is there are established and commonly accepted principles and procedures for compliance in handling these personal particulars. In case there is a need for any government department to collect personal particulars, Hong Kong citizens or the person concerned should be briefed in advance on the purpose of collecting such particulars and how they will be made public. Insofar as the third term Chief Executive Election is concerned, we have not briefed the persons concerned on the possibility of uploading their particulars onto the Internet. Yet, this principle has been well understood by all relevant departments of the Special Administrative Region Government. The third perspective to be considered in relation to this supplementary question is the REO's decision to upload election returns onto the Internet should apply across the board; in other words, in addition to the Chief Executive Election, consideration should also be made to adopt the relevant arrangement in the Legislative Council and District Council elections. Since the Honourable

Member has raised this supplementary question, the REO will look into it from different perspectives.

DR KWOK KA-KI (in Cantonese): *Madam President, given that all documents must be made public, I think that whatever the means employed, be it writing or photographing with digital cameras, must not be prohibited. I wish to ask the Secretary: Has there been any attempt to prohibit the returns from being recorded in writing as in the third term Chief Executive Election? If yes, what is the reason for that? Why was such a special arrangement adopted this time?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, colleagues in the REO have all along acted in accordance with the law and legal advice was also sought in the past. According to the law, members of the public should be allowed to inspect the election returns upon request. This became a standing practice in 2004, whereby members of the public were only allowed to inspect the returns but could not write down the particulars therein at that time. However, after listening to the views and concerns expressed by Members in these few days, a review was conducted on the relevant administrative arrangements. As a result, we can read so many press reports on the declared information of the two candidates for the third term Chief Executive today. I believe it is because our media friends had conveniently written down and copied the relevant information yesterday.

MR SIN CHUNG-KAI (in Cantonese): *President, may I ask the Government if it has sought legal advice on whether or not "public inspection" includes inspection by electronic means? Insofar as public inspection is concerned, is the Government duty-bound to allow the public to inspect by electronic means (that is, via the Internet) in society nowadays? Whether the REO has performed its duties in enabling public inspection by electronic means?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, the REO will definitely act in accordance with the existing electoral laws by allowing public inspection of the election returns. Therefore, the existing arrangement whereby members of the public can go to the REO office and request to inspect the returns, write down the particulars therein and obtain

copies of them, does conform with the requirements of the electoral laws. Publication of the relevant information on the Internet by electronic means is, however, even more open. After all, in today's electronic era, we have grown accustomed to writing down information and gaining an understanding of the work of different government departments through the Internet. But, just as Dr YEUNG Sum said earlier, we are duty-bound to inform the person concerned and the supporters of the candidates of our intention before uploading the relevant information onto the Internet, with a view to taking proper actions subsequently.

Insofar as the legal advice is concerned, the REO has all along sought legal advice on a need basis so as to duly perform its responsibilities in law.

MR SIN CHUNG-KAI (in Cantonese): *President, I wish to clarify the supplementary question raised by me earlier on. My supplementary question is: Will the REO consider the unavailability of electronic means for public inspection a failure in fulfilling its responsibilities?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Cantonese): Madam President, I can say that the REO's existing arrangement of allowing the public to inspect the relevant information in its office, write down the particulars therein or obtain copies, has fulfilled its legal responsibilities. If we have to go further to upload the relevant information onto the Internet, we are duty-bound to discuss in advance with the person concerned and state our intention, and then act in accordance with the electoral laws and the Personal Data (Privacy) Ordinance.

PRESIDENT (in Cantonese): Third question.

Building Height Restrictions and Plot Ratio Reduction

3. **MR ABRAHAM SHEK**: *Madam President, it has been learnt that from time to time since 2005, various forms of building height restrictions and plot ratio reduction have been introduced to approved Outline Zoning Plans (OZPs). In this connection, will the Government inform this Council of:*

(a) the policy objective of introducing the above building height restrictions and plot ratio reduction; and

(b) the districts and private sites to which such restrictions and reduction have been introduced since 2005, as well as the estimated loss of revenue and of the value of land because of such restrictions and reduction?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Madam President, town planning is an ongoing process. The OZPs made pursuant to the Town Planning Ordinance (TPO), which set out the development parameters and land use planning of individual areas, are reviewed and updated from time to time to meet changing social and economic needs. All OZPs, and the updated versions thereof, are approved by the Chief Executive in Council.

My reply to the two-part question is as follows:

(a) It is a well-established practice of the Town Planning Board (TPB) to stipulate development restrictions in the OZPs to provide open, clear and unambiguous development parameters for compliance by relevant parties. In general, restrictions on plot ratio are stipulated to demarcate areas of different development intensities. This is to make sure that the local infrastructure, environmental and traffic capacities can cater for the demand arising from the development intensities. Building height restrictions are stipulated to protect important ridgelines, views to the harbour and other valuable attributes of our landscape; to preserve the special character of some neighbourhoods; and to achieve compatibility with the surrounding developments and natural setting.

(b) Since January 2005, amendments to 15 OZPs for imposing or updating plot ratio, gross floor area or building height restrictions have been gazetted under the TPO. Seven of these OZPs have been approved by the Chief Executive in Council. These 15 OZPs cover 10 districts namely Eastern District, Southern District, Wan Chai, Kowloon City, Kwun Tong, Sham Shui Po, Kwai Tsing, Tsuen Wan, North District and Yuen Long.

In general, developments already completed or approved will not be affected by the new development restrictions. However, when an existing building is to be redeveloped, the redevelopment would be subject to the new development restrictions, or the bulk and height of the existing building, whichever is the greater.

While it is generally true that lower development intensity would mean less revenue, lower development intensity could avoid excessive developments in densely populated and congested areas, thus allowing public benefits not quantifiable in monetary terms to be gained. Lower development intensity also improves our quality of living and it responds to the community calls for better building layouts and more open space.

MR ABRAHAM SHEK (in Cantonese): *I have to thank the Secretary for his detailed reply. But he has been really tactful, for he has not answered my question indeed. (Laughter)*

According to part (b) of the main reply, the Secretary is playing the host in improving the environment, but this is done at the expense of the interest of 1.2 million owners across the territory — Members returned by geographical constituencies through direct elections have to pay attention to this. As once the plot ratio is lowered, every owner will be affected, particularly in the case of redevelopment as mentioned by "Uncle SUEN" earlier. Therefore, the Secretary has not answered part (b) of my main question at all. How could land issue not be related to money? The Government can work out the number of flats to be built on each lot sold, where the plot ratio has not been reduced — it has not done so in most cases, for an adjustment in plot ratio will have monetary implications, affecting the value of a lot to its owner.

President, protection in this respect is stipulated in Article 105 of the Basic Law, I hope the Secretary .....

PRESIDENT (in Cantonese): What is your supplementary question?

MR ABRAHAM SHEK (in Cantonese): *I would like the Secretary to answer part (b) of my main question.*

PRESIDENT (in Cantonese): That is part (b) of your original question, alright. Secretary for Housing, Planning and Lands.

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): As Mr Abraham SHEK said earlier, not all adjustments involve a reduction in building density.

Perhaps I can explain the OZPs in more detail. Each OZP is accompanied by three documents, including notes, schedules of uses and explanatory statements, which explain the content and actual situation of the restrictions imposed, not only a reduction of all restrictions.

Just as I have said earlier, in designating the development intensities in OZPs, we have to consider the local traffic condition, transportation support services and the capacity of other facilities in coping with the demand arising from such development intensities. After considering all these factors of a certain area, we will specify the building density allowed. If the existing requirement is inconsistent with the density specified and a reduction in density is required, the density concerned will be reduced. But it does not mean that building density will be reduced in all cases, nor will such a reduction be applied across the board. Thus, whether a lot will be affected depends very much on its location.

Besides, Members all know that after an amendment to an OZP is completed, the OZP has to be gazetted. If any owners have opinions about it, they may state their case to the TPB or request a change of use. The TPB, after considering all factors concerned, may uphold its decision to lower the height or density of buildings. In that case, as I have said in the main reply, if an existing building is below the limit under the new development restrictions, it may be expanded up to the restricted limit upon redevelopment in the future.

However, if the bulk of an existing building is already beyond the restricted limits, upon redevelopment, that building is still allowed to build beyond the limit in terms of area and height. In other words, upon redevelopment, the building will be allowed to be built to the bulk and height of the existing building and of the same density. From this perspective, the owner will not incur any loss in concrete terms. Naturally, there may be some individual cases where the owners may consider they have suffered losses.

However, according to the TPO, for restrictions required to be imposed by reason of overall configuration, no compensation arrangement will be made.

President, with regard to Article 105 of the Basic Law, it is not directly related to the theme of this question today. If Members have different views on this, I hope I will have the opportunity to explain it in detail in response to another oral question in future.

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

MR ABRAHAM SHEK (in Cantonese): *President, the Secretary has wasted a few minutes without answering my supplementary question. The more the Secretary said, the more contradictory his reply appears, for in comparison with his main reply, the reply he has just given — President, I have to ask the question again, why? President, take a building with an original plot ratio of eight as an example, if in future ……*

PRESIDENT (in Cantonese): According to the rule governing Question Time, you need only state the part of your supplementary question that has not been answered.

MR ABRAHAM SHEK (in Cantonese): *I just asked the Secretary that among the 15 OZPs, whether or not the loss incurred by the owners had been assessed when there was a reduction in plot ratio. The Secretary should have those figures. President, will the Secretary provide us with those figures?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, as I have explained earlier, when a restriction on plot ratio is imposed, we have to see whether the plot ratio of the existing building is beyond or below the restricted limit. If the plot ratio of an existing building is below the restricted limit, the owner of the building will be allowed to expand the building up to the restricted limit. If an existing building is beyond the restricted limit, despite the lowered development intensity imposed on future development, that

building, under the existing law, is exempted from the new restriction upon redevelopment as long as it is within the confines of the existing building in development intensity and bulk. Therefore, President, from this point of view, the owner concerned does not incur any loss.

MR JEFFREY LAM (in Cantonese): *The Secretary said earlier that in recent years, the Government had proposed to update the plot ratio, gross floor area and building height restrictions of various districts in the territory. We observe that in many districts, the proposals made by the Government are not comprehensive. These proposals only include a number of buildings and the restrictions imposed on both ends of the same street may even differ, giving an impression to many people that the Government is in favour of certain parties while ill-treating the others. What criteria has the Government adopted in assessing and drawing up these proposals?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I think the explanatory statement of each OZP should be studied in more detail. Take the development intensity for residential buildings as an example, which is not standardized. The development intensity allowed in certain districts may be higher while that in some other districts may be lower. For instance, the building density on the Peak is very low and the plot ratio is usually less than one, and some may be 0.4 or 0.5. It all depends on the development intensity specified by the TPB in respect of a certain lot. As the density for each lot varies, it has thus given rise to the discrepancies mentioned by Mr Jeffrey LAM earlier, while different height restrictions are imposed in consideration of the different uses.

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

MR JEFFREY LAM (in Cantonese): *President, yes, for I asked about the situation in the same district but not in different districts. For even in the same district and in the same street, such discrepancy may be found between two adjacent buildings. What are the reasons?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I have already explained it. I was not referring to the situation involving different districts just now. For even in the same district, owing to different considerations, the development intensity of different lots may vary, with some being higher while some other being lower. Take Kowloon Tong as an example, the density at both ends and on the two sides of the same street may also be different. That is why there are discrepancies in this respect. It all depends on the density requirement of a certain district or lot.

DR LUI MING-WAH (in Cantonese): *The Government lowered plot ratios and imposed height restrictions without conducting extensive consultation, affecting many urban redevelopment projects led by the private sector. Is it fair to do so?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Dr LUI said that no consultation had been conducted; I do not quite understand his point. President, when these draft plans are gazetted, they will be discussed by the District Councils and will have to go through an open procedure. As I said earlier, if anyone has any opinion about these plans, they may formally raise their objections to the TPB in accordance with the TPO, while the TPB has to consider all the reasons submitted. If the TPB considers the reasons justified, adjustments will be made accordingly. If the TPB considers the reasons not justified, it will surely adhere to its original idea in making its final decision. In the end, the TPB is required to submit these drafts to the Chief Executive in Council for approval before they are implemented.

PROF PATRICK LAU (in Cantonese): *In his reply to part (b) of Mr Abraham SHEK's main question, the Secretary mentioned that if the development on private land had to be reduced because of the restriction imposed, it would surely incur loss in monetary terms. I would like to ask the Secretary one question. As many of these sites are bound by land leases, under such circumstance, which will take precedence, the land lease or the planning requirement? Should development be subject to the restrictions of land leases?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Land lease is certainly one kind of contract, but it is also subject to the TPO. For instance, buildings in Hong Kong have to comply with the height restrictions

set out in Schedule 1 to the Building (Planning) Regulations. The height and density of buildings in Hong Kong are not unrestricted; they are subject to the regulation of the Buildings Ordinance.

If a restriction is not laid down in the TPO, buildings may be built to a certain height. But if a restriction is set out in the Ordinance — as it is related to the configuration of the city and whether the infrastructure and ancillary facilities of a district can complement and cope with development of such a high density — which will be set when that is not allowed, the restriction will definitely be applicable to all sites, and the requirement of the land lease concerned should thus be disregarded.

PROF PATRICK LAU (in Cantonese): *President, the Secretary said earlier that a land lease is also a kind of contract, so I think he does respect the contract. If so, when the plot ratio is lowered, should compensation not be awarded?*

PRESIDENT (in Cantonese): This is not part of the supplementary question you asked earlier. If you have to ask this question, you have to press the button for another turn. However, I do not think you will have the opportunity to ask this question today.

MR LEE WING-TAT (in Cantonese): *President, I think, in respect of planning, fairness is of the utmost importance. Members should be aware of two typical examples. One is about two extremely tall buildings of 40 to 50 storeys at Stubbs Road. Another example is about two buildings of over 70 storeys at Hung Hom, which are built by a developer who always manages to seize the opportunity ahead of others. However, restrictions on planning have now been imposed on the two districts, which forbid the construction of buildings of that height.*

May I ask the Secretary, if fairness is said to be uphold, why that particular developer can always receive fair treatment? Why other developers are not allowed to do the same after that developer has been treated fairly? For height restriction has now been imposed on Hung Hom. Why can only that particular developer but not other developers do so? Was it because he managed to seize the opportunity ahead of others every time, so that he could make it?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): I would not speculate why such incidents happened. But I think these incidents can demonstrate that when no restriction is laid down in the OZPs, some people will take advantage of this loophole, and they will certainly be able to act ahead of others. Besides, these incidents also demonstrate that the Government has mended the fold after a sheep is lost. Having seen such cases, we think the reoccurrence of these cases should not be allowed, and we certainly have to plug the loophole.

As to whether the two examples cited by Mr LEE Wing-tat earlier fall under this category, I dare not say too much about this, for I do not have much information on those two cases at hand. However, in general, we have to examine thoroughly how the layout of an area should be set. At present, development in the territory is becoming mature, as such, not much space in the urban area is available for new development. We must thus cherish the opportunity to, say, examine ways of protecting ridgelines and views to the harbour, while ventilation of fresh air is also a consideration. Therefore, we have to impose the various types of restrictions mentioned earlier with a view to conserving and improving our living environment and quality of living.

MR LEE WING-TAT (in Cantonese): *The Secretary has not answered my supplementary question. I asked why that particular developer could seize the opportunity ahead of others to build the buildings of over 70 storeys at Hung Hom before the imposition of height restriction. If the Secretary says that he does not have the information, may I ask whether the Secretary will give a detailed explanation on these two cases concerning Stubbs Road and Hung Hom after the meeting?*

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

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): President, I have already said that I do not have the information at hand. I will go back and try to provide a reply in writing. (Appendix I)

PRESIDENT (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question.

DR RAYMOND HO (in Cantonese): *I wonder if the Government has considered that the present approach of lowering plot ratio and imposing height restriction will directly affect the development value of buildings, in other words, this may affect the value of urban development of a place upon redevelopment and impede the pace of development. Has the Secretary considered the impact in this respect?*

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Cantonese): Certainly, these issues have been taken into account in a holistic manner. The quality of living is an issue that we cannot neglect. As to whether or not buildings should be allowed to be built densely together, creating the so-called wall effect, we should cautiously consider the possible impact it may have on the surrounding environment. We should not assume that profit could only be generated from constructing buildings of towering height in all development. Sometimes, an orderly scale of development that brings benefit to the environment will also enhance the value of the buildings concerned. Therefore, in this connection, I cannot arbitrarily say that the lowering of development intensity of certain places will certainly result in losses, for in another perspective, we have to consider factors other than benefits derived from building density, that is, requirements on quality of living and other aspects.

PRESIDENT (in Cantonese): Fourth question.

Bus Fare Concession Initiatives

4. **MR CHEUNG HOK-MING** (in Cantonese): *President, the bus fare adjustment mechanism, which allows fares to go upward and downward, has been implemented for more than a year. The fare concession initiatives of the franchised bus companies, however, impose a restriction which requires a passenger to make a return trip on the same bus route or route of the same group on the same day in order to be entitled to a fare discount on the return trip. In this connection, will the Government inform this Council whether it knows:*

(a) the total number of passengers benefited from the above restrictive fare concession initiatives since their implementation, and the top and bottom 10 bus routes ranked according to the number of

passengers benefited from the initiatives; the aggregate amount of fare discounts offered to passengers and the average amount of fare discount enjoyed by each passenger, broken down by long, medium and short distance bus routes; and

(b) if the actual number of passengers benefited from the bus fare concession initiatives is substantively smaller than that originally estimated; if so, whether the Government will consider asking the franchised bus companies to withdraw the above restrictive fare concession initiatives and replacing them with single-trip fare concession initiatives which offer a fare discount for each trip?

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

(a) Four franchised bus companies, *viz* the Kowloon Motor Bus Company (1933) Limited (KMB), Citybus Limited (CTB), New World First Bus Services Limited (NWFB) and Long Win Bus Company Limited (LWB) have implemented a series of fare reduction initiatives since February 2006. These include the following same day return fare reductions on 100 routes with single fares of $10 or above:

(i) 20% fare reduction for a same day return trip to Octopus users on routes with single fares of $15 or above; and

(ii) 10% fare reduction for a same day return trip to Octopus users on routes with single fares between $10 and $14.9.

The two initiatives above do not cover Airport "A" routes, recreation routes and racecourse routes.

For routes with single fares of $15 or above, the Transport Department (TD)'s latest figures showed that the average daily patronage of this fare reduction initiative was about 80 000 in December 2006. On average, passengers using the initiative enjoyed a total reduction of $3.6, or around $1.8 per trip. The aggregate amount of discounts enjoyed by passengers in that month

was about $4.5 million. Since the introduction of this fare reduction initiative up until December 2006, the aggregate patronage stood at 23 million and the fare discounted amounted to about $41 million.

For routes with single fares between $10 and $14.9, the average patronage of the fare reduction initiative was about 135 000 in December 2006. On average, passengers using the initiative enjoyed a total reduction of $1.2, or around $0.6 per trip. The aggregate amount of discounts enjoyed by passengers in that month was about $2.5 million. Since the introduction of this fare reduction initiative up until December 2006, the aggregate patronage stood at 40 million and the fare discounted amounted to about $23 million.

Of the routes providing same day return fare reduction, the 10 routes with the highest and lowest patronage of the fare reduction initiatives concerned are presented in fare groups at Annex.

(b) In addition to the same day return fare reduction, the bus companies have also introduced other fare reduction initiatives by phases since early 2006, including a $2 flat fare or half fare for elderly passengers on Sundays and public holidays on routes excluding Airport "A" and racecourse routes. There was a daily average patronage of 295 000 using the concession offered on Sundays and public holidays for elderly passengers, and a daily average patronage of about 120 000 using over 200 Bus-bus Interchange (BBI) concessions.

In general, there has been a steady growth in the number of passengers using the fare reduction initiatives since the latter's implementation by phases. In December 2006 alone, the average daily patronage using the same day return fare reduction, concessions offered to elderly passengers on Sundays and public holidays, as well as the BBI concessions ranged from 330 000 to 630 000 in total, the maximum of which represents 70% of the total 900 000 patronage (that is, 630 000 patronage) which could have been benefited from the initiatives. The bus companies have committed to continuing the provision of the same day return fare

reductions and the elderly fare discounts on Sundays and public holidays for three years starting from the date of implementation until a review in 2009.

The bus companies will continue publicizing their fare reduction initiatives so that passengers will be informed of the concessions and make use of them. The operating environment of the bus trade has become increasingly difficult due to oil price hikes and keener competition in the public transport market. The bus companies therefore express that they have already provided the existing fare reduction initiatives as far as they could afford. In this connection, the Government has no intention to require the bus companies to alter the mode of fare reduction currently on offer.

President, I will not read out the content of the Annex in detail now, and I hope Members will know the relevant situation after reading the Annex.

Annex

Top and Bottom Routes Ranked According to their Patronage Using Same Day Return Discount Scheme

Routes with single fares of $15 or above

Route Number		*Bus Company*
Routes with the Highest Patronage Using Same Day Return Reduction Initiative		
1.	968 (Yuen Long (West) — Causeway Bay (Tin Hau))	KMB
2.	969 (Tin Shui Wai Town Centre — Causeway Bay (Moreton Terrace)	CTB
3.	960 (Tuen Mun (Kin Sang) — Wan Chai Ferry)	KMB
4.	962 (Tuen Mun (Lung Mun Oasis) — Causeway Bay (Moreton Terrace)	CTB
5.	268C (Long Ping West Rail Station — Kwun Tong Ferry)	KMB
6.	269C (Tin Shui Wai Town Centre — Kwun Tong Ferry)	KMB
7.	681 (Ma On Shan Town Centre — Central (Hong Kong Station))	KMB/CTB
8.	682 (Chai Wan (East) — Ma On Shan (Lee On))	NWFB
9.	680 (Admiralty (East) — Ma On Shan (Lee On))	KMB/NWFB
10.	967(Tin Shui Wai (Tin Yan) — Admiralty West)	CTB

Route Number		*Bus Company*
Routes with the Lowest Patronage Using Same Day Return Reduction Initiative		
1.	N969 (Tin Shui Wai Town Centre — Causeway Bay (Moreton Terrace))	CTB
2.	N691 (Central (Macau Ferry) — Tiu Keng Leng)	KMB/NWFB
3.	N170 (Wah Fu Central — Sha Tin Central)	KMB/CTB
4.	N182 (Central (Macau Ferry) — Sha Tin (Kwong Yuen))	KMB/CTB
5.	N31 (Tsuen Wan (Discovery Park) — Airport (Ground Transportation Centre))	LWB
6.	N11 (Central (Macau Ferry) — Airport (Ground Transportation Centre))	CTB
7.	N30 (Tung Chung — Yuen Long East)	LWB
8.	N42 (Airport/Tung Chung — Ma On Shan (Yiu On))	LWB
9.	N23 (Tung Chung — Tsz Wan Shan North)	CTB
10.	N42A (Tung Chung — Fanling Luen Wo Hui)	LWB

Routes with single fares between $10 and $14.9

Route Number		*Bus Company*
Routes with the Highest Patronage Using Same Day Return Reduction Initiative		
1.	171 (Cheung Sha Wan — South Horizons)	KMB/CTB
2.	59X (Tuen Mun Pier Head — Mong Kok Kowloon-Canton Railway Corporation (KCR) Station)	KMB
3.	E34 (Tin Shui Wai Town Centre — Airport (Ground Transportation Centre))	LWB
4.	58X (Tuen Mun (Leung King) — Mong Kok KCR Station)	KMB
5.	60X (Tuen Mun Central — Jordan (Wui Cheung Road))	KMB
6.	277X (Fanling Luen Wo Hui — Lam Tin (Ping Tin))	KMB
7.	68X (Yuen Long East — Jordan (Wui Cheung Road))	KMB
8.	603 (Lam Tin (Ping Tin) — Central (Ferry Piers))	KMB
9.	260X (Tuen Mun (Po Tin) — Hung Hom Station)	KMB
10.	278X (Sheung Shui — Tsuen Wan (Nina Tower))	KMB
Routes with the Lowest Patronage Using Same Day Return Reduction Initiative		
1.	N118 (Siu Sai Wan (Island Resort) — Sham Shui Po)	KMB/CTB
2.	N281 (Ma On Shan (Kam Ying Court) — Hung Hom Station)	KMB
3.	N293 (Mong Kok KCR Station — Tseung Kwan O (Sheung Tak))	KMB
4.	N619 (Central (Macau Ferry) — Kwun Tong (Shun Lee))	KMB/CTB

Route Number		*Bus Company*
5.	70 (Sheung Shui — Jordan (Wui Cheung Road))	KMB
6.	N122 (Shau Kei Wan — Mei Foo)	KMB/NWFB
7.	66 (Tuen Mun (Tai Hing) — Sham Shui Po)	KMB
8.	N796 (Tseung Kwan O MTR Station — Tsim Sha Tsui)	NWFB
9.	N121 (Central (Macau Ferry) — Ngau Tau Kok)	KMB/NWFB
10.	N270 (Sha Tin Central — Sheung Shui)	KMB

MR CHEUNG HOK-MING (in Cantonese): *President, my main question asks about some very concrete issues, and part (a) of the main reply of the Secretary is also very concrete. However, the thrust of my question lies in part (b) of the main question. I asked whether the actual number of passengers benefited from bus fare concession initiatives is smaller than the original estimation of the Government. But the Secretary has not answered this part of my question. Worse still, before giving a clear reply to this part of my question, the Secretary jumped to the conclusion in the last paragraph of her main reply that the Government had no intention to require the bus companies to alter the mode of fare reduction currently on offer. I would like to ask the Secretary to respond to this part of my question.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): I have in fact given the answer in my main reply. I have just said a few words about this, it may be too brief. Perhaps I can try to give a more detailed answer.

In respect of the patronage of these fare reduction initiatives, before the implementation of the fare reduction plan, we estimated that upon the introduction of the new fare reduction plan, together with the BBI concessions offered at the time, a maximum patronage of 900 000 would benefit every day. This was the estimate at that time, which represented around one fourth of the total number of bus passengers each day.

In December 2006, according to our statistics, the average daily patronage benefiting from the fare reduction and concession plans reached 630 000, which represented 70% of the maximum patronage we estimated could benefit from these plans. The patronage of different fare reduction initiatives is determined by the travelling mode of passengers. For instance, many passengers may not

choose to take the bus daily, they may sometimes change to other modes of transport, like MTR or minibuses. However, we can see that this figure is now increasing. More so, among these fare reduction initiatives, some have to be completed in phases. Take the BBI concessions as an example, we notice that the patronage has increased from 580 000 passenger trips in the early 2006 to 630 000 passenger trips in the end of 2006. This is my detailed reply.

MR ANDREW CHENG (in Cantonese): *I would just like to follow up the preliminary estimate the Secretary mentioned earlier. She said that around one fourth of the passengers would benefit from these concessions, but it turns out that only 8% to 16% of the daily patronage can benefit. Calculating on the basis of a daily patronage of some 3.7 million, only some 300 000 to 600 000 passenger trips can enjoy these so-called "concessions". But in the next three years, the Government has no intention to request the bus companies to alter the mode of offering these so-called "concessions". Secretary, do you think that these so-called "concessions" are only ineffectual offers so far off the mark that fail to help the public, where passengers are compelled to put up with expensive travelling expenses?*

Actually, at first, when the target patronage to benefit was set at 25%, it was already a very low target. But now, only 70%, 70% of this one-fourth patronage can benefit, that is, a daily maximum of 16% of the passengers can benefit. Of the patronage of over 3 million, only this very small number of passengers can benefit, but the Secretary is so ready to be complacent. I hope the Secretary will think this over seriously lack in her office. Should this policy of not conducting a review in the next three years be reconsidered and efforts be made to negotiate with the bus companies? These few companies are making profits of $80 million to $1 billion at every turn, so it is only natural for them to set aside tens of million dollars more to help the public.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): I understand that Members will act proactively to fight for a reduction in transportation fare, for the public will always welcome a fare reduction. However, given the limited resources, we should by all means help those who are most in need. Therefore, we have made an all-out effort to provide concessions to passengers of long-haul routes, for instance, a 20% fare reduction on return trip is offered, which is really helpful to many people.

As to whether a review of the coverage of bus fare concessions offered will be conducted shortly, I believe the room for doing so is small. Certainly, I do not rule out the possibility of conducting constant reviews. As I have said in the main reply, due to high oil prices, the operating costs of bus companies are actually increasing. I believe it is unlikely that they will make a profit of $80 million to $1 billion, and the shortfall may be substantial. Therefore, taking into account the overall operation, we hope that bus services provided are of high quality, stable, convenient and acceptable to the public. A balance has to be struck between these two aspects, and we must maintain the quality of service, preventing any significant deterioration. More so, we think that long-haul passengers are now enjoying the reduction on return trips. However, we will keep this under cautious review.

MR WONG KWOK-HING (in Cantonese): *President, residents in remote areas are shouldering a heavy burden in long-haul bus fares. For instance, residents in Yuen Long, Tuen Mun, Tin Shui Wai, and Tung Chung in particular, have to change transport at least once, or even twice, when they go out. Take the residents in Tung Chung as an example, they have to change transport at least twice when they go out. Therefore, may I ask the Secretary via the President whether or not the Bureau will consider helping residents to get concessions for interchange among different buses companies or corporations? Will the Government, on behalf of residents, negotiate with different bus companies and ask them to consider providing inter-corporation or inter-company interchange concessions to help those residents in remote areas? Assistance of this nature, if provided, can help lessen their burden in transport expenses in large measure.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): First of all, I have to thank Mr WONG for his supplementary question. We fully understand that passengers of public transport, who have to change transport a number of times, have to pay particularly high transport fares in total. As such, we have arranged for a lot of interchange concessions.

I wonder if Members can recall that last year, when we discussed the bus fare adjustment mechanism and fare reduction initiatives, we particularly mentioned that interchange concessions would be provided by all means on jointly operated routes, in other words, the same routes or feeder services operated by different bus companies. Owing to the variance in Octopus

charging systems, some time had been spent on standardizing the charging system of different bus companies for jointly operated routes.

In respect of jointly operated routes, at present, interchange concessions are offered for several medium- and long-haul routes. In this connection, we will keep an eye on their practice. Mr WONG can provide information in this respect, so that we may continue to discuss the mode of offering interchange concessions for jointly operated routes.

MR WONG KWOK-HING (in Cantonese): *President, the Secretary has not answered part of my supplementary question. I do not only refer to jointly operated routes, I mean inter-company or inter-corporation concessions, such as concessions for the LWB or KMB passengers changing to the CTB buses. I hope the Secretary can provide more information on this.*

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): These routes are also included under the jointly operated routes we mentioned, for example, interchange concessions are already offered for cross-harbour routes run by the KMB and the NWFB.

MR LEE CHEUK-YAN (in Cantonese): *President, the Secretary said earlier that she well understood Members had to help the public to fight for fare reductions. However, I think the public can hardly understand and appreciate why the Secretary is not acting on the principle of people-first but that of consortia-first. It seems to me that she was explaining the case for the consortia, for she repeatedly said that the bus companies could hardly have any room for further review due to the prevailing oil price hikes.*

However, President, we are not pressing for unreasonable demands. Now, it is pretty obvious that only 70% of the target patronage of 900 000 can benefit, which means there is still capacity for improvement. We should use these initiatives to their full capacity for reserve has been set aside for this purpose. We are not making additional demands, nor are we requesting a sudden increase, for the capacity for doing so already exists. I hope the Secretary will consider conducting a review properly, so that a patronage of 900 000 can really benefit from these initiatives as per the target patronage of 900 000.

Moreover, may I ask the Secretary to explain why passengers cannot benefit from these initiatives at present and why the patronage benefiting has decreased? Let me cite an example to illustrate my understanding. For long-haul bus passengers departing for the urban area, but who have to return by other modes of transport or via alternative routes to take care of other matters, they cannot enjoy any fare reduction, for when they return by other modes of transport, it means they are only taking single trips. However, if an adjustment can be made to grant concessions to single trip passengers, the number of passengers benefiting will greatly increase. In fact, the making of only some minor adjustments can reduce the travelling expenses borne by local residents, that I think is very important. However, it seems to me that the Secretary has not thought about this and even holds that the bus companies are facing more difficulties than the public. How can that be? The public is really in a very difficult situation. I hope the Secretary could appreciate this.

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): I believe the public understands the situation. For in all aspects, be it on fare reduction or resources allocation, the resources in society are limited. How can these resources be efficiently used to render effective assistance to those who are most in need? I think a consensus has been reached in society and insatiable demands should not be made.

I have already explained it earlier. First, Mr LEE, I did not say we would not review the situation. Please do not put words into my mouth. I did not say that. We have a lot of data on hand only because we have been keeping an eye on the situation. At that time, it was estimated that a patronage of 900 000 would benefit. It was an estimate made on our part, assuming that every member of the public would take buses. But it is not necessarily the reality, for you certainly know that not every member of the public will choose to take buses. The figure is the highest possible figure we estimated. But the public still have many modes of transport to choose from. Not that the bus companies have set aside a sum for the patronage of 900 000. I hope you can understand this.

Moreover, we have been monitoring the operation. As I have explained earlier, I have not been biased and paying no heed to the aspirations of the public, nor have I not considered the possibility of providing initiatives like interchange concessions. In fact, we have examined the case thoroughly. In

respect of operating costs, as I said earlier, the oil price hikes have exerted great pressure on the operating costs of bus companies. Moreover, the quality of services has to be maintained and convenient and fast services should not be compromised. For this reason, after balancing the considerations in all aspects, constant reviews of the concession initiatives are conducted to identify ways for improvement.

MR LEE CHEUK-YAN (in Cantonese): *President, I have not made insatiable demands. But I think ……*

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR LEE CHEUK-YAN (in Cantonese): *Yes, the Secretary has not answered whether or not the concession initiatives can be used to the full capacity of 900 000 passenger trips. As 30% of the capacity has not been used, will extra efforts be put in to achieve this? The Government said that reviews have been conducted, but the Secretary said in the main reply that the Government had no intention to require the bus companies ……*

PRESIDENT (in Cantonese): Mr LEE Cheuk-yan, it is not a debate now, you need only to state your follow-up question.

MR LEE CHEUK-YAN (in Cantonese): *Alright. May I just ask whether the target patronage of 900 000 will be achieved?*

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

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, I have just given my answer. That 900 000 patronage is only an assumption, an academic figure.

PRESIDENT (in Cantonese): Fifth question.

Handling of Pigs Surrendered by Pig Farmers

5. **MR LEE CHEUK-YAN** (in Cantonese): *President, it has been reported that staff of the Agriculture, Fisheries and Conservation Department (AFCD) have, at the government kennels in Sheung Shui, killed with shotguns the pigs surrendered by pig farmers participating in the voluntary surrender scheme for pig farm licences. In this connection, will the Government inform this Council:*

(a) of the reasons for handling those pigs with the above means;

(b) whether it has assessed if handling those pigs with the above means is in breach of the provisions of the Prevention of Cruelty to Animals Ordinance; if it has, of the results of the assessment; and

(c) whether it will consider using other means to handle the pigs surrendered by pig farmers participating in the above scheme?

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

(a) The current situation of pig raising industry in Hong Kong is: where breeder pigs in pig farms are in excess, it is the responsibility of pig farmers to dispose of the excess pigs at their own expense. Pig farmers who wish to join the Voluntary Surrender Scheme for Pig Farm Licences should make advance plans to gradually phase out their breeder pigs so as to make way for the smooth surrender of the licences. Pig farmers should also send their breeder pigs to slaughterhouse for disposal by way of electrical stunning at their own expense. In cases where some breeder pigs cannot be sent to slaughterhouse for disposal owing to their huge size or for any other reasonable considerations, the AFCD will assist pig farmers in euthanizing these breeder pigs by using internationally accepted methods.

In the veterinary discipline, "euthanasia" is internationally understood as the termination of an animal's life in a manner which causes the least pain to the animal concerned.

Breeder pigs are generally huge in size, with weight reaching up to 300 kg. Some boars are also aggressive. Considering the above, the AFCD has decided to follow international practices and arrange for staff who are trained in firearms to dispose of these breeder pigs with shotguns.

The United Nations Food and Agriculture Organization (UNFAO) has not only endorsed the appropriate use of shotguns for euthanizing large animals but has also issued detailed guidelines for the practice. According to the UNFAO guidelines, the appropriate target position for pig is the intersecting point of diagonal lines drawn between its ears and eyes — President, here I have a picture to illustrate the actual situation. This is not a toy but the UNFAO guidelines enlarged for Members' reference. The bullet will cause instant damage to the brain tissues of the pig, which will render the pig unconscious and dead immediately, thus sparing it of unnecessary suffering. Moreover, the use of firearms in euthanizing pigs is legally recognized in the European Union, Australia, the United States and the United Kingdom.

Drug injection is another method for euthanizing pigs. As breeder pigs are huge in size and difficult to immobilize, and that their blood vessels are normally three to five inches deep under the skin and hard to locate, the AFCD experts consider the use of drug injection in euthanizing breeder pigs as unsuitable.

(b) The AFCD will ensure that the smallest number of breeder pigs would be euthanized each time. At present, the AFCD euthanizes breeder pigs one at a time. As I pointed out earlier, the use of shotguns is an internationally recognized method for euthanizing pigs. The Prevention of Cruelty to Animals Ordinance prohibits any person from ill-treating or terrifying animals, or causing them any unnecessary suffering. Using shotguns to euthanize breeders pigs will render the pigs unconscious and dead immediately, thereby sparing them of unnecessary suffering. The practice is therefore not in violation of the Prevention of Cruelty to Animals Ordinance.

(c) The AFCD has always encouraged farmers to make use of the breeder pig disposal services provided by slaughterhouses. In fact, since the implementation of the Voluntary Surrender Scheme for Pig Farm Licences, slaughterhouses have assisted pig farmers in disposing of 11 700 breeder pigs, which accounted for 85% of the total number of breeder pigs disposed. Two thousand pigs have been disposed of by the AFCD.

The Voluntary Surrender Scheme for Pig Farm Licences will be closed for application in May this year. Pig farmers who have joined the Scheme will have to dispose of all their breeder pigs before March 2008. According to the AFCD records, there are still some 15 000 breeder pigs in local farms. Currently, Sheung Shui Slaughterhouse can deal with around 7 000 pigs — now around 5 000 pigs are slaughtered every day but the actual number can reach 7 000 pigs — and Tsuen Wan Slaughterhouse can handle about 2 500 pigs every day. Hence, local slaughterhouses have sufficient capacity to handle the remaining breeder pigs. The Administration expects farmers participating in the Voluntary Surrender Scheme to dispose of all their remaining breeder pigs by March 2008.

MR LEE CHEUK-YAN (in Cantonese): *President, I hope the Secretary can be honest and will not play tricks or pull the wool over Members' eyes when answering our questions. President, please look at part (b) of the main reply, in which the wordings are very clear, "At present, the AFCD euthanizes breeder pigs one at a time." It is one at a time, whereupon the Secretary said that "the practice is therefore not in violation of the Prevention of Cruelty to Animals Ordinance." But my question is about the massacre of pigs which did happen. President, here I have a photo showing that pigs were not killed one at a time. Rather, a person was using a shotgun to shoot a group of pigs at that time. According to a report, one of the pigs had struggled and screamed for five minutes, thus terrifying the pigs around it. To make pigs around witness the massacre of their kind is terrifying. To make the pig struggle for five minutes before death is causing unnecessary suffering.*

I am not talking about the current practice as it has already changed. My question is about whether or not the practice at that time breached the law

because the AFCD, as a law-enforcement agency knowing what is stipulated in law, has broken the law by engaging in a massacre of breeder pigs. I hope the Secretary can answer whether or not the slaughter of breeder pigs shown in the photo or the previous slaughter of thousands of pigs has broken the law. Have the authorities conducted an investigation into the case? If the staff performed the killing have broken the law in full knowledge of the provisions, will they be prosecuted?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, the AFCD will try to dispose of the pigs in the best way. However, if there are too many pigs, it may not be possible to deal with them separately. I believe on some occasions in the past, it was impossible to do so. As I said in part (b) of the main reply, the AFCD now euthanizes breeder pigs one at a time. So, in our opinion, the AFCD has done its best in dealing with the disposal of breeder pigs. But the assistance of the farmers is also needed in this aspect. For example, they should not send in a large number of pigs at the same time because this may pose difficulties to the AFCD in dealing with them.

So, in our opinion, the AFCD, in its current practice, is doing its best to ensure that the Prevention of Cruelty to Animals Ordinance is not violated.

MR LEE CHEUK-YAN (in Cantonese): *The Secretary said that there is no violation of the law at present. But he also admitted that pigs had not been disposed of one at a time previously. Now I ask him whether or not the previous practice has violated the law and whether prosecution will be initiated or not. When a government department fully aware of the relevant legal provisions has violated the law, it is absolutely unacceptable to the public. I hope the Secretary can give us a clear answer in this aspect.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as far as I know, we believe the AFCD has done its job circumstances permitting and thus has not violated the legislation.

MR WONG YUNG-KAN (in Cantonese): *In part (c) of the main reply, it is said that Sheung Shui Slaughterhouse can slaughter up to 7 000 pigs every day. But*

as we know, only 4 000-odd pigs are killed every day. So, together with the output of Tuen Wan Slaughterhouse, the total number of pigs slaughtered is only around 5 000. Besides, there is a very crucial restriction under the Voluntary Surrender Scheme. If there are pigs in the pigsties by the time when the Scheme is closed, the farmers cannot receive the final compensation. May I ask the Secretary what means there are to make the farmers.....or can the AFCD staff make more frequent contacts with the farmers and ask them whether they would like to participate in the Scheme? If the farmers wish to join the Scheme, can the AFCD staff urge them to dispose of their breeder pigs at an early date before or when the licences are surrendered? Will the Secretary take up this duty?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as the AFCD staff know that the Voluntary Surrender Scheme will be closed for application by the end of May, they will communicate with the pig farmers who are still in the business so as to know whether they wish to surrender their licences voluntarily. If they are willing to surrender the licences, we hope a disposal schedule at the slaughterhouse can be arranged in an orderly fashion according to their number of breeder pigs. Besides, we would also like to know whether there are special considerations such that breeder pigs are required to be disposed of by the AFCD. If so, the AFCD will draw up another schedule for them in order to identify a solution to their problem.

MISS CHOY SO-YUK (in Cantonese): *President, according to the international practice, when animals are euthanized, they should be killed with only one shot so that they will not be subject to unnecessary suffering. In the main reply, the Secretary said that 2 000 pigs had been euthanized. I would like to ask the Secretary: How many bullets were used? How much time was taken to kill these pigs on average? And were there any pigs which were killed with a few shots?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I do not have the figures. Of course, I do not know whether the marksmanship of the marksmen of the Food and Environmental Hygiene Department (FEHD) is good. As far as I know, however, the shotguns and bullets used by the FEHD are large in size. When the bullet goes into the brain, the nervous system of the front part of the brain will be totally smashed and the

pig will become unconscious immediately. Despite the absence of figures, I know that the FEHD's vets and technical staff will shoot at the pigs at very close range to ensure precision. Moreover, given the power of the bullets, I believe there are very few cases where more than one shot are required. Having said that, I really do not have the figures.

MS AUDREY EU (in Cantonese): *President, I note that the Secretary did not deny the relevant report when answering Mr LEE Cheuk-yan's question. For example, some pigs died after struggling for five minutes in the mass disposal of pigs. However, in answering Mr LEE Cheuk-yan's question, the Secretary said in the last part that he believed the staff had not violated the law. In other words, he said he believed there was no violation of the law because the staff had done their best circumstances permitting. May I ask the Secretary whether or not he has conducted any investigation and whether the investigation is in written form? Can he submit the investigation result to the Legislative Council so that it can be disclosed to the public? If he has not conducted any investigation, how could he say he believed there was no violation of the law? Furthermore, will he conduct an investigation?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, we have asked the AFCD how the pigs were dealt with. Under such circumstances, we think that the AFCD has done its best to dispose of a large number of pigs in a short period of time. We think they have done their best in this aspect. Besides, in response to the concerns of various quarters of the community, the AFCD has adjusted its mode of operation and the pigs are now dealt with one at a time. Since the practice has been changed, we do not intend to conduct a detailed investigation or to conduct any investigation in future. On the contrary, we will look forward and see how breeder pigs should be disposed of.

DR KWOK KA-KI (in Cantonese): *President, if the report mentioned by Mr LEE just now is a genuine report, I believe we should feel ashamed because the AFCD should protect the animals. In fact, if there is suspicion of inhumane treatment of animals, I think the Government is duty-bound. But I would like to ask the Secretary: As slaughterhouses can deal with 5 000 pigs daily which is*

indeed a very large number, why were so many pigs disposed of by such a controversial means, meaning being shot dead by shotguns. President, why is the AFCD unable to make some administrative arrangements or make use of its own facilities so that pigs are slaughtered in a humane way?

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I believe there is really a controversy. But from the perspective of humanity, it is entirely the same no matter the pigs are killed by shotguns, electrical stunning or other means. In particular, we should bear in mind that the pigs may not necessarily die after electrical stunning. We can take a look at what happens in slaughterhouses. After electrical stunning, pigs become unconscious only, waiting to be slaughtered. According to the FEHD's guidelines, bleeding and slaughtering of the pigs should proceed within 15 seconds after electrical stunning. Moreover, a small number of pigs cannot pass through the passage of the slaughterhouse because of huge size. Secondly, they do not have any commercial value but the farmers have to pay $75 for each service of the slaughterhouse. They will send the pigs to the slaughterhouse if the pork is saleable. Besides, as some breeder pigs may carry diseases, we do not want the spread of diseases to other pigs in the slaughterhouse. Owing to these considerations, farmers will seek assistance from the AFCD. Under such circumstances, the AFCD will use shotguns to dispose of the breeder pigs.

MR LEE CHEUK-YAN (in Cantonese): *We did not query whether the AFCD had done its job or not. But the problem is that it has only done its best to kill, which does not mean that it has done its best in its job because the most important part of its job is to comply with the Prevention of Cruelty to Animals Ordinance. President, I think a deep structural problem is reflected, and that is, when the AFCD is the enforcement agency of the Ordinance and being suspected of having broken the law, should an investigation not be conducted by other more independent departments rather than by the Secretary who wishes to protect his staff and cover up for the department under his jurisdiction? The Secretary just now said he believed the AFCD had done its best but did not say it had complied with the law. So, can the Secretary request other department, such as the police, to investigate whether or not the law has been violated instead of allowing the AFCD to conduct an investigation on its own? In doing so, this may lead to collusion among government officials.*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, I do not think that there is a need to conduct an investigation into the case. In particular, we all know that there was a large number of pigs then. Let us put aside the means by which these pigs were slaughtered. If they were not disposed of at an early opportunity, they might pose more health problems. So, I think the AFCD did do its best to dispose of the breeder pigs in very short time without causing any suffering to them. Concerning whether the pigs were terrified or not, we think there is a need for improvement. So, we think the AFCD has done its best in the job, based on which improvement has been made to its current practice. Thus I think there is no need for further review of the previous practice.

PRESIDENT (in Cantonese): We have spent more than 18 minutes on this question. Last supplementary question.

MISS CHOY SO-YUK (in Cantonese): *President, the market can in fact consume 20 breeder pigs every day. May I ask the Secretary why not let the market consume these breeder pigs gradually? For instance, 2 000 pigs can be consumed in only 100 days. Why should the pigs be dealt with by a means which is a waste of resources in such an urgent manner?*

SECRETARY FOR HEALTH, WELFARE AND FOOD (in Cantonese): Madam President, as I just explained, these pigs may be too huge to pass the passage of the slaughterhouse. As we all know, the passage to electrical stunning in the slaughterhouse is not wide and the pigs have to pass through one by one. Also, on some occasions, some pigs are sick. We do not want to send these pigs to the slaughterhouse and as a result infect other pigs. We do have such considerations, in addition to other considerations, them being the commercial considerations of the farmers. If they send the pigs to the slaughterhouse and the pork is not saleable, they have to pay the costs. Can the meat of 20 breeder pigs be sold every day in the form of meatballs or other products in Hong Kong? If there is such a large market, we will of course consider the need of the market. Some farmers may consider it commercially not viable for a big farm to deal with a large number of breeder pigs in a short period of time, thus they have to seek assistance from the AFCD.

However, in my opinion, the most important thing is to deal with the breeder pigs with the means I just mentioned, that is, to deal with them one at a time. If the pork is saleable, we had better sell it. But I know such pork cannot fetch a good price. For instance, the slaughtering cost may reach $75 while the sale proceeds may only be some $100, resulting in a marginal profit to the farmers. Breeder pigs are different from pigs for pork as the later can fetch $600 to $800 per pig. So, there is a big difference.

PRESIDENT (in Cantonese): Last oral question.

Promoting Development of Asset Management Business

6. **MR JEFFREY LAM** (in Cantonese): *Madam President, Hong Kong has abolished estate duty since February last year, in order to attract more foreign and local investment, promote the development of asset management business and boost the financial market. In this connection, will the Government inform this Council:*

(a) of the revenue from estate duty in the 2006-2007 financial year, the difference between such revenue and its estimated figure, as well as the reasons for the difference;

(b) whether it has calculated the new investments from abroad and by local investors so far brought about by the abolition of estate duty, especially those in the asset management business; and

(c) whether it has formulated other measures to promote the development of asset management business for more business opportunities and employment?

FINANCIAL SECRETARY (in Cantonese): Madam President,

(a) The original estimate for estate duty collection in 2006-2007 was $160 million and the provisional actual collection is $778 million. That the estate duty collection in 2006-2007 is more than the

original estimate is mainly because of the receipt of several new estate cases during the year involving substantial amounts, the advancement of duty payment by some estate cases, and the additional duties paid by some large estates as a result of underestimation of assessable value when filing estate duty returns.

Some estates mainly consist of landed properties but lack adequate cash and bank balances to settle the estate duty payable. It is estimated that some personal representatives of such estates may have taken advantage of the recent boom in the property market to sell the properties in the estates, and advanced the duty payment. Consequently, the estate duty collection in 2006-2007 is more than the original estimate.

(b) As regards the amount of investments brought to Hong Kong by the abolition of estate duty, especially those in asset management business, investment decisions are often influenced by many factors and it is difficult to give an accurate assessment on the additional amount of investment induced by the abolition of estate duty alone. Nevertheless, the industry generally agrees that the abolition of estate duty has generated a positive impact and is conducive to the long-term development of our asset management business and the financial sector as a whole. Our asset management business and investment environment have also become even more attractive and competitive following the abolition of the tax. We also understand from the banking trade that many private banking clients have relocated their overseas assets back to Hong Kong after the abolition.

With the abolition of estate duty and the support of government policies, coupled with the continued promising economic outlook and improving business environment, Hong Kong has become increasingly attractive to local, mainland and overseas investors.

On asset management business, there had been a growth of 25% in Hong Kong's combined fund management business, from HK$3,618 billion in 2004 to HK$4,526 billion in 2005. Moreover, 79% of the assets managed in Hong Kong were invested

in Asia, including Hong Kong and the Mainland, representing an increase of 28% compared with the figure in the previous year. Although figures for 2006, that is, the year of abolition of estate duty, are yet to be released, we can make reference to other figures to assess the recent performance of our financial services industry.

On authorized funds and authorized hedge funds, the gross sales of authorized funds in Hong Kong amounted to US$24.3 billion in 2006, representing a substantial increase of 72% in 2005. In 2006, the Security and Futures Commission (SFC) authorized more than 200 new unit trusts and mutual funds. The total asset under management of all authorized funds increased from US$66.7 billion in end 2005 to US$91 billion in end 2006 (Appendix 1), representing a growth of 36%. The business of authorized hedge funds also continues to flourish. The net asset size of the 14 hedge funds authorized by the SFC also increased further to US$1.66 billion, up notably by 60% from US$1.04 billion in end 2005.

On bank deposits, while the average growth rate of bank deposits in Hong Kong was only 3% in the past five years (from 2001 to 2005), bank deposits increased by 17% in end 2006 to $4,762.2 billion. Furthermore, Hong Kong's direct foreign investments in 2006 amounted to HK$333.2 billion, up by over 27% from 2005. The total assets of the investment portfolios of private bank clients of banks authorized by the SFC to conduct asset management business also increased by 31% in 2006, compared with 16% in 2004 and in 2005.

While investment decisions are influenced by many different factors, the above information helps to show that following the abolition of estate duty, there are significant development in both Hong Kong's asset management and the financial services industry as a whole.

(c) To further promote the development of asset management business in Hong Kong, the Government and the SFC will continue to adopt multi-pronged measures, including:

(i) Facilitation of Market Development and Innovation of Investment Products

To further promote the development of our asset management business, we must provide a business-friendly environment for fund houses to operate their businesses in Hong Kong and provide more choices of investment products for investors. The SFC will continue to liaise closely with the fund management industry, review its regulatory policies from time to time, and streamline the current approval procedures as far as possible to facilitate the development of new investment products.

(ii) Tax Measures

Apart from the abolition of estate duty, we have exempted offshore funds from profits tax since last year. This measure will attract new offshore funds to come here and encourage existing funds to continue to invest in Hong Kong, which will lead to an increase in market liquidity as well as employment opportunities in the financial services and related sectors. Downstream service sectors such as brokers, accountants, banks and lawyers will also benefit.

(iii) Promoting the Industry

Over the past year, the Administration, in conjunction with the financial services sector, visited a number of places to promote Hong Kong's asset management business and our strengths as an international financial centre. We will continue to promote Hong Kong as a platform for global investment and our diversified financial services to various overseas markets and mainland provinces and cities.

(iv) Human Resources Development

Adequate and high quality human resources are crucial to the development of our asset management industry which requires experts in different fields, such as fund managers, economic analysts, lawyers and accountants. In this connection, the Government has set up the Advisory Committee on Human

Resources Development in the Financial Services Sector comprising members from industry organizations, professional bodies, regulatory bodies, training institutions and the relevant Policy Bureaux. We will continue to enhance talent training and planning in order to maintain our competitiveness as an asset management centre.

Looking ahead, with the rapid development of Mainland's economy, the Government will continue to develop Hong Kong as our country's international financial centre, establish a complementary, co-operative and interactive relationship with the mainland markets. We will also actively promote our strengths as an asset management centre, and seize new business opportunities in the Mainland for our asset management industry.

Early this month, the SFC signed a Memorandum of Understanding with the China Banking Regulatory Commission for regulatory co-operation with respect to mainland commercial banks conducting overseas wealth management business on behalf of their clients (that is, QDII). The SFC and the Hong Kong Monetary Authority will continue to maintain close co-operation and communication with the relevant authorities in the Mainland, and capitalize on Hong Kong's strengths in enhancing our role as an investment platform and bridge for the flow of investment from the Mainland to the international market. Through the Mainland/Hong Kong Closer Economic Partnership Arrangement (CEPA), we will also continue to help the industry explore the opportunities of the mainland market with a view to facilitating the further development of our asset management industry.

MR JEFFREY LAM (in Cantonese): *Madam President, the Financial Secretary said just now that the abolition of estate duty has generated positive impacts on the development of the financial sector in Hong Kong, facilitating especially the asset management industry. For instance, the asset and fund management businesses have flourished, and the number and gross amount of funds under management have also increased. However, the abolition of estate duty has indeed led to a drop in government revenue by almost $780 million for the 2006-2007 financial year. May I ask the Financial Secretary, apart from*

facilitating the development of the financial sector, what benefits the abolition of estate duty has brought to the Government and the general public? How can the tax revenue lost be recovered?

FINANCIAL SECRETARY (in Cantonese): Madam President, in formulating each Budget, I bear in mind the fundamental principles of revitalizing the economy, creating employment and improving people's livelihood. Under these fundamental principles, we shall ensure that any new policy or tax concession made is forward-looking and consistent with these principles. With the support of the Legislative Council, the abolition of estate duty was formulated on the basis of these principles. Thus, in respect of the supplementary question asked by Mr Jeffrey LAM just now, I can assure him that these principles have indeed created considerable employment opportunities for Hong Kong. Last year, the employment figure of the financial sector increased by 2.5%, exceeding the overall employment figure of 2.1% by 0.4%.

As regards tax revenue, we have to make sure that every tax concession offered is affordable to the Government, that is, while being in line with prudent fiscal management, it has to be able to revitalize the economy or create more employment opportunities. Sometimes, however, some forward-looking policies may not necessarily cause losses to government revenue. We only have to look at the $15 billion stamp duty on stock transactions last year (that is, 2006-2007). It has increased by 80% as compared with the previous year, that is, $6.9 billion more before the abolition of estate duty. Hence, we often have to be forward-looking when formulating a policy because such policies, wherever affordable to the Government, can indeed revitalize the economy and create more employment opportunities.

MR JEFFREY LAM (in Cantonese): *The Financial Secretary replied just now that the Government has in this respect……*

PRESIDENT (in Cantonese): Has your supplementary question not been answered?

MR JEFFREY LAM (in Cantonese): *Yes. In what ways can the community be benefited?*

PRESIDENT (in Cantonese): His question is on the benefits to the community, which is part of his supplementary question just now. Secretary, do you have any information to tell Mr LAM?

FINANCIAL SECRETARY (in Cantonese): I believe the community includes many people. With increased tax revenue, the Government will have more room to leave wealth with the community by providing concessions. There will also be more allowance for policies on helping the disadvantaged and the needy. Members may be aware that I have adopted a two-pronged approach in the recent 2007-2008 Budget, which aims at leaving wealth with the community while stepping up efforts in helping the needy with the increased revenue and the surplus.

MR ANDREW LEUNG (in Cantonese): *We have abolished estate duty, but many rich people like Bill GATES and Warren BUFFETT, the legendary stock pickers, have set up one after another many charitable funds. Another example is the billionaire who just passed away leaving behind hundreds of billions worth of estates. May I ask the Financial Secretary if an estate can be used for setting up a charity fund (for example, setting up a charitable fund in Hong Kong), to what extent this can bring benefits to the community of Hong Kong?*

FINANCIAL SECRETARY (in Cantonese): It may be able to bring benefits to members of the legal profession. *(Laughter)* However, Madam President, generally speaking, before estate duty was abolished, it had been a stable source of government revenue for many years, amounting to an annual revenue of about $1.5 billion. Hence, we can more or less arrive at the conclusion that most mega billionaires have set up trusts or made other arrangements for their estates so as to legally avoid paying estate duty. On the other hand, however, if the charitable fund falls under the categories stipulated in sections 78 and 79 of the Inland Revenue Ordinance, it can be exempted from paying tax. Therefore, if an estate is managed under a charitable fund, as long as the latter complies with the Inland Revenue Ordinance, it is not required to pay tax.

MR CHAN KAM-LAM (in Cantonese): *Some people in society expressed regret and objection to the abolition of estate duty when it was passed in this*

Council. I hold that this is a view lacking foresight. Judging from the past period of time, the abolition of estate duty has indeed, among others, boosted the turnover of the financial sector. In view of the fact that at present, in the financial sector, stamp duty or other tax relating to trading is still levied in the bond market, may I ask the Financial Secretary whether the Government will consider facilitating such trading by providing concessionary measures and thereby further boosting the financial market?

PRESIDENT (in Cantonese): Mr CHAN Kam-lam, your supplementary question appears to be much broader than the main question. Can you name any connection between the Financial Secretary's reply and your supplementary question put just now?

MR CHAN KAM-LAM (in Cantonese): *President, the supplementary question and the main reply are related. For instance, promoting the development of asset management business often involves transactions, buying or selling financial products or investing in the bond market. I thus hope that the Government can enhance such tradings through tax concession and thus further boost our financial markets.*

FINANCIAL SECRETARY (in Cantonese): Madam President, in formulating a policy the Government will surely seek to uphold the principle of strengthening Hong Kong's economy or bringing our economic edge into full play, while we must also consider whether the policy can create more job opportunities or not. When we provide tax concession, we must, while having regard to this principle, consider whether or not the Government can afford it. I suppose Mr CHAN Kam-lam was asking just now whether stamp duty of certain assets, such as of stock trading, can be further reduced or not, thereby encouraging more people to take part in the trading of financial instruments. In fact, as far as stamp duty is concerned, first of all, it is a very stable and substantial source of revenue to the Treasury and we cannot lightly do away with it; but on the other hand, to the question of whether or not the stamp duty in Hong Kong should be further reduced, we must consider that Hong Kong is different from many western countries. Profits yielded from stock tradings by an individual……because many western countries have capital gains tax through which tax can still be recovered despite the trading of stock is exempted from stamp duty. Thus,

under the principle of prudent fiscal management, we will constantly review the situation and evaluate how best Hong Kong's role as an international financial centre can be further strengthened and bring this edge into full play. At the same time, we have to carefully assess how far it can further develop.

PRESIDENT (in Cantonese): We have spent more than 19 minutes on this question. Last supplementary question.

MR ALAN LEONG (in Cantonese): *There are always people in society who will take in every word the Government says without probing into it. The Financial Secretary seems to have given all the credit of the growth in bank deposits and in the financial services sector to the abolition of estate duty. May I ask the Financial Secretary on what grounds he can exclude other factors which may also contribute to the increased figures mentioned in his main reply? Can he tell this Council the reasons?*

FINANCIAL SECRETARY (in Cantonese): Madam President, I have mentioned in the main reply that it is difficult to give an accurate assessment on the amount of investment induced by the abolition of estate duty alone because an individual can base his decision of investing in Hong Kong on many different reasons. It is difficult for us to predict, nor will we ask every investor why he or she comes to Hong Kong for investment. Is it because of the abolition of estate duty, or the buoyant stock market in Hong Kong? Or is it because of our supervisory system which they appreciate? We will not ask investors these questions and thus we can only evaluate the benefits based on some objective figures. In fact, we will also collect new suggestions through other channels — for the financial sector; we definitely will frequently liaise and talk to them.

Many people have told me that with the abolition of estate duty, many rich people have transferred their capital abroad back to Hong Kong because they no longer have to worry about the estate duty issue, while some others have set up trusts through their lawyers. To a certain extent, many are, in fact, not yet subject to……they may fall under several taxation territories, be it Cayman, Virgin Islands or Panama, and thus not yet subject to legal challenges. I thus reckon that many people do so for streamlining purposes and thus have their capital transferred back to Hong Kong.

PRESIDENT (in Cantonese): Oral questions end here.

WRITTEN ANSWERS TO QUESTIONS

MPF Investment Performance

7. **MR TOMMY CHEUNG** (in Chinese): *President, in an article published in mid-February this year, a retired investment banker has commented that the investment returns stated in "A Five-year Investment Performance Review of the MPF System" released by the Mandatory Provident Fund Schemes Authority (MPFA) might have been overestimated, and the high fees charged by Mandatory Provident Fund (MPF) service providers have adversely affected the MPF investment performance. The article has aroused wide public concern. In this connection, will the Government inform this Council:*

(a) whether it has assessed if the MPFA has covered up the excessively high fees charged by MPF service providers and the relatively low rates of return in the above report; if assessment has been made, of the results; and why the report did not use the compound annualized rate of return which is considered by market participants to be a better indicator to reflect the truth, and did not include expenses, such as the transaction levy, in calculating and analysing the MPF investment returns;

(b) whether it will request the MPFA to conduct a central MPF settlement exercise annually, and to make a detailed comparison of the rates of return, expenses and costs, transaction levy, risk levels and investment performance of the products offered by various MPF service providers, so as to enhance the transparency of MPF schemes; and

(c) given that the MPF Industry Schemes for employees in the catering and construction industries are currently run by only two operators, and the employees in those industries consider that there is a lack of competition, whether the authorities concerned have studied if the maintenance fees charged by such operators are on the high side; if they have, of the results of the study; if not, whether they will conduct the relevant review and consider introducing measures to ensure effective investment performance of such MPF schemes?

SECRETARY FOR SECURITY (in the absence of Secretary for Financial Services and the Treasury) (in Chinese): President,

(a) The objective of the MPFA in undertaking a five-year investment performance review is to provide some objective information to scheme members and other stakeholders to help them better understand about long-term investment risks and returns. The review report has provided clear explanation on the basis and methodology for using the internal rate of return (IRR) to calculate investment return, and that all returns are expressed net of expenses including any transaction costs. The review report has therefore clearly set out all necessary information to facilitate the public's understanding of its contents and findings. There is no overestimation of returns.

The MPF is a regular savings system, with scheme members contributing into and withdrawing from the system during the relevant period. Considering that the methodology of calculating MPF's investment return must fit its mode of operation, the MPFA has decided to adopt the IRR method after consulting Prof Kalok CHAN[Note], Chair Professor of Department of Finance, The Hong Kong University of Science and Technology (HKUST). The IRR, commonly known as "dollar-weighted return", was computed on a monthly compound basis, taking into account the amount and timing of contributions into and withdrawals from the MPF system. The compounding effect has therefore been reflected in the system return figures in the report.

As regards the alternative method of compound annualized rate of return, the MPFA considers that it cannot adequately reflect the return of all the contributions made into the MPF system. This is because the compound annualized rate of return can only show the compound return on those monies ($15.69 billion) that were already in the system on 1 April 2001. It would not provide any return information for the net contributions that were made in subsequent months, which account for about 88.5% of the total net contributions. On the other hand, the IRR method can provide

Note Prof Kalok CHAN is also the Director of the Center for Fund Management of HKUST.

return information that is relevant for each and every contribution made into the system over the five-year period.

The MPFA is committed to enhancing the provision of MPF-related information to the public. Since the issuance of the Code on Disclosure for MPF Investment Funds (the Code) in mid-2004, the MPFA has implemented a number of initiatives to improve the disclosure of information and to enhance the transparency of fees relating to MPF funds. These initiatives include:

- introducing a fee table to standardize the way that fees and charges are disclosed;

- prescribing the minimum content of the fund fact sheet to ensure pertinent information about the fund is disclosed; and

- introducing two useful tools, the Fund Expense Ratio and the Ongoing Cost Illustration, to help members and other stakeholders understand and compare fee levels.

With the implementation of these initiatives, MPF scheme members now have better access to information about the funds they invest in.

(b) Apart from the initiatives mentioned in (a), the MPFA is studying improvements to the annual benefit statements of MPF scheme member to further enhance transparency of fees and returns. The MPFA is also developing a comparative platform to provide a central place to facilitate comparison of fees and charges of different MPF funds. The Government plans to introduce the requisite legislative amendments for implementing the above two initiatives this year. We have consulted the Legislative Council Panel on Financial Affairs on the proposed amendments in April 2007. As regards information on return of MPF funds, it is readily available in the market-place, such as weekly reports in the press.

(c) Since the issuance of the Code in mid-2004, the MPFA has been monitoring closely the fees and charges of MPF funds, including those of industry schemes. The fund expense ratios of the funds of the two industry schemes are found to be generally in line with the

market, except a few funds where the fund sizes are exceptionally small.

It should be noted that employers of the construction and catering industries are free to join master trust schemes instead of the industry schemes and in fact, many employers chose to do so. In this connection, the MPFA does not consider that there is a lack of competition for the industry schemes.

Altering Indoor Facilities for Elderly Tenants of Public Housing Estates

8. **DR JOSEPH LEE** (in Chinese): *President, at present, the Housing Department (HD) may alter the facilities in the flats of elderly tenants living in public housing estates (PHEs) according to the individual needs of such tenants to facilitate their daily living. In this connection, will the Government inform this Council:*

(a) of the current number of elderly tenants awaiting the HD to alter the facilities in their flats (with a breakdown by housing estates) and the estimated time, manpower and resources required to complete the works concerned;

(b) of the average time taken by the HD from the receipt of recommendations by social welfare agencies or occupational therapists to the completion of the works concerned, and the procedures involved;

(c) whether the HD will take the initiative to visit and inspect the flats of the elderly tenants so that works can be carried out to alter the facilities therein according to their needs; if it will, of the details; if not, the reasons for that; and

(d) whether the Government will consider expanding the scope of this measure so that alterations at a low charge or free of charge can be made to the facilities in the flats of the non-PHE singleton elderly people who have such needs; if it will, of the details; if not, the reasons for that?

SECRETARY FOR HOUSING, PLANNING AND LANDS (in Chinese): President, the HD has always been concerned about the needs of disabled and elderly tenants. Upon receipt of recommendations from service agencies funded by the Social Welfare Department (SWD) and the health care professionals and occupational therapists from the Hospital Authority, the HD would carry out as soon as possible in-flat alteration or addition works for the tenants concerned to satisfy their needs in everyday life.

My reply to the four-part question is as follows:

(a) According to the HD's records, as at 13 April 2007, 73 elderly tenants (from 40 estates) are awaiting works to be conducted to alter or install special facilities in their flats. The details are set out at Annex.

Normally, these works will take three or four weeks to complete. They are part of the normal duties of the HD and are handled through deployment of existing manpower and resources.

(b) Upon receipt of recommendations from the agencies concerned, the HD will conduct site inspections and feasibility assessments so as to confirm the details of the works and to procure the required materials. Such preliminary work generally takes three to four weeks. If the works are technically feasible, they will commence as soon as possible. Works not involving structural alterations, such as providing additional handrails, lowering door thresholds and installing plastic folding doors, will normally be completed within three to four weeks. Works involving structural alterations, such as altering the partitions, widening the doors and repositioning the toilets, will take about four to six weeks to complete.

For works with technical difficulties, the works team will explore with the recommending agencies ways to revise the works design so as to overcome the implementation difficulties while meeting the needs of the tenants. In case of insurmountable technical problems (for example, where the structural safety of the buildings would be affected), the HD will arrange the tenants to be transferred to other suitable flats.

(c) The Housing Authority (HA) is implementing a "Total Maintenance Scheme" (TMS) to proactively conduct in-flat inspection for all public rental housing (PRH) tenants in Hong Kong by phases. If there is a need to make alterations to in-flat facilities to suit the needs of elderly tenants in their daily living, these tenants may approach the TMS staff who will refer the cases to health care professionals or occupational therapists for assessment and design of suitable facilities. The HA will provide the necessary facilities as soon as possible on the recommendation of the professionals.

Under the TMS, a comprehensive review will be conducted to ascertain whether the existing common facilities in the housing estates are adequate and can meet the needs of the disabled and the elderly. Where necessary, the HA will carry out improvement works such as provision of additional access and improvement to recreational and sports facilities for the use of the elderly.

(d) As mentioned in my opening remarks, community care and support service agencies funded by the SWD, in particular the "Integrated Home Care Services Teams" and the "Enhanced Home and Community Care Service Teams", will conduct home environment safety assessments for clients in need, including the physically handicapped and the frail elders living in various types of housing, and will follow up the improvement proposals, such as installation of handrails and repairing of worn-out floors. They also provide household safety education and training to their clients with a view to minimizing accidents at home. If clients are in financial difficulties, the service agencies will help them apply for charitable funds to meet the expenses for the improvement works.

In addition, the Hong Kong Housing Society (HS) launched the "Home Renovation Loan Scheme" in February 2005 to provide an interest-free loan of up to $50,000 for eligible private flat owners to carry out flat renovation works relating to safety and hygiene, including installation of additional facilities that cater to the needs of the elderly. Applicants aged 60 or above who are recipients of Comprehensive Social Security Assistance or medical fee waiver are entitled to a subsidy of half the amount of the loan or $10,000 (whichever is the lower). The HS will install two handrails free of

charge inside the flats of successful elderly applicants. The HS will also inspect the flats of the applicants to provide suggestions on facility improvements and consult occupational therapists as and when necessary.

Annex

Statistics on elderly PRH tenants awaiting alteration or installation of special in-flat facilities (as at 13 April 2007)

	Estates	*Number of Tenants*
1	Tai Yuen	2
2	Tai Hing	5
3	Shan King	1
4	Tin Shui	1
5	Tai Wo	1
6	Tin Wan	1
7	Shek Yam East	3
8	Wo Che	3
9	On Ting	1
10	Lee On	1
11	Sha Kok	1
12	Sau Mau Ping	3
13	Wo Lok	1
14	Ping Shek	2
15	Hau Tak	2
16	Mei Tin	1
17	Mei Lam	2
18	Ma Tau Wai	1
19	Choi Hung	4
20	Fu Heng	1
21	King Lam	1
22	Wah Kwai	1
23	Shun Tin	1
24	Shun Lee	1
25	Lower Wong Tai Sin (2)	3
26	Tsz Man	3

	Estates	*Number of Tenants*
27	Tsz Lok	1
28	Oi Tung	2
29	Kwai Fong	2
30	Kwai Chung	2
31	Yue Wan	1
32	Kwong Tin	1
33	Tak Tin	4
34	Lok Wah South	1
35	Wang Tau Hom	4
36	Lei Yue Mun	1
37	Lai On	2
38	Lai Kok	1
39	Po Tin	1
40	Po Tat	3
	Total	73

Mainland Fishing Vessels Making Unauthorized Entry for Illegal Fishing

9. **MR ALBERT CHAN** (in Chinese): *President, at the Legislative Council meeting on 21 June 2006, I asked a question on curbing the unauthorized entry of mainland fishermen into Hong Kong waters to fish. In reply, the Administration said that it considered the existing measures adequate for safeguarding the interests of local fishermen and conserving the ecology of the local waters. However, recently I still received requests for assistance from quite a number of people, who said that during the period between 31 December 2006 and 3 January 2007, an average of 10 to 15 mainland fishing vessels were spotted making unauthorized entry into the waters off Tai A Chau and Siu A Chau each day, and a total of 140 fishing nets set up there by Cheung Chau fishermen had been torn away by such vessels. In this connection, will the Government inform this Council:*

(a) since July 2006, of the manning scale of Marine Police officers patrolling the waters south of Lantau, including the waters near Tai A Chau, Siu A Chau, Peng Chau and Cheung Chau;

(b) since July 2006, of the number of cases involving mainland fishing vessels suspected of making unauthorized entry into and fishing

illegally in Hong Kong waters, and the respective numbers of cases in which the persons involved were prosecuted and convicted; and

(c) whether, apart from those measures mentioned in its reply to the above question, the Government will take other measures to tackle the problem of mainland fishing vessels making unauthorized entry into and fishing illegally in Hong Kong waters, so as to protect the interests of local fishermen and conserve the ecology of local waters; if so, of the details of such measures; if not, the reasons for that?

SECRETARY FOR SECURITY (in Chinese): President,

(a) Since July 2006 the waters off Lantau (covering the areas near Tai A Chau, Siu A Chau, Peng Chau and Cheung Chau) are continued to be patrolled by two major launches of the Marine Police, each manned by no less than 11 police officers, on a 24-hour basis.

(b) At present, there are a number of legislation governing the activities of non-Hong Kong registered fishing vessels in Hong Kong waters. The main ones include the Immigration Ordinance (Cap. 115), Fisheries Protection Ordinance (Cap. 171), Shipping and Port Control Regulations (Cap. 313A), Marine Parks and Marine Reserves Regulation (Cap. 476A) and Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F).

From July 2006 up to 16 April 2007, the number of mainland fishing vessels suspected of illegally entering the territory and relevant prosecutions and convictions made according to the above legislation is set out below:

- The Marine Police, in accordance with the relevant provisions of the Immigration Ordinance, refused the entry of 278 mainland fishing vessels and arrested a total of 370 mainland crewmembers. These persons were repatriated as illegal immigrants.

- The Agriculture, Fisheries and Conservation Department successfully prosecuted four cases of illegal fishing in marine

parks under the Marine Parks and Marine Reserves Regulation, in which 12 mainland fishermen involved were sentenced to imprisonment from one week to six weeks.

- According to the records of the Agriculture, Fisheries and Conservation Department and Marine Department respectively, no mainland fishing vessel was prosecuted for carrying out in Hong Kong destructive fishing practices prohibited under the Fisheries Protection Ordinance, or for unauthorized entry into Hong Kong waters during the period.

(c) The departments concerned will further strengthen the enforcement of the various relevant legislation to prevent the unauthorized entry of fishing vessels from outside the territory for illegal fishing, and will continue to carry out joint operations to tackle the illegal activities where necessary.

In addition, the departments concerned will continue to maintain liaison and communication with the law-enforcement agencies in neighbouring administrations, and seek assistance where necessary, to prevent the unauthorized entry of fishermen from outside the territory to fish in Hong Kong waters.

Public Fill

10. **MS EMILY LAU** (in Chinese): *President, last year, the Government awarded a works contract worth $768 million to commission a contractor to operate the public fill reception facilities (including two fill banks) in Hong Kong and deliver public fill to the designated reception points on the Mainland. In this connection, will the executive authorities inform this Council:*

(a) as presently, the fill banks concerned are almost filled up, of the reasons for the authorities contracting out the operation of the public fill reception facilities to the contractor;

(b) of the respective costs per tonne for the disposal of public fill in Hong Kong and on the Mainland, the costs for operating the public fill reception facilities in Hong Kong, the costs for the construction

of infrastructural facilities at the fill reception sites on the Mainland, the staff payroll and administrative costs involved in operating these facilities and the costs of other related works;

(c) as the public fill delivered to the Mainland has economic value, of the reasons for the authorities not charging fees from the mainland authorities and instead paying fees to the latter through contract payment to the contractor;

(d) of the works which the mainland authorities need to undertake for receiving public fill from Hong Kong and the costs involved; and

(e) of the benefits to be brought to Hong Kong by delivering public fill to the Mainland?

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

(a) At present, there are two public fill banks in Tuen Mun and Tseung Kwan O respectively. The fill banks have been managed by government-employed contractors for stockpiling public fill materials for use in local reclamation projects. Due to the decrease in the number of local reclamation projects in recent years, a large amount of public fill has been stockpiled in the fill banks. As the fill banks will be filled up in a few years' time, the Government has entered into an agreement with the mainland authorities for delivering surplus public fill to the Mainland for reclamation purposes. To facilitate the implementation of this initiative, the Government awarded a contract last year. Apart from operating all the local public fill reception facilities (including the two fill banks mentioned above), managing the public fill in the fill banks and providing suitable materials for use in local projects, the contractor is also required to deliver surplus public fill to designated reception site in the Mainland.

(b) The value of contract mentioned in (a) above is $768 million. The operation of the public fill reception facilities is for two years and about 17 million tonnes of public fill will be handled. As for the

delivery of public fill to the designated reception site in Taishan, the service period is one year and the estimated quantity is 10 million tonnes. The contract cost includes all costs payable to the contractor for the operation of the public fill reception facilities and the cross-boundary delivery of public fill.

(c) The public fill generated in Hong Kong has all along been used for reclamation purposes. While we have made our best endeavour to use the public fill locally, the supply of public fill has been exceeding demand as a result of the declining number of reclamation projects in recent years. If the situation persists, not only will the two fill banks be filled up, the surplus public fill will inevitably have to be delivered to landfills for disposal, thus shortening the remaining lifespan of landfills substantially. The delivery of public fill to the Mainland for reclamation is a win-win solution that is in line with the principles of environmental protection and sustainable development.

(d) It is understood that environmental monitoring and assessment will be carried out by the mainland authorities for receiving public fill materials delivered from Hong Kong. We do not have information on other preparatory work which the mainland authorities need to undertake for receiving public fill from Hong Kong and the costs involved.

(e) The delivery of our public fill to the Mainland for reclamation can put our surplus public fill to better use, thereby lessening our burden of handling surplus fill. Moreover, it will help clearing up the fill stockpiled at Tseung Kwan O and Tuen Mun fill banks and vacating the land concerned for other development purposes.

Tender Invitation for Government Works Projects

11. **MISS CHOY SO-YUK** (in Chinese): *President, a company has relayed to me that the Government currently sends, to the companies concerned by fax, tender invitations for government works projects together with the tender specifications which contain tens of pages. Such an arrangement is a waste of paper for those companies which do not intend to participate in the tender*

exercise and is also not environmentally-friendly. In this connection, will the Government inform this Council whether:

(a) it will consider issuing guidelines to change the above tender arrangement (for example, only the tender invitation will be faxed, and the entire tender specifications will be issued only when the recipient companies have indicated interest in participating in the tender exercise); if it will, of the details of the relevant guidelines; if not, the reasons for that; and

(b) it will explore using other means (such as by e-mail, and so on) to invite private companies to participate in tender exercises for government works projects?

SECRETARY FOR SECURITY (in the absence of Secretary for Financial Services and the Treasury) (in Chinese): President,

(a) Departments are required to follow the normal tendering procedures as laid down in the Stores and Procurement Regulations for procurement of goods and non-works services of a contract value exceeding $1.3 million and for works services with a contract value exceeding $3 million. Under the established procedures, procuring departments are required to publish the notice for the invitation of tender in the Government Gazette and, where necessary, in the local press. The tender notice contains the address where the tender documents can be obtained by interested tenderers. Under normal circumstances, the procuring departments will not send out tender documents to the tenderers unless upon request.

For procurement below the financial limits mentioned above, in view of its relatively low value, procuring departments are not required to adopt the normal tendering procedures. However, according to the Stores and Procurement Regulations, for procurement with a value not exceeding $50,000, procuring departments should normally invite more than one supplier for quotations. For procurement with a value exceeding $50,000, no less than five suppliers should be invited for written quotations. The invitation can be in the form of a letter or by fax. In respect of

goods and non-works services, as the requirements of the procurement are generally simple, the quotation documents usually consist of a few pages. As regards works services, given the details of the technical specifications involved, the quotation documents can be relatively bulky. For the purpose of paper saving, we have advised all bureaux and departments that they should refrain from sending or faxing bulky quotation documents to the potential suppliers unless upon their request.

(b) To enhance the use of information technology in government procurement and for the purpose of paper saving, the Government Logistics Department has launched an Electronic Tendering System to allow subscribers to download tender documents from and to submit tender offers through the Internet for all types of tenders issued by the Government Logistics Department. The Environment, Transport and Works Bureau has also been pursuing electronic tendering for works projects. At present electronic version of tender documents, as an alternative option to paper version, is available for collection by tenderers. Except the Form of Tender, tenderers may opt to submit tender bids in electronic files format. The Office of the Chief Government Information Officer is embarking on a pilot e-procurement programme, involving three departments *viz*, Immigration Department, Office of the Government Chief Information Officer and Environmental Protection Department, to deal with low value non-works purchases not exceeding $1.3 million with a view to, among other benefits, improving efficiency and effectiveness and reducing paper consumption and storage space. Under this programme, pilot departments will be able to invite quotations electronically and suppliers will be able to download the details and submit their response online. A review will be conducted in 2010 and the findings will form the basis for the Government to consider the way forward for extending the e-Procurement initiative to other bureaux/departments.

Hong Kong People Arrested for Taking Drugs on Mainland

12. **MR LAU KONG-WAH** (in Chinese): *President, it has been reported that in January 2005, the Guangdong police authorities and the Judiciary Police of*

Macao had signed an agreement under which the anti-drug units of both sides would co-operate in the transfer to Macao of Macao residents arrested for taking drugs within Guangdong Province. In this connection, will the Government inform this Council:

(a) whether the Hong Kong Police Force has signed a similar agreement with the Guangdong authorities; if it has, of the specific procedure for transfer provided under the agreement; if it has not, the procedure currently followed by the Guangdong authorities in sending back to Hong Kong the Hong Kong people arrested for taking drugs on the Mainland;

(b) of the number of Hong Kong people arrested on the Mainland for taking drugs and subsequently sent back to Hong Kong in the past three years, and the number of them who were under 21 years of age; and

(c) whether law-enforcement agencies of the territory have reviewed and discussed with the mainland authorities the problems of cross-boundary drug trafficking and Hong Kong people (especially youngsters) taking drugs on the Mainland over the past three years; if so, of the details; if not, the reasons for that?

SECRETARY FOR SECURITY (in Chinese): President,

(a) We have not signed an agreement but have agreed with the Guangdong authorities on a mechanism for handling the return of Hong Kong residents arrested within Guangdong Province for abusing drugs. When notified by the mainland authorities, the police will, where necessary and practicable, assist those Hong Kong residents to return to Hong Kong. We will liaise with the relevant social workers to provide counselling and follow-up services to those who are willing to receive them.

(b) In the past three years, the Administration has assisted 135 Hong Kong residents arrested within Guangdong Province for abusing drugs to return to Hong Kong. Fourteen of them were aged under 21.

(c) The Administration has maintained close liaison with mainland authorities on formulating and streamlining strategies and co-operation arrangement to tackle the problems of cross-boundary drug trafficking and Hong Kong residents (including youngsters) abusing drugs in the Mainland. Hong Kong and mainland law-enforcement agencies exchange information and intelligence on cross-boundary crimes including cross-boundary drug abuse, draw up operational directions and take joint actions to interdict drug trafficking activities. Law-enforcement officers also visit and hold regular meetings with their counterparts to update each other on the latest drug abuse and drug trafficking situation in the region.

We have developed a tripartite co-operation framework with our Guangdong and Macao counterparts to promote exchanges and co-operation in anti-drug efforts among the three places. Starting from 2001, tripartite conferences or functions to tackle drug abuse and trafficking have been held regularly. Information is exchanged and experience shared on various fronts covering law enforcement, research, treatment and rehabilitation as well as preventive education.

In addition, we have discussed the problems and drawn up measures in consultation with the Action Committee Against Narcotics. The Committee comprises members from various fields including youth, social work, medicine, academia, Legislative Council Members and government departments. We have embarked on a series of publicity and preventive education activities:

(i) We have produced a series of docu-drama "Anti-Drug Files" featuring real life drug abuse cases, and launched the "Sponsorship Scheme on Anti-Cross-boundary Drug Abuse Projects", which provides funding to 18 projects on anti-drug educational and publicity activities targeting young people. We are producing an education kit for primary and secondary schools to disseminate anti-drug messages and consequences of cross-boundary drug abuse, and a television programme of 10 one-minute episodes to spread anti-drug messages, especially the dangers of cross-boundary drug abuse. We will produce VCDs of the television programme for distribution to schools and non-government organizations;

(ii) Police officers at the border district regularly conduct education and publicity activities at the boundary crossings. The community leaders of the District Councils and District Fight Crime Committees also assist in person to distribute leaflets there about the harmful effects of drug abuse to people going to the Mainland; and

(iii) We will continue to step up publicity and educational activities, including the broadcast of Announcements of Public Interest through the mass media and KCR trains, and displaying spectacular panel posters at KCR Lo Wu Station during long holidays.

Reshuffling of Policy Bureaux

13. **MR FREDERICK FUNG** (in Chinese): *President, in reply to my question at the Legislative Council meeting on 18 October last year, the Secretary for Constitutional Affairs said that if the third term Chief Executive took the view that it was necessary to consider reshuffling the responsibilities among the existing Policy Bureaux, the suggestions received in the consultation sessions held by the Chief Executive prior to the delivery of the 2006-2007 policy address would be referred to. It has been reported that the Chief Executive had indicated in his election platform that he would reshuffle the existing three departments and 11 bureaux. In this connection, will the Government inform this Council:*

(a) whether it has conducted an internal study of the functions and structures of various Policy Bureaux as well as the distribution of responsibilities among them; if so, of the preliminary results of the study, and whether the above relevant suggestions received from various sectors have been referred to and adopted; if so, of the details of those suggestions adopted;

(b) of the functions of the Development Bureau which the Chief Executive earlier proposed to set up; whether the work of this bureau will overlap with that of the existing Housing, Planning and Lands Bureau and of the Environment, Transport and Works Bureau, whether the Government will reshuffle the responsibilities of the

above two Policy Bureaux; and to avoid giving members of the public the impression that the Government only cares about development and neglects conservation, whether the Government will consider setting up an Environmental Protection Bureau with dedicated responsibility for environmental protection work, which currently falls within the Environment, Transport and Works Bureau's policy portfolio, so that the Government can take forward environmental protection efforts in a more focused and independent manner; if not, of the reasons for that;

(c) given that the scope of the Health, Welfare and Food Bureau's existing policy portfolio is too wide, whether the Government plans to restructure the Bureau and hive off some of its functions; if so, of the details of the plan; if not, the reasons for that;

(d) whether it will consider my repeated suggestion that one single Policy Bureau should be designated to be responsible for labour-related matters (including employment support, unemployment assistance, protection of labour rights and upgrading of skills, and so on), which are currently the respective responsibilities of the Health, Welfare and Food Bureau and the Economic Development and Labour Bureau, so as to facilitate co-ordination of the relevant work and more effective allocation and utilization of resources; if so, of the details; if not, the reasons for that; and

(e) given the public's increasing interest in culture as well as my repeated mentioning of the necessity to set up an independent bureau for cultural affairs, whether the Government will consider setting up a new Cultural Affairs Bureau to be responsible for all the work relating to culture, and to be involved in the process of formulation of policies by other Policy Bureaux, so that cultural concerns in the community can be fully reflected in the policies introduced by the Government; if so, of the details; if not, the reasons for that?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Chinese): President, the Administration is studying the structure and division of responsibilities among Policy Bureaux of the third term Hong Kong Special Administrative

Region Government. In formulating the relevant proposals, the Government will take into account the views received, including those views on the reshuffling of responsibilities among Policy Bureaux expressed during the consultation sessions held prior to the delivery of the 2006-2007 policy address by the Chief Executive.

Patent Registration

14. **MS EMILY LAU** (in Chinese): *President, recently, I received a complaint from a member of the public alleging that the patent registration system of Hong Kong fails to provide sufficient protection for the intellectual property rights of inventors. If small and medium enterprises (SMEs) discover acts of infringement involving their inventions, they can only resort to costly civil proceedings. In this connection, will the executive authorities inform this Council:*

(a) of the respective numbers of applications for registration of patents received and approved in each of the past three years by the Patents Registry under the Intellectual Property Department;

(b) whether they know the difficulties faced by SMEs in applying for registration of patents in Hong Kong;

(c) whether they will consider criminalizing acts of infringement involving patents registered in Hong Kong; and

(d) of the number of civil cases involving acts of infringement of patents registered in Hong Kong in the past three years, and the number of such cases in which the Courts ruled in favour of the plaintiffs?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in the absence of Secretary for Commerce, Industry and Technology) (in Chinese): President,

(a) The Patents Ordinance (Cap. 514) provides for two types of patents in Hong Kong: standard patents and short-term patents. The grant of a standard patent in Hong Kong is based on a patent granted by

one of three designated patent offices, namely, the State Intellectual Property Office of the People's Republic of China, the United Kingdom Patent Office and the European Patent Office (applicable to applications for patent in the United Kingdom only). An applicant may lodge an application in Hong Kong after the publication of his patent application in one of these designated patent offices. According to the Patents Ordinance, the Hong Kong Patents Registry only conducts formality examination of applications for standard patent. That is, the documents and information submitted by the applicant are checked to ensure that the requirements for registration are satisfied. It does not conduct substantive examination to assess whether the invention in question is patentable and new, involves an inventive step and is susceptible to industrial application, and so on. The application procedure for short-term patents is relatively simple. An applicant may lodge his application with the Patents Registry of Hong Kong direct without having first made an application at a designated patent office. The grant of a short-term patent is based on a search report prepared by one of the International Searching Authorities appointed pursuant to Article 16 of the Patent Cooperation Treaty or by one of the designated patent offices. A standard patent is valid for a maximum term of 20 years. A short-term patent is valid for a maximum term of eight years.

The number of patent applications and the number of grants in the last three years are set out below:

		2004	*2005*	*2006*
Standard Patents	No. of applications	10 005	11 763	13 790
	No. of grants	4 242	6 518	5 147
Short-term Patents	No. of applications	416	463	520
	No. of grants	329	419	436

The number of grants is much smaller than the number of applications for standard patents. The reason is that some of the patent applications did not survive the substantive examination of the designated patent offices. Furthermore, some applicants may abandon their applications during the application process.

(b) Through our contact with the industry, we understand that some SMEs may not be fully conversant with the protection offered by a patent and the application process; whereas individual SMEs might need financial assistance. In view of the above, the Intellectual Property Department, in close collaboration with the trade and industrial organizations and SME organizations, has from time to time organized talks to explain the legal provisions and application procedures to SMEs. Moreover, the Innovation and Technology Commission has introduced the Patent Application Grant (grant) to assist local companies and individuals in applying for patents to protect their inventions. The grant is administered by the Hong Kong Productivity Council (HKPC). Where an application is approved, a grant of 90% of the sum of the total direct cost of the patent application (including the cost for patent search and technical assessment) plus the administration fee charged by the HKPC, or $100,000.00, whichever is the lower sum, will be provided. SMEs in need may apply for the grant. In the past three years, the Innovation and Technology Commission approved a total of 244 cases of grant, amounting to $24.4 million. The yearly breakdown is as follows:

Year	*2004*	*2005*	*2006*
No. of grants	84	92	68
Amount involved ($ million)	8.4	9.2	6.8

(No breakdown on whether the applicant is SME or individual)

(c) Hong Kong is a member of the World Trade Organization (WTO). The regime for the protection of intellectual property in Hong Kong complies with the standard of the "Agreement on Trade-Related Aspects of Intellectual Property Rights" (TRIPS Agreement) of the WTO. In respect of patents, the TRIPS Agreement does not require acts of patent infringement to be criminalized.

We also note that in patent infringement litigations, the party being alleged of infringement would, more often than not, choose to challenge the validity of the patent(s) concerned and make counter-claims against the plaintiff. The proceedings usually involve disputes over many technical issues. It is not always easy to ascertain whether an invention infringes another person's patent.

Criminal law should be clear and unambiguous to ensure that members of the public do not contravene the law inadvertently. There are likely to be enforcement difficulties if patent infringements are criminalized. We have examined the patent legislation of other common law jurisdictions. In general they do not criminalize acts of patent infringement. For the foregoing reasons, we have at this stage no plan to criminalize acts of patent infringement.

(d) Patent infringement litigations are civil actions. As we do not specifically collect statistics on this type of litigations, we do not have the requested figures.

Promotion of Development of Social Enterprises

15. **MR FREDERICK FUNG** (in Chinese): *President, regarding the promotion of the development of social enterprises (SEs), will the Government inform this Council:*

(a) of the types of jobs to be created by the Enhancing Self-Reliance Through District Partnership Programme (the Programme), together with a breakdown of the number of jobs to be created and average wages by the types of jobs, and how it ensures that participants from socially disadvantaged groups will receive reasonable wages;

(b) of the details of the pilot scheme for facilitating SEs which employ able-bodied unemployed persons to participate in public procurement (including the mode of operation, the implementation timetable, the size, types and number of contracts, the number of unemployed persons recruited and the average percentage of such persons in the total number of employees of the SEs concerned, as well as the estimated number of beneficiaries and the results of the assessment on the effectiveness of the scheme in alleviating poverty);

(c) of the progress in promoting the products and services of SEs to persons responsible for public procurement (including the government departments already using such products and services,

the types and quantity of these products and services, and the amounts of money involved); whether it will consider drawing up a timetable to require all government departments and public bodies to gradually use these products and services; as well as the estimated number of beneficiaries and the results of the assessment on the effectiveness of the efforts concerned in alleviating poverty;

(d) of the expected completion date of the report on the regulatory framework of SEs and the preliminary study results; and whether it will consider relaxing the relevant requirements in the Co-operative Societies Ordinance (Cap. 33); and

(e) given that the term of the Commission on Poverty (CoP) will expire at the end of June this year, whether the Government will consider establishing a new department under the Chief Secretary for Administration's Office to promote the future development of SEs; if not, which government department will be responsible for the continued promotion of the development of SEs after the expiry of the term of the CoP?

FINANCIAL SECRETARY (in Chinese): President,

(a) Since the launch of the Programme in 2006, we have approved 41 projects. It is expected that these projects would create about 750 employment opportunities for the socially disadvantaged in various business areas, including household services, fitting-out works, retail, beauty care/massage, catering, recycling, guided-tours and elderly services.

To ensure a reasonable wage level for employees of the approved projects under the Programme, all grantees are required to specify the wage level for each job to be created in their grants agreements signed with the Government. In this respect, all grantees have to make reference to the average monthly wages for the relevant industry/occupation as published in the latest Census and Statistics Department's Quarterly Report of Wage and Payroll Statistics. The Programme Secretariat has been closely monitoring the implementation of the projects to ensure that the actual emoluments

paid out under the approved projects are no less than the amount specified in the grants agreements signed with the Government.

(b) We have explored a model to require successful bidders of some small government contracts to employ a certain percentage of the unemployed persons who have completed a relevant retraining programme offered by the Employees Retraining Board. We also had discussions with a number of non-governmental organizations on, among other things, their capabilities and interests in bidding for government contracts. Instead of identifying some small contracts in existing services like cleansing and guarding services, they considered that it would be more helpful to identify a stable source of new businesses where SEs would have a relative competitive edge, for example, delivery of personal care services to other disadvantaged groups. We are considering possible options in this direction.

(c) We have devoted a lot of efforts to promote within the Government, including those responsible for public procurement, and to the public the values and potentials of SEs, for example, the additional benefits that SEs can bring to the community. While we do not have government-wide information on the value of goods and services procured from SEs, we have taken stock from the bureaux and departments represented at the CoP[1]. In 2006–2007, some $28 million worth of goods and services were procured from SEs, and it is expected that about $32 million would be procured from SEs during 2007–2008.

We will continue to consider ways to strengthen our efforts to promote the goods and services of SEs. Instead of imposing a requirement for government departments to buy products and services of SEs, our focus would be on disseminating more effectively information about the range and quality of SE products and services. While the Government would facilitate SEs to participate in the public procurement process, the key for SEs to be successful is to be competitive and to deliver the types and quality of services required by the procuring agencies.

[1] These include the Education and Manpower Bureau; Labour Department; Home Affairs Department; Food and Environmental Hygiene Department; Leisure and Cultural Services Department; Hospital Authority and contracts known to the Social Welfare Department.

(d) The Administration is aware of the need to keep our regulatory framework updated to facilitate SE development. It is uncertain whether relaxation of the co-operatives requirements under the Co-operative Societies Ordinance (Cap. 33) is the best way forward to facilitate SE development at this juncture. Separately, the Administration notes that the United Kingdom has just introduced a new form of companies, that is, the Community Interest Companies, to cater for the special needs of SEs. We will continue to keep track of relevant overseas experience when considering a suitable legal vehicle to promote SE development in Hong Kong. A recommendation will be included in the report of the CoP.

(e) The Administration recognizes the potential of SEs to facilitate the disadvantaged to integrate into the job market. The next Administration will decide on the most suitable institutional structure to continue to further promote their development in Hong Kong.

Support for Hong Kong People Working on the Mainland

16. **MISS TAM HEUNG-MAN** (in Chinese): *President, according to the results of a questionnaire survey that I have conducted, nearly 40% of Hong Kong people need to travel to and from the Mainland because of work. Regarding the support provided by the Government to Hong Kong people working on the Mainland, will the Government inform this Council:*

(a) whether the Office of the Government of the Hong Kong Special Administrative Region in Beijing (BJO) and the Hong Kong Economic and Trade Offices in Guangdong (GDETOs), Shanghai and Chengdu have formulated guidelines for handling cases of Hong Kong people seeking assistance; if they have, of the details of the relevant guidelines; if not, whether they will consider formulating such guidelines;

(b) of the numbers of cases of Hong Kong people seeking assistance handled by the above offices in the past three years, and details of the follow-up actions taken on such cases; and

(c) whether it will consider enhancing the support services provided to Hong Kong people who, because of work, need to travel to and from the Mainland; if it will, of the services involved; if not, the reasons for that?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Chinese): President,

(a) All four mainland Offices will endeavour to provide necessary assistance to Hong Kong residents in the Mainland. Generally, the scope of assistance cases handled by the mainland Offices include complaints against administrative, law-enforcement and judicial agencies in the Mainland, business and trade disputes, complaints relating to real estate in the Mainland, loss of travel documents and monies, and distress situations. Having regard to the past operational experience and distribution of cases, the Immigration Divisions of the Hong Kong Special Administrative Region Government are set up in the BJO and the GDETO only. Their scope of assistance covers cases involving loss of travel documents or monies, accidents or casualties, and arrest or detention.

The Immigration Department (ImmD) has published a leaflet entitled "Guide to Assistance Services to Hong Kong Residents in the Mainland", which outlines the existing services rendered by the concerned departments/offices to Hong Kong residents in distress in the Mainland, and elaborates on the scope of practical assistance which the Hong Kong Special Administrative Region Government can provide. The ImmD has also set up a 24-hour hotline for assistance seekers. The relevant information has been uploaded to the websites of the ImmD and mainland Offices. In handling requests for assistance, staff of the mainland Offices will endeavour to provide practical assistance having regard to the circumstances of each case. They will continue to act in accordance with the principle of "one country, two systems", and will not interfere in the judicial process and administrative operations of the Mainland. If necessary, the mainland Offices will make referrals to the relevant mainland authorities, so that the cases may be handled and followed up in accordance with the procedures and regulations of the

Mainland. In general, the mainland Offices will not intervene in cases which are under judicial proceedings, or which concern private contractual dispute matters.

(b) Details on the breakdown of the requests for assistance by Hong Kong residents handled by the mainland Offices in the past three years:

Nature of Requests for Assistance	*2004*	*2005*	*2006*
Cases handled by the Immigration Divisions of BJO and GDETO			
Loss of travel documents or monies	82	82	75
Accidents or casualties	126	163	203
Arrest or detention	89	86	115
Other cases handled by mainland Offices			
Complaints against administrative, law-enforcement and judicial agencies in the Mainland	104	88	106
Business and trade disputes	62	48	46
Complaints relating to real estate in the Mainland	41	66	65
Others	49	57	89

Note: The Immigration Division of GDETO was established in April 2006. Shanghai ETO and Chengdu ETO commenced operation in September 2006.

Follow-up services provided by the mainland Offices for the above different types of cases are summarized below:

(i) *Loss of travel documents and monies*: verify the identity of the Hong Kong residents concerned; facilitate their early return to Hong Kong, and contact the families concerned where necessary.

(ii) *Accidents or casualties*: notify relatives of the parties concerned; contact relatives/travel agencies to arrange for the expeditious return of the injured persons to Hong Kong for treatment; facilitate entry of the injured persons back to Hong Kong; secure information of medical services available in the Mainland for reference as far as practicable; assist in the

application for death certificates, and assist in the transportation of the remains back to Hong Kong.

(iii) *Arrest or detention*: gather details of the case from the assistance seekers (usually family members of the parties concerned); explain to them the relevant mainland laws, regulations and criminal proceedings at different stages; advise the assistance seekers that they may appoint mainland lawyers as legal representatives; provide the assistance seekers with relevant contact details of law societies in the provinces/regions concerned if required; pass on and reflect their views and requests to the relevant mainland authorities if requested, and provide them with relevant information for reference in accordance with the progress of the case (for example, the rights and obligations of a person under detention).

(iv) *Assistance cases other than those relating to personal safety*: Upon receipt of requests for assistance, the mainland Offices concerned will liaise with the assistance seeker(s) to understand the case before passing on and reflecting their views and requests to the relevant mainland authorities. They will also maintain contact with the assistance seekers and, depending on the progress of the case, provide them with relevant information for reference.

(c) We have been strengthening support services to Hong Kong residents in the Mainland. In April 2006, the GDETO established the Immigration Division to provide practicable assistance to Hong Kong residents in distress in the five provinces under its coverage. The Shanghai ETO and Chengdu ETO have also started operation since September 2006 to provide support service to Hong Kong people in the areas under their respective coverage.

To enhance Hong Kong residents' understanding of the legal system in the Mainland, the Security Bureau and the BJO have respectively published booklets entitled "Criminal Procedure Law in the Mainland" and "Criminal Law and Application of Regulations in the Mainland Relating to Detention and Arrest". The above booklets

can be obtained from the ImmD, District Offices and all mainland Offices. They are also available for download at the websites of the ImmD and BJO.

We will continue to provide useful information to Hong Kong residents in the Mainland to facilitate their living, business pursuit and work in the Mainland through various channels, such as websites of the mainland Offices, bulletins, leaflets and pamphlets. For example, the GDETO has jointly published with the Hong Kong Federation of Trade Unions in September 2006 the "General Information Booklet for Hong Kong Residents Living in the Mainland". The booklet provides useful advice to Hong Kong residents on work and employment, business and investment, study, and seeking assistance in distress situations in the Mainland.

Comments of Securities Analysts

17. **MISS TAM HEUNG-MAN** (in Chinese): *President, I have recently received complaints that some securities analysts have published articles in newspapers mentioning their personal investment decisions and actions, which may mislead the small investors in the stock market. In this connection, will the Government inform this Council whether it knows if the authorities concerned:*

(a) had received complaints in the past three years about securities analysts expressing in the media views which might mislead investors; if they have, of the number of such complaints and how they were followed up;

(b) currently have mechanisms in place for preventing securities analysts from expressing in the media views that may mislead investors; if they have, of the details of such mechanisms; if not, whether the Government will consider establishing the relevant mechanisms; and

(c) will consider stepping up education for investors on how to comprehend and interpret views of securities analysts; if they will, of the relevant details; if not, the reasons for that?

SECRETARY FOR SECURITY (in the absence of Secretary for Financial Services and the Treasury) (in Chinese): President, in response to the questions raised by the Honourable TAM Heung-man, we have sought the advice of the Securities and Futures Commission (SFC) and the Secretariat of the Broadcasting Authority (BA). Our reply is as follows:

(a) Since January 2004, the SFC has received a total of 13 complaints about securities analysts expressing views in the media which might mislead investors. Of these complaints, 11 were not substantiated while the remaining two are being examined by the SFC.

(b) Concerning television and radio broadcasting, broadcasting licensees are required to comply with the Code of Practice issued by the BA when providing news, financial programmes and personal views programmes, including making reasonable effort to ensure that the "factual contents" of such programmes are accurate. Upon receiving complaints involving the broadcast of the views of securities analysts, the BA will seek the professional advice of the SFC as necessary in the course of investigation. If the complaints are substantiated, the BA will impose sanctions on the licensees depending on the severity of the issue.

If the securities analysts are licensed by the SFC to carry on regulated activities, they must comply with the following requirements set out in the Code of Conduct issued by the SFC when they prepare and publish investment research on securities (including stocks and derivatives) or otherwise disseminate all or part of their investment research in the mass media (printed materials and broadcasting):

(i) When the abovementioned person provides analyses or comments on securities in respect of a listed corporation in the mass media in his/her personal capacity, including appearing in person, he/she shall disclose the following at the time the analyses or comments are provided:

(1) his/her name;
(2) his/her licence status; and
(3) where he/she and/or his/her associate has a financial interest in the listed corporation, the fact of having such an interest.

(ii) When the abovementioned person is asked by members of the audience, or otherwise by a journalist, for analyses or comments on specific securities, he/she may offer such analyses or comments, provided that he/she makes the disclosures as mentioned above.

(c) The SFC has been putting efforts in investor education to enhance investors' abilities to comprehend and interpret the views of securities analysts. For example, a series of feature articles are posted under the "Considering Analysts' Advice" column at the InvestEd website (an investor education website of the SFC) to enhance investors' understanding of the subject. The SFC also advises the public on this subject at different kinds of education seminars. Between April and June 2005, the SFC broadcasted an educational drama series (comprising 10 weekly episodes) at Radio Television Hong Kong (RTHK) Radio 1 to educate investors on how to interpret the views of securities analysts and remind them of the importance of understanding the assumptions behind an investment recommendation. Since November 2004, the SFC has also published a total of 25 educational articles in newspapers, magazines and the free monthly investor e-newsletters of the InvestEd website, to remind investors of how to deal with analysts' investment recommendations. Looking ahead, the SFC will continue to invest resources to enhance investor protection and education.

Foul Odour Causing Nuisance to Tseung Kwan O South Residents

18. **MR LAU KONG-WAH** (in Chinese): *President, many residents in Tseung Kwan O South have relayed to me that they often smell a foul odour from an unknown source in spring and summer. In this connection, will the Government inform this Council:*

(a) of the number of such complaints received by the relevant government departments in the past 12 months, and the follow-up actions taken;

(b) whether it has investigated the source of the foul odour and its impact on human health; and

(c) whether it will consider installing a stationary gas monitoring device in the district to assist in tracing the source of the foul odour?

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

(a) In the past 12 months, the Environmental Protection Department (EPD) received 161 malodour complaints from the Tseung Kwan O town south area. The EPD had investigated each of these complaints thoroughly, in order to try to find out the odour source(s). In response to the complaints, the EPD staff had conducted more than 600 inspections in 2006 during different time periods, at all the affected estates and all potential odour sources in the area. Moreover, pursuant to the request from residents of Tseung Kwan O town south, the EPD has set up a designated malodour complaint hotline, and extended the service hours from 6.00 pm to 11.00 pm (including Sundays and public holidays). In addition, in order to conduct immediate investigation, starting from end June 2006, the EPD deployed extra resources to arrange investigation staff to handle malodour complaints immediately until 11.00 pm in evenings and Sundays. After receiving complaint call, the EPD staff would contact the complainant immediately for investigation. The EPD had informed all complainants about the investigation results, and reported the main results at different occasions to the Sai Kung District Council, and so on. The EPD will continue to monitor the situation closely.

(b) The EPD inspection teams scented slight malodour intermittently during some inspections in the Tseung Kwan O town south area. Based on all the investigation results, it was found that the South East New Territories (SENT) Landfill might be one of the odour sources. On the other hand, it was also found that some of the cases might be caused by other sources, such as refuse trucks and foul sewers inside estates. In order to enhance the performance on odour management at the SENT Landfill and to prevent odour from the landfill affecting nearby residents, additional improvement measures have been implemented in the landfill, including provision of additional deodorizing units on site, reduction of the size of the active tipping face, prompt covering up of the waste deposited, provision of thicker cover to the waste, and covering up of the active tipping face by soil at the end of each working day. Moreover,

special attention will be paid to the soil cover during the rainy season. The EPD is also reviewing every detail of the landfill operation, in order to further enhance the management of odour at the landfill. As malodour in the Tseung Kwan O town south area was intermittent and of light intensity, there is no evidence or indication that the odour will cause any ill health effect.

(c) Investigation of community odour complaints is mainly based on the smell and professional judgement of the investigators. This is similar to the method being used in other parts of the world. In fact, the human nose is more sensitive than most electronic equipment, and can also distinguish the intensity and type of odour, as well as whether the odour is irritant or offensive. Moreover, the odour scented by complainants could be that of rubbish, sewage, faeces or smell of rotten egg, and so on. This reflects that the composition of the odour under complaint may be quite complex. It is therefore very difficult to use a single instrument for investigation. We believed that the above arrangement to conduct immediate malodour complaint investigations in Tseung Kwan O town south by the EPD staff in the evenings may effectively handle the complaints.

Cross-boundary Students

19. **MR WONG KWOK-HING** (in Chinese): *President, will the Government inform this Council of:*

(a) the current numbers of primary and secondary school students who cross the boundary to attend school every day from Shenzhen to Hong Kong and those who do so vice versa;

(b) the total number of students enrolled in rural schools at present and in each of the past five years, and the number of cross-boundary students among them, together with a breakdown by districts; and

(c) the number of rural schools which ceased operation due to under-enrolment in each of the past five years?

SECRETARY FOR HOME AFFAIRS (in the absence of Secretary for Education and Manpower) (in Chinese): President,

(a) Students who cross the boundary every day from the Mainland to attend schools in Hong Kong concentrate in North District and Yuen Long District. According to the information provided by schools, in the 2006-2007 school year, there are about 750 and 2 750 cross-boundary students at the secondary and primary levels respectively in these two districts. The Education and Manpower Bureau does not have statistics on the number of Hong Kong students who cross the boundary every day to attend schools in Shenzhen.

(b) At present, there is no strict definition for rural schools, nor are there any schools specifically registered as rural schools. Rural schools generally refer to schools situated in remote rural areas of the New Territories, which were established by the local villagers to provide education for their children. The total enrolment and the number of cross-boundary students studying in these rural schools in North District and Yuen Long District in the recent five years (including this school year) are listed at Annex 1.

(c) The number of rural schools which have ceased operation as a result of the implementation of the "Consolidation of Under-utilized Primary Schools" policy since 2003 are listed at Annex 2.

Annex 1

Total Enrolment and Numbers of Cross-boundary Students in Rural Schools of North District and Yuen Long District in the Recent Five Years (including this School Year)

School Year	*Districts*			
	North		*Yuen Long*	
	Total Enrolment[Note]	*Number of Cross-boundary Students*[Note]	*Total Enrolment*[Note]	*Number of Cross-boundary Students*[Note]
2002-2003	3 821	1 054	3 330	367
2003-2004	3 016	1 084	3 025	311
2004-2005	2 467	896	2 601	313
2005-2006	1 993	852	2 097	322
2006-2007	1 831	760	1 549	268

Note: Figures as at September of the respective years

Annex 2

Numbers of Rural Schools which Ceased Operation
as a result of the Implementation of
"Consolidation of Under-utilized Primary Schools" Policy since 2003

School Year	*Number of Rural Schools Ceased Operation*
2003-2004	0
2004-2005	5
2005-2006	7
2006-2007	18

Maintenance of Private Streets

20. **MR LAU WONG-FAT** (in Chinese): *President, will the Government inform this Council:*

(a) of the existing number of private streets freely accessible by the public in the territory, and their geographical distribution;

(b) whether the maintenance of these private streets is required to meet certain established standards; if so, of the details; if not, the reasons for that; and

(c) how it tackles the environmental hygiene problems arising from poor maintenance of private streets?

SECRETARY FOR HOME AFFAIRS (in Chinese): President,

(a) According to the Buildings Ordinance (Cap. 123), a private street means a street on land held under lease, licence or otherwise from the Government or on land over which the Government has granted a right of way. As the actual condition of each private street differs, the Administration does not keep records on the basis of

private streets freely accessible by the public and is therefore unable to provide the information requested.

(b) The Buildings Ordinance provides that private streets should be maintained in good order by the frontagers and that the maintenance should be in compliance with the relevant building regulations, including the standards (such as road width) as stipulated in the Building (Private Streets and Access Roads) Regulations and to the satisfaction of the Building Authority. In general, the Government will also make reference to its internal maintenance standards for public streets in assessing whether the maintenance of private streets is satisfactory.

(c) Private streets are private properties. Management and maintenance of private streets fall within the responsibilities of the land owners. Under normal circumstances, the Government would not be involved in the management of private properties, including private streets. The Government would only provide assistance to property owners under exceptional circumstances and when significant public interest is involved.

The Home Affairs Department and District Offices (DOs) in various districts play a co-ordinating role in the liaison between residents and relevant departments and in tackling environmental hygiene problems in private streets. If owners of private streets could not organize themselves to carry out urgent environmental improvement works such as repair of blocked drains and sewers, the Government would carry out the improvement works on their behalf. In this respect, the Government adopts the "act first, recover costs later" principle. Relevant departments will take swift actions to address public health hazards and recover the expenses from the owners/occupiers concerned after the completion of works.

Furthermore, DOs would also assist residents in the formation of owners' corporations or mutual aid committees to help them better manage their properties. District Councils, area committees, DOs and relevant departments would assist residents, including those in the private streets, in improving their living environment.

BILLS

First Reading of Bills

PRESIDENT (in Cantonese): Bills: First Reading.

CIVIL JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 2007

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

CLERK (in Cantonese): Civil Justice (Miscellaneous Amendments) Bill 2007
Statute Law (Miscellaneous Provisions) Bill 2007.

Bills read the First time and ordered to be set down for Second Reading pursuant to Rule 53(3) of the Rules of Procedure.

Second Reading of Bills

PRESIDENT (in Cantonese): Bills: Second Reading.

CIVIL JUSTICE (MISCELLANEOUS AMENDMENTS) BILL 2007

CHIEF SECRETARY FOR ADMINISTRATION: I move that the Civil Justice (Miscellaneous Amendments) Bill 2007 (the Bill) be read the Second time.

The Bill seeks to improve the civil procedures in the High Court, District Court and Lands Tribunal. The main objectives are to streamline and improve civil procedures, encourage and facilitate settlement, and enable judicial resources to be better distributed and utilized.

As in many common law jurisdictions, our present civil justice system has to keep abreast with the needs and developments of modern times. With Hong Kong's economic development and social and technological advances, there has been over the years a sharp increase in the number and complexity of transactions, in particular commercial ones. The increase in the scope and

complexity of legislation reflects this. All this has put pressure on our civil justice system, generating large numbers of disputes and consequent civil proceedings. Our civil justice system, largely unchanged for several decades, has been criticized for not having kept up with the times.

In February 2000, the Chief Justice appointed the Working Party on Civil Justice Reform (the Working Party) to review the rules and procedure of the High Court in civil proceedings and to recommend changes thereto, with a view to ensuring and improving access to justice at reasonable cost and speed. The Working Party completed the review and published its Final Report in March 2004. The Chief Justice subsequently decided that the proposed changes should be implemented not just in the High Court, but also in the District Court and the Lands Tribunal, where such changes are appropriate.

The Judiciary has consulted stakeholders, including the legal profession, at various stages. These include a seven-month consultation starting from November 2001 on the Civil Justice Reform Interim Report and Consultative Paper, and a three-month consultation starting from April 2006 on the Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform. The package of proposals in the Bill is the result of these extensive consultations. I would like to highlight the major proposals.

The Bill introduces a number of amendments to facilitate settlement. Specifically, a new cause of action called "costs-only proceedings" is proposed to enable parties who have reached settlement on a substantive dispute and have agreed who should pay the costs, but cannot agree on the amount, to apply for the costs to be taxed by the Court of First Instance or the District Court. At present, where parties cannot agree on the amount of costs even though the substantive dispute has been resolved, it is necessary to litigate the whole dispute, consuming even more time and costs.

Amendments are also proposed to facilitate settlement by extending the common law defence of "tender before action". Currently, such defence only applies to liquidated claims, that is, those in the nature of a debt. It would be extended to claims for unliquidated damages, such as claims for damages.

To promote greater transparency between the parties at an earlier stage so as to facilitate settlement, the Bill proposes amendments to extend the Court's existing power to order pre-action discovery against potential parties and

post-commencement discovery against non-parties. These powers are currently restricted to personal injuries and death claims only, and are proposed to be extended to all types of civil claims.

Another main objective of the Bill is to enable better distribution and utilization of the Court's resources. To this end, the Bill introduces a number of amendments to screen out unmeritorious and vexatious applications, streamline procedures, and penalize undue delays.

Specifically, amendments are proposed to introduce a leave requirement for interlocutory appeals from the Court of First Instance to the Court of Appeal. Leave should only be granted where there is a real prospect of success or some other compelling reason exists for an appeal. This would help screen out unmeritorious appeals on interlocutory matters which do not determine substantive rights.

To streamline existing procedures, amendments are proposed to empower the Court of Appeal to deal with leave and interlocutory applications on paper without a hearing.

Moreover, the Bill introduces amendments to screen out vexatious applications by allowing persons other than the Secretary for Justice to apply to the Court for a vexatious litigant order. Such order restricts a vexatious litigant from issuing fresh proceedings except with the leave of the Court. To penalize undue delays and misconduct, amendments are proposed to extend the Court's existing jurisdiction on wasted costs, which applies to solicitors only, to cover barristers as well. A clause is also proposed to be added to require the Court to take into account the interest that there be "fearless advocacy" when determining whether or not wasted costs orders should be made. This would be in line with the proposed amendments for criminal cases under the Criminal Procedure Ordinance in the Statute Law (Miscellaneous Provisions) Bill.

In addition, the Bill introduces a number of amendments to improve the existing civil procedures, so that the Court is empowered to grant interim relief in aid of proceedings outside Hong Kong which would improve our regime and increase Hong Kong's competitiveness, to order costs against a non-party if it is in the interests of justice to do so, and to nominate a person to execute certain instruments if the person originally ordered to execute them fails to do so or cannot be found. Moreover, amendments are proposed to provide greater

flexibility for the Lands Tribunal to adopt the practice and procedures of the Court of First Instance and to streamline the processing of claims in the Tribunal.

Madam President, the package of proposals in the Bill will improve our civil justice system by facilitating settlement, streamlining procedures and enabling better utilization and distribution of the Court's resources. I hope Members will support these proposals and pass the Bill as soon as possible.

Thank you.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Civil Justice (Miscellaneous Amendments) Bill 2007 be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

SECRETARY FOR JUSTICE (in Cantonese): Madam President, I move the Second Reading of the Statute Law (Miscellaneous Provisions) Bill 2007 (the Bill).

The Bill seeks mainly to make minor, technical and non-contentious amendments to the Laws of Hong Kong. The amendments are modelled on similar Bills passed in recent years, which is an effective way to improve the existing laws. Moreover, the Bill also contains several proposals to carry out minor reforms to our local legislation. The Bill is divided into 14 Parts. Part 1 contains the preliminary clauses while Part 2 to Part 14 contain the proposed amendments to a number of Ordinances.

Part 2 seeks to repeal section 30A(10)(b)(i) of the Bankruptcy Ordinance because the Court of Final Appeal (CFA) ruled in July 2006 that the said provision is unconstitutional. The provision stipulates that in the event of a bankrupt failing to notify the trustee when leaving Hong Kong, the designated period of bankruptcy of the bankrupt shall be postponed. The CFA ruled that the provision is unconstitutional on the grounds that it provides more than

necessary protection to the creditor while being unreasonably restrictive of the right to travel guaranteed under the Basic Law and the Hong Kong Bill of Rights. In the light of the CFA ruling, section 30A(10)(b)(i) shall be deemed null and void from the outset. As the provision is not legally binding, it has to be repealed from the Ordinance.

Part 3 seeks to repeal the references to "(*ordre public*)" in the term "public order (*ordre public*)" in the Societies Ordinance and Public Order Ordinance. The amendment is in line with the CFA ruling made in 2005. The ruling specified that in the context of the relevant provisions, it is sufficient to adopt "public order" in the law and order sense because the term refers to upholding public order and preventing it from being disturbed, and preventing crimes from happening, whereas the connotation of "(*ordre public*)" is more extensive including but not limited to the basic principles of a democratic society.

Part 4 seeks to repeal the words "killing himself or" from section 5(1) and (2) of the Homicide Ordinance to reflect the abolition of the offence of suicide.

At present, under section 5(1), it shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by a third person. However, section 33A of the Offences against the Person Ordinance enacted in 1967 has abrogated the crime for a person to commit suicide or self-murder. Section 33B of Cap. 212, that is, the Offences against the Person Ordinance, specifies that it shall no longer be murder, but a new statutory offence of "complicity in another's suicide" for a person to be a party to the other killing himself. The person is liable to a maximum penalty of 14-year imprisonment.

Part 5 seeks to add a new subsection (5) to section 101I of the Criminal Procedure Ordinance to repeal the existing maximum penalty of seven-year imprisonment for the offence of perverting the course of justice in common law. There will be no fixed maximum penalty. The Court may impose a sentence that is appropriate to the seriousness of the offence in accordance with the established sentencing guidelines.

Part 6 seeks to amend sections 3A and 3B of the Fixed Penalty (Criminal Proceedings) Ordinance to empower a magistrate to order a person who has committed an offence to pay costs if that person has not paid the relevant fixed

penalty or notified the Commissioner of Police that he wishes to dispute liability. A number of consequential amendments are also made to sections 10 and 10A of that Ordinance.

Part 7 seeks to amend section 2 of the Costs in Criminal Cases Ordinance to enable the Court in criminal cases to order a party to bear any costs incurred by another party as a result of the improper or unreasonable act, or delay or misconduct on the part of the legal or other representative of the first mentioned party. Section 18 of that Ordinance is also amended to provide that the Court shall take into account the interest of fearless advocacy under the adversarial system of justice when determining whether or not wasted costs orders should be made.

The said amendments are proposed in the light of the limited scope of application of the present provision, as criticized by the Court of Appeal (CA) in several adjudicated cases, which only applies to the legal or other representative who is absent from or late for the proceedings. For example, in an appeal case, the hearing had to be delayed because the legal representative had to attend to other matter during the period of proceedings. Restricted by the wordings of the wasted costs provision, the CA ruled that it did not have the power to make a wasted costs order. In view of this undesirable situation, we proposed an amendment in response to the criticism made by the CA.

Part 8 seeks to amend the Fire Service (Installation Contractors) Regulations (sub. leg. A of the Fire Services Ordinance), the Pharmacy and Poisons Ordinance and the Lifts and Escalators (Safety) Ordinance to repeal provisions providing that the decision of the Court of First Instance on an appeal is final, and provide for the event in which an appeal shall be deemed to be finally determined.

In December 2003, the CFA handed down the judgement in *A Solicitor v The Law Society of Hong Kong & Secretary for Justice (Intervener)* in which it held that the finality provision in section 13(1) of the Legal Practitioners Ordinance was invalid. Section 13(1) of Cap. 159, that is, the Legal Practitioners Ordinance, stipulates that subject to exceptional circumstances, "an appeal against any order made by a Solicitors Disciplinary Tribunal shall lie to the CA" and it includes a provision which provides that "the decision of the CA on any such appeal shall be final".

Sixteen Ordinances were subsequently identified as containing finality provisions which were identical to the finality provision in section 13(1) of Cap. 159 in all material aspects. These provisions were thus amended under the Statute Law (Miscellaneous Provisions) Bill 2005. In the light of this development, we hold that it is necessary to amend the relevant provisions through Part 8 of the Bill.

Part 9 seeks to amend the Rules of the High Court (Cap. 4, sub. leg. A) and the Legal Practitioners Ordinance (Cap. 159) to provide for consequential amendments omitted in previous amendment exercises.

Part 10 seeks to amend the Legal Practitioners Ordinance (Cap. 159) to cover, in the definition of "Postgraduate Certificate in Laws", the Postgraduate Certificate in Laws to be awarded by The Chinese University of Hong Kong, and to require a firm of solicitors which intends to employ a bankrupt solicitor or foreign lawyer to apply to The Law Society of Hong Kong for written permission to do so.

Part 11 seeks to amend certain provisions in the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204) to remove certain minor inconsistencies between the English and Chinese texts.

Part 12 seeks to add to the Interpretation and General Clauses Ordinance (Cap. 1) two new powers of the Secretary for Justice. The first is that the Secretary for Justice shall have the new power to amend any Ordinance or subsidiary legislation to effect the replacement of a general reference to a date by the actual calendar date, and second is that the Secretary for Justice shall have the new power to amend any subsidiary legislation to effect the replacement of a general reference to another subsidiary legislation by the title or citation of that other subsidiary legislation, the gazette number, or the chapter number.

Part 13 contains minor and technical amendments to various Ordinances.

Part 14 contains minor amendments to various Ordinances to achieve internal consistency and consistency between the English and Chinese texts.

Madam President, as mentioned just now, the Bill is part of our continuous effort to collate and make minor amendments to the statute law in Hong Kong. I hereby recommend the Bill to the Legislative Council.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the Statute Law (Miscellaneous Provisions) Bill 2007 be read the Second time.

In accordance with the Rules of Procedure, the debate is now adjourned and the Bill referred to the House Committee.

Resumption of Second Reading Debate on Bills

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Shenzhen Bay Port Hong Kong Port Area Bill.

SHENZHEN BAY PORT HONG KONG PORT AREA BILL

Resumption of debate on Second Reading which was moved on 7 February 2007

PRESIDENT (in Cantonese): Mr LAU Kong-wah, Chairman of the Bills Committee on the above Bill, will now address the Council on the Committee's Report on the Bill.

MR LAU KONG-WAH (in Cantonese): President, in my capacity as Chairman of the Bills Committee on Shenzhen Bay Port Hong Kong Port Area Bill (the Bill), I report the main deliberations of the Bills Committee on the Bill.

The Bill seeks to declare an area of the new control point on the Mainland, the Shenzhen Bay Port, as the Shenzhen Bay Port Hong Kong Port Area, and to apply the laws of Hong Kong in the Hong Kong Port Area. The co-location arrangement will be implemented at the Shenzhen Bay Port.

Some members expressed concern about the legal basis for enacting the Bill, and the constitutional basis of the decision of the Standing Committee of the National People's Congress (NPCSC) in authorizing the Hong Kong Special Administrative Region (SAR) to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port. As the Hong Kong Port Area is located on the Mainland, they are also concerned whether the Legislative Council has the

competence to enact the Bill the intended extent of which is geographically outside the boundary of the SAR.

The Administration has explained that the authorization is given by the NPCSC in accordance with its power under the Constitution of the People's Republic of China. Under Article 20 of the Basic Law, the SAR is competent to acquire and exercise the powers granted to it under the NPCSC's Decision. Regarding the status of the NPCSC's Decision, the Administration has explained that the NPCSC's authorization on 31 October 2006 is considered part of the law under the mainland legal system.

Regarding the legislative competence of the Legislative Council, the Hong Kong Bar Association (the Bar) is of the view that according to the NPCSC's Decision, it is the SAR that has jurisdiction over the Hong Kong Port Area. The SAR thus may exercise the powers conferred on it by the Basic Law, including the legislative power, in respect of the Hong Kong Port Area. Such jurisdiction is to be exercised in accordance with the laws of the SAR. By necessary implication, the SAR may make legislation in respect of the Hong Kong Port Area, including enacting the Bill the intended extent of which is the Hong Kong Port Area.

The Administration has pointed out that there are no provisions in the Basic Law which expressly prohibit the legislature of the SAR from legislating extra-territorially. The SAR, under Article 20 of the Basic Law, is competent to acquire and exercise the powers granted to it under the NPCSC's Decision. Hence, there is no doubt that the SAR, by virtue of the NPCSC's Decision, has legislative competence to enact the Bill.

Some members are also concerned about whether or not the NPCSC's Decision is a national law; and if so, whether it should, in accordance with Article 18 para 3 of the Basic Law, be included in Annex III or not.

(THE PRESIDENT'S DEPUTY, MR FRED LI, took the Chair)

The Bar is inclined to the view that the NPCSC's Decision does not qualify as a national law under Annex III to the Basic Law. The Bar has pointed out that there does not appear to be any statutory definition of "law" either in the

Constitution of the People's Republic of China or the Legislation Law of the People's Republic of China. "Laws" are defined by mainland legal scholars as those normative rules enacted by the National People's Congress (NPC) and the NPCSC which have general binding effect. The NPCSC's Decision merely authorizes the SAR to exercise its jurisdiction in and apply its laws to the Hong Kong Port Area, it does not contain any normative rules with general binding effect. The NPCSC's Decision is a decision dealing with a specific case and is not to be applied in the SAR. The Bar has also pointed out that Article 18 para 2 of the Basic Law provides that national laws listed in Annex III to the Basic Law shall be applied in the SAR by way of promulgation or legislation. The Bar considers that it is clear that the NPCSC's Decision cannot be applied in the SAR by promulgation.

The Administration has pointed out that as the NPCSC's Decision in substance provides for a port area in Shenzhen where Hong Kong laws will apply to the exclusion of mainland laws, it is normative in nature. Since it has legal force throughout the country, it is a national law. There is no need for the NPCSC's Decision to be included in Annex III for application in the SAR on the ground that it is not to be applied (實施) in the SAR under Article 18 of the Basic Law. The Administration has also pointed out that there is no provision in Article 20 of the Basic Law which requires that an additional authorization by the Central Authorities would need to be included in Annex III to the Basic Law for it to be validly applied (適用) in the SAR. Furthermore, the NPCSC's Decision does not contain any provision which suggests that its coming into force is conditional upon its inclusion in Annex III to the Basic Law.

Deputy President, another main concern of the Bills Committee is the impact on motor vehicle third party risks insurance policies and employees' compensation insurance policies in existence before the Hong Kong Port Area comes into operation, as their coverage does not include the Hong Kong Port Area.

To address this problem, the Hong Kong Federation of Insurers (HKFI) has informed the Bills Committee of two possible options, namely, to issue an endorsement on each of the policies involved extending their coverage accordingly to include the Hong Kong Port Area until their expiry or renewal; or to have some form of a market agreement between insurers and the Insurance Authority to extend the coverage of such policies to the Hong Kong Port Area. As the option of issuing an endorsement on each of the policies requires a

considerable amount of administrative work, the HKFI is inclined to adopt the option of entering into a market agreement, and consultation with the insurance companies concerned has been conducted.

Some members have queried whether the implementation of such a market agreement is equivalent to the issuing of an endorsement on each of the policies involved. They are concerned about the legal effect of the agreement, its enforceability and possible legal challenge. They suggest reflecting the market agreement in the Bill.

The HKFI has expressed that the implementation of the market agreement would have the same effect of issuing an endorsement on each of the policies. There are also similar market agreements in place at present. As an insurance policy is a contract between the policyholder and insurer, the Administration has stated clearly its policy of not interfering with private contracts. The authorities have stated that the market agreement is a legally binding agreement executed between the Government acting through Insurance Authority and the insurers. The Insurance Authority may, in accordance with his regulatory powers under the Insurance Companies Ordinance, ensure compliance with the market agreement by the trade.

Regarding some members' suggestions of making reference to the market agreement in the Bill and providing a statutory basis to the insured for some legal actions against non-compliance with the market agreement, the Administration considers that such sanctions will run against the fundamental spirit of a market agreement. Furthermore, this course of action may have read-across implications on other market agreements. The Administration has then informed Members that all relevant insurance companies have indicated their willingness to participate in the market agreement.

Mr James TO will propose an amendment in respect of the market agreement.

Regarding the clauses in the Bill, members have queried the need for enacting clause 5(2) to empower the Chief Executive in Council to make subsidiary legislation to modify any statute or to exclude any statute from the laws of Hong Kong that apply in the Hong Kong Port Area. Members consider that any modifications or exclusions should be made by way of an amendment Bill. As the Administration is unable to provide concrete examples that justify the need for this clause, the Administration has, at the request of members,

agreed to delete clause 5(2). Furthermore, the authorities will move amendments to delete clauses which empower the Chief Executive in Council to amend Schedule 2 and Schedule 4.

Clause 6 is about land in the Hong Kong Port Area being regarded as Government land. Some members have suggested that a provision should be added to reflect the fact that the land use right of the Hong Kong Port Area is acquired by way of a lease. The Administration will move an amendment to this effect. Ms Margaret NG has expressed reservations about clause 6.

Regarding clause 8, members have pointed out that some private contracts may contain provisions that allow extension of territorial limit and have raised the concern that clause 8 as presently drafted may unintentionally restrict such contracts. The Administration will propose an amendment in this connection.

In response to suggestions of members, the Administration will move other amendments, including the addition of a provision to reflect that the temporal operation of the Bill as enacted is linked with the term of the lease of the Hong Kong Port Area.

Deputy President, in respect of the transport arrangements upon commissioning of the Shenzhen Bay Bridge (that is, the Shenzhen-Hong Kong Western Corridor), the Administration is now planning the provision of two franchised bus routes, one running to and from Yuen Long East and the other running to and from Tuen Mun, and one green minibus route running to and from Tin Shui Wai. Members consider that the provision of public transport services is far from adequate and will result in higher transport expenses for passengers using the new control point. Members also consider the size of the public transport interchange of about 8 000 sq m too small and cannot cope with demand in future. Members have put forth a number of suggestions, which include allowing non-franchised buses to operate at the control point and holders of private car quotas to use different boundary crossings without restriction.

Members have also expressed grave concern about the serious congestion in the northwestern part of the New Territories, in particular Tuen Mun Road, possibly brought about by the commissioning of the Shenzhen Bay Bridge. Members have pointed out that given the imminent commissioning of the Shenzhen Bay Bridge, the Legislative Council passed a motion at its meeting on 8 March last year urging the Government to formulate as early as possible

strategies to improve the traffic arrangements in the western and northwestern parts of the New Territories.

The Administration has expressed that the original planning of the new control point is to mainly cater for goods vehicles. The transport services to be provided at the Hong Kong Port Area are constrained by the area available at the public transport interchange. Thus, priority has to be given to public transport services such as franchised buses and minibuses. Nevertheless, the Administration will jointly with the mainland authorities keep under review the transport services concerned having regard to the actual operation of the control point and the traffic situation.

Regarding the impact on traffic in the Northwest New Territories, the Administration is of the view that according to the latest traffic projections, the existing and committed road networks together with necessary improvement measures would be able to cope with the traffic demand in the region up to at least 2016. The authorities have also explained to members existing plans for improving the overall operation of Tuen Mun Road.

Finally, members urge the Administration to formulate effective measures to solve the traffic problem to be brought by the commissioning of the Shenzhen Bay Bridge.

Thank you, Deputy President.

MS MARGARET NG: To facilitate the flow of people and goods between the HKSAR and the Mainland, the Government has put forward a "co-location" policy, whereby Hong Kong and Shenzhen officials will operate at the same location to deal with customs and immigration formalities. While the policy has the support of the community, the means the HKSAR Government has chosen to achieve this is highly elaborate, and without precedent anywhere in the world.

The Shenzhen Bay Port is located in Shenzhen. The Hong Kong Port Area is within it. The Bill puts forward for this Council's consideration is to apply the laws of Hong Kong to that area, and to treat this area to all intents and purposes as if it is within the territory of the HKSAR. In so doing, the Bill raises a host of legal and constitutional questions which require careful consideration.

The first question concerns the legislative competence of this Council. The Legislative Council of the HKSAR is not a supreme legislature. It enjoys only those powers delegated to it by the Basic Law. Under the Basic Law, this Council has power to make laws for Hong Kong. It is not competent to make laws for any other part of China unless by an appropriate act of the National People's Congress (NPC) it is authorized to do so. Otherwise, the enactment will not only be a nullity, meaningless and without effect, but constitutionally improper as a usurpation of the powers properly pertaining to the Central Government.

The extent of this Council's legislative competence must be understood as distinct from the exercise of extra-territorial jurisdiction through the laws it has properly enacted for Hong Kong. For example, a law prohibiting unauthorized off-shore gambling may be applicable to a participant operating outside Hong Kong as well as to a participant operating in Hong Kong. The well-established legal principle is that the extra-territorial effect of an ordinance is valid if it has a substantial relationship with the governance of the territory of Hong Kong.

In the present instance, we are not talking about making a law which has part of its effects outside the territory. The entire legislation is intended for a place outside Hong Kong.

The more fundamental issue is this. The system in which the legislature of the HKSAR makes laws according to the common law system previously prevailing in Hong Kong and not according to the socialist legal system is made possible only by the promulgation of the Basic Law which suspends the implementation of the socialist system prevailing in the rest of China. The suspension is confined in terms of geographical location, that is, within the boundary of the HKSAR, and in terms of time — for 50 years. How then can this Council make laws for any other part of China where the socialist system has not been suspended?

The third question concerns the vital matter of land. Clauses 5 and 6 of the Bill provide that Hong Kong law applies to land in the Hong Kong Port Area as if it is land within the Hong Kong territory. This is contrary to the fundamental principle in the law of conflict that on the subject matter of land, the applicable law is the law of the territory where the land is situated — in the present case, as the Hong Kong Port Area is in Shenzhen, it is Chinese law

which applies. Even if Hong Kong Courts have jurisdiction to hear matters concerning land in the Area, the applicable law will still be Chinese law and not Hong Kong law.

Furthermore, interests and estates in land can be disposed of and acquired under Hong Kong law in the SAR because the socialist system of China is suspended by virtue of the Basic Law. The Hong Kong Port Area is outside the HKSAR and is in Shenzhen where the socialist system prevails. This state of affairs and the legal consequence that flows from it cannot be altered by an enactment of the subordinate Hong Kong legislature. It is difficult to see how enacting a "legal fiction" to "regard" the Area as within HKSAR territory can work.

The Government relies on an authorization of the Central Authorities as the basis for the legality and propriety of the present Bill. As recited in the Preamble of the Bill, the authorization comprises the decision of the National People's Congress Standing Committee (NPCSC) on 31 October 2006 and the Official Reply of the State Council on 27 October 2006 on the matter. It is crucial to study these documents to determine precisely what they have authorized.

The first thing to note is that the Decision of the NPCSC does not confer a blanket power upon the HKSAR to enlarge the extent of its law-making power to the Hong Kong Port Area in Shenzhen, or to treat the Area as if it is within the HKSAR. What it does authorize the HKSAR to do is to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port according to the laws of HKSAR and "to administer the Hong Kong Port Area as a closed area". The intent of the Decision is clear: It is to apply to this area such Hong Kong laws as necessary to operate the Hong Kong Port Area as a closed area under Hong Kong laws. The power the SAR Government intends to appropriate unto itself is far too wide under this Bill.

Even if it is not practicably possible to foresee precisely what parts of the laws of Hong Kong might be necessary, there is no discernible justification for applying Hong Kong laws pertaining to land to the Hong Kong Port Area, merely because the Area is to be administered as a closed area for customs, immigration and other official operations. There is no justification particularly for provisions such as those of clause 5(4) and (5), and in particular, clause 6:

"(1) Land within the Hong Kong Port Area is regarded, for the purpose of applying the laws of Hong Kong in the Hong Kong Port Area, as part and parcel of the Government land lying within Hong Kong.

(2) Any right or interest in any such land disposed of by virtue of a dealing on or subsequent to the Relevant Date is regarded as a right or interest derived directly or indirectly (as the case may be) from the Government."

Reading together with this clause, clause 7, which extends the jurisdiction of the Hong Kong Courts to the Hong Kong Port Area, will suggest that the applicable law on disputes about land in this Area in Shenzhen is Hong Kong law. I will say more about clause 6 at a later stage. The point which is being made here is that there is no authorization for clause 6.

As recited in the Preamble, the HKSAR acquires the land use of the Hong Kong Port Area by a lease contract signed with the People's Government of the Shenzhen Municipality of Guangdong Province, and the land use right is subject to Chinese law. It does not authorize the SAR Government to dispose of the land, for example, by granting leases to organizations or individuals as if this were land within Hong Kong, to which Article 7 of the Basic Law applies.

To use the language of Hong Kong law, the HKSAR has acquired no interest or estate in the land, and can pass on none to anyone. The situation is utterly different from the lease of the New Territories, signed between China and Britain, which came with the right to make laws for it and the right to grant sub-leases under it within the period of the leasehold.

To say the least, clause 6 must be amended so as to limit the Government's power to deal with the land in the Hong Kong Port Area to what is permitted under the acquired land use right according to Chinese law. The amendment which the Government proposes to move at the Committee stage goes in the opposite direction by excluding the effect of this limitation from the clause. This astonishing defiance of the Central Authorities and legal principles is inexplicable.

Secondary questions have arisen in the course of the Government's attempt to answer the primary questions discussed above which are equally fundamental. The Government was unable to provide convincing explanations and relied

heavily on the Bar's submissions where they support the Government's position. Yet, the Bar's views are diametrically opposite to the views presented by the Government on key issues. The result is greater confusion and uncertainty which have remained unresolved. These concern Articles 7, 18 and 20 of the Basic Law.

The Government advised that the Decision of the NPCSC is a national law and effectively grants additional powers to the HKSAR which, under Article 20, the HKSAR is capable of exercising. However, this national law does not have to comply with the procedure of being incorporated into Annex III under Article 18 before it takes effect in Hong Kong. The Government said that this is because it involves an additional power granted by the NPCSC which the HKSAR is allowed to enjoy under Article 20, and Article 20 does not impose any particular procedure to be adopted.

The Bar's view is the opposite: The NPCSC Decision is not a national law because it is not of a normative nature. Article 18 permits no exception: No national law shall be applied in the HKSAR except those listed in Annex III. Article 20 in no way qualifies Article 18.

The safeguard of Article 18 is of crucial importance to the confidence of Hong Kong residents. If a national law can be clothed as a grant of "other powers" under Article 20 and in that way bypass Article 18, then the safeguard will be meaningless and confidence will be threatened.

The NPCSC Decision is the first occasion when Article 20 is evoked. But its scope, application and intent have not been discussed or explained at all. For example, whether it is broad enough to enlarge the extent of the competence of the Legislative Council; whether to achieve this requires an amendment of the Basic Law under Article 159 or a national law to be promulgated and added to Annex III. These are matters which the public should have been given full opportunity to discuss but have not.

The Government's understanding of its powers and functions under Article 7 is the opposite of the Bar's understanding. In the further Submission specifically on the proposed CSA on clause 6 which the Bar provided at my request through the Bills Committee, the Bar noted that the Government considered Article 7 applies to the Hong Kong Port Area — even though it is land outside the HKSAR — by the enactment of clause 5 of the Bill because it

provides the legal fiction that "the Hong Kong Port Area is regarded as an area lying within Hong Kong". And so, by Article 7, the SAR Government can, among other things, be responsible for the "lease or grant of the land to individuals, legal persons or organizations for use or development". This is very disturbing indeed. In the Bar's view, and I fully agree, Article 7 has no application to the Area, and "An Ordinance cannot possibly have the effect of applying the constitutional instrument that provides for the legislative power to make the Ordinance to a place outside the administrative limits of the territory stipulated in the constitutional instrument". If the Government can be so wrong on so fundamental an issue in so comprehensive a bill as this, members have every reason to be extremely wary in sanctioning the scheme of the Government.

The Bill was rushed through the Bills Committee in spite of the unclear and unsatisfactory state of its legal and constitutional basis. This is deeply to be regretted. The subject matter of the Hong Kong Port Area is not politically controversial. This would have been a good opportunity to discuss and develop the constitutional and legal interface between the SAR and the Central Authorities. Instead, because of the way in which the Government has chosen to handle this matter or because of inattention, the opportunity was largely lost. I note that the Secretary for Justice is not even present at this debate. The Civic Party will abstain from voting for the Second Reading of the Bill and oppose clause 6. Thank you.

MR CHEUNG HOK-MING (in Cantonese): Deputy President, the co-location arrangement to be implemented at the Shenzhen-Hong Kong Western Corridor (Western Corridor), an arrangement which extends Hong Kong's jurisdiction to designated port areas within the boundary of Shenzhen, is a convenient boundary clearance measure that turns a new page in the history of co-operation between Hong Kong and the Mainland.

However, behind the excitement, I feel keenly concerned about the traffic support in Yuen Long and Tuen Mun Districts upon the commissioning of the corridor on 1 July. In the past decade, chaos did break out at the initial stage of a number a large-scale infrastructure facilities coming into operation. The total chaos broke out at the early operation of the new airport at Chek Lap Kok and the stability of service of the West Rail upon commencement of operation can be cited as examples. For this reason, I earnestly hope that the SAR Government will learn a lesson from the past experience and make well preparations,

pre-empting chaos which may stir grievances and dissatisfactions in society upon the commissioning of this prominent land crossing.

I have been along worried that upon the commissioning of the Western Corridor, a large number of vehicles will choose to use the toll-free Tuen Mun Road, causing serious congestion to a number of bottlenecks in Tuen Mun District and Tuen Mun Road. As a result of the repeated expression of my worries, the Administration has introduced three additional measures, including the widening of the section at Tsing Tin Interchange from a dual two-lane to dual three-lane carriageway; the widening of the section at Tuen Mun Town Centre near Jusco from a dual two-lane to dual three-lane carriageway; and the reconstruction and the provision of hard shoulder at the section of Tuen Mun Road between Tsuen Wan and Sam Shing Hui, to increase traffic flow. Moreover, in Yuen Long District, improvement works will be carried out to the roundabout at Pok Oi, while Ping Ha Road and Tin Ha Road will be widened. However, these improvement works take time and seriously lag behind the commissioning of the Western Corridor. We have repeatedly urged the Government to advance the completion of the aforesaid projects, but still, these improvement projects can yet bring into full play the advantage of the Western Corridor in promoting the local logistics and transhipment industries.

I think the Government should promptly seize the opportunity presented by the Western Corridor to review the planning and positioning of Northwest New Territories. In addition to the Western Corridor, it should examine the construction of other supporting infrastructure facilities to establish further the strategic position of Northwest New Territories as a hub. To completely solve the problem of insufficient support of the local transport network in Hong Kong, I think the Government should, at a time when an enormous surplus is swelling the government coffers, seize the opportunity to swiftly implement ancillary transport projects, such as the construction of the Tuen Mun Western Bypass and the arterial highway of the Tuen Mun-Chek Lap Kok Link. For this will on the one hand shorten the distance between Northwest New Territories and the Hong Kong airport at Chek Lap Kok substantially, and that between Northwest New Territories and the Hong Kong-Zhuhai-Macao Bridge (HKZMB) to be built on the other, thus enabling Hong Kong to benefit direct from the advantages brought about by the Chek Lap Kok airport and the HKZMB and boosting the development and restructuring of Northwest New Territories. Moreover, this proposal has the potential of extending the West Rail from Tuen Mun to the new airport, which can greatly enhance the image of Northwest New Territories,

Tuen Mun District in particular, boosting the development of local economy and creating more job opportunities. With good planning, the strategic function of Northwest New Territories will surely be reinforced, bringing benefits to a number of planning projects. Besides, the Government may take this opportunity to construct Tuen Mun and Yuen Long as a service platform providing support to logistics development, promoting the restructuring of vacant factory buildings in Tuen Mun District for alternative uses, and thus increase the opportunities for residents in Tuen Mun, Yuen Long (including Tin Shui Wai) in finding employment in the vicinity.

Deputy President, the commissioning of the Western Corridor will definitely enhance further development of the logistics industry in Hong Kong, which demands our proactive effort to provide support in land use planning. I believe Members will also agree that there are two prerequisites for the development of logistics industry: First, adequate and suitable locations should be earmarked in the course of land planning to provide open storage space as port back-up area; and second, the support of well-established transport networks. These two aspects should both be taken care of by the Government. But, unfortunately, the Government did not attach much importance to these two aspects in the past. Many members of the trade have complained to me that they encountered many difficulties in expanding their logistics businesses because of the lack of support from the Government. At present, the Government has designated 260 hectares of land in Northwest New Territories for use as Category I port back-up and open storage area. However, these sites in general lack road networks suitable for the running of large container trucks, which will thus increase the operating cost of the trade in this respect and affect the social environment and public safety to a certain extent. In this connection, we urge the Government to consider the development of logistics industry from the perspective of economic structure. It should provide suitable support in planning, infrastructure and policies, and capitalize on the competitive edge Hong Kong has in the transportation of high value goods, to further consolidate Hong Kong's status as the international shipping centre.

Deputy President, I so submit.

MR BERNARD CHAN: Deputy President, I appreciate the concern the Honourable James TO and others are showing over insurance coverage in the

Shenzhen Bay Hong Kong Port Area (HKPA). But I can assure everyone that there is no problem here. The insurance industry has solved much, much bigger problems in the past. And we have a simple and easy solution for this.

Technically, vehicle third party and employee compensation coverage will not extend to the new area under existing insurance policies. Policies will be amended when they are renewed after the area opens on 1 July. So, for a period of up to 12 months, the wording of some people's policies will not include the HKPA.

The Hong Kong Federation of Insurers has worked very promptly to address this. They have visited the Port Area itself, and they have consulted fully with the Government. As a result, I am pleased to say that the industry is perfectly happy to include the area under all existing policies.

The HKPA is a very small place compared with the whole of Hong Kong. So it represents a very small risk compared with all the risks the insurers currently cover.

We could physically amend every individual policy, but frankly it would be a considerable administrative job for insurers and the Government. There would be costs that would be passed on to other customers or the taxpayers.

Instead, all the insurance companies have agreed in principle to sign up to a market agreement with the Insurance Authority. And that agreement will effectively say that we will all consider the HKPA to be part of Hong Kong for all existing policies.

We want to — and we will — be good corporate citizens here. This way, it is easy. It is cost-effective. It is quick. And it will work.

The fact that the agreement does not have legal force is basically irrelevant. No insurance company would have an interest in breaking the agreement by refusing to pay out on a claim. They would get such bad publicity — especially from some of my Legislative Council colleagues here today — that it would cause them to lose future business. They would also betray a commitment made to the Government. And they would make the rest of the industry look very bad as well.

The public can have confidence in this solution, because we already use market agreements like this to provide coverage in far more complex and open-ended situations.

The Motor Insurance Bureau was set up under a market agreement around 20 years ago to provide coverage in case of hit-and-run accidents and other situations. It has accumulated a fund of $2.2 billion. It works very well. More recently, the industry has used a market agreement to set up, in practice, an insurer of last resort for employers who cannot get employee compensation coverage elsewhere.

If we can find ways of covering hit-and-run victims and high-risk employees on an open-ended basis, I can assure you that we can cover vehicles and workers at the HKPA for the duration of their current policies.

In short, Deputy President, there is no problem.

MR JAMES TO (in Cantonese): Deputy President, a couple of years ago, the Government started contemplating the idea of this legislation. Since then, I have given a lot of opinions to the Government and conducted negotiation with the Government in the Bills Committee or the Panel on Security. I have indeed put in much effort and contributed a lot of opinions to enable certain issues, particularly the following two issues, relating to this legislation be settled generally.

These two issues have been confined to discussion all along, or for the past few years. But at last, they have become a reality now. The first issue is about the enactment of legislation. I told the Government that this must be effected by legal means, in other words, by the enactment of legislation, instead of relying purely on administrative measures. Though in some other places, even in Macao, administrative means have been employed to address the issue, I still consider that legislation must be enacted to make it more definite and provide more protection. The second issue is about jurisdiction. I think that the jurisdiction of both parties should not overlap. Even if legislation has been put in place, or that it is jointly possessed by Hong Kong and the Mainland, it is after all less than desirable. Each party should have their own jurisdiction. In respect of these two issues, it appears that they have been achieved in form, and I am thus glad about this. But, unfortunately, some technical problems came up

at the last moment, and I feel really sorry about that. Earlier on, Ms Margaret NG has talked about them, so I will only add a few words here.

These problems are of grave concern to the people of Hong Kong, for they worry that certain national laws may, by unknown means, become laws applied in Hong Kong. The confidence of Hong Kong people is built on the Basic Law, both in its draft and enactment. Actually, at that time, many members of the Basic Law Drafting Committee, not only members from the democratic camp but also many members from the business sector, expressed a lot of opinions at the Committee. It is stipulated in the Basic Law that laws of the Mainland which need to be applied in Hong Kong must be listed in Annex III. In Annex III, the relevant laws on national flag, national emblem and the territorial waters are listed categorically. However, these laws are general in nature, and will not affect the rights and obligations of the people of Hong Kong. But, unfortunately, the attitude adopted by the Government this time around shows that despite the present NPCSC Decision to grant power is a national law, it is not necessary to be included in Annex III. This will then set a precedent for certain national laws to be applied in Hong Kong without being included in Annex III.

The strongest argument maintained by the Government is only based on Article 20 of the Basic Law. Actually, the additional power beyond the Basic Law granted by the Central Authorities to the SAR is only on extraterritoriality or the implementation of laws other than those in Hong Kong. Members should perhaps examine this thoroughly. In fact, Article 18 which stipulates the application of national laws listed in Annex III to the Basic Law and the provision in Article 20 can resolve this conflict. Article 18 does not necessarily be overridden by Article 20. Why? For Article 20 is about power, while Article 18 is about law. If any disputes are brought before the Court of Final Appeal in future, Article 20 may indeed be interpreted as a provision that can be invoked by the Central Authorities to grant additional power to Hong Kong when necessary. But according to Article 18, any national laws to be applied by legislation have to be listed in Annex III. If the Central Authorities hope to let Hong Kong have certain powers not by means of legislation, they may do so according to Article 20. This is called the administrative power, for certain power under the law is granted by administrative authorization. Therefore, I hold that Article 20 is about power granted by administrative authorization. If there are laws that must be included in Annex III, then actions should be taken in accordance with Article 18 of the Basic Law.

With regard to this point, I think it is regrettable. This is a point which involves a very important principle, and it has in the end made the Democratic Party and me unable to vote for the Bill at Second Reading. This Bill has been examined for a long time, and I have devoted strenuous effort to it. Actually, I earnestly hope that I can support the enactment of this law. But unfortunately, in the end, the Bill is tarnished by one unexpected blemish. I thus hope that the Government can be extremely cautious when it deals with these issues in future. If the Bill can be dealt with all over again, and the Government can know more clearly the opinions put forth by Members, will the Government be able to ask the NPC to implement this law via Annex III? I think it is possible. There should not be any problem in principle, for the present problem is probably attributable to the insufficient time for deliberation previously.

The second point is about insurance. First, I wish to express my gratitude to the insurance sector. In reality, an additional piece of land is included in Hong Kong. According to the existing contracts of insurance companies, they are entitled to charge policy holders additional fees for the provision of extra protection. Mr Bernard CHAN said earlier that insurance companies had examined the situation and considered that site a very small area which did not incur great risks. But no matter how small the area is, they are after all doing a favour to policy holders. Hence, I have to thank the insurance sector for being so understanding and do not charge additional premium. Certainly, some people may say that they do so because even if additional premium is charged, the additional premium received may not cover the loss resulted. Let us put aside the reasons for so doing, the insurance companies have after all provided extra protection.

Back to the topic, according to Mr Bernard CHAN, there is no problem with the so-called market agreement now proposed by the Government. This is natural. From the perspective of the insurance sector, insurance companies have provided extra protection, but this is not in the form of an additional commitment to policy holders but to another party, the Insurance Authority, who represents the Government. In other words, insurance companies give an undertaking to the Insurance Authority that if anything happens in that area where compensation should be covered by insurance, they will not deny policy holders of the compensation on the reason that that area is not an area within Hong Kong. However, insurance companies do not give this undertaking to policy holders but to the Insurance Authority.

Certainly, in this connection, the Government said that "not even a daredevil will dare to do so" (this is my wordings). The Government is saying indirectly that the Insurance Authority has the authority, and if the insurance sector really go back on the undertaking they have made to the Insurance Authority, they will lose their credibility. Insurance companies must have credibility. The Government can deal with a lot of issues by means of laws on insurance, and being a contracting party, the Government can enforce the agreement. However, the Government has not stated clearly that it would definitely enforce it.

Individual policy holders are not any party to the agreement, so they are incapable of exercising their legal rights to initiate legal proceedings or bring their cases to Court. Therefore, they can only tell the Government that insurance companies go back on their words and fail to honour their promise (this is only an "if" and I am not saying insurance companies certainly will break their promises), so the Government has to deal with it. In that case, the policy holder himself does not have the inherent right to enforce the agreement, for he is not a contracting party of the agreement and insurance companies have not given any promise to policy holder in this connection. This is where the imperfection lies. When we keep on saying that we are confident the Government will certainly enforce it or that we have to have confidence in insurance companies, this is only rule by man rather than rule by law. That is to say, we should not think this way, nor should we have the mindset that "not even a daredevil will dare to do so". If we really want to act in accordance with law, we should strive for the existence of rights.

Moreover, sometimes, not only the insured are affected. If the insured are also included in the market agreement, three parties, namely, policy holders, insurance companies and the Government, will be involved. But, in addition to the policy holders, the case may involve a fourth or fifth party. Why? For a policy holder may have entered into another agreement with another party stating that he has taken out an insurance policy, and whenever he drives into that area, the agreement, which is legally enforceable, will activate the relevant insurance policy. When the insurance policy is included in the agreement in this way, it will give rise to a lot of problems. When the fourth party finds the agreement not enforceable and enter into contractual disputes with the policy holder, the policy holder surely cannot refer to the market agreement which states the undertaking given to the Government and ask the fourth party to claim the Government if anything happens.

Deputy President, excuse me, have I not addressed the Deputy President? I am sorry, Deputy President, particularly today, for today is your birthday. I am sorry, for I have been speaking too fast just now. Sorry, Deputy President.

If I were the policy holder, I cannot mention that agreement or say that I can enforce the agreement, for I indeed cannot enforce it, nor is the agreement related to me in any way. Therefore, when a fourth party or fifth party presses legal claims against me, I truly have no rights to protect myself, for this is not justified. Such an arrangement is thus imperfect. We cannot simply rely on confidence, and we have to state clearly that the agreement concerned is legally enforceable. Even in agreements the policy holder entered into with a fourth party or fifth party, he can point out that that area is covered by the market agreement and he can enforce the provisions set out in the agreement.

Owing to this point, I will propose a Committee stage amendment shortly. My proposal includes two parts. In the first part, which is certainly the most desirable option, references in insurance contracts will regard that area as within Hong Kong. But these insurance policies are only restricted to those mandatory insurance plans. This amendment seeks to prevent by all means any company unwilling to participate from being affected, so that the freedom of contract will not be impinged. The reason, as I have said when I expressed my gratitude to them earlier, is that insurance companies are now willing to bear the risk and their practice so far is in line with this undertaking. Therefore, there is no question of an imposition from my part. I do not coerce insurance companies to provide extra protection, nor do I dig into their pockets, forcing them to bear additional risks. They themselves express the willingness to bear the risk, so this will not affect private property, and so on.

The second part is that if this clear-cut option is voted down, I will propose a secondary amendment. Though this amendment is less desirable, it can at least provide some more protection. The amendment states that if insurance companies really fail to act in accordance with the agreement with the Insurance Authority representing the Government, that is, the so-called market agreement, the Insurance Authority representing the Government must enforce the provisions in the agreement, which means proceedings must be initiated. From the point of view of the policy holder, he is at least given one more tier of protection. For in case anything happens, the Government will certainly stand up for him and will assure the mandatory enforcement of the agreement.

Finally, I would like to echo Ms Margaret NG's views. Actually, this time, we are facing a very important issue and the arrangement is unprecedented. We have made reference to overseas situations, but we find that there is no place like Hong Kong where certain legislation is fully implemented and enforced outside Hong Kong. In other places, the agreements concerned, such as the agreement signed between the United States and Canada or that between the United States and Japan, or other agreements of different nature, are usually enforced by means of administrative measures, and legislation is not fully enforced. In the European Union, member states adopt different methods while exceptions are numerous.

However, the arrangement now adopted by Hong Kong is unprecedented. It is exactly because of this that we should spend more time to fine tune it carefully, for our arrangement may set a precedent for other countries and places around the world. But unfortunately, though the Government had been thinking about the establishment of a Bills Committee for years, the Bill was only submitted hastily and in a hurry, giving this Council only a few months to deal with it. We have made hard efforts to hold as many meetings as we can, meeting twice or thrice a week, but still, it is undeniable that some details can only be attended to by spending more time. Even though those issues had been discussed for years, some problems which have never been thought of may pop up. We need time to think these issues over, for without thorough consideration, the arrangement may cause a lot of troubles in future.

Naturally, at one stage, the Government itself also worried that some problems might have been overlooked. Thus, the Government once proposed that certain parts related to legal matters be exempt from implementation, which may be achieved by means of instructions of the Chief Executive in Council. Perhaps this only involves certain laws, but the Government still worried that some issues might have been overlooked, that it lacked in comprehensiveness and detailed consideration. But eventually, the Government thought that the existence of these parts might not necessarily boost the confidence of the public, and might carry blemishes in principle. The Government thus, in large measure, listened to the views of the Bills Committee and proposed the Bill.

Therefore, Deputy President, the Democratic Party and I will abstain in the vote on the Second Reading of the Bill, but this is the last thing we wish to do. I hope that in future, when any national law is to be applied in Hong Kong, the Government will follow the procedures in Annex III, and it should not further

extend the power stipulated in Article 20 of the Basic Law to make any exception.

MR TAM YIU-CHUNG (in Cantonese): Deputy President, the completion of the Shenzhen-Hong Kong Western Corridor (Western Corridor) is a major leap made in cross-boundary transport between Hong Kong and Guangdong. This new boundary crossing is completed 18 years after the commissioning of the Lok Ma Chau boundary crossing in 1989. Compared with the rapid economic and social development in the Mainland, it shows a failure on the part of Hong Kong to make plans early for facilitating economic integration with the Mainland in the '90s, and as a result, Hong Kong no longer has obvious advantages in logistics and shipping. In recent years, the SAR Government has made great efforts to catch up in promoting economic co-operation between Hong Kong and the Mainland. The Democratic Alliance for the Betterment and Progress of Hong Kong (DAB) supports this policy direction and so, we support the passage of this Bill today.

The development of a regional network is certainly important, but the Government must attach greater importance to the support provided by local road networks. Following the commissioning of the Western Corridor and the Deep Bay Link in July, the traffic flow in New Territories West is set to further increase. According to the Government's estimate, the daily vehicular flow will initially reach 29 800 vehicle trips after the commissioning of the Western Corridor and will increase to 47 100 vehicle trips four years later. The Government has consistently stressed that the road networks in Tuen Mun and Yuen Long have the capacity to cope with the volume of vehicular flow and so, it has no intention to map out plans to divert the expected increase in vehicular flow. This attitude of the Government is worrying, because the traffic capacity as set out in the road design is a rigid figure, as the actual vehicular flow on each road may change considerably depending on the time, direction of traffic, tolls, and so on. Added to this are the limitations in bottleneck zones. If the Government does not expeditiously draw up contingency and improvement plans, residents in Tuen Mun may have to face the nightmare of serious traffic congestion all the time. The road network in New Territories West is, in fact, most fragile, and one traffic accident can often paralyse the outbound traffic in the entire Tuen Mun district. On 7 April, for instance, the traffic accident on Tuen Mun Road led to a closure of all Kowloon-bound lanes on Tuen Mun Road, which

subsequently gave rise to traffic queues as long as 2 km, and traffic could resume normal only three hours later.

The extension and improvement works now being carried out by the Government on Tuen Mun Road will be completed in phases only in 2009 and 2012. For instance, the extension of the Tsing Tin Interchange will be completed in 2009, the extension of the Town Centre Section will be completed in 2010, whereas the Expressway Section will be completed only in 2012. In the next few years, these road sections will certainly have to be closed partially from time to time in order to meet the needs of the engineering works. In other words, the works cannot provide support to the commissioning of the Western Corridor and the Deep Bay Link and worse still, they might even aggravate the problem of traffic congestion.

The DAB has all along exerted our utmost to improve the traffic in Tuen Mun and Yuen Long and we have in recent years continuously urged the Government to implement a comprehensive range of traffic improvement proposals in Northwest New Territories. Here, we urge the Government once again to implement these measures early.

First, the Government should expeditiously work for a reduction of tolls for Route 3, with a view to diverting the expected increase in vehicular flow at the Western Corridor, in order not to add to the burden of Tuen Mun Road. Recently, news about the Route 3 operator planning to cease the concessionary tunnel tolls has been widely circulated. In other words, the tunnel tolls will increase significantly. Imagine: On one side there is the toll-free Tuen Mun Road and on the other side there is Route 3 which charges an expensive toll. To professional drivers or vehicle owners, which road link will they choose when they come from the Western Corridor? The answer cannot be more obvious. The Tuen Mun Road has been seriously congested, whereas Route 3 has a utilization rate of 40% only. The drivers have long cast their votes by the wheels. The use of Route 3 to divert the expected increase in vehicular flow is a measure capable of producing instant results and so, whether by way of acquisition of Route 3 or extension of the franchise to exchange for a toll reduction, the Government should expeditiously implement whatever measure as long as it can minimize the risks of traffic congestion on Tuen Mun Road.

Second, the Government should embark on the design and construction of the Tuen Mun Western Bypass and Tuen Mun-Chek Lap Kok Link earlier, so as

to provide cross-boundary vehicles with a direct road link from Tuen Mun West to the airport.

Third, the Government must expeditiously study and draw up plans for the design and construction of the Tuen Mun Eastern Bypass, in order to reduce the vehicular flow at the Town Centre Section on Tuen Mun Road. As there is not sufficient land space at the Town Centre Section, extension works are not feasible in some parts of this Section. It is, therefore, necessary to develop a new road, in order to fully resolve the problem.

The Government has since 2005 stressed that the development of new road projects and their implementation timetables will depend on the location, scope, progress, and expected traffic flow of various major development proposals in Northwest New Territories and on Lantau. However, time waits for nobody. The DAB hopes that the Government can take bold measures to enhance road development in Hong Kong, in order to create better conditions in infrastructure for the benefit of economic development.

Lastly, I would like to make two demands relating to the Western Corridor. Firstly, I hope that a driving time display system can be retrofitted at the Mainland to Hong Kong section of the Western Corridor, or on Tuen Mun Road, so that Hong Kong-bound drivers from the Mainland using the Western Corridor can know the situation of congestion on Tuen Mun Road early and hence choose the routes early. We hope that this electronic system can be helpful to them. In fact, similar display systems are also provided in many countries, including the Mainland, to assist users in choosing the right route. Secondly, efforts should be made to provide direct bus routes from Tin Shui Wai to the Port Area, rather than the proposed minibus routes, for the convenience of more residents.

Deputy President, the DAB hopes that in implementing this Ordinance, the Government will also endeavour to improve the matching transport facilities in Tuen Mun and Yuen Long. I so submit.

MS EMILY LAU (in Cantonese): Deputy President, I support the implementation of the co-location arrangement for customs and immigration clearance. I am not as lucky as you are, Deputy President, for I do not have a Home Visit Permit, so I cannot return to the Mainland. However, during the

scrutiny period of the Bill, with the assistance of the Secretary, we were able to visit the area for a few hours at a fee of $310.

However, Deputy President, as mentioned by Members speaking before me, the present Bill exposes to us certain problems, including problems related to the legal system, constitutional system and the judicial system, as well as that on transport support as mentioned by Mr TAM Yiu-chung. Actually, today, not only the Secretary for Security should be present, Secretary Dr Sarah LIAO and the Secretary for Justice, in particular, should also be here. As colleagues said, the present arrangement is unprecedented in history, so it is only natural that some people feel worried about this, Deputy President, for this is after all a novel arrangement.

But what about us? We have been most "marvelous". On 21 February, the First and Second Readings of the Bill were initiated, but on 25 April, its Second Reading debate is resumed. We have only five weeks in the interim, Deputy President, and 16 meetings have been convened. Frankly, some committees hold less than 16 meetings in a year. This may be attributed to the influence of Secretary Ambrose LEE. However, no one who has to attend 16 meetings within five weeks will be able to digest all the information.

Moreover, the matters involved are very complicated. I may not fully agree with the remarks made by Ms Margaret NG. She asked whether this Council had the competence and power to make laws for a place outside Hong Kong. In relation to Article 20 and Article 18 of the Basic Law, she queried whether the laws of Hong Kong, including laws on land, should be applicable to Shenzhen. All these issues need discussions, but we do not have the opportunity to do so — you give your opinion, I indicate my disagreement, and that is the end. Silence prevails in society, Deputy President. Usually, when we have meetings, as you also know, monumental scenes as in the "Ben-Hur" film will be seen, for many people will come to attend our meetings. But this time around, no matter how we begged around, few people came to attend the meetings.

The Bar Association had come and submitted submissions afterwards. As for The Law Society of Hong Kong (Law Society), I am not trying to denounce it, but I do have some opinions about it. For a Bill involving so many fundamental issues, how can it have no comments? I did raise the issue with individual members of Law Society, but they also said that they did not have any

opinions because they did not want to say anything. However, even if one gives no comments, it does not mean that he or she can shirk the responsibility when there is a problem. We will certainly be the first to bear the brunt. Deputy President, after the Bill has been passed into law, any serious congestion in Tuen Mun Road will lead to a gridlock along Tuen Mun Road, just like the situation at Cotton Tree Drive this morning. I believe meetings will be called immediately at that time, and we will then see striking scenes like those in the film "Ben-Hur". But then, the official attending the meeting will not be Secretary Ambrose LEE, but Secretary Dr Sarah LIAO.

However, once it is open to traffic, it will be subject to judicial review — nowadays, the public will do so if they find there is anything wrong, I thus think Directors of Bureau, Secretaries of Department and the Chief Executive should all think this over. If there is no solid foundation for their action, it will be challenged at different forums. By then, it will be too late. Therefore, the Bill should indeed be introduced earlier. I learn that there is a deadline for this piece of legislation, Deputy President. It is said that the corridor has to be commissioned on 1 July and that the State President, or other key figures, may attend.

However, the Government should give sufficient time to the legislature. It is unreasonable that 16 meetings have to be held within five weeks. Now, let me state clearly, first and foremost, the Government should not adopt the same approach in dealing with other Bills. I believe it may like to do so in handling the Bills on rail merger and housing. Therefore, Honourable colleagues should not allow our work to be carried out in such haste, leaving us no opportunity to digest nor discuss the issues concerned. This practice itself is a problem.

With regard to Article 18 para 3 of the Basic Law, I mentioned a number of times at the Bills Committee that the present approach was proposed by the authorities out of nowhere. Actually, in the Preamble, it is the decision of the Central Authorities, but the authorities have not mentioned this. In fact, it is most desirable that decisions made by the Central Authorities be left to the Central Authorities to explain and decide as to which article in the Basic Law this should be handled. It may say, "Do you think I will tell you?" But if you do not tell us, it will arouse many disputes. Besides, it does not mean that it will be acceptable just because we are told so. Everything should still follow the required and established procedures. But now, it says nothing except that the NPCSC has made a decision. People then ask whether or not the decision is a

national law. The Bar Association says that it is not. But, nay, the authorities have to say that it is. The authorities say the decision is definitely a national law. However, it is not handled according to Article 18, but it is based on Article 20 to confer more power on the SAR Government. Nevertheless, it is a national law.

Deputy President, it has been almost 10 years since the reunification. "One country, two systems" is a principle the people of Hong Kong hold so dear. Some people of Hong Kong may say that we are still under the rule of China, but we still have things belonging to us: the rule of law, freedom and institutions in Hong Kong. We hope that we can maintain and preserve these things. Why Article 18, in particular Article 18 para 3, was included in the Basic Law when it was enacted? The objective is to set up a firewall, a mechanism to guard against the arbitrary implementation of mainland laws in Hong Kong. Otherwise, "one country, two systems" will just vanish and be reduced to "one country, one system". Article 18 is thus of the utmost importance. However, the authorities dare to state openly now that it is acting in accordance with Article 18 para 3, yet an inclusion in Annex III is not required. I think this approach is provocative.

Article 20 is mentioned, but Article 20 is a different issue. You decline the inclusion of the decision and do not act in accordance with the provision laid down, but yet you insist that the decision is a national law. In that case, you may in future present another piece of law saying that it is also a national law, you may again implement it in Hong Kong and again do not act in accordance with the Basic Law. By then, you will say that a national law, which has not been handled in accordance with the Basic Law, has been endorsed by Members and passed by the Legislative Council on 25 April 2007, and that many Members supported it. At that time, Deputy President, the "one evil deed is no different from two" theory, so to speak, will be quoted. I think it is not so good. I believe neither does the Secretary for Security want to such thing. So, how can we accept this now? I think there is no need to do that.

The Bar Association proposes that provisions in the Bill should not be described as national laws, but the lawyers of the Government insist so. Worse still, the Secretary for Justice has not come here today to explain the case. This issue should not be explained by the Secretary for Security, and in fact, he also needs to understand the definition of national laws. It is something the Secretary for Justice should do. So, I feel really sorry about it. He was here earlier, and I thought he would listen and participate in the debate, but now he is

not even here in attendance. Indeed the authorities are now sending the following message to the public: Do we have Article 18? Do you think that article can safeguard "one country, two systems"? Are you not dreaming? Hong Kong has been reunited with China for less than 10 years, I am now going to challenge you, and I will challenge "one country, two systems".

I think this situation is most unpalatable and I consider it completely unnecessary. You say other provisions have to be identified, but not a single provision is applicable. These matters are in no way controversial, but you play them up and stir up a controversy for no reason. Deputy President, you may remember 1 July 2003. Why did so many people take to the streets on that day? It was because our institutions were being challenged, our freedom and the rule of law were being challenged. The situation this time is not bad, for only a few people have expressed opinions. I can swear to it that if you go out and ask 10 000 people about this issue, all of them will say they know nothing about it. No one knows the legislation has been so enacted.

But once the legislation is enacted, a precedent is set. What is Article 18 para 3 about? I do not know, but the Legislative Council also turns a blind eye to it. Nevertheless, the authorities, of their own accord, did say that it was a national law, but the process stipulated in the Basic Law did not have to be followed. If things are done this way, we can simply cease to work.

If the Government says that it is not a national law, just as the Bar Association does, the present disputes may be avoided. But the Government maintains its stance. Actually, the Central Authorities have said nothing about this. The Government just speaks for the Central Authorities. I believe when Donald TSANG visits Beijing in future, he will probably be reprimanded: When were you told to do so? Why did you stir up such a great controversy in Hong Kong?

Therefore, I advise the Central Authorities, if they need to do anything — I am not asking you not to trust the SAR Government — they had better state it clearly in writing. The Central Authorities should state according to which article of the Basic Law do they act, what issues they are dealing with and whether it is a national law. They should state everything clearly. If so, there will not be so many disputes in Hong Kong. But definitely, the Central Authorities should observe the Basic Law and honour its words. Therefore, Deputy President, I can in no way support this.

With regard to the big traffic congestion, it is really an important issue. Some people may consider the administration of justice dispensable given the prosperity in Hong Kong, for they think it will be fine as long as they can make more money. In fact, without a judicial system, without this ultimate and most important core value, do you think we can still make money? As for the impact on the transport front, it will take its toll very soon. Earlier on, some colleagues mentioned a motion carried after amendment on 8 March last year and that none of the issues under the motion had been followed up, Deputy President. This Friday, the Panel on Transport will discuss these issues at its meeting. However, the other day, when we discussed the Budget at a special meeting of the Finance Committee, officials in charge of transport matters said that somethings were in the pipeline, some would soon be carried out, but none had been completed.

On 8 March last year, we requested the Government to formulate some measures as soon as possible. What were those measures? That was to request the franchisee of Route 3 to set its toll at a reasonable level. But it was mentioned earlier that there might be a toll rise. It is just like when you ask someone to go east, he just goes the opposite. I wonder if the franchisee of Route is deliberately confronting the Government, or that it hopes to see the stepping down of certain officials before 1 July. Moreover, the construction of connecting roads, the widening of Tuen Mun Road, and all kinds of work have not yet been started.

One last thing that should be done is to set the fare of railway transport at a more reasonable level. However, this issue is now bundled up with the Bill, and when this can be achieved remains an unknown. Nevertheless, that Secretary may not be as influential as this Secretary who managed to ask Members to complete the scrutiny of such a complicated Bill in five weeks. Therefore, we still have worries about transportation. I wonder what Secretary Ambrose LEE can say later, for this is not within his purview, but he has to say something.

A couple of weeks later, the corridor will open to traffic. If anything happens after that, it will cause significant problems. The situation at Cotton Tree Drive this morning is a case in point, for a minor accident alone already caused serious traffic congestion. In future, if anything happens — in fact, people are using Tuen Mun Road at normal time for the road is toll-free. Therefore, in different aspects, be it legislation or transportation facilities, there are still a lot of inadequacies.

Lastly, I would like to talk about the insurance issue, Deputy President. With regard to the present arrangement made between the Government and the insurance sector, I myself consider it acceptable. I understand Mr TO's proposal. If the authorities accept this option and Members do agree to do so, I surely have no objection. However, I also notice one point. They said if we were to follow Mr TO's proposal in the legislation, discussions had to be held afresh. By then, Mr TO may perhaps explain his proposal in detail in his speech.

The present arrangement is only an interim measure, for the issue will be dealt with in new insurance policies. This morning, I enquired the Insurance Authority again about this issue and learnt that of the existing 180-odd insurance companies in Hong Kong, the policies of some 60 of them might involve that area. According to the information I have, the Secretary may reaffirm this later, all insurance companies holding this type of insurance policies have agreed in principle to join the market agreement. They have not yet signed the agreement pending the completion of certain procedures, and perhaps the Secretary may give a clear explanation of the technical problems involved later on. Anyway, they have all agreed. Certainly, a Member mentioned earlier that this arrangement was not the first of its kind, and similar arrangements had been made for motor insurance and employee's compensation insurance. Personally, I think I will support the present arrangement. I surely hope that nothing will happen. Actually, nowadays, it is really difficult to give support to the Government. Once you support it, you will shudder at every step you take. I wonder how the pro-government camp can remain so composed. However, I think one should approve the right, and denounce the wrong. I thus consider the arrangement does not involve any major problem. But even if this point is worthy of support, the Bill comes as a blow on the transportation and judicial fronts.

So, it is most regrettable. As colleagues said, originally, we all considered that it was a good thing to do and we would support it, but for unknown reasons, the present approach was adopted in the course and rectification was turned down. I have to reiterate, I do not want to hear the authorities cite the present case as an example where a national law is not handled according to the Basic Law when it tries to present other laws in future and do not follow the Basic Law. I believe if it does happen, there will inevitably be a fight. I so submit.

MR ALBERT CHAN (in Cantonese): Deputy President, I am not a member of the Bills Committee on Shenzhen Bay Port Hong Kong Port Area Bill. I did not join this Bill Committee for I first thought that this Bill was basically very simple. I thought that there should not be much controversy over it and that it would be endorsed by this Council, as it involved the provision of a new border control point, and the location as well as other relevant issues had been discussed for a very long time.

However, over the past two weeks, I have listened to the opinions of many members. Members of the pro-democracy camp also made reports and conducted discussion on this Bill at luncheon meetings. I have listened to the entire debate and today, I have also listened very carefully to the speeches made by many members and in particular, the many issues reported by Mr LAU Kong-wah in his capacity as Chairman of the Bills Committee, and I have also read the whole report. I feel very sorry and regrettable because we should be very happy about this Bill which should be endorsed unanimously by the Legislative Council, but this Bill has nonetheless given rise to political or constitutional disputes and on many issues, there have been many co-ordination gaps translated into livelihood and transport problems. After careful consideration, I think this fully reflects a lack of communication in the entire administrative structure of the Government, that is, between various bureaux and departments, and it also reflects their detachment from reality. I wonder if this is the product or side-effect of the accountability system introduced by TUNG Chee-hwa. As we all know, the Government used to operate under a system of collective responsibility, and on issues involving legislation or various bureaux, there would certainly be co-ordination and this would be done according to the established mechanism. But after the introduction of the accountability system, policies are basically within the responsibility of the accountable Bureau Directors. Since this Bill is related to the Security Bureau, the Secretary for Security is, therefore, invited to come to this Council today, whereas other bureaux can stay aloof from this, for this is the business of the Security Bureau and if there is any problem, it should be taken care of by the Security Bureau and has nothing to do with them. If a power struggle is involved, everyone would only wish to see the others die. I hope that this will not happen in the offices of the three Secretaries for Department and 11 Directors of Bureaux.

But even if they do not wish to see the others die, they would not give any back-up or support either. When the Financial Secretary delivered the Budget,

apart from the Chief Secretary for Administration, many Bureau Directors attended the meeting to show their support. But today, the Secretary for Security is basically facing all the contentions and debate alone. As we can see, the discussion today actually involves four major policy areas. Certainly, the Security Bureau does have a part to play, and it has a major part to play too, as this Bill is within the remit of his Bureau, and they had worked very efficiently to bring about many meetings in a short period of time, and in the twinkling of an eye, the Second and Third Readings of the Bill will be completed. As for problems involving the constitutional system, transport and insurance, a number of Members have spoken on them, so I do not wish to repeat what they have said. Theoretically and conceptually, I very much agree with the points made by James TO and Margaret NG in relation to the legal and insurance issues. On the transport front, as Ms Emily LAU said earlier, she is a Member representing New Territories East but as she has lived in New Territories West for a very long time, she is well in the problems in New Territories West. As she used Tuen Mun Road every day in the past, I think she knows the traffic situation in New Territories West even better than the elected Members representing New Territories West.

Deputy President, the traffic problem has actually been discussed for many years, and since the Government started to think about developments at Shenzhen Bay and Shekou, this problem has been discussed on many occasions. Members may recall that Route 10 was discussed in the '90s. Indeed, Route 10 is a solution to the traffic problem at Shenzhen Bay but much to our regret, because of the lobbying by the plutocrats, the "pro-government party" rejected the Government's funding application and Route 10 was finally voted down. Should traffic congestion occur on Tuen Mun Road after the commissioning of the Shenzhen Bay boundary crossing, those Members and political parties opposing Route 10 then would be the chief culprit, and this has all been put down in record. If we have to trace the responsibility, those Members who voted down Route 10 back then should be held responsible.

Obviously, the Government is unwilling to propose the development of a new land crossing. Many Members have suggested that if the Government refused to construct Route 10, then it must construct the Tuen Mun Eastern and Western Bypasses. Many Members made a proposal which is even tantamount to giving money to the Route 3 operator as they requested the construction of a special access to link up with Route 3 at the exit of Shenzhen Bay Port Area in Tin Shui Wai. However, this has mostly remained at the stage of discussion,

and the Government has not completed any specific improvement works so far. Although proposals have been put forward and in particular, specific traffic diversion proposals have been made for the section near Yaohan and the town centre on Tuen Mun Road, they absolutely cannot address the problem of congestion resulted from an increase in vehicular flow after the commissioning of the Shenzhen Bay Port. These proposals will not solve the problem and worse still, I have heard recently that the Route 3 operator will seek approval for a toll increase on the ground that they suffer a loss of hundreds of million dollars per annum. They said that as a loss is recorded every year and as the interest is high, the company is still in the red. This is taking advantage of other people's disadvantages. The company should reduce the tolls, so that more vehicles will be attracted to use Route 3 rather than using Tuen Mun Road regularly. Although the growth of vehicular flow may not be very high initially after the commissioning of the boundary crossing, it will in one way or another cause the overall traffic flow in New Territories West to……some vehicles using the roads in New Territories East may turn to New Territories West and this will certainly lead to an increase in traffic on Tuen Mun Road. No specific improvement measure has been implemented so far, despite that discussions have been held for a long time on, among other things, the extension of the franchise of the Route 3 company to ease the pressure of a toll reduction on the company. Yet, I oppose an extension of its franchise. Extending the company's franchise to operate Route 3 is basically tantamount to prolonging the sufferings by allowing it to seize the opportunity to reap even more profit unscrupulously. I think this will not do any good to the public and all the parties concerned. If no solution can be identified, I would suggest that the Government might as well acquire the company and that would be the best, right? This can be done according to its cost since it is operating at a loss anyway, and acquisition can be proceeded with in accordance with the principle of public interest. Moreover, the Government has adopted this approach many times before. Whether it is through the Land Development Corporation or the Urban Renewal Authority, the Government can resume land on the ground of public interest. But it seems that the Government has no intention to do this and so, some fast knots which are impossible to untie have been formed. In fact, upon the commissioning of the new border control point, all these problems should have been handled altogether, but it appears that no Policy Bureau is made responsible for co-ordination and as a result, they have worked separately in their own ways.

What is more unsatisfactory and regrettable is that, when all modes of transport should be happy about the commissioning of the new crossing, the fact

is that they are not. Hong Kong seems to have a characteristic and that is, a good thing will turn into a bad thing. Something which should be a cause for universal rejoicing will turn out to be an occasion for denunciation and condemnation. The commissioning of the new crossing has led to rivalries and disputes among various trades and industries, as the taxis are dissatisfied, and so are the minibuses, and there are also disputes between cross-boundary franchise buses and non-franchise buses over their benefits or the divergence of opinions, thus giving rise to a new struggle.

In fact, these issues should be properly dealt with when planning large-scale infrastructure or making a decision, but this is often not the case. Instead, work is carried out hastily at the eleventh hour. The Lok Ma Chau Spur Line is a case in point. All the documents had been tabled at the Legislative Council seeking funding and approval for the Lok Ma Chau railway project, and the whole plan had been worked out. At that time, I was the first in the committee to say that it was impossible not to provide any transport link for such a large-scale infrastructure project. The overall planning of the Government at that time — which was many years ago — was that all the passengers should travel by rail, while buses, taxis and minibuses were not allowed to access the railway station. Finally, it was after severe criticisms from Members that the Transport Bureau, as if it had suddenly awakened from a dream, asked the Security Bureau to reconsider this policy issue. It is because according to the reply that we were given back then, this was the policy of the Security Bureau; all these stations involved communication between Hong Kong and the Mainland, and at that time, the policy of the '60s vintage still prevailed whereby vehicles were not allowed to access the border control points. This is most ridiculous and when these issues were discussed at that time, the Government still maintained the security policy of the Hong Kong-British Government during the era of the Cultural Revolution in the '60s, although it was already 2003-2004. Later, amendments were made after a review. But on these issues, the bureaux often do not progress with the time. For half of the time they are like awakening from a dream, feeling lost and even living without knowing what is actually happening. As a result, many policies closely related to the public are not amended in a proper and timely manner to enable the relevant developments to complement each other.

Deputy President, the problem before us now, and the many conflicts, differences in opinions and shortcomings arising from this Bill today are

precisely a reflection of defective communication and co-operation in the administrative structure comprising three Secretaries of Departments and 11 Bureau Directors of the Hong Kong Government. This could not be clearer. These issues, which are very simple and which the Government should be able to handle, have not been dealt with at all. Certainly, finance is a major consideration. Many Members, especially Ms Emily LAU, criticized that many transport measures are not put into practice because it usually takes three to five years to make transport planning. As Members must remember very clearly, between 2000 and 2004 the Financial Secretary substantially cut many projects and distributed "big envelopes" to departments. If the department's expenditure exceeded the figure in the "big envelope", the department would have to solve the problem on its own. For this reason, many matching facilities could not be implemented and as a result, in respect of transport, we have to bear the financial consequence and face the problem of traffic congestion.

Therefore, Deputy President, on this issue, the League of Social Democrats certainly supports the commissioning of the new crossing and we are glad to see another boundary crossing insofar as Hong Kong-Mainland development is concerned. Of course, many members of the League of Social Democrats still do not have a Home Visit Permit to cross the boundary via these boundary crossings reasonably and legitimately. But when we see that this Bill involves problems in the four policy areas just mentioned by me, namely, security, constitutional system, transport and insurance, and when there are still so many grey areas or issues which give cause for concern, the League of Social Democrats cannot support the Second Reading of the Bill and the subsequent motions. Thank you, Deputy President.

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

MR HOWARD YOUNG (in Cantonese): Deputy President, the "11th Five-Year Plan" announced by the State in March last year had for the first time incorporated Hong Kong into the general framework of development. Apart from supporting Hong Kong to maintain its international financial and trade development, it also explicitly stated that Hong Kong should continue to develop into a shipping and logistics centre, stressing the need to consolidate the existing advantages while at the same time seeking new opportunities for development.

The Hong Kong-Shenzhen Western Corridor (Western Corridor), a highlight of the commemoration of the 10th anniversary of Hong Kong's reunification with the Motherland, will be officially commissioned in July this year. Not only can this enhance Hong Kong's stimulation and facilitation to the mainland economy, the flow of people and cargo between Hong Kong and Guangdong will also increase in scale, while exchanges and transport can also be more convenient, thus enabling the general pattern of Pan-Pearl River Delta Region co-operation to gradually take shape, which is indeed beneficial to both places.

The smooth operation of the Western Corridor will not only open a new crossing for cross-boundary traffic, but also help relieve the traffic pressure on the three existing major land crossings. After the passage of the Shenzhen Bay Port Hong Kong Port Area Bill, co-location arrangement for customs and immigration clearance will be implemented at the new Port, and this will be a major policy which is unprecedented in Hong Kong and the Mainland. With the implementation of the co-location arrangement, the time required for travellers to complete immigration and customs clearance can be shortened by five to 15 minutes, and they do not have to get on and off the vehicle with their luggage twice for immigration and customs clearance as they are currently required to do at the Huanggang Control Point. Instead, when travellers get off the vehicle at the Shenzhen Bay Port, they only have to proceed to the Joint Inspection Building where they can complete the exit and entry formalities. Immigration and customs clearance will be more expedient than before, thus saving time and resources.

Although the co-location arrangement that we are talking about now will only reduce the number of times that travellers are required to get on and off the vehicle, unlike the practices adopted in Britain or the United States where there is only entry control but not exit control, as immigration clearance is required for travellers entering and leaving the territory under the immigration law in Hong Kong, the co-location arrangement to be implemented at Shenzhen Bay Port is still a new arrangement and a progress to Hong Kong. We hope that this *modus operandi*, if implemented successfully, can serve as an example for other crossings to follow in future, so that such co-location arrangement can be extended to more checkpoints and hence further promote the development of Hong Kong and the Mainland.

Moreover, the completion of the Western Corridor signifies ultimate achievements made in respect of the planning of works, policy and regulations, land lease, as well as the process of consultation and reconciliation. It has enabled many experiences to be accumulated, a pattern of co-operation and communication to be established and a foundation to be laid for more effective co-operation between Hong Kong and the Mainland in future, and we hope that this will, in turn, expedite the completion of infrastructure projects involving Hong Kong and the Mainland in future.

Given that this is an unprecedented mode of boundary control management, inevitably there will be problems that need to be tackled, such as third party insurance for vehicles and employees compensation in the Hong Kong Port Area. As the insurance policies do not include the Hong Kong Port Area, there will be problems concerning the coverage of compensation. However, all relevant insurers have expressed a willingness to extend the coverage of their policies to the Shenzhen Bay Port Hong Kong Port Area by means of a market agreement.

Some people may be worried that such an agreement may not provide sufficient protection to policy holders. But I wish to point out that the Government already stated that the agreement will be executed between the Government and the insurers through the Office of the Commissioner of Insurance, and the agreement, which will be legally binding, will be made known to the public extensively.

Non-compliance with the market agreement by an insurer will not only affect the insurer's reputation. Its integrity will even be challenged, and insurance companies do rely heavily on their reputation and integrity in their operation. Meanwhile, the Government said that there had been precedents of such market agreement arrangement and that they were proven very effective. The Liberal Party has all along upheld the principle of minimal legislation, in order to prevent unnecessary intervention in the free market. Since all the insurance companies have agreed to sign the agreement and the agreement will have an actual regulatory effect on insurance companies, is it still necessary for us to make a superfluous move by enacting legislation as a solution to everything? Moreover, in the event of disputes over compensation, the Office of the Commissioner of Insurance will be prepared to assist the policy holders. Therefore, the Liberal Party cannot support Mr James TO's amendment.

Lastly, I would like to express some views on the traffic at Shenzhen Bay Port. Now, the Government only has plans to provide two franchised bus routes serving Yuen Long and Tuen Mun, and also one green minibus route to and from Tin Shui Wai. Although there will also be services provided by urban and New Territories taxis, it seems that public transport service is still inadequate. In order to provide more choices, different stakeholders have different views as to whether the Government should only allow franchised buses to provide service or it should only allow cross-boundary coaches rather than local shuttle buses to access the area. But at least, I know that many members of the tourism sector opine that non-franchised buses should also be allowed to access the control point, in order to provide better tourism services. In view of this, I hope that the Government will conduct a review not too long after the commissioning of the corridor.

In my capacity as a member of the Bills Committee, I have paid a visit to the Shenzhen Bay Port together with other members of the Bills Committee. I think the control point and the public transport interchange are too small in size, and the number of parking spaces for coaches also seems to be inadequate. I am concerned that this will fail to meet the demand of the rapid increase in vehicular flow in the future. Therefore, I hope that the Government can duly make arrangements, especially giving consideration to increasing the number of parking spaces for coaches during peak hours.

All in all, we hope that with the commissioning of the Western Corridor, Hong Kong-Mainland co-operation and development will scale new heights. We think that not only the Western Corridor, but also the Hong Kong-Zhuhai-Macao Bridge, the Guangdong-Shenzhen-Hong Kong Express Rail Link, and so on, to be completed in future can draw Hong Kong and the Mainland even closer and hence further open up a thoroughfare for Hong Kong and the Mainland to join hands in pursuing development.

I so submit.

(THE PRESIDENT resumed the Chair)

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

MRS SELINA CHOW (in Cantonese): President, I heard many colleagues mention the Western Corridor earlier on. Certainly, I understand that there were different opinions during the discussion of the Bills Committee, but I believe that to a great majority of Hong Kong people, the development of this new Western Corridor is good news, and I also believe many people hope to see the early commissioning of the Western Corridor.

Many colleagues have had the opportunity to visit this boundary crossing. So have I, and I was very excited. When we saw that bridge extending all the way to the Mainland, we could imagine that the flow of people and vehicles between Hong Kong and the Mainland would be very efficient and expedient in future. Insofar as this very useful crossing is concerned, I think we certainly feel excited seeing its completion because it is brand new, and after the commissioning of the corridor, I believe many people will also benefit from it. Whether from the perspective of work, entertainment or tourism, I think this crossing is still good news to us. We all welcome it, and we very much hope that this crossing will come into operation early.

We have heard many speeches here earlier on. Some colleagues have different views on some legal issues, and I think this will never cease to happen in this Council as this happens whenever legislation is examined. However, I always hear some colleagues express dissatisfaction on certain issues, and this is not the first time that I have heard this. Over the years, I have always heard them say that time is not enough, that they are really not given enough time, and so on. But I think insofar as our work is concerned, the most important thing is not to consider how many weeks or how many months or how many hours are left, or how many meetings have been held, but whether or not the subject matter concerned has been thoroughly discussed at the meetings, and whether or not we, being Members, have the opportunity to put forward our views and whether the Government has the opportunity to consider and respond to these views or not. I think these are more important. In other words, in the relevant process and procedures, Members should be given sufficient opportunity to consider the legislation. Some organizations might not have come to the meetings — Ms Emily LAU asked earlier why The Law Society of Hong Kong had not sent its representatives to the meetings. But it is not the case that everyone will have very strong views on this issue, and not everyone must oppose it or come forth to support it. Not really. If Members think that the Bill does not have any big problem, they may not attend the meetings to express their views, and if that is the case, I think there is no reason to blame them.

Having said that, however, I think we must still focus mainly on two points: First, is it a good thing? Second, should we do it as soon as possible? I think many people do share this view. Besides, this is a good thing indeed, and I have already explained this earlier. However, there will certainly be changes in our life, and even though we may not actually feel these changes now, I think we will feel them more deeply after the commissioning of the crossing.

As regards traffic in New Territories West, I do not wish to talk about it. We have really talked about it for many times and I do not wish to repeat the points again and again. In fact, we do not see eye to eye with the transport authorities. Members have reflected in unison the concern of the residents, as well as the concern of drivers who are frequent users of the roads, pointing out that the traffic there will be very congested. However, the Transport Department or the Bureau had always produced statistics to show a different method of calculation. It is very difficult for us to argue with them, but the problem is that the Government's calculation has always been wrong and so, we do not have much confidence in it.

But insofar as this case is concerned, we can see that as the corridor will actually be very convenient, it is set to attract many vehicles to use it. Then can we cite some statistics to argue with the transport authorities? It is indeed difficult. From Members' angle, it is difficult to do so. But we are very, very worried about this indeed. Members pointed out earlier that over the past few years, we have continuously urged the Government to enhance the strength of the measures but the Government seemed to be always dragging its feet. I do not know why, and perhaps it was partly because the Government was facing financial problems, but the Government always seemed to be unable to understand the problems faced or envisaged by the public.

For this reason, I very much hope that the Government can earnestly target actions at the actual situation. The Western Corridor will be commissioned on 1 July. We hope that we can obtain the actual statistics very soon. In all fairness, it is not true to say that the authorities have done nothing at all because the authorities have, after all, done something in Tuen Mun, just that it is inadequate to residents in the district. Furthermore, this is not just the problem of one district, for the entire New Territories West and even all the places along the corridor leading to the urban area may also be affected.

Although Secretary Dr Sarah LIAO is not in attendance today, Secretary Ambrose LEE, who is here in this Chamber, can listen to our opinions on behalf of Dr LIAO. Here, I would like to urge the Government to take actions, and I hope Dr LIAO will earnestly implement the measures, rather than just presenting statistics calculated by the computer to fend off challenges from Members. I hope that Secretary Ambrose LEE can convey this message to the Government, and I hope that the authorities will earnestly monitor the actual situation, so that the residents can see that the authorities have indeed sensed the urgency of the people. As for many other problems, I think no matter how worried we are today, we can have a clear picture only after the corridor has come into actual operation.

But finally, President, I strongly believe that the early commissioning of the Western Corridor will be beneficial to the public, and it is also what the public will wish to see. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, I now call upon the Secretary for Security to reply.

SECRETARY FOR SECURITY (in Cantonese): Madam President, first of all, I wish to thank the Chairman of the Bills Committee on Shenzhen Bay Port Hong Kong Port Area Bill (Bills Committee), Mr LAU Kong-wah, and its Deputy Chairman, Mr KWONG Chi-kin, as well as other members.

Although the Bills Committee had spent only one and a half months on the scrutiny of the Shenzhen Bay Port Hong Kong Port Area Bill (the Bill), the whole scrutiny process was conducted in a very detailed and serious manner. I think we should focus on efficiency, rather than judging the effectiveness of the scrutiny of the Bill from the length of the time spent on discussion.

The Bills Committee has worked very hard in its deliberations and held a total of 16 meetings. In the course of scrutiny, the Bills Committee invited the

organizations concerned, including the Hong Kong Federation of Insurers (HKFI), the Hong Kong Bar Association (the Bar) and The Law Society of Hong Kong (Law Society), to express their opinions and participate in discussions. The Bills Committee, together with members of the Panel on Security and Panel on Transport, also made a site visit to the proposed Hong Kong Port Area at the Shenzhen Bay Port, in order to understand the operation of the border control point where the co-location arrangement for customs and immigration clearance would be implemented as well as the matching facilities.

To support the scrutiny of the Bill, the Security Bureau and the Department of Justice, as well as many government departments including the Environment, Transport and Works Bureau, Transport Department, Highways Department, Planning Department, Office of the Commissioner of Insurance, Immigration Department, Customs and Excise Department, Hong Kong Police Force, Fire Services Department and Environmental Protection Department, have sent representatives to the meetings of the Bills Committee or the site visit, providing detailed explanation on the various arrangements and answering members' questions one by one.

Having gained a full understanding of the relevant arrangements, the Bills Committee provided a lot of valuable input which enabled the Bill to be further improved. Almost all of our Committee stage amendments are proposed in response to the views of the Bills Committee.

The issues mentioned by Members earlier have been thoroughly discussed at meetings of the Bills Committee. Now, I wish to reiterate the Government's position.

On such constitutional issues as the legal basis for enacting the Bill and the constitutional basis of the decision of the Standing Committee of the National People's Congress (NPCSC) in authorizing the Hong Kong Special Administrative Region (SAR) to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port, the Department of Justice already explained them in detail during the scrutiny of the Bill by the Bills Committee.

The Shenzhen Bay Port is located at Shekou in Shenzhen. Under the co-location arrangement, the SAR will exercise jurisdiction over the Hong Kong Port Area within the Shenzhen Bay Port according to the laws of Hong Kong. However, this jurisdictional arrangement cannot be unilaterally effected without

additional authorization by the Central Authorities. Against this background, the NPCSC decided on 31 October 2006 to authorize the SAR to exercise jurisdiction over the Hong Kong Port Area according to the laws of Hong Kong from the day on which the Shenzhen Bay Port commences operation.

The authorization was given by the NPCSC by virtue of its power under the Constitution of our country. Article 57 of the Constitution provides that the National People's Congress (NPC) is the highest organ of state power. Its permanent body is the NPCSC. Article 58 of the Constitution provides that the NPC and the NPCSC exercise the legislative power of the State.

Under Article 20 of the Basic Law, the SAR is competent to acquire and exercise the powers granted to it under the NPCSC's Decision. This Article provides that the SAR may enjoy other powers granted to it by the NPC, the NPCSC or the Central People's Government. In other words, Article 20 of the Basic Law enables additional powers to be delegated to the SAR by the Central Authorities if and when appropriate.

In his "Explanations on the Proposal for Authorizing the Hong Kong Special Administrative Region to Administer the Hong Kong Port Area at the Shenzhen Bay Port" delivered at the 23rd session of the Standing Committee of the 10th NPC on 22 August 2006, Mr CHEN Zuoer, Deputy Director of the Hong Kong and Macao Affairs Office, State Council, considered that a decision made by the NPCSC for the purpose of the co-location arrangement has a legal status-cum-authority which is most sufficient according to the Constitution.

There are no provisions in the Basic Law which expressly prohibit the legislature of the SAR from legislating extra-territorially. Article 2 of the Basic Law authorizes the SAR to exercise, *inter alia*, legislative power in accordance with the Basic Law. Article 17 further provides that the SAR has legislative power. Article 73 empowers the Legislative Council to make laws in accordance with the Basic Law and the legal procedures. By its decision dated 31 October 2006, the NPCSC authorized the SAR to exercise jurisdiction over the Hong Kong Port Area in the Shenzhen Bay Port according to the laws of the SAR from the day on which the Shenzhen Bay Port commences operation. The Bill seeks to extend the application of Hong Kong laws to the Hong Kong Port Area pursuant to the NPCSC's Decision. The SAR, under Article 20 of the Basic Law, is competent to acquire and exercise the powers granted to it under

the NPCSC's Decision. Hence, we consider that there is no doubt that the SAR, by virtue of the NPCSC's Decision, has legislative competence to enact the Bill.

When participating in the discussion of the Bills Committee, the Bar did not question the Legislative Council's legislative competence in respect of the Hong Kong Port Area at all. The Bar is of the view that according to the NPCSC's Decision, it is the SAR (with all its powers and authorities) that has jurisdiction over the Hong Kong Port Area. The SAR thus may exercise the powers granted to it under the Basic Law (including the legislative power) in respect of the Hong Kong Port Area. Such jurisdiction is to be exercised in accordance with the laws of the SAR. By necessary implication, the SAR may legislate in respect of the Hong Kong Port Area, including enacting the Bill, the intended extent of which is the Hong Kong Port Area.

Earlier on, some Members queried whether the NPCSC's Decision is a national law. They considered that if the NPCSC's Decision is a national law, it should be included in Annex III in accordance with Article 18 para 3 of the Basic Law.

The legal opinion of the Department of Justice is that the NPCSC's Decision should be regarded as a "law" under the mainland legal system. As the NPCSC's Decision in substance provides for a port area in Shenzhen where Hong Kong laws will apply to the exclusion of mainland laws, it is normative in nature. Since it has legal force throughout the country, it is a national law. However, the SAR Government and the Bar share the view that there is no need for the NPCSC's Decision to be included in Annex III for application in the SAR on the ground that it is not to be applied in the SAR under Article 18 of the Basic Law. The reason is that notwithstanding the lease contract for State-owned land signed between Shenzhen and Hong Kong, the Hong Kong Port Area remains not part of the SAR.

The NPCSC's Decision was intended to confer additional powers on the SAR, so that it may exercise its jurisdiction over the Hong Kong Port Area in accordance with Hong Kong laws. Whether the intended effect of the NPCSC's Decision can be achieved would hinge on whether the NPCSC's Decision is validly made, and whether the SAR is competent to acquire the additional powers conferred. The NPCSC's Decision was validly made by the NPCSC according to its powers under the Constitution of our country, and the SAR is competent to acquire the additional powers conferred on it under Article 20 of the Basic Law.

The Department of Justice has explained repeatedly to the Bills Committee that the effective operation of the NPCSC's Decision is not conditional upon its inclusion in Annex III to the Basic Law.

I wish to stress here that the SAR is competent to acquire additional powers from the Central Authorities under Article 20 of the Basic Law. The SAR Government must exercise these additional powers in accordance with the Basic Law, and we will not, and I stress, will not, deprive the SAR of its rights protected by the Basic Law.

There is the view that discussion on the Central Authorities' authorization for the co-location arrangement was inadequate. I wish to respond to this point.

In fact, as early as in January 2006 we officially wrote to the Bar and Law Society to consult them on the legislative proposals on the co-location arrangement. In its reply dated February 2006, the Bar put forward their views on the arrangement for the Central Authorities' authorization. The Bar pointed out that under Article 20 of the Basic Law, the SAR may enjoy other powers conferred on it by the NPC, NPCSC and the Central People's Government. The Bar also considered that as the powers conferred on the SAR under the present arrangement may include legislative powers, the NPCSC is the appropriate authorizing organ.

In March 2006, we consulted the Panel on Security on the legislative proposals on the co-location arrangement, and the arrangement for the Central Authorities' authorization was also discussed at the time. There was the view that the Central Authorities should make an authorization by legal means. The authorization now made by the Central Authorities is fully consistent with this view.

In August and October 2006, the NPCSC examined the motion authorizing the SAR to exercise jurisdiction over the Hong Kong Port Area at the Shenzhen Bay Port. The motion and the discussion were also made public. A point worth noting is that Mr CHEN Zuoer, Deputy Director of the Hong Kong and Macao Affairs Office, State Council, in his "Explanations on the Proposal for Authorizing the Hong Kong Special Administrative Region to Administer the Hong Kong Port Area at the Shenzhen Bay Port" delivered at the 23rd session of the Standing Committee of the 10th NPC on 22 August 2006, mentioned that it

would be more appropriate for the NPCSC to make an authorization by way of a decision at the request of the SAR Government.

I must stress that the arrangement for authorizing the co-location arrangement has been discussed on various occasions, and the details have also been explained openly. When considering making a decision for the purpose of authorization, the Central Authorities have consulted the views of the SAR Government, and the SAR Government has also reflected to the Central Authorities the views expressed by the Panel on Security and other organizations concerned, such as the Bar.

In the course of scrutiny of the Bill, Members have expressed many views on traffic and transport, especially public transport arrangement at the Shenzhen Bay Port, and the impact on traffic in Northwest New Territories to be brought by the new port. The Panel on Transport has been following up the relevant arrangements. Representatives of the Environment, Transport and Works Bureau and other relevant government departments have explained the relevant arrangements to the Bills Committee and further information was provided to the Panel on Transport last week. The Panel on Transport will discuss the relevant arrangements again at its meeting to be held this Friday. Here, I wish to respond to a few points concerning the traffic arrangement.

Although Secretary Dr Sarah LIAO is not in this Chamber today to discuss this Bill with Members, Dr LIAO has sent a representative who is now sitting with us here. With regard to the public transport arrangement, transit passengers can cross the boundary via the Shenzhen Bay Port by cross-boundary coaches or other means of public transport (including franchised buses, minibuses and taxis). Some Members consider that apart from these public transport services, the Government should also allow non-cross-boundary non-franchised buses to provide service. In this connection, we must point out that the Shenzhen Bay Port is generally positioned to mainly cater for cargo traffic while having regard to passenger traffic to an appropriate extent. The main source of passenger traffic at the border control point is cross-boundary coaches, and limited public transport service will also be provided by the two sides. On the Shenzhen side there will be three bus routes to and from the Shenzhen port connecting the three bus/minibus routes to and from the Hong Kong Port Area, and they have no plan to allow non-cross-boundary coaches to provide service at the Shenzhen port. Without matching measures to support

such service, we do not consider it suitable to allow non-cross-boundary non-franchised buses to access the Hong Kong Port Area.

After the commissioning of the crossing, the Government will, jointly with the Shenzhen municipal authorities, review whether or not there is a need and room to make adjustments to the transport services at the border control point in the light of the actual operation of the port as well as the traffic conditions there.

Members are also very much concerned about the impact of the vehicular flow brought by the commissioning of the Shenzhen Bay Port on the road network in Northwest New Territories. The Environment, Transport and Works Bureau pointed out that the Northwest New Territories Traffic and Infrastructure Review concluded that the existing and committed road networks, together with necessary improvement measures (such as the widening of Castle Peak Road and Yuen Long Highway), would be able to cope with the traffic demand, including those to be generated from the Shenzhen Bay Bridge and Hong Kong-Zhuhai-Macao Bridge, up to 2016, and no new major highway infrastructure projects will be required.

However, to ensure that the new transport infrastructure beyond 2016 will be provided in a timely manner, we have conducted further investigation and engineering feasibility studies on the proposed road projects as necessary. The target of the Government is to complete at this stage as much requisite lead work as possible, so that construction works can expeditiously commence when the uncertainties concerning the various planned development proposals in the district have become clear.

On the other hand, the Government has obtained the support of the Panel on Transport for carrying out three proposed projects to improve the overall operation of Tuen Mun Road. They include widening the section at Tsing Tin Interchange to a dual three-lane carriageway, widening the Town Centre Section to a dual three-lane carriageway, and also reconstructing and improving the expressway section to meet the prevailing expressway standard. Apart from Tuen Mun Road, the Government also has plan to carry out improvement works to Ping Ha Road and Tin Ha Road to enhance the connectivity of Northwest New Territories with the Shenzhen Bay Bridge.

In general, the Government will closely monitor the operation of the Shenzhen Bay Port after its commissioning as well as the impact on the traffic in

Northwest New Territories, in order to ensure that public transport service can meet the needs of passengers and maintain smooth traffic flow.

On insurance arrangement, I would like to talk about the background first. Documents of a private nature involve various bargains made between contracting parties in different circumstances. Statutory extension of the territorial limits of pre-existing rights and obligations that are confined to Hong Kong to include the Hong Kong Port Area could amount to an interference with the rights or obligations of the parties concerned. The risks that the provision may rewrite the bargain made between contracting parties and cause significant hardship to some of them are real. It would be difficult to ensure that the application of a general provision to all of them will satisfy the requirement of proportionality or fair balance implicit under Articles 6 and 105 of the Basic Law in every case that it falls to be applied. Therefore, the Bill will not extend pre-existing rights or obligations arising from documents of a private nature.

Motor vehicle third party risks and employees' compensation insurance will be the two major classes of mandatory insurance policies that may be affected by the establishment of the Hong Kong Port Area. In future insurance policies issued on or after the Hong Kong Port Area comes into operation, a reference to Hong Kong to describe the territorial limit of a right or obligation will be construed by virtue of clause 12 of the Bill as including the Hong Kong Port Area unless the contrary intention appears. However, a similar reference in pre-existing policies will not automatically be construed to include the Hong Kong Port Area. Given that these two classes of insurance policies in question are usually renewed on an annual basis, the problem relating to the extension of their territorial coverage is hence only transitional.

We have consulted the HKFI on these arrangements and we have also kept the HKFI posted of the milestone developments of the Bill. We also consulted the HKFI before submitting a paper to the Legislative Council Panel on Security in March 2006 and on the day when the Bill was gazetted in February 2007, we immediately wrote to the HKFI notifying it of the gazettal of the Bill. Then we arranged briefings and a site visit for the HKFI and its member companies in February and March 2007 to allow them to make a more informed judgement on the risks involved.

We have been informed by the HKFI that the industry has unanimously expressed support for the proposal of entering into a market agreement with the

Government as a voluntary undertaking to extend the policy coverage of pre-existing mandatory insurance policies to the Hong Kong Port Area. All insurance companies providing motor vehicle third party risk insurance and employees' compensation insurance have indicated their willingness to participate in the market agreement. Having regard to the smooth implementation of previous market agreements, the Government is content that the market agreement would provide a satisfactory solution to extending policy coverage to the Hong Kong Port Area.

Market agreement has all along been an effective solution to problems in the market. An example is the Motor Insurers' Bureau set up in 1980 that provides compensation to traffic accident victims if the driver is uninsured or untraceable. Another example is the Employees Compensation Insurer Insolvency Scheme established in 2003 that provides compensation to employees in the event of an employer's insurer becoming insolvent. The Employees' Compensation Insurance Residual Scheme scheduled to be launched in May 2007 is also predicated on market agreement to offer a venue of last resort for employers engaged in certain high-risk trades. Market agreements have been operating satisfactorily so far, and the Office of the Commissioner of Insurance is not aware of any problems.

Earlier on I have already explained that market agreements are the most practicable solution to the transitional problem that we now face. We will oppose the two amendments proposed by Mr James TO in respect of the insurance arrangement later. I will explain in more detail the reasons of our opposition in the ensuing debate on the amendments.

Although Ms Margaret NG opined that the Bar and the Government do not see eye to eye over some legal viewpoints, I must point out that the Government's amendment to clause 6(1) has the support of the Bar. The Bar is of the view that the proposed amendment to clause 6(1) is drafted for the purpose of a reasonable legal policy. On the point that the Bar does not agree with the Government that Article 7 of the Basic Law applies to the Hong Kong Port Area only by virtue of clause 5 of the Bill, our view is that the SAR can exercise jurisdiction over the Hong Kong Port Area in accordance with Hong Kong laws, including the Basic Law, because of the authorization given by the NPCSC's Decision. Clause 5 of the Bill is drawn up on the basis of the arrangement for jurisdiction as I explained above.

Here, I wish to again express my gratitude to the Bills Committee for supporting the resumption of the Second Reading of the Bill. The efforts made by members have enabled us to expeditiously implement this brand new co-location arrangement at the Shenzhen Bay Port, which can, in turn, provide greater convenience to visitors and hence save their time in customs and immigration clearance. Moreover, the co-location arrangement will enable immigration officers from Hong Kong and the Mainland to work in a connected inspection area at the border control point and this will be helpful to their communication and co-ordination and help enhance the overall efficiency of customs and immigration clearance.

Finally, I urge Members to support the amendments which I will propose to the Bill later on.

I so submit. Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Shenzhen Bay Port Hong Kong Port Area 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.

(Members raised their hands)

Ms Emily LAU rose to claim a division.

PRESIDENT (in Cantonese): Ms Emily LAU has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Mr Abraham SHEK, Ms LI Fung-ying, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Mr CHEUNG Hok-ming, Prof Patrick LAU and Mr KWONG Chi-kin voted for the motion.

Mr Albert CHAN and Mr LEUNG Kwok-hung voted against the motion.

Mr Fred LI, Ms Margaret NG, Mr James TO, Mr SIN Chung-kai, Dr YEUNG Sum, Ms Emily LAU, Mr Andrew CHENG, Ms Audrey EU, Mr Alan LEONG and Dr Fernando CHEUNG abstained.

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

THE PRESIDENT announced that there were 42 Members present, 29 were in favour of the motion, two against it and 10 abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the motion was carried.

CLERK (in Cantonese): Shenzhen Bay Port Hong Kong Port Area Bill.

Council went into Committee.

Committee Stage

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

SHENZHEN BAY PORT HONG KONG PORT AREA BILL

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Shenzhen Bay Port Hong Kong Port Area Bill.

CLERK (in Cantonese): Clauses 1, 4, 7, 11, 12, 13, 15, 16 and 17.

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

MS MARGARET NG (in Cantonese): Madam Chairman, since we abstained in the vote on the Second Reading of the Bill as a matter of principle, we will not actively participate in the examination of the general clauses.

However, I would like to take this opportunity to raise a point. Just now in the Second Reading debate, we did not have time to mention the scrutiny of clauses. In fact, during the course of scrutiny, we noted that many clauses are not at all consistent with our long-standing principles of law making, such as the creation of many so-called legal fiction, meaning the original meaning is different from what is constructed by the Bill. For instance, what is the definition of public officer? Initially, under the Bill, public officer and Special Administrative……

CHAIRMAN (in Cantonese): Ms Margaret NG, I have to interrupt you. You should have discussed this in the resumed Second Reading debate, but you might be unable to cover this due to insufficient time. However, since we are now discussing clauses 1, 4, 7, and so on, we will listen to your speech if your comments now are relevant to these clauses. Otherwise, you will be allowed to speak later when we come to clauses relevant to your speech just now.

MS MARGARET NG (in Cantonese): Madam President, perhaps I have made a mistake. These are clauses without amendments, right?

CHAIRMAN (in Cantonese): These are clauses without amendments.

MS MARGARET NG (in Cantonese): I in fact wish to speak on clauses with amendments but not on clauses 5 and 6.

CHAIRMAN (in Cantonese): Never mind. We will soon discuss clauses 2, 3, 5, 6, 8, 9, 10 and 14. You can speak on them at the appropriate juncture.

MS MARGARET NG (in Cantonese): I understand. Madam Chairman, perhaps let me explain. I mainly wish to point out that we discussed the drafting of clauses or the policies behind some specific clauses at the Committee stage. Initially, I wish to talk about the drafting of the Bill as a whole instead of the specific content. Will you allow me to make some remarks here?

CHAIRMAN (in Cantonese): Ms Margaret NG, this should be discussed in the resumed Second Reading debate.

If no other Member wishes to speak, I now put the question to you and that is: That the clauses stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2, 3, 5, 6, 8, 9, 10 and 14.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move the amendments to the clauses read out just now, as set out in the paper circularized to Members. These amendments have been carefully scrutinized by the Bills Committee and I will now explain the major amendments.

We have examined afresh the definition of "法院" (that is, "court" in the English text) in clause 2(1) in the Chinese text, which reads "指附表4第1部指明的屬香港司法機構的法院、法庭、審裁處或裁判法庭". We consider that the term "裁判法庭" can be sufficiently covered by "法庭", and therefore propose to delete "裁判法庭" from the definition.

The other amendments seek to adopt the proposals of the Bills Committee and to make consequential amendments.

The aims of amending clause 2 are: first, to delete the definition of "Particularized Description" from clause 2(1), and move the information contained therein to clause 3 (that is, Declaration of Hong Kong Port Area; second, to delete paragraph (b), which contains the reference to "the Chief Executive (including the Chief Executive in Council)"), of the definition of "public officer" in clause 2(1) and stipulate such reference in the relevant provisions (that is, section 1(a) and (b) of Schedule 3); and third, to specify in the definition of "Relevant Date" that the day appointed under section 1(2) for the coming into operation of sections 3 and 5 must be the day on which the Shenzhen Bay Port referred to in paragraph (2)(a) of the preamble commences operation.

The aims of amending clause 3 are: first, to move the information contained in the deleted definition of "Particular Description" from clause 2(1) to clause 3; and second, to include maps of setting out co-ordinates of the Hong Kong Port Area in a new Part 3 of Schedule 1, and make reference to the maps in clause 3.

The aims of amending clause 5 are: first, to delete clause 5(2), which empowers the Chief Executive in Council to make modification or exclusion in respect of application of the laws of Hong Kong in the Hong Kong Port Area. The intention is to allow flexibility to deal with unforeseen circumstances. The

Administration has, at the request of Members, agreed to delete clause 5(2); second, consequentially, clause 5(3), which provides that the subsidiary legislation made under clause 5(2) is subject to the approval of the Legislative Council, will also be deleted; and third, to delete clause 5(6), which is an avoidance of doubt provision regarding the meaning of "laws of Hong Kong".

The amendment to clause 6 is proposed in response to the request made by some members of the Bills Committee to specifically add a provision to reflect the fact that the land use right of the Hong Kong Port Area is acquired by way of a lease as mentioned in paragraph (3)(b) of the preamble.

The aim of amending clause 8 is to amend clause 8(1) to specify clearly that in any proceedings (whether civil, criminal or otherwise), no person is entitled to contend that the territorial limit of a particular pre-existing right or obligation is extended to include the Hong Kong Port Area if the sole ground for such contention is that section 5(4) has the effect of extending the territorial limit of a pre-existing right or obligation to include the Hong Kong Port Area.

The aims of amending clause 9 are: first, to delete clause 9(3), which empowers the Chief Executive in Council to amend Schedule 2; and second, consequentially, to delete clause 9(4), which sets out the condition which an amendment under clause 9(3) must satisfy.

The amendment to clause 10 seeks to delete clause 10(3), which empowers the Chief Executive in Council to amend Schedule 4.

We have proposed to delete clause 14 consequential upon the deletion of clauses 5(2), 9(3) and 10(3). New clause 14 reflects the fact that the temporal operation of the Bill as enacted is linked with the term of the lease contract of the Hong Kong Port Area referred to in paragraph (3) of the Preamble of the Bill.

Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex I)

Clause 3 (see Annex I)

Clause 5 (see Annex I)

Clause 6 (see Annex I)

Clause 8 (see Annex I)

Clause 9 (see Annex I)

Clause 10 (see Annex I)

Clause 14 (see Annex I)

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

MS MARGARET NG (in Cantonese): Madam Chairman, as I just said, although we cannot actively participate in the examination of clauses at the Committee stage, I would also like to express a collective view on the Committee stage amendments (CSAs) just mentioned by the Secretary, which have reflected that the Administration has downplayed the principle of the rule of law when dealing with these clauses. For instance, according to the kernel of the rule of law, the principle of legislation is that the provisions of a principal ordinance should not be amended by way of subsidiary legislation. And we have been upholding this principle. However, why is it necessary to delete clause 5(2)? Because this is an attempt to amend a principal ordinance by way of subsidiary legislation. So, even though we do not oppose these amendments, we have to express our views on the drafting regardless of its legal effect. So these amendments are necessary.

However, Madam Chairman, we would like to discuss, in particular, clauses 5 and 6 and express our views for the record. It is stipulated in both clauses 5(4) and 5(5) that the Hong Kong Port Area is regarded as an area lying within Hong Kong although it is in Shenzhen and should be dealt with as if it is within the Hong Kong Special Administrative Region (SAR). It is very disturbing to us because it breaches the Basic Law and the fundamentals of the Basic Law.

Regarding clause 6, we can see that according to clause 6(1), land within the Hong Kong Port Area is regarded as part and parcel of the Government land

lying within Hong Kong. Clause 6(2) even stipulates that any right or interest in any such land is regarded as a right or interest derived directly or indirectly from the SAR Government. In the course of deliberations, the Government expressed its view that the land within the Hong Kong Port Area is regarded as the same as land within Hong Kong mentioned in Article 7 of the Basic Law and it is part of the land within Hong Kong. Under Article 7 of the Basic Law, the Government of the Hong Kong SAR shall be responsible for the management, use and development (of land) and for lease or grant to individuals, legal persons or organizations for use or development. The revenues derived therefrom shall be exclusively at the disposal of the government of the Region. However, it has clearly specified in the first place that the land is lying within the Hong Kong SAR. Here, it refers to land within Hong Kong territory. Why can the Government say that land in the Hong Kong Port Area, which is clearly lying outside Hong Kong, is regarded as land within Hong Kong? We strongly uphold the high autonomy of Hong Kong, but law is law. How can land not within Hong Kong be regarded as land within Hong Kong?

The Secretary for Security just now boldly assured that the amendment to clause 6 had won the recognition of the Bar Association. If we look at the submissions of the Bar Association carefully, we can see that the Bar Association has never recognized such an approach. I will go into the details later on.

Madam Chairman, regarding the law concerning land, the applicable law should be the law of the territory where the land is situated. This is the principle of the law of conflict. However, clause 6 is not in line with this principle. Although the land to be dealt with is not within Hong Kong, the laws of Hong Kong still apply. This is not right. In particular, I would like to point out: What is the legislative foundation of the SAR's legislature? Why can laws be made in accordance with our original legal system such as the common law and rules of equity? This is entirely because of Article 5 of the Basic Law, which stipulates that the socialist system and policies shall not be practised in the Hong Kong SAR, and the previous capitalist system and way of life shall remain unchanged for 50 years. So, after the reunification, the socialist system should be practised in the whole country. However, owing to historical reasons, the SAR is protected under Article 5 of the Basic Law, thus the socialist system will not be practised and the previous system shall remain unchanged for 50 years. As a result, our legislature can make legislation on the basis of the original system and legal principles.

So, if the land is lying within Hong Kong, I mean the approach of legislation is entirely different from that for land lying outside Hong Kong. In particular for land, under Hong Kong's original system, our law is vastly different from that of the socialist Mainland. In Hong Kong, we talk about the title or ownership of land while in the mainland legal system, there is only land use right because land is the property of the State and the people. The distinction lies in the land use right, which is specifically separated from ownership. So, this is a marked conflict with our system and that is why the Bar Association thinks that clause 6 is problematic.

Regarding Article 7, the Bar Association does not think that Article 7 should be changed simply because under clause 5 of the Shenzhen Bay Port Hong Kong Port Area Bill, the land is regarded as land within Hong Kong. We cannot change the constitution's scope of application by means of local legislation. This is a most fundamental principle. So, it is absolutely impossible to deal with the land in the Hong Kong Port Area as if it is within Hong Kong by such a means.

Have we been granted such a power by the NPCSC's Decision and the State Council's Official Reply? First, if we take a look at the Decision and the Official Reply, we can see that there is no express provision stipulating that during the lease period, the socialist system will not be practised in the Hong Kong Port Area. There is no provision extending other Articles or Article 7 of the Basic Law to the Hong Kong Port Area. Nor is there any express provision authorizing the inclusion of the Hong Kong Port Area under Article 7. It is land outside Hong Kong, but there is no express provision authorizing that.

The Government is fond of saying that approval is given if there is no express prohibition. But as I said at the beginning, this legislature enjoys only those powers delegated to it. If there is no delegation, there is no power. Why do we sometimes fight for making amendments to the Basic Law? Because we do not enjoy a power unless it is conferred on us by law. So, we cannot say that since there is no prohibition of extending Article 7, we can freely do what we want.

Even though there is no express stipulation, is there any implication? In fact, we cannot infer such meaning by looking at the Decision, the Official Reply and other background information. The Bar Association's view is very clear. Why should Hong Kong laws be applied in the Hong Kong Port Area from the very beginning? It is for the exercise of control and jurisdiction. And such

jurisdiction is different from the lease of the New Territories which came with all sorts of rights that could be exercised freely. Rather, it is for one single purpose which is the co-location arrangement and the area will be administrated as a closed area for boundary crossing. So, for purposes of such a need, approval has been given for the application of Hong Kong laws in the Hong Kong Port Area despite lying within Shenzhen.

Let us look at the background information papers which say that jurisdiction cannot be separated and should be intact. So, it is difficult to single out matters concerning traffic, transportation or the Public Order Ordinance because demonstration is not welcome there. Concerning the immigration law, the papers say that it is undesirable to implement the immigration law there only because civil and criminal responsibilities, rights and liabilities are often associated with it and it is very difficult to separate them. So, the laws of Hong Kong are allowed to apply in the Hong Kong Port Area.

Meanwhile, however, it is also pointed out that the Hong Kong Port Area is different from other areas in the Hong Kong SAR because there will not be any residents or social activities in this area. Thus, many Hong Kong laws are not necessary in this area. So, power is not delegated……if we need such a power and want to have more, we can lobby for it. However, if a power is not delegated to us, we cannot regard it as our power in an arbitrary manner. So, the original background information indicates that only the co-location arrangement is allowed instead of other social activities. Can duty-free shops be open or sub-leases be granted? I think we should think about this before all else.

The Bar Association has also pointed out the origin of the land use right of land in the Hong Kong Port Area. It is derived from a lease contract. However, the third paragraph of the NPCSC's Decision has clearly stipulated that "the land use period of the Shenzhen Bay Port Hong Kong Port Area will be determined by the State Council according to the provisions of the relevant laws." In other words, both the land use right and the land use period are determined in accordance with the provisions of Chinese laws. The Bar Association's submission has set out the rules and provisions of the relevant Chinese laws.

So, according to the Bar Association's views, the relevant laws are Chinese laws rather than Hong Kong laws. The land within the Hong Kong

Port Area at Shenzhen Bay Port cannot be dealt with according to Hong Kong laws. This is very clear and precise. Besides, the Bar Association also said that OK — sorry, I should use all Chinese in my speech — if there is no difference to implement something in accordance with Hong Kong laws or Chinese laws, there will not be any practical problems. For instance, a licence is issued to a shop for the sale of soda. Since the permission under a licence only involves the rights and obligations of an individual instead of the land, practical problems may not arise. This is the view of the Bar Association.

So, the Bar Association has made further submissions specifically on the CSAs under discussion today. Madam Chairman, I would like to read out paragraph 12 of its supplementary submission: "The lease contract for State-owned land in respect of the Hong Kong Port Area makes provision for the granting of land use right in respect of Hong Kong Port Area, a piece of land within Mainland China to the HKSAR Government. The Hong Kong Port Area remains state property, a species of public property under Mainland law. In so far as the HKSAR Government disposes part of the Hong Kong Port Area, it is exercising the land use right granted to it under Mainland laws and regulations, subject to the terms and conditions under the lease contract for State-owned land." In other words, the power must be derived from the lease contract and exercised according to the restrictions of relevant mainland laws. However, what are the wordings of the CSA? It says, "Notwithstanding that the land use right of the Hong Kong Port Area is acquired by way of a lease as mentioned in paragraph (3)(b) of the preamble", the laws of Hong Kong shall prevail. Madam Chairman, that is why I said at the resumed Second Reading debate that I was very astonished. I do not know why the Government has adopted an attitude of blatant defiance? Even though we have been told of the restrictions, the Government insists on its own way. How can this be justified?

Madam Chairman, many Members said earlier that the policy of co-location had been discussed for a very long time and should be expedited. But we should learn a lesson from the story, that it is very important to have a sound legal basis. To expedite it, we should have started the discussions early so that a solution can be sorted out early. In particular, open discussions to arrive at a solution in an open manner can set our mind at ease. Since clause 6 is outside the legislative competence of this Council, leading to legal contradictions and misunderstanding among the people, in addition to the fact that it is not necessary, we oppose clause 6.

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

MR JAMES TO (in Cantonese): Chairman, I will not repeat points already made in the Second Reading debate. Rather, I will only add one more point at this Committee stage. In view of so many problems, more views should have been provided on the details early if the policy could be brewing much earlier.

I remember that at that time, or a couple of years ago actually, we discussed some issues of principle only at the meetings of the Security Panel. In retrospect, a Blue Bill should have been a very good means of consultation if the same issue was to be dealt with again. For instance, the Bar Association could have identified the problems earlier and tendered advice. In that case, the Government might be able to lobby the Central Authorities again.

I can see that the policy will be implemented in a very flexible way. If Hong Kong laws are really to be applied with good convergence, and……let me quote an example, and that is to follow the practice of Annex III. I cannot see why the Mainland should insist on applying Article 20 of the Basic Law and rule out the use of Annex III. On the contrary, it is disastrous because an agreement has been signed and there is an understanding. Some members of the NPCSC, being informed of the case, may even worry that problems relating to law and order or specifically sensitive activities may arise. Now the Government, after making a lot of efforts, insists on applying the legal principle and Article 20 instead of Annex III. In doing so, it will constitute a very serious problem in future because a precedent has been set.

I believe if a better job could have been done, under such situation……nevertheless I also believe that in the end, it is a carefully and deliberately designed plan. Every time, the Government deliberately gives us just a few months. The Secretary said that the most important thing is efficiency rather than the duration of time. Certainly, this is true because from his perspective, problems may arise if matters drag on. He had better avoid complications.

In the course of deliberations, he could have provided more information and conducted more detailed consultation. To say the least, the insurance industry will bear a great risk. They also said that after a brief consultation, the

whole brewing process took only a few months. To a certain extent, they also thought that the Government was exerting pressure on them, meaning that they might get into trouble if the issue was not properly dealt with. Since hundreds of thousands of policies may be involved if they should employ the endorsement of individual agreements or supplementary terms and conditions, it will pose a serious problem to them. As a result, they had a lot of grievances and even their representatives admitted this at our meetings. So, I hope there will be no repeat of the same incident in future. Having said that, I think it is a plan carefully designed to ensure very little time is allowed for us so that the Bill can be rushed through. I think such an attitude is extremely undesirable.

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

MS EMILY LAU (in Cantonese): Chairman, I am not sure whether this is a carefully designed plan by the Secretary to make us comply. However, it takes two to tango. Otherwise, the Secretary will not get what he wants. The Secretary knows the Legislative Council so well that he can get what he wants as far as some matters are concerned. But I think such an approach is not desirable, in particular, the Secretary for Security surprisingly said that efficiency is the top priority. Can it be regarded as efficient when all people are indiscriminately arrested under his arrest order? I do not think so because we have to follow the proper procedure.

Mr James TO just now mentioned the insurance industry. I have also heard that they were very unhappy. Chairman, it is because the insurance industry was taken to visit the area only after our delegation had visited it. They were not given a chance to visit the area, not even a look, by the Government which, however, urged them to get things done quickly and properly. In fact, the Government should have let them visit the area earlier.

Besides, regarding consultation, according to the papers submitted by the Bar Association, the Government secretly consulted them last year or some time ago and the Bar Association also made a reply secretly. But according to the Bar Association, the Government has not taken any follow-up action or given further response, not even a word of thanks since. This cannot be regarded as communication. Since the Bar Association was prepared to reply secretly, the Government should have explained to it what is feasible and what is not. But

the Government has given it a cold shoulder after receiving its reply. I do not think the Bar Association will feel good. Secretary, today you can get what you want, but it does not mean that you should continue to adopt such an approach.

Chairman, regarding the Secretary's amendment to clause 2 on the definition of public officer, I originally though that the Administration had changed its stance. We have discussed whether the Chief Executive should be subject to the regulation of the Prevention of Bribery Ordinance and the answer remains unknown as of today because the Government holds that the Chief Executive should be exempted. If the Chief Executive were subject to the regulation of the Ordinance, the issue would have been over simply by putting this in black and white. To my surprise, all colleagues said that it was not true because the Government did not hold such a view. They also wondered why the Bill was drafted in such a way. The Government solicitors then explained that it did not matter because it could be so regarded even though it was not. This is their best trick, and that is, to regard something which is in the negative as something in the positive. But the people do not understand it. The Secretary may say that the Government has accepted all suggestions of Members and amendments are therefore proposed. In fact, if the Government has accepted all our advice, this amendment should have been moved by the Chairman of the Bills Committee instead of the Administration. But in that case, however, the Secretary may say that we are challenging his authority granted by the Basic Law. If all CSAs are moved by Members, today's CSAs should have been moved by the Chairman of the Bills Committee on our behalf instead of by the Secretary. In that case, the Secretary's workload could have been markedly reduced and it could truly reflect that the CSAs were moved by the Legislative Council and accepted by the Administration. And what the Secretary has to do is just to support our CSAs. However, the Government should not have drafted the Bill in such a way that things which are in the negative have been constructed in the positive. I really hope that once the drafting has been finalized, the Secretary or the Department of Justice, when being queried, will not say that it is in fact not true and add that it is their practice to turn things in the negative into things in the positive by way of drafting. Sometimes, our legislation has become very confusing and such a practice should be rectified.

Besides, some colleagues also mentioned the amendments to clauses 5 and 9. For a principal ordinance, the Government, without any justification, wishes to amend it by way of subsidiary legislation and claims that no procrastination is allowed. Members have in fact done their best to expedite the scrutiny when

being informed of the need to hurry up. As a result, the scrutiny of a piece of principal legislation has completed in a few weeks and it will only take the Government a few hours to finalize it in future. However, the Government should have followed the procedure and submitted the Bill to the Legislative Council in a formal manner. So, I have to say I am glad that the Secretary has accepted our advice so readily. But I also hope that the Administration — I hope the representative of the Department of Justice can listen carefully — do not resort to such tactics in legislation in future because many Members consider it unacceptable. The Government can amend the law in a proper way and we shall all support it if necessary.

Chairman, the Administration also said that it is hard to say what is necessary. They have written a lot of provisions, but are they necessary? They can hardly think of a justification. But they said that they hope to be expeditious and flexible, thus all these are put on paper. They seem to be confident that all their wishes will be granted in the Legislative Council. Fortunately, they are able to get the support of some colleagues. Otherwise, the Secretary would have been reluctant to propose the amendments. Some colleagues also think that such a situation may not be desirable and I therefore, Chairman, support some of the amendments.

Regarding the issues raised by Ms Margaret NG, I think there will be an opportunity to discuss them on suitable occasions. The Administration does not allow her discussion now. This is like the case of someone who refuses to drink to a toast only to drink to a forfeit. If something happens in future, people may challenge the law in Court. Will it not be more disastrous? For the taxpayers, it will certainly be disastrous because the cost is exorbitant and the Government is forced to be engaged in a lawsuit. All these questions should have been discussed clearly in the legislative process rather than rushing through the Bill in a few weeks despite all these difficulties. For such complicated matters, the Council and the people should be given more time to listen to views on the pros and cons from all quarters before the final decision is made.

I so submit.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, I now call upon the Secretary for Security to speak again.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I pointed out in my speech just now that we have taken on board most of the amendments proposed by members of the Bills Committee. Nearly all the amendments proposed by us today were suggested by Members and I can confirm this point.

I wish to respond to the views voiced by some Members on clauses 5 and 6.

It can be said that cluase 5 is the kernel of the Bill. Clause 5(1) provides for the application of the laws of Hong Kong in the Hong Kong Port Area except to such extent as otherwise provided by any enactment enacted or made on or after the Hong Kong Port Area commences operation. Clause 5(4) provides that for the purpose of applying the laws of Hong Kong in the Hong Kong Port Area, the Hong Kong Port Area is regarded as an area lying within Hong Kong.

In fact, it is a must to retain clause 5, otherwise, the Bill will not make the laws of Hong Kong applicable to the Hong Kong Port Area and provide that that for the purpose of applying the laws of Hong Kong in the Hong Kong Port Area, the Hong Kong Port Area is regarded as an area lying within Hong Kong.

At the suggestion of Members, we propose to delete clause 5(6), which is an avoidance of doubt provision regarding the meaning of "laws of Hong Kong".

Here, I wish to add a few words concerning the amendment to clause 5(6).

Given that "law" is already defined in the Interpretation and General Clauses Ordinance, some members of the Bills Committee have queried the need for the definition in the Bill and whether there is any difference in their meaning.

The Interpretation and General Clauses Ordinance has provided for the definition of "law" whereas the Bill stipulates the definition of "laws of Hong Kong". Although the wordings of their definitions are not entirely the same, the meanings of the two are entirely consistent. The aim of the Bill is to apply "laws of Hong Kong" in the Hong Kong Port Area. As the term "laws of Hong Kong" instead of the term "law" is used in the Bill, we consider it necessary to

provide for the definition of "laws of Hong Kong" in the interpretation section of the Bill to avoid possible argument on the construction of clause 5 in future, that is, the view that the definition of "law" in the Interpretation and General Clauses Ordinance cannot be applied to the term "laws of Hong Kong".

Under the Bill, "laws of Hong Kong" means the laws for the time being in force in, having legislative effect in, extending to, or applicable in, Hong Kong, including all the sources of the laws of Hong Kong specified in Article 18 of the Basic Law.

The Bills Committee understands the importance of the definition of "laws of Hong Kong" to the application of the ordinance, therefore, Members have agreed to retain the definition of "laws of Hong Kong" in the Bill. Since the definition of "laws of Hong Kong" is set out clearly in the interpretation section of the Bill, we agree with the suggestion of members that it is not necessary to elaborate any further the meaning of "laws of Hong Kong" in clause 5(6), which is an avoidance of doubt provision. Therefore, we have proposed an amendment to delete clause 5(6).

The amendment to clause 6 is proposed in response to the request made by some members of the Bills Committee to specifically add a provision to reflect the fact that the land use right of the Hong Kong Port Area is acquired by way of a lease as mentioned in paragraph (3)(b) of the preamble.

Clause 6(1) as amended according to the government proposal is accepted by the Hong Kong Bar Association (the Bar). The Bar considers that clause 6(1) as proposed in the amendment is drafted for a legitimate legal policy purpose.

Ms Margaret NG said that I had misquoted the views the Bar expressed to us. Here, I have the representation submitted by the Bar. I cite the view voiced by the Bar in paragraph 8 of the representation, "The Hong Kong Bar Association considers that clause 6(1) as proposed in the CSA is drafted for a legitimate legal policy purpose.".

Clause 6(2) aims to make it unnecessary for the lessee or permittee of Government land to invoke the lease contract for State-owned land to confirm that the HKSAR Government has the right to grant the lease or issue a permit. In this regard, the Bar recognizes that one of the purposes of drafting clause 6(2)

is to remove the need of the lessee or permittee of Government land to conduct title investigation where the HKSAR Government, acting consistently with the terms of the lease contract, disposes of a right or interest in a part of the land within the Hong Kong Port Area by virtue of a dealing.

The Bar is of the view that "clause 6(2) can be more precisely formulated to indicate that the HKSAR Government may not dispose of a right or interest in land in the Hong Kong Port Area beyond what it has acquired or is authorized to deal in respect of such land under the lease contract for State-owned land." We find it inadvisable to adopt the amendment proposed by the Bar. If the relevant amendment is adopted, the aforementioned purpose of formulating clause 6(2) may be defeated because it may still be necessary for the lessee or permittee of Government land in the Hong Kong Port Area to rely on the lease contract to ascertain whether the HKSAR Government has exceeded its rights under the lease contract.

In addition, the enactment of clause 6 will not affect the rights and obligations of the HKSAR Government and the Shenzhen Municipal People's Government under the lease contract. When the HKSAR Government disposes of any right or interest in the Hong Kong Port Area, it will comply with the terms and conditions stipulated in the lease contract.

Insofar as the Government's view that Article 7 of the Basic Law of the HKSAR would apply to the Hong Kong Port Area by virtue of clause 5 of the Bill, the Bar does not agree. Our view is that the HKSAR can exercise jurisdiction over the Hong Kong Port Area according to the laws of the HKSAR (including the Basic Law) by virtue of the NPCSC's Decision of Authorization. The basis for the enactment of clause 5 is this arrangement on jurisdiction.

In sum, the amendments proposed by us to clauses 5 and 6 have fully taken on board the suggestions of the Bills Committee. The amendments to clauses 5 and 6 must be retained, otherwise, the purpose of applying the laws of Hong Kong in the Hong Kong Port Area cannot be achieved. I hope Members will support the amendments to clauses 5 and 6 proposed by us as well as the amended clauses 5 and 6.

I also implore Members to support the amendments to clauses 2, 3, 8, 9, 10 and 14 moved by me. Thank you, Madam Chairman.

MS MARGARET NG (in Cantonese): Chairman, I would like to respond to the Secretary's remarks on clause 5(6) just now. Clause 5(6) says, "For the avoidance of doubt and without prejudice to section 2, it is declared that 'laws of Hong Kong' in this section includes (but is not limited to) the Basic Law and the national laws applicable in the Hong Kong Special Administrative Region specified in Article 18 of the Basic Law.". We have lots of opinions on this. What are Hong Kong laws? This is provided for in the Basic Law. In other words, legislation of Hong Kong specified in Articles 18 and 8 of the Basic Law are Hong Kong laws and those outside this scope are not. Now the Government has blatantly said that Hong Kong laws are not limited to those specified in Article 18 of the Basic Law. As law-abiding Legislative Council Members, how can we accept such a clause? So, I think the biggest problem is that the Secretary tried to distort reason in order to force his argument. In the deliberation process, he surprisingly did not understand that he should comply with the constitution.

Besides, the Secretary just now said that clause 5 is very important to the Bill as a whole because Hong Kong laws could not be applied in the Hong Kong Port Area without this clause. Chairman, why do we still request discussing clause 5 although we will abstain from voting on clause 5 instead of opposing it? Because the Bar Association has also mentioned the problem about Article 7 of the Basic Law. The Secretary skipped paragraph 10 of the Bar Association's submission when talking about its views. In fact, Article 7 of the Basic Law will apply because Hong Kong laws will apply in the Hong Kong Port Area by virtue of clause 5 of the Bill. This is the Government's opinion. So, Chairman, allow me to read out paragraph 10 of the Bar Association's submission: "In so far as the Administration's suggestion that Article 7 of the Basic Law of the HKSAR would apply to the Hong Kong Port Area by virtue of clause 5 of the Bill, the Hong Kong Bar Association does not share that view. An Ordinance cannot possibly have the effect of applying the constitutional instrument that provides for the legislative power to make the Ordinance to a place outside the administrative limits of the territory stipulated in the constitutional instrument. If Article 7 of the Basic Law were to apply to the Hong Kong Port Area, that would have to be by reason of the NPCSC Decision of 31 October 2006."

Regarding why there is no express provision or implication in the Decision allowing Article 7 to be …… Chairman, this is the most typical example of the Basic Law being distorted. It provides that land outside the territory — sorry,

it only provides that there is such a power in respect of land within the territory. The Administration said that according to the NPCSC Decision, land outside the territory can be regarded as land within the territory. This is utterly illogical. If the Government wants to amend the Basic Law, then do it. So, that is why we asked at the very beginning whether power was delegated under Article 20 or Article 18. We do not say that the Central Authorities cannot delegate additional powers to Hong Kong. We only say that if such additional power exists which touches the fundamentals of the Basic Law, an amendment instead of an extra administrative means may possibly be required. This is a very important reason for our high regard for due process. This is a very important principle.

Chairman, I have one more point to add. The Secretary just now said he considered that the Bar Association had agreed to his amendment to clause 6 and then read out paragraph 8 of its submission. In fact, I really…… this is not only a misinterpretation of the law but also a misinterpretation of English. What the Bar Association meant is that it has assumed the Government has a legitimate policy justification. Its starting point is not on the assumption that the Government has an improper justification and therefore opposes the Government. What it meant is that it would assume a legitimate justification on the part of the Government, and it could even think of a legitimate policy justification for the Government. However, even if the Government had a legitimate justification, clause 6(2) should not be drafted in such a way. So, in paragraph 12 of its submission, the Bar Association informed the Government of the fact that it is "subject to the terms and conditions under the lease contract for State-owned land", instead of "notwithstanding the terms and conditions". Chairman, there is a big difference between the two phrases. According to the former, the Government may do so subject to the restrictions and not in violation of laws of China and the rights derived from the lease contract. This is one matter. But if one says that the Government can still do so notwithstanding the restrictions, this is entirely another matter. So, Chairman, I really hope that Members can read the Bar Association's submission clearly and do not make interpretation out of context. Since the Government is used to distorting the public opinion, the Bar Association has also made allowance for the possibility that the Government may make interpretation out of context and distort the meaning. But I really hope that Members can read the submission. The Bar Association has written it in a most careful way and really given much thought to the matter. It does not want to cause any harm to the Government's prestige.

Thus, the submission is written in a subtle way in the hope that the Government can do a better job of it. Surprisingly, the Government regards this as an agreement and an endorsement by the Bar Association. I really think that it is most unfortunate, and the Government has failed to live up to other's goodwill.

Ms Emily LAU said earlier that the Bar Association had not given any advice. In fact, after reading the Bar Association's submission, I also feel that it has given much thought to the matter because advice did have been given. We have read a lot of such submissions. In some of these submissions, it said that it did not have other views, or any comment or any special opinions to offer. In fact, the submission is written in a very special way because the Bar Association said that it had decided not to express its views on this matter. We should read into the lines. The matter is so complicated that it does not know how to start discussing the matter with the Government.

The Government should be vigilant. It should know the solemnity of matters concerning the laws which are enacted for binding effect. It should be normative as the Bar Association said and for the purpose of establishing principles. How can the Government act in an imprudent manner just for sake of achieving its target? Chairman, if the Government has more time, these problems are not unsolvable and there should be proper procedures and proper ways to deal with it. However, the Government did not give us time and urged us to rush through the Bill hastily on the ground that it had been informed that it would be feasible. This should not be the proper attitude or the attitude of a responsible Government. So, I have to reiterate once again that these problems should have been resolved earlier and clarification should have been made earlier so that the public can clearly know what our legal basis is. Only in doing so can the Government do justice to the Basic Law and fulfill its obligations. Thank you, Chairman.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If not, Secretary for Security, do you wish to speak again?

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I have pointed out in the comments I made just now that concerning Article 7 of the Basic Law, it is true that our views differ from those of the Bar Association, however, we both respect the constitution and the laws. In fact, the Decision of Authorization of the NPCSC states clearly that the NPCSC authorizes the HKSAR to exercise jurisdiction, and full jurisdiction for that matter, over the Hong Kong Port Area at the Shenzhen Bay Port according to the laws of the HKSAR. Therefore, we believe that the legal advice obtained by us is correct. Thank you, Madam Chairman.

CHAIRMAN (in Cantonese): As Ms Margaret NG has requested to put the amendments to clauses 5 and 6 separately to vote, the amendments to other clauses, which have been moved by the Secretary for Security, will therefore be put to vote first.

I now put the question to you and that is: That the amendments to clauses 2, 3, 8, 9, 10 and 14 moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

Mr James TO rose to claim a division.

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

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

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

Dr Raymond HO, Mr Fred LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Miss CHAN Yuen-han, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Kong-wah, Mr LAU Wong-fat, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LEE Wing-tat, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Dr KWOK Ka-ki, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendemnts.

Ms Margaret NG, Mr LEUNG Yiu-chung, Ms Emily LAU, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr Fernando CHEUNG and Miss TAM Heung-man abstained.

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

THE CHAIRMAN announced that there were 43 Members present, 33 were in favour of the amendments and nine abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the amendments were carried.

MR FRED LI (in Cantonese): Chairman, I move that in the event of further divisions being claimed in respect of the clauses, Schedules or the remaining amendments of the Schedules of the Shenzhen Bay Port Hong Kong Port Area Bill, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Fred LI be passed.

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 respectively of each of the two groups of Members who are present. I declare the motion passed.

I order that in the event of further divisions being claimed in respect of the clauses, Schedules or the remaining amendments of the Schedules of the Shenzhen Bay Port Hong Kong Port Area Bill, this Council do proceed to each of such divisions immediately after the division bell has been rung for one minute.

CLERK (in Cantonese): Clauses 3, 8, 9, 10 and 14 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to clause 5 moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clause 5 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 5 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment to clause 6 moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Ms Margaret NG rose to claim a division.

CHAIRMAN (in Cantonese): Ms Margaret NG has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Dr Raymond HO, Dr LUI Ming-wah, Mrs Selina CHOW, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Jasper TSANG, Mr Howard YOUNG, Mr LAU Kong-wah, Mr LAU Wong-fat, Miss CHOY So-yuk, Mr Timothy FOK, Mr TAM Yiu-chung, Ms LI Fung-ying, Mr Tommy CHEUNG, Mr Frederick FUNG, Mr Vincent FANG, Mr WONG Kwok-hing, Mr LI Kwok-ying, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong and Mr KWONG Chi-kin voted for the amendment.

Ms Margaret NG, Mr LEUNG Yiu-chung, Mr Albert CHAN, Ms Audrey EU, Mr Alan LEONG, Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Miss TAM Heung-man voted against the amendment.

Mr Fred LI, Mr James TO, Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr YEUNG Sum and Ms Emily LAU abstained.

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

THE CHAIRMAN announced that there were 42 Members present, 26 were in favour of the amendment, nine against it and six abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CLERK (in Cantonese): Clause 6 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 6 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

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

MR JAMES TO (in Cantonese): Chairman, may I seek your consent to move under Rule 91 of the Rules of Procedure that Rule 58(5) of the Rules of Procedure be suspended in order that this Committee may consider Schedule 2 and new clause 15A together with clause 2, as well as vote on the amendment to Schedule 2 first before those regarding new clause 15A and clause 2.

I have raised this request because in comparing my amendment to Schedule 2 with my amendments regarding new clause 15A and Clause 2, the former is a better option, and can better reflect the intention to provide sufficient legal protection for insurance arrangements. Also, if my amendment to Schedule 2 is passed, I shall withdraw my amendments regarding new clause 15A and clause 2.

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

Council then resumed.

PRESIDENT (in Cantonese): Mr James TO, you have my consent.

MR JAMES TO (in Cantonese): President, I move that Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Schedule 2 and new clause 15A together with clause 2, as well as vote on the amendment to Schedule 2 first before those regarding new clause 15A and clause 2.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That Rule 58(5) of the Rules of Procedure be suspended to enable the Committee of the whole Council to consider Schedule 2 and new clause 15A together with clause 2, as well as vote on the amendment to Schedule 2 first before those regarding new clause 15A and clause 2.

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by

functional constituencies and those returned by geographical constituencies though direct elections, who are present. I declare the motion passed.

Council went into Committee.

Committee Stage

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

CLERK (in Cantonese): Schedule 2.

New clause 15A Agreement to be enforced by Insurance Authority.

CHAIRMAN (in Cantonese): Mr James TO has given notice to move an amendment to Schedule 2 as well as the addition of new clause 15A and an amendment to clause 2. Committee now proceeds to a joint debate.

MR JAMES TO (in Cantonese): Chairman, I move that Schedule 2 be amended.

Chairman, in fact, in the letter I issued to Members, I have already explained in detail the reasons. Of course, I also talked about this earlier on in the Second Reading debate but some Honourable colleagues might not be present at that time. I wish to talk very briefly — only briefly — about why I believe that the schedule should be amended first. It is because I believe it is in fact possible to include the Hong Kong Port Area at the Shenzhen Bay Port in the definition of Hong Kong, so that in those mandatory insurance contracts, it will look as though Hong Kong has been expanded and all insurance coverage will naturally include the Hong Kong Port Area at the Shenzhen Bay Port.

I believe this is the best course of action because firstly, it will not be necessary for the insured to rely in a very roundabout way on the market agreement to be signed between the Insurance Authority (IA) representing the

Government and the insurance sector and their assistance in enforcing the relevant agreement and it will be possible for an insured to enforce the relevant agreement individually on his own, so that the insurance company concerned cannot go back on its words. This will give him direct rights and he does not have to rely on another party to enforce the agreement indirectly for him. Secondly, at an even more complicated level, a fourth or fifth party apart from the insured, the IA representing the Government or the insurance company may become involved in some legal relationships with the insured, however, such legal relationships may not enable them to benefit from the agreement executed between the IA representing the Government and the insurance sector, so they will not be able to enforce the agreement. Thirdly, some people may not be related to the IA representing the Government, the insurance companies concerned or the market agreement in any way. I have thought of an example before. Say, if an insurance company closes down — I am not saying that insurance companies will always close down; I am just giving an example — there will of course be a liquidator. Since the insurance company concerned has entered into an agreement only with the IA representing the Government, the liquidator may say, "It is only the company that is bound by it and as I am the liquidator, I do not have to be concerned about my reputation." Why? Since the company has already closed down, what reputation can it possibly still have? Furthermore, the company will not make a comeback. So, even if the IA wants to invoke the legislation on insurance, he has nothing to fear because the company is already facing closure, is that right?

From my point of view, the most important thing is for the liquidator of the company to see what is left of the company and salvage whatever there is. For example, if it so happens that there is an insurance market agreement involving an insured who got into trouble in the Hong Kong Port Area of the Shenzhen Bay Port, as the creditor, I can say that I am not going to offer any compensation, so the creditors — no, I mean the liquidator — can say, "If I do not pay any compensation, the creditors will receive more money, will they not?" This is because if compensation is paid, the asset will be reduced. If he thinks that as the company has closed down, there is no need to be concerned about reputation, and he would say, "Since I represent the creditors, I am not going to pay any compensation." Why would it be possible for him not to pay any compensation? Because that location does not belong to Hong Kong, therefore, it is possible not to pay any compensation. Therefore, there is nothing one can do about him. In that event, he would not pay any heed to the

insured at all. Of course, in theory, the IA, which represents the Government, can take legal action against the liquidator as he too has to abide by the agreement that the company has entered into.

However, in that event, it would be necessary to weigh things up. The Government can certainly take legal action against the insurance company, however, for one thing, it is already in the process of being liquidated, and for another, what loss the Government has suffered. The Government has not suffered any loss. Even if the insurance company is very brazen, refusing to compensate the insured no matter what, still, the Government has not suffered any loss — it has not suffered any loss in money terms. Therefore, even if it wants to take legal action against the insurance company and seek compensation — that is, assuming that the Government is being nice and takes legal action according to the agreement, with a view to giving the compensation to the insured after getting it, only that it has to claim compensation in a roundabout way — that will not work because the Government has not suffered any loss, so it cannot take any legal action. Thus, in some circumstances, even though such a market agreement exists, it will not help at all.

Concerning this amendment proposed by me, I formed this view only after scrutinizing the Bill, consulting some lawyers and gaining a deep understanding of the Bill. That is why sometimes, due to time constraints, this cannot be helped and it is not possible to think of every point immediately. However, in such circumstances — since it is possible that a situation can become so extreme — all the protection will crumble and become useless.

For this reason, I believe if this definition can be included, so that the Hong Kong Port Area can be included in insurance contracts, that is, that location is regarded as part of Hong Kong, then when the insured gets into trouble there, even in the event of liquidation, the liquidator concerned cannot cite this as the reason to refuse to compensate the insured.

Of course, I know that today, I may not be able to persuade Honourable colleagues to support me, however, concerning the legal implications and the more complicated ideas involved, I hope that the Government, and the colleagues in the Department of Justice in particular, can consider what to do if they encounter such a situation in the future. Just now, an Honourable colleague said that this was not the first time that a market agreement would be employed

and there were successful examples. However, I can tell Members that such an argument can also be applied to other market agreements.

I have also thought about why the Government is so afraid of enacting legislation. In fact, in the speech given by the Secretary at the resumption of Second Reading, it could be gathered from his words that he is afraid that other market agreements will be affected as a result and doubts will be cast on them. If you ask me, I would say that in fact, other market agreements are of the same nature and they are also enforced indirectly, so it is actually also possible for people to doubt them. Similarly, in the act of liquidation mentioned by me just now, for example, in liquidating an insurance company, such problems will also arise.

In speaking here today, I therefore want to put the record and tell the whole world that this matter is just like an emperor's robe. The emperor may think that there is no problem but in fact, there are many problems. However, if an insured is lucky and his insurance company does not go into liquidation, or for some unknown reasons, the liquidator does not act with the greatest interest of the creditors in mind and pays compensation all the same, I would have nothing to say. Otherwise, problems may arise in such situations.

At the end of the day, had this idea occurred to me at that time (I do not know how to put it), it would have been possible to think of the specifics and ruminate over them and we would have had more time to persuade the insurance sector. I believe that in that event, the question of whether or not legislation should be enacted and whether or not this is shameless coercion would not have arisen. Why? Because the relevant companies are in fact willing to do so and if they are really willing, there will not be any implication on what is called private contracts. Moreover, we are just entrenching the spirit of the market agreement by way of legislation, so that everyone, not just the insured but other parties related to the insured or a fourth or fifth party that has entered into contracts with the insured can also be better protected in a more assured way. Moreover, in the event that the insurance company concerned has to be liquidated in future and a third party is affected, it will not be necessary to consider whether the creditors will go back on their words. This will serve to reinforce the entire agreement.

Hence, I believe that the Government should in fact draw on the lesson on this occasion and if it encounters this kind of situation in the future, it should no

longer rely on a market agreement and it should not tell others that there are precedents. For example, in the past, other Honourable colleagues might not have considered whether even better protection could be given to the market agreements on employees' compensation, however, after they have gained an understanding of the significance of the matter on this occasion — I hope that in particular, those so-called Members from the labour sector and Honourable colleagues who support workers' rights will also learn from this experience — they will no longer support such a course of action in the future.

Proposed amendment

Schedule 2 (see Annex I)

CHAIRMAN (in Cantonese): Members may now debate the original clause 2, Schedule 2 and Mr James TO's amendment thereto as well as new clause 15A jointly.

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

(No Member indicated a wish to speak)

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

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, in the Second Reading debate, I already said that all insurance companies providing motor vehicle third party risks insurance and employees' compensation insurance (that is, two types of mandatory insurance relating to the operation of the Hong Kong Port Area) have expressed their willingness to become a signatory to the market agreement to extend the coverage of pre-existing mandatory insurance policies to the Hong Kong Port Area.

I once again thank the industry for its goodwill and efforts in recommending a most practicable solution and for being willing to partake in putting it into practice, that is, to extend the territorial coverage of pre-existing

mandatory insurance policies through a market agreement at no extra premium for the policy holders.

Given the successful implementation of previous market agreements and the various safeguards available, the Government is content that the market agreement would provide a satisfactory solution to extending policy coverage to the Hong Kong Port Area.

Mr James TO proposed to add a new clause 15A to the Bill to provide that the IA shall enforce any agreement made between it and any insurer within the meaning of motor vehicle third party risks insurance and employees' compensation insurance for the purpose of extending the territorial limit of a pre-existing right or obligation to include the Hong Kong Port Area. We voice our opposition to this.

To extend the territorial coverage of insurance policies through the market agreement at no extra premium is legally binding on both parties to the contract. In representing the Government in signing the market agreement, the IA has assumed the responsibility of enforcement and ensuring that the undertaking made by insurance companies in the agreement will be implemented and adhered to. For many years, the IA has represented the Government in signing a series of market agreements with the sector and the same mode of operation have been adopted in relation to the Motor Insurers' Bureau of Hong Kong, the Facility for Terrorism Risks and Employees Compensation Insurer Insolvency Bureau, which has been proven effective. To impose explicit statutory responsibility on the existing powers of the IA by way of legislation is meaningless, and this will cause confusion in the effective operation of existing market agreements and bring uncertainties.

Furthermore, in taking the initiative to propose signing a market agreement with the Government, the sector has put forward a solution to a transitional problem that can minimize administrative costs and avoid causing confusion to the insuring public, thereby fully displaying its self-discipline and professionalism. The sector has promised to enter into a market agreement with the highest degree of integrity. If the agreement is constrained by any legislative means, it is most likely that some of the insurance companies may back out as a result.

In addition, Mr James TO proposed that a proivision be added to Schedule 2 of the Bill to extend the territorial limit of a pre-existing right or obligation arising from motor vehicle third party risks insurance and employees' compensation insurance to include the Hong Kong Port Area. We are also opposed to this.

The legal profession is of the view that if the proposed amendment is passed, it will have implications on Articles 6 and 105 of the Basic Law. These two Articles of the Basic Law protect the right of private property. If the proposed amendment is passed, it will have the effect of rewriting the clauses in the insurance policies affected by it, thus interfering with the rights and obligations of various parties that have entered into the contracts. Therefore, when considering the proposed amendment, we must ensure that it will satisfy the requirement of proportionality or fair balance implicit in Articles 6 and 105 of the Basic Law. According to this requirement, reasonable proportionality must exist between the means taken and the end to be achieved if the Government interfers with the right of property. In other words, government interference with the right of property on grounds of public interest cannot impose an undue burden on individuals.

The proposed amendment does not specify that it is only applicable to insurance policies that will benefit from the proposed market agreement. In fact, if the proposed amendment is passed, it is possible that the industry will not be willing to enter into the market agreement. In addition, the proposed amendment does not specify that the insured has to pay additional charges or premiums to compensate the insurance companies affected.

If the proposed amendment is passed and the sector is consequently unwilling to enter into the market agreement, then in future if an insurance company has paid a large amount of compensation to a victim, that is, to the third parties who died or suffered bodily injuries in a car accident or employees who died or suffered bodily injuries during the course of work, and if the recovery of the money from the insured is prohibited as a result of the amendment made to the provision, it is possible that the insurance company affected can successfully challenge the relevant provision of the enacted Bill on the ground that it does not satisfy the requirement of proportionality implicit in Articles 6 and 105 of the Basic Law. This I have pointed out earlier on.

In addition, the industry is of the view that since all the insurance companies concerned have already made firm undertakings in respect of the market agreement and have agreed to extend the insurance coverage at no extra cost, it is not reasonable to interfere unduly with the pre-existing private contracts relating to the Hong Kong Port Area. Moreover, insurance policies are only one of the numerous types of private contracts and it is unfair to target insurance policies selectively.

Therefore, Madam Chairman, after careful consideration, the Government is resolutely opposed to all the amendments moved by Mr James TO concerning the arrangements for insurance.

Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, perhaps allow me refute one by one the arguments that do not hold water as presented by the Secretary.

First, the Secretary said that the market agreement would be binding on both sides. One can say that he was honest. What he meant was both sides, that is, it is binding on both the Government and the companies that have entered into the agreement. However, does it mean that it will also benefit the insured? Can the insured get additional and enforceable legal protection? On this question, even the lawyers of the Government said that since the insured was not a party to the agreement, it is very doubtful if he could rely on a contract entered into by the two sides to protect him. It is not possible for him to rely on this alone. Therefore, it was useless for the Secretary to say that the agreement would be binding on both sides because it cannot bind insurance companies so that they will not go back on their words.

Moreover, as I said just now, even if the agreement is binding on the IA and the insurance companies, in the event that it is really necessary to take legal action, what loss has the Government suffered, thus making it necessary for the Government to claim compensation? It may not have suffered any loss. Will it always be able to apply for an injunction? This may not be the case because what it seeks to prohibit has to do with a relationship between an insurance company and a third party, not with the failure of an insurance company to comply with an agreement it has entered into with the Government. Will the application definitely be granted? Even government lawyers could not provide any additional information in writing to us to give an explanation on this.

The weakest point of the Secretary is precisely the point that I have just told him, however, since there are so many lawyers on the Secretary's side, he can at least get a little legal advice, such that he should be able to respond. If an insurance company is really so unfortunate as to go into liquidation, there will no longer be any need for it to preserve its reputation and it will not be necessary to pay any heed to the IA, so how can the IA give any guarantee on this? The insurance company can say, "Yes, I am sorry but for this reason, I am not going to pay any compensation as I prefer to retain more assets for the insured of the company." Is the Secretary unable to give a reply? Since there are so many lawyers here, can they give a reply? No, they cannot.

If they cannot reply, you should not say that there is protection, nor should you say that other people have also entered into this kind of agreements and there is no problem in doing so. Of course, this is because, God forbid, at present, no insurance company has gone into liquidation, however, in terms of law, there is a lack of protection. If this amendment is passed, it will be a kind of protection because the agreement is just like something additional. However, the Government maintains that this will mean greater interference and this will make it mandatory for them to extend their insurance coverage. We must remember that the Government said in the last House meeting that insurance companies were willing to extend the coverage to include the Hong Kong Port Area at no extra premium.

For that reason, my amendment will be capable of reinforcing this wish, so that it can be enforced legally. The amendment is just like a private Members' bill, that is, a private bill. In our daily life, there are lots of private bills designed to entrench the terms in contracts or other matters, so that a liquidator will not disregard the wish of an insurance company that has gone into liquidation. This is the most important and highest form of manifestation, not high-handed interference or what some people describe as targeting only insurance companies because insurance companies are willing and I am only entrench this. I remember that when the Government reduced the pay of civil servants, it also said the same thing, that after discussions with them, by enacting legislation, it was only making provisions for it. In fact, this is exactly what we want to achieve, that is, no matter what the circumstances are, no one will be able to harbour other thoughts.

In the end, the Secretary also said that we should not impose excessive burden on the companies because Article 105 of the Basic Law stipulated that

companies had right to property and it was necessary to justify such a move. He has already given the answer to everything. Firstly, insurance companies themselves do not think that this is an additional burden and secondly, insurance companies are already willing to shoulder this additional burden, therefore, to set this down by way of legislation will not impose an additional burden on them because this is what they are willing to do voluntarily. The only question is whether or not it will be possible to enter into the agreement before the scrutiny. This is something that I had kept asking the Government to do for a long time, that is, whether or not it was possible to enter into the agreement before the scrutiny of the Bill. The Secretary kept saying that it was not possible, for all in all, he was concerned about whether insurance companies would agree. As the matter now stands, all insurance companies have finally said "yes".

The interesting thing is that the Government said that if the amendment was passed, some people would then become unwilling. In that case, we have to ask why people who were originally willing will become unwilling after the passage of the Bill or the enactment of this law. Why? I hope the Secretary can tell me the reason for this and what legal implications are involved, or what other implications there are. So far, the Secretary has not given any explanation. Why did you say that originally, they were willing and they had also confirmed this to the Government as well as to Members of the Legislative Council by way of a letter, but as a result of reflecting the agreement by this enactment, they will now pull out, become unwilling and overturn everything? What does that portend? Why is this so strange? This is really inexplicable.

The only reason that I can think of is, in some circumstances, they really do not want any legislation enacted because they in fact want to repudiate this agreement. In the event that the Government takes legal action against them, they can say, "We are sorry, but there is nothing we can do because we are hanging in the balance (it may not necessarily be liquidation). All in all, it is not possible for us to do so." Or they may say, "The amount of compensation in this case is too great, so much so that we really want to choose the lesser evil. Even though we have given our consent to the Government, even if the Government takes legal action against us, it will not be able to get any compensation because it has not suffered any direct loss, nor will it definitely be able to obtain an injunction. We simply are not going to pay any compensation because the amount involved is simply too great." This is because insurance companies want to reserve the last resort of not paying any compensation.

Apart from this, I really cannot think of any reason that the sector would oppose legislation. Unless they may want to have the last resort at their disposal, that is, although they have given their consent to the Government, in extreme circumstances, for example, when the amount of compensation is really too great, they will not pay any compensation. If my conjecture is correct, that means when some major event happens, the rights of some of the insured will be vulnerable and they will not get any protection.

Ultimately, this problem is exactly like "the emperor's new robe" and here lies the core of the problem. This is because I cannot think of any other reason. Or can the Secretary tell me if there is any other reason? Why would anyone oppose the enactment of legislation? All the apparent reasons such as interfering with the operation of the commercial market cited by you are nonsense and not tenable. The only reason is that some situations will really hurt insurance companies and they really do not want to pay any compensation, or they have made calculations and think that they should not pay any compensation. We can find a reasonable explanation only in such circumstances.

In addition, since this is a joint debate, the Government wanted to debate my amendment together with the next clause 15A. I took the opportunity to make the request that the Government be mandated to enforce the agreement, however, the Government voiced its opposition and I trust everyone could also hear the Government voice its opposition just now. Why is the Government opposed to this? Is this because in some circumstances, even the Government would think that although they have indeed violated the agreement executed with the Government, it is not going to take any legal action against them and it does not even want to apply for an injunction to prohibit them from violating the agreement? What is the reason for this? Is it because there are some very sensitive or special situations, or large amounts of compensation have to be paid? I have no idea. For some unknown reasons, the Government simply refuses to enforce it, however, the Secretary said that he would assume the responsibility of enforcement.

Since the Secretary said that he would assume the responsibility of enforcement, I now demand that the Government definitely has to enforce the agreement, so that the insured can have a little more protection. Although that will only be indirect protection, the Government is still unwilling to do so, so what sort of situation is this? Is this collusion between the Government and

businesses? Are there some circumstances in which the Government will be sympathetic to insurance companies and if an insurance company really refuses to pay compensation on the ground that the amount of money involved is too great, it will just forget about this and will not take any legal action against the company or penalize it according to the insurance legislation? Will such a situation really arise? What sort of insurance company will that be? What will be the amount of compensation involved? Is public interest involved? Will the insurance company concerned go into liquidation if it really pays the compensation? All of us learned in the past why a certain businessperson was not prosecuted — because if the company went into liquidation, the workers would lose their jobs. Will such a thing happen? If an insurance company pays tens of millions of dollars to someone and as a result, it has to go into liquidation and several hundred workers are involved, what will happen then? In view of this, will the Government say, "Do not pay any compensation, I am not going to take any legal action against the company or enforce the agreement and I can only do so."? If not, I cannot think of any situation that can prevent us from enacting legislation to mandate enforcement. If discretion is to be given to the Government again, in what situations should it have discretion? Can this be spelt out clearly?

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

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, it is based on several points that we oppose the amendments proposed by Mr James TO. Firstly, we think that these market agreements have been proven effective in protecting consumers. Secondly, we think one very important principle in enacting legislation is that the Government should not meddle or interfere rashly with private contracts, in particular, those involving right of private property by legislative means since doing so will set a very dangerous precedent. In fact, I think that it is only right for Members of the Legislative Council to support the Government in this because if we can enact legislation today to interfere with private contracts, that is, those relating to insurance, when it comes to other cases, Mr James TO would say that we have set a very bad precedent.

Mr James TO was very right in saying that the market agreement is a legally binding agreement executed between the Government and the insurers —

we can say very frankly that as policy holders are not parties to the market agreement, they cannot enforce the market agreement. That said, in notifying the policy holders of the details of the market agreement and the list of participating insurance companies, the participating insurance companies are indeed telling the affected policy holders that they have waived their contractual right to enforce any exclusion clause on territorial limit and conferred additional benefit on the policy holders by extending the coverage of the existing policies to include the Hong Kong Port Area.

In case of an accident in the Hong Kong Port Area, the victims (that is, the third parties who died or suffered bodily injuries in car accidents or employees who died or suffered bodily injuries during the course of work) will be able to claim compensation from the insurance companies. Once the liabilities of the insurance companies towards the victims are established, the insurance companies have an obligation to compensate the victims notwithstanding any exclusion clause.

In the unlikely event that an insurance company which has signed the market agreement wishes to go back on its words and take legal action to recover compensation paid to any third parties on the ground that the insurance policy does not cover the Hong Kong Port Area, the policy holder can advance such arguments as he deems fit including referring to the market agreement, and the representation made by the insurance companies on extending the coverage to include the Hong Kong Port Area. We believe that the policy holder will have a good defence and the IA will be prepared to render assistance in any such legal proceedings.

Mr James TO said that I had not considered the scenario of an insurance company being liquidated. This is a very extreme scenario. In fact, we have given this consideration. If an insurance company goes into liquidation, all claims for motor vehicle third party risks and employees' compensation insurance will be paid out of the compensation funds established by the industry, that is, they will be dealt with by the Motor Insurers' Bureau of Hong Kong and the Employees Compensation Insurer Insolvency Bureau.

Thank you, Madam Chairman.

MR JAMES TO (in Cantonese): Chairman, concerning the first point, the Government's reference to interfering rashly with the right of property, I think

such an accusation is really very serious, so I cannot accept it and has to return it to the Government. How can this state of affairs still be reagarded as rash? There has been so much dilly-dallying and discussion. Moreover, this is only a minor issue. In addition, we have to bear in mind that even though other people's right of property is involved, these people have given their approval and agreement and, as the Secretary said, the market agreement had also been mailed to them and that means they have given it up. In that case, what is the problem with enacting legislation? How can this be considered rash interference? How can such a word be used? Is that right?

Chairman, on the second point, the more one talks about it, the more confusing it becomes. Why was it necessary for us to discuss for such a long time and to reach a market agreement? Because the last thing that insurance companies want to see is that they have to give individual endorsement to dozens of insurance policies. This is a very tedious business and even the mailing cost of $1.4 for each copy can be substantial when taken together. Moreover, there if also a lot of other administrative work. However, the interesting thing is that the Secretary told us just now that the policy holders would be notified after the market agreement had been reached. Does he mean by telephone? Of course, this will be done at a cost of $1.4 each, although doing so by bulk mail may not cost as much as $1.4 each.

Since it will be necessary to spend $1.4 in postage to mail the signed endorsement, there is in fact no difference, only that an endorsement is what is described as legally enforceable, that is, insured persons can handle things on their own and they have the right to take legal action without having to rely on the agreement. In that case, why do they not complete the endorsement? This matter somewhat baffles me.

If it is said that after signing a market agreement and issuing a press release, it will be possible to save tens of thousands of dollars or even a hundred thousand dollars in postage, however, this will not be the case because it will still be necessary to mail documents on which information has been entered using a computer program. That will do the job and this is just that simple. Doing so will indeed achieve some administrative effect and if this is done, people will have greater peace of mind and do not have to worry about the occurrence of other situations. In addition, we also have to discuss the case of extreme scenarios — we have to understand that all would be well if nothing happens, however, should something happen and if claims for large sums of compensation

are made, it will be very tempting to the liquidators, that is, they will face a great test. It is therefore very doubtful whether the so-called complementary fund can really provide protection.

In fact, the Government also said that other people had done so. However, if the protection was inadequate, people would also raise queries concerning other parties and in that case, the parties would have a lot of trouble. I wish to tell other people, in particular Members seated here who champion for workers' rights that they really have to be very careful. Without enacting law that enables individual insured persons to exercise their rights under their contracts individually, in fact, it is possible that problems may arise in extreme scenarios. I think this is exactly why we want the highest degree of protection because what insurance covers are unlikely events. Although it is said that there is only a one in 10 000 chance of an accident happening and on top of that, an insurance company will have to close down, I can tell all the people seated here that in our legal profession, even an instance of a re-insurance company participating in the Employees' Compensation Insurance Residual Scheme closing down has occurred before and this is something that no one has ever thought of. Therefore, in these few years, lawyers have had a very hard time operating their business and they have to pool enough money to underwrite their own responsibility. Initially, everyone thought that since insurance companies have provided coverage, the protection should already be adequate, however, it turned out that even insurance companies can close down. In these circumstances, what should workers do? How can people who were knocked down by vehicles get any protection? In these extreme scenarios, they cannot get any protection.

CHAIRMAN (in Cantonese): Before I put to you the question on Mr James TO's amendment to Schedule 2, I wish to remind Members that if that amendment is agreed, Mr James TO will withdraw his amendment to clause 2 and that on the addition of new clause 15A.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the amendment moved by Mr James TO be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai, Dr KWOK Ka-ki and Miss TAM Heung-man voted for the amendment.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Prof Patrick LAU voted against the amendment.

Ms LI Fung-ying, Mr WONG Kwok-hing and Mr KWONG Chi-kin abstained.

Geographical Constituencies:

Mr Albert HO, Mr James TO, Mr LEUNG Yiu-chung and Dr YEUNG Sum voted for the amendment.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the amendment.

Miss CHAN Yuen-han, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU and Mr Ronny TONG abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, four were in favour of the amendment, 15 against it and three abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, four were in favour of the amendment, eight against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the amendment was negatived.

MR JAMES TO (in Cantonese): Chairman, I move that new clause 15A be read the Second time.

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That new clause 15A be read the Second time.

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.

(Members raised their hands)

Mr James TO rose to claim a division.

CHAIRMAN (in Cantonese): Mr James TO has claimed a division. The division bell will ring for one minute, after which the division will begin.

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

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

Functional Constituencies:

Mr CHEUNG Man-kwong, Mr SIN Chung-kai and Ms LI Fung-ying voted for the motion.

Dr Raymond HO, Dr LUI Ming-wah, Mrs Sophie LEUNG, Dr Philip WONG, Mr WONG Yung-kan, Mr Howard YOUNG, Mr LAU Wong-fat, Mr Timothy FOK, Mr Abraham SHEK, Mr Tommy CHEUNG, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr WONG Ting-kwong and Prof Patrick LAU voted against the motion.

Mr WONG Kwok-hing, Dr KWOK Ka-ki, Mr KWONG Chi-kin and Miss TAM Heung-man abstained.

Geographical Constituencies:

Mr Albert HO, Mr James TO, Mr LEUNG Yiu-chung and Dr YEUNG Sum voted for the motion.

Mrs Selina CHOW, Mr CHAN Kam-lam, Mr Jasper TSANG, Mr LAU Kong-wah, Miss CHOY So-yuk, Mr TAM Yiu-chung, Mr LI Kwok-ying and Mr CHEUNG Hok-ming voted against the motion.

Miss CHAN Yuen-han, Ms Emily LAU, Mr Albert CHAN, Mr Frederick FUNG, Ms Audrey EU and Mr Ronny TONG abstained.

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

THE CHAIRMAN announced that among the Members returned by functional constituencies, 22 were present, three were in favour of the motion, 15 against it and four abstained; while among the Members returned by geographical constituencies through direct elections, 19 were present, four were in favour of the motion, eight against it and six abstained. Since the question was not agreed by a majority of each of the two groups of Members present, she therefore declared that the motion was negatived.

CHAIRMAN (in Cantonese): As the motion on the Second Reading of new clause 15A has been negatived, Mr James TO may not move his amendment to clause 2, which is inconsistent with the decision already taken.

CHAIRMAN (in Cantonese): Clause 2 as amended.

CHAIRMAN (in Cantonese): Since the Committee has earlier on passed the amendment to clause 2 moved by the Secretary for Security, I now put the question to you and that is: That clause 2 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Secretary for Security.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that Schedule 2 be amended as set out……

(The Clerk made an explanation to the Chairman, who indicated to the Secretary for Security to sit down first)

CLERK (in Cantonese): Schedule 2 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Schedule 2 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

CHAIRMAN (in Cantonese): I think the question is……I have to suspend the meeting because there is a minor problem with the procedure that we went through just now. I hope Members can give me five minutes. I will definitely come back to the Chamber after five minutes. Thank you.

5.15 pm

Meeting suspended.

5.22 pm

Committee then resumed.

CHAIRMAN (in Cantonese): Members, I am sorry to have wasted your time. Let us now go back to page 14 of the script. Since there are several words more in my script, there was some confusion. However, there is no problem with your scripts.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that Schedule 2 be amended as set out in the paper circularized to Members. This amendment has been scrutinized by the Bills Committee. Thank you, Madam Chairman.

Proposed amendment

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 amendment moved by the Secretary for Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedule 2 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Schedule 2 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1, 3 and 4.

SECRETARY FOR SECURITY (in Cantonese): Madam Chairman, I move that Schedules 1, 3 and 4 be amended as set out in the paper circularized to Members. This amendment has been scrutinized by the Bills Committee. Thank you, Madam Chairman.

Proposed amendments

Schedule 1 (see Annex I)

Schedule 3 (see Annex I)

Schedule 4 (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 Security be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Schedules 1, 3 and 4 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That Schedules 1, 3 and 4 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Preamble.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That this be the preamble to the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Council now resumes.

Council then resumed.

Third Reading of Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

SHENZHEN BAY PORT HONG KONG PORT AREA BILL

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

Shenzhen Bay Port Hong Kong Port Area 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 Shenzhen Bay Port Hong Kong Port Area 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): Shenzhen Bay Port Hong Kong Port Area Bill.

PRESIDENT (in Cantonese): We now resume the Second Reading debate on the Building Management (Amendment) Bill 2005.

BUILDING MANAGEMENT (AMENDMENT) BILL 2005

Resumption of debate on Second Reading which was moved on 27 April 2005

PRESIDENT (in Cantonese): Mr James TO, Chairman of the Bills Committee on the above Bill, has not yet appeared in the Chamber. I have to suspend the meeting again in order to look for Mr James TO and ask him to come back to the Chamber.

5.26 pm

Meeting suspended.

5.29 pm

Council then resumed.

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

MR JAMES TO (in Cantonese): President, shall I first speak in my capacity as Chairman of the Bills Committee and then proceed to give my personal views?

PRESIDENT (in Cantonese): Yes, you may first speak as Chairman of the Bills Committee and then give your personal views. You will have up to 15 minutes all the same.

MR JAMES TO (in Cantonese): President, but can I make the second part of my speech at a later time?

PRESIDENT (in Cantonese): Yes, it is all up to you.

MR JAMES TO (in Cantonese): Thank you.

Madam President, in my capacity as Chairman of the Bills Committee on Building Management (Amendment) Bill 2005 (the Bills Committee), I shall now brief the Council on the deliberations of the Bills Committee.

The Building Management (Amendment) Bill 2005 contains many proposals that will produce very significant impacts on building management, including the procedures of setting up owners' corporations (OCs) and their operation, the relationship between the OC and management committee (MC) of a building, the duties and rights of members of MCs and the protection of property owners' interests.

Since the proposals set out in the Bill involve extensive and significant changes, the Bills Committee has spent almost two years scrutinizing all such proposals and considering the consequences of implementing the provisions concerned. The Bills Committee has held 51 meetings and listened to views from the public and the building management sectors. The Bills Committee has

also offered many views and recommendations on the Bill. Following discussions with the Bills Committee and strenuous attempts to identify a feasible scheme, the authorities have agreed to introduce a considerable number of amendments. Most members of the Bills Committee support such amendments. I shall now outline the major items of discussions as follows.

According to section 3 of the Building Management Ordinance (BMO), an MC may be appointed at a duly convened meeting of the owners in accordance with the deed of mutual covenant (DMC); or if there is no DMC or the DMC contains no provision for the appointment of an MC, by a resolution of the owners of not less than 30% of the combined shares. According to the Administration, the reference to DMC in section 3 of the BMO has raised doubts about whether the provisions in the DMC or those in the BMO should prevail. Consequently, the Administration proposes to stipulate clearly in the BMO that for an MC to be formed under the BMO, the owners have to follow the procedures set out in the BMO, instead of the DMCs. The Administration also proposes to repeal all references to DMC in Schedule 2 to the BMO, so that the operation of an MC will follow the provisions of the BMO instead of the DMCs.

Members have expressed reservations about the proposal of imposing mandatory requirements on owners to follow the procedures set out in the BMO, instead of the DMC, for the appointment of an MC. They have pointed out that some DMCs may contain reasonable provisions on the composition of an MC. For example, an DMC may provide for a certain number of representative(s) to be elected from each block. For composite developments, the DMC may provide for the ratio of representatives from the residential, commercial and industrial portions, so as to enhance the representativeness of the MC. These members are concerned that confusion will be caused to the day-to-day work and the re-appointment of the existing MCs which have been formed in accordance with the provisions in their respective DMCs if the mandatory appointment procedures are imposed.

The Administration has responded that there is no provision in the BMO governing the composition of an MC. In other words, provided that the members of an MC and the post-holders are appointed from amongst the owners at an owners' meeting, they would have fulfilled the requirements under Schedule 2. Owners may choose to use whatever ways to allocate the posts in their MC as long as the final appointment of each member is approved at the owners' meeting.

Besides, under the existing BMO, once an OC is formed, liability will be enforceable against the OC to the exclusion of individual owners being MC members. The Administration has proposed to add a new section 29A to the BMO to the effect that MC members of an OC acting in good faith shall not be held personally liable for any act done or default made by or on behalf of the OC.

Members in general recognize the need to give statutory protection to individual MC members from being claimed for personal liability in the course of exercising statutory powers or discharging statutory duties on behalf of the OC under the BMO. However, some members have expressed concern that problems may arise if a member of an MC may easily make use of the defence that "they have acted in good faith" to avoid assuming responsibility for carrying out malpractices. These members have suggested that members of an MC should be required to act in good faith as well as in a reasonable manner in order to invoke the exemption and protection under the proposed new section 29A. The Administration has accepted the recommendation of these members and shall move corresponding amendments.

Moreover, the Bill proposes to set out clearly the requirements for appointment of proxy and to include a standard format of the proxy instrument. While some members consider that owners should be allowed to indicate voting instructions on the proxy instrument and modify the statutory format, some other members are concerned that this will make the proxy instrument too complicated and may lead to more frivolous disputes. After careful consideration of the pros and cons, a majority of members have agreed that owners should not be allowed to give instructions to the proxy and should only be allowed to use the statutory format.

At members' suggestion on preventing any abuse of the proxy instrument, the Administration has agreed to move amendments to include additional requirements in Schedule 3 to the BMO to facilitate the cross-checking of proxy instruments. Under these additional requirements, the secretary of an MC should acknowledge receipt of all proxy instruments submitted by leaving a receipt slip at the flat of the owner or depositing the slip into the letter box of the owner before the owners' meeting. Besides, the secretary of the MC should be required to post, throughout the owners' meeting, information in respect of those flats where a proxy instrument has been submitted in a prominent place of the venue of the owners' meeting for inspection.

To ensure that the secretary or the convenor would have sufficient time to check the proxy instruments, the Administration shall move further amendments to increase the time limit for lodging the proxy instruments from 24 hours (as originally proposed) to 48 hours before the owners' meeting.

In order to deter forgery appointment of proxy, the Administration has accepted members' recommendation and will move amendments to stipulate in the BMO that an MC should keep the proxy instruments received for an owners' meeting for a period of 12 months after the holding of the relevant owners' meeting, so that when necessary, as in the case of criminal investigations, the relevant proxy instruments can be used as evidence for the purpose of legal proceedings.

Paragraph 1(2) of Schedule 3 to the BMO provides that the chairman of an MC shall convene a general meeting of the OC at the request of not less than 5% of the owners for the purpose specified by such owners within 14 days of receiving such request. Some members have expressed concern over a situation where the chairman of an MC refuses to convene an owners' meeting or issues a notice of meeting within the statutory time limit but schedules the general meeting to be held months later. In order to prevent MC chairmen from evading their statutory responsibility, the Administration will move amendments to specify the deadline for actually holding an owners' meeting.

Under the requirements proposed by the Administration, the chairman of an MC shall convene a general meeting of the corporation at the request of not less than 5% of the owners for the purposes specified by such owners within 14 days of receiving such request, and hold the general meeting within 45 days of receiving such request. Besides, the secretary shall convene an MC meeting within 14 days of receiving the request of any two members and the MC meeting should be held within 21 days on receipt of such request.

Regarding the termination of the appointment of managers, the Bill proposes to specify that the termination mechanism under the BMO shall only be applicable to the termination of the appointment of the DMC manager. For any manager appointed subsequently by an OC (including the DMC manager who is reappointed by the OC), any termination of the manager's appointment shall be executed in accordance with the provisions of the management contract. In response to members' request, the Administration has agreed to move

amendments to the Bill to the effect that the mechanism for termination of the appointment of managers under paragraph 7 of Schedule 7 to the BMO shall apply only to the first manager, that is, the DMC manager, as well as managers subsequently appointed by an OC if the management contract does not provide for a termination mechanism.

Whilst members generally agree that the outgoing manager should be given two months to prepare the income and expenditure account and balance sheet, they consider that the manager should be required to hand over to the owners' committee or the new manager "supplies, facilities and equipment" such as keys, safes, floor plans, and so on, immediately after his appointment ends, so as not to affect the management of the building.

Having considered the views of members and professional organizations of property management, the Administration has agreed to move amendments to amend paragraph 8 of Schedule 7 to the effect that only those books or records of account, papers, documents and other records which have to be used for the purpose of preparing the financial statements as required under the new paragraph 8(2)(a) of Schedule 7 should be delivered to the new manager or the owners' committee within two months of the termination of the appointment of the old manager, and the outgoing manager should deliver other properties or records as soon as practicable after the end of his appointment and in any event no later than 14 days. With the exception of Mr WONG Kwok-hing, most members have accepted the Administration's proposal, with a view to balancing the interests of all sides. Mr WONG Kwok-hing would move an amendment to the effect that the outgoing manager would deliver other properties or records as soon as practicable after the end of his appointment but no later than two days under paragraph 8(1) of Schedule 7. This will be the only amendment proposed by members.

According to the new requirements on procurement set out in the Bill, any procurement of goods or services with a value exceeding $200,000 or 20% of the annual budget of an OC (whichever is the lesser) shall be done through tendering, and that any tender of a value exceeding 20% of the annual budget of an OC shall be accepted or rejected upon the passage of a resolution of the owners at a general meeting. If any procurement meets the stipulated threshold, it shall also go through the tendering procedures subject to passage of resolution at an owners' meeting.

The Administration is of the view that the tendering requirement could be waived for continuous engagement of the incumbent contractor for the supply of services if the majority of owners would like to retain the existing service. Some members have expressed support for the Administration's proposal of giving flexibility to owners to retain the existing service without the need to meet the tendering requirement. However, some other members have expressed the view that all procurement proposals that involve a large sum of money should go through tendering. They hold that the tendering process would enable owners to obtain the best quotations and the most up-to-date market information for making a choice.

Having considered members' views, the Administration will move amendments to revise the procurement requirements to the effect that for contracts of the same type engaging the same contractor/supplier, if approval is given in a general meeting of the OC or a meeting of owners, an MC or a manager can be permitted to waive the tendering requirement, but the procurement proposal must be endorsed by a majority of owners at the meeting. Besides, in addition to deciding whether tendering should be conducted or waived, owners should decide at that meeting the terms and conditions of the new procurement contract.

In relation to the validity of a contract for the procurement of any supplies, goods or services, that is, the consequences of non-compliance with the statutory procurement requirements, members have expressed divergent views. While members in general agree that the Court may make such orders and give such directions in respect of the rights and obligations of the contractual parties where proceedings are taken for the enforcement of any procurement contract to which the statutory procurement requirements apply, they consider that owners should be given the opportunity to decide whether to honour the contract or not before the judicial mechanism is triggered. The Administration has agreed to move amendments to provide for arrangements and procedures for OCs and owners to deal with contracts that have not followed the statutory procurement requirements. Under these arrangements and procedures, a contract for the procurement of any supplies, goods or services shall not be rendered void by reason only of non-compliance with the statutory procurement requirements, but a contract for the procurement of any supplies, goods or services may be voided by a resolution passed by the majority votes of the owners at a general meeting of the corporation convened under Schedule 3 to the BMO.

The Administration has undertaken to carry out extensive publicity programmes after the passage of the Bill, with the aim of making all sides involved in building management realize their respective rights and obligations following the implementation of all the new changes. The Panel on Home Affairs shall follow up matters relating to the implementation of the Amendment Ordinance and the required publicity programmes.

Madam President, since the Albert House incident, the procurement of third party risks insurance has become a topic of public concern. Actually, a new section 28 was already added to the BMO in 2000, stipulating that all OCs shall procure in relation to the common parts of the building a policy of third party risks insurance. To implement the new section, the Government needs to draw up subsidiary legislation for the purpose. According to the Administration, during the drafting of the subsidiary legislation, it was found that the principal ordinance was not exhaustive and in need of further amendments. The amendments concerned have been incorporated into the Bill.

The Bills Committee has discussed various issues relating to the Draft Regulation (that is, the subsidiary legislation mentioned above). The most heated discussions are on whether or not unauthorized building works should be included in insurance coverage. This is indeed a contentious topic. Members of the Bills Committee are divided on this issue and they have failed to reach any agreement following discussions. However, we will still have an opportunity to do so, because I believe that when the Legislative Council establishes a subcommittee to scrutinize the Regulation, there will certainly be further discussions on this topic.

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

MR WONG YUNG-KAN (in Cantonese): Madam President, to most individual property owners in Hong Kong, their flats are already all or nearly all the assets they own. And, the quality of building management will affect property value in many ways. Furthermore, Deeds of Mutual Covenant (DMCs) aside, the Building Management Ordinance (BMO) is the most important legal document on the regulation of building management. Therefore, the Bills Committee on the Building Management (Amendment) Bill 2005 (the Bill) has attached very

great importance to the scrutiny of the Bill. We have spent more than two years on carefully scrutinizing the various clauses of the Bill, convening as many as 51 meetings. The DAB and other political parties and groupings have also offered plenty of advice on the contents of the Bill. Although the authorities have not accepted all our suggestions, the DAB basically accepts their proposed amendments.

However, I still wish to take this opportunity to reiterate and explain some of the views put forward by the DAB in the Bills Committee, in the hope that the authorities can reconsider them. I shall speak on three aspects, namely, the mechanism for amending DMCs, the liabilities of individual property owners and the procurement of legal services.

A DMC is a very important agreement on building management and the definition of property rights. However, DMCs are all drafted by property developers without any participation of individual property owners, who may even be entirely ignorant of the DMCs of their buildings. Very often, DMCs are marked by unfair provisions. For instance, it may be specified that while the external walls of a building are the property of the developer, individual property owners are required to pay for their maintenance and repairs. Or, there may be mistakes in calculating the respective shares of the flats in a building, thus leading to disproportionate rights and obligations among individual owners. It is only when individual owners discover such unfair provisions that they come to realize that the amendment of the DMC will require the signatures of all owners. Since this is practically impossible, they must bear with the situation despite their dissatisfaction.

In response to Bills Committee members' request, the authorities have replied that since the amendment of a DMC will inevitably affect the rights and liabilities of all sides and is likely to be regarded as an "interference" or "control" of property, it is very difficult to strike a balance.

But the main question is: Is it possible to amend DMCs? Actually, Schedule 7 to the existing BMO can already show that instead of still being an agreement which must be adhered to in its entirety, a DMC is subject to the BMO. The changes to Schedule were the greatest amendments made to the BMO in 1993. It was then stated, "In the event of any inconsistency between this Part and the terms of a deed of mutual covenant or any other agreement, this

Part shall prevail.". The result is that all the mandatory terms in DMCs mentioned in the BMO automatically become part of all DMCs in Hong Kong and supersede all those terms that are inconsistent with Schedule 7.

For this reason, it is possible to amend DMCs by way of legislation. But how are we going to amend the unconscionable terms in the DMCs of individual buildings? What should be the criteria and procedures of amendment? The DAB proposes that the focus of any amendment should be the greatest benefit of all owners and we must make sure that the amendment mechanism can realize the principle of striking a "fair balance". The Government may set three conditions for the amendment mechanism. First, the mechanism can be activated only when there is an extremely unfair situation. Second, any amendment must be agreed by a large proportion of owners holding, for example, 80% of the shares. Third, the Court should be the final arbiter to rule whether or not an amended DMC is in accordance with the principle of "fair balance" and can provide all owners with the greatest protection.

The second point I wish to discuss concerns the liabilities of individual owners. I believe Members can still remember the Albert House incident. Since an OC must bear unlimited liabilities, all individual owners must be held liable when it is liquidated. In other words, to its creditors, the liabilities of individual owners are not limited to the values of flats owned by them but will cover the whole amount of debt.

Suppose there are four categories of individual owners in the case of Albert House: first, owners of negative equity assets; second, bankrupts; third, mortgagors holding flats under the name of a limited company; and, fourth, owners whose flats are not mortgaged. When the OC is liquidated, creditors will naturally turn to the fourth category of owners first. If these owners have other properties, they may even have to sell these properties. Is it reasonable to impose such liabilities on them?

The DAB advises the authorities to consider the following question in the context of balancing the interests of creditors and individual property owners. If such property owners have already taken out sufficient liability insurance, and also if they themselves have not made any mistakes, is it possible to limit their liabilities to the values of their flats in the building concerned?

Finally, I also wish to say a few words on the procurement of legal services. Under the Bill, when procuring legal services, an OC must follow the same statutory procedures applicable to the procurement of other services, meaning that procurement must be done through tendering. We must realize that tendering must take time and follow certain procedures. In case of litigation, especially when an OC is sued, there will be a time constraint. If tendering is made mandatory, the other side may well obtain a court order quickly, and the OC concerned may lose the case even before it can hire any lawyer. The DAB advises the Government to explore the possibility of allowing the MC concerned to hire a lawyer for the provision of basic services under certain urgent circumstances, while the OC continues to procure legal services through tendering in the meantime.

To sum up, the BMO should ultimately aim at protecting owners' interests and promoting effective building management. I therefore hope that after the passage of the Bill, the Government can continue to conduct reviews and explore various possibilities of perfecting the BMO.

Madam President, I so submit.

MR ALBERT CHAN (in Cantonese): President, I rise to speak in support of the Second Reading of the Bill and the associated amendments.

Insofar as the Legislative Council's scrutiny of bills over the past decade or so is concerned, I believe the Building Management Ordinance (BMO) must have been the one which has received the most numerous amendments, and the one on which the Legislative Council has spent comparatively more time. The BMO is plagued with problems. A few years ago, the Legislative Council set up a working group to conduct a comprehensive study on the various problems of the BMO. After three years of repeated discussions and studies, it has put forward many concrete proposals on property matters, owners' interests, the duties of property management companies, the procedures of establishing an OC, meeting agendas and legal liabilities. And, more than a hundred recommendations have been made to the Government. The Government has agreed to amend the Bill on the basis of some of these recommendations. And, an Amendment Bill has been put before the Legislative Council for deliberation.

The Government has indeed accepted many of our recommendations, but there are still many unaccepted proposals. These unaccepted proposals can aptly tell us that even after the passage of the Bill, the Ordinance will still have many inadequacies. On behalf of the Bills Committee, Mr James TO has already addressed this Council on the amendments contained in the Bill today. I believe that Members will probably not oppose these amendments. I just want to take the opportunity presented by the Second Reading of the Bill to point out that property management is still plagued with very serious problems. It is hoped that after the completion of this amendment exercise, the Government can expeditiously put forward further amendments to rectify all the remaining inadequacies.

I have remarked that the BMO is plagued with numerous problems. This is actually an incontestable fact. The numerous problems with the BMO are mainly the results of unequal DMCs. I have mentioned many times in the Chamber that even our great Motherland already passed a law two years ago which provides that the selection of property management companies for newly completed buildings must be done through open tender. But in Hong Kong, the clandestine approach of the colonial times is still being adopted. The management companies for all newly-completed buildings are invariably selected by property developers. Because of this intrinsic inadequacy, because the management companies for all newly completed buildings are directly associated with property developers, it is only natural that they are totally biased towards the interests of property developers in respect of property management, financial arrangements and handover inspections.

From many past examples, we can observe many cases of management fees being used to finance the maintenance and remedial works that must be performed by property developers; employees of management companies being deployed to sell property developers' flats; common funds being spent on running the fee-charging commercial car parks of property developers; and, management companies even occupying common areas for illegal electricity connection, so that they can pay for the electricity consumed by property developers' shopping arcades. There are numerous such examples. We will commit a criminal offence even when we steal just a candy from a supermarket. The Government is fully aware of all the examples cited by me, but no criminal prosecutions have ever been instigated. I have once approached the Organized Crime and Triad Bureau — a pact of three persons may already constitute organized crime. Is it a criminal offence for the top echelons of management

companies to collude with property developers and use management fees to make profits for the latter? The police have never instigated any prosecutions over the years.

Some of such cases even involve the companies owned by the richest tycoon in Hong Kong, Secretary. They have managed to become the richest tycoons in Hong Kong by fleecing the masses. The common masses and individual owners are exploited, bullied and oppressed by all those plutocrats, being deprived of their hard-earned money. The Administration is fully aware of all these cases, but it still turns a blind eye to them. In this very Chamber, we often criticize the Government for colluding with businesses, for favouring the large consortia. This is an incontestable fact.

Our great Motherland has already changed its attitude and policy. But Hong Kong still turns a blind eye to such unfair phenomena and tolerates their continued existence. This is simply absurd. These are all unfair and unreasonable social phenomena that outrage the common people in Hong Kong.

The poor masses in Hong Kong work extremely hard to earn money for purchasing a flat, but in many cases, they find that their purchases are just the beginning of their nightmares. Water leakage, substandard quality, messy building management, uses of management fees that cannot be accounted for, and crazy increases in management fees and maintenance fees are all problems that have been frustrating hundreds and thousands of households in Hong Kong, especially middle-class families. Many Members and political parties often claim that they want to fight for the interests of the middle classes. But the fight for changes that can enable individual owners to select their own management companies is very important to the struggle for the interests of the middle classes. The continued bias in favour of large consortia will continue to put their interests before those of the common masses and the middle classes.

President, we have put forward many recommendations, one of which is of course the selection of management companies through open tender. There must be no secretive deals, and people with conflicts of interests must not be put in charge of building management. Another thing is that as a result of a change introduced by the Lands Department, many DMCs now provide that the contract period for a management company employed under the DMC concerned should be two years. This is a clear provision in many DMCs, and the Lands Department has also undertaken to enforce it. I was once very happy. But the

truth is that although a two-year tenure is specified, the right of management can be terminated only if the management company voluntarily relinquishes its right upon the expiry of the tenure. If the management company specified in the DMC does not relinquish its right after the two-year tenure, the appointment will remain valid forever. If a building wants to terminate the management right of the company appointed for a two-year tenure under the relevant DMC, there must be the consent of owners holding 50% of the shares of the building.

Consequently, talks about the two-year tenure are simply nonsense, and the provision is largely meaningless. The truth is that the appointment of a new management company can be possible only if the existing management company voluntarily relinquishes its right upon the expiry of the two-year tenure. If not, a general meeting must be convened and a decision must be made by owners holding 50% of the shares. Another point is that the remuneration specified for the managers of management companies is invariably 10% in all DMCs. I have never come across any DMC which specifies a remuneration of less than 10% for managers. In the case of open tender, whether we are talking about Home Ownership Scheme estates or private housing estates, I have never seen a remuneration level of higher than 3%. In many cases, it is just a bit higher than 1%. There was one case in which a management company owned by the richest tycoon in Hong Kong voluntarily offered a quotation of just $10,000 a month when the housing estate concerned set up an OC and wanted to terminate its management right — Mr WONG Kwok-hing is also aware of this case. This management company originally charged some $100,000 to $200,000 a month. But then, it was willing to charge just $10,000 a month for managing the housing estate. In other words, the management fee charged under an unfair DMC may well be 1 000 times the fee charged voluntarily by a management company. This is an incontestable fact. But the Government simply turns a blind eye to it.

I have also asked whether criminal liabilities should be imposed if management fees are not used in accordance with the procedures set out in Chapter 344 of the Laws of Hong Kong. The greatest problem is that if a management company does not follow the annexes or guidelines set out in Chapter 344, the most that can be done is to obtain a court order. The manager does not have to bear any criminal liabilities. The manager may then adopt all these practices to make money for the company. He may thus be promoted and obtain indirect benefits. But this is not regarded as corruption. Unfortunately, my proposal has not been accepted.

President, in the discussions today, it is not my intention to criticize the Government for doing nothing at all. Frankly speaking, the Bill contains amendments in many areas, including committee procedures, the liabilities of OC members, the voting system and methods of voting. There are many improvements indeed. I have been chiding the Government for eight minutes, but I must also spend some time thanking it. In regard to certain procedures, and on the premise of not jeopardizing the interests of large property developers and consortia, it has indeed introduced many amendments to protect the interests of individual property owners. In this connection, I must thank the government officials concerned. During the discussions in the past few years, they showed an understanding of the problems and difficulties connected with property management. As a result, amendments to the Ordinance have been proposed, thus making it possible to improve the operation of OCs in future.

Another matter the Government may consider, as mentioned many times before by Mr Albert HO and other Members, is the fact that it is still impossible to set up OCs for many houses developed on the basis of special land grants. Fairview Park and Hong Lok Yuen are often cited as examples. It is still impossible to set up OCs for many small house developments of this kind in the New Territories. Consequently, it will be more useful if the several issues mentioned above can be included in future amendments.

I have just talked about non-compliance with procedures, that is, the failure of management companies to follow the required procedures. I now wish to add one point. We can observe that the scopes of business of large consortia now virtually cover all aspects of people's life, including electrical appliances, telecommunications and transportation, with funeral services being the only exception, perhaps. In many cases, they can further their interests in many ways by exploiting their management rights. And, in the absence of any tender process, they can force individual property owners to patronize their subsidiary and sub-subsidiary companies. Why do I emphasize that tendering must be done in strict compliance with the procedures set out in the BMO? Why do I emphasize that the number of bidders making a tendering process legal must be specified? Why do I emphasize that the whole process must be open? The reason is that if they do not have to face any criminal liabilities, they will simply ignore everything. It will be useless to sue them. Very often, large consortia will try to bully people by resorting to legal proceedings, because they can use management fees for lawsuits. When they are sued by individual owners, they will use management fees to hire lawyers. Individual owners, on

the other hand, must do so at their own costs. Therefore, if criminal liabilities are not imposed to regulate such practices, I simply fail to see how there can be any improvements to management.

Another point is about the accountability of managers. The clauses require the posting of information concerning many aspects, such as audit reports and minutes of meeting. But even if such information is not posted, nothing can be done. For this reason, I have been advocating the establishment of a building tribunal by the Government. With this tribunal, which is similar to the Small Claims Tribunal or Labour Tribunal, people will not have to go to Court and hire lawyers every time they want to instigate a lawsuit. Individual owners can choose not to hire a lawyer, but management companies or large consortia will still hire lawyers, so individual owners must still face the risk of incurring huge legal costs. This may easily drive them into virtual bankruptcy. And, the legal costs of such lawsuits may involve as much as several hundred thousand or even more than a million dollars.

In this way, individual owners may, in some cases, request a management company to submit audit reports, financial information and certain contracts. Under Chapter 344 of the Laws of Hong Kong, owners have the right to request all such information, but there is nothing they can do even if a management company still refuses to comply after they have issued a lawyer's letter to it. What is most ridiculous is that though the submission of such information is required under the Ordinance, in case a management company refuses to comply, no government department will have the power to force it to comply. The only solution is to bring the matter before the Court and obtain a court order. However, how can any individual owner run the legal risk of suing a management company under the richest tycoon in Hong Kong, just to obtain a financial report or an audit report? Thus, in the absence of strict legislative control over management companies, individual owners will only continue to be bullied.

I hope that after listening patiently for more than 10 minutes to my speech on the various problems today, the Secretary can really continue to formulate new amendments, so as to better protect the interests of individual owners. Thank you, President.

MR ALAN LEONG (in Cantonese): Madam President, in 1970, the Government enacted the Multi-storey Buildings (Owners Incorporation)

Ordinance, that is, Chapter 344 of the Laws of Hong Kong, providing owners of multi-storey buildings with a legal basis of establishing owners' corporations (OCs) for the management of their buildings. Later, in 1993 and 2000, amendments were introduced to this Ordinance in the hope of further upgrading the quality of building management.

Currently, roughly half of the 40 000 or so private buildings in Hong Kong have established their OCs, and there are now about 7 000 OCs in Hong Kong. The management committees (MCs) under these OCs have actually been playing quite an important role in maintaining the quality management of the common parts of multi-storey buildings and private housing estates. MCs have been selflessly devoting their time and efforts to the various matters connected with their buildings and housing estates. We must really heap praises on all those people who have worked so enthusiastically for MCs on a voluntary basis.

Building management is a highly complex task which involves many aspects, including legal and accounting issues. In some cases, tendering, procurement and maintenance will even call for engineering and other kinds of professional expertise. Although most OC members are enthusiastic and committed, they are not necessarily well versed in building management. It is therefore all the more necessary to formulate a satisfactory ordinance on building management and other support measures for assisting MC members in effectively discharging their duties and managing their buildings and housing estates. What is more, with a satisfactory ordinance, we can also define very clearly the management rights and obligations of those owners who are not MC members, and their interests can also be protected as a result.

Madam President, although the Building Management Ordinance (BMO) has been amended twice, it still has many inadequacies. I believe that other Members serving their constituents in the districts will also have the same feeling. Building management problems often revolve around such matters as the appointment of proxy, works tendering, substandard goods or services, procurement, financial surpluses, access or otherwise to OC accounts and third party liabilities.

The amendments proposed in the Bill this time around are all targeted on these matters and can be divided into seven categories: first, the composition of MCs and qualifications and personal liabilities of MC members; second, the

appointment of proxy; third, the procurement and selection of supplies, goods and services by OCs; fourth, the procedures and methods to be adopted by OCs in terminating the manager appointed under a DMC; fifth, the third party risks insurance arrangements for buildings with unauthorized building works or without OCs; sixth, individual owners' right of access to the copies of certain building management documents; and, seventh, OC meetings and other procedures. I honestly very much welcome the Government's proposed amendments to the BMO. And, I am also of the view that these amendments can further improve the legislation regulating building management, thus helping to reduce disputes concerning building management.

During the 50 or so meetings of the Bills Committee, colleagues and the Government exchanged views on some matters of principle and specific legal provisions. Both sides have managed to reach a consensus on many issues. However, in regard to quite a number of issues, the Government has still refused to accept Members' suggestions. I wish to raise two points in particular during the discussion today.

To begin with, most owners who encounter problems know that they can visit the Building Management Resource Centre under the Home Affairs Department for assistance. But they have all told me that …… Of course, I am not the only Member having been thus told, and I suppose many Members already mentioned the same thing during the Bills Committee's scrutiny of the Bill. Those who have sought assistance from the Resource Centre will invariably point out afterwards that the Resource Centre is unable to help them solve their problems. According to them, the Resource Centre can only answer some simple questions on procedures, instead of providing assistance in dealing with specific cases. Besides, owners are not prepared to use their own money for any lawsuits with OCs, or they simply do not have any financial ability to do so. Therefore, I maintain that while trying to perfect the legislation on building management, the Government must provide a framework with the power to resolve disputes. That way, both sides can resolve their disputes with lower litigation costs. I hope that the authorities can deal with this problem as soon as possible.

Actually, on the establishment of a Building Affairs Tribunal, Members generally think that it is necessary to establish such a Court for the purpose of handling disputes related to building management. Madam President, the reason is naturally more than obvious. Since this is a specialized Court, its

Judges will be handling the same kind of problems day in, day out. Owing to their specialization and experience with the problems, the Judges will not have to be briefed on the complexities, loopholes and points to note every time they hear such cases. This arrangement certainly merits our consideration from the perspectives of both judicial efficiency and saving time for the Court. I believe that there will certainly be higher efficiency and better results. However, the Government has simply pointed out that the Home Affairs Department and the Housing, Planning and Lands Bureau are still holding discussions on the proposal of establishing a building affairs tribunal, and it is necessary to wait for the outcome of the discussions before determining how best to promote the reconciliation of disputes between OCs and owners. I of course hope that the Government will conduct serious studies instead of using this as an excuse for its "stalling tactic". I also hope that after the passage of the legislation, it will not forget all about the need for examining the feasibility of establishing the tribunal to enable people encountering building management problems to resolve disputes in a more efficient and effective manner.

Madam President, the second issue of which I want to make special mention is the formation of OCs in house developments. Members of the Bills Committee generally think that a mechanism should be established under the BMO, or if this is not possible, under a new piece of legislation, so that owners of house developments can establish an organization for managing the common parts of their house developments. However, the Government has replied that since no undivided shares are accorded to individual owners under most DMCs applicable to house developments and the "common parts" are still the private property of developers, even if certain individual owners of house developments have set up an OC, the OC will have no power to manage and maintain the common parts in the house developments. I must point out that in some cases, the "common parts" in a house development are actually not the private property of the developer. But even in the case of those house developments where the common parts are still owned by the property developers concerned, we should not jump to concluding that we cannot do anything. I naturally will not underestimate the difficulties in establishing such a mechanism, but I believe that since there is indeed a need for its existence, a means can certainly be identified somehow to enable the owners concerned to manage their house developments in a more convenient and effective manner.

As a matter of fact, in some house developments, there is already an established and proven mechanism. Maybe, with just a little bit more creativity,

and by summing up the experience of the more successful cases, the Government can already bring an end to all the varying practices and formulate a systematic mechanism which is easier to follow. That way, the owners concerned can be given support in managing their house developments more effectively.

Madam President, the Building Management (Amendment) Bill 2005 can indeed improve the legal basis of building management and tackle certain common problems. But there is still a very long way to go before it can completely eradicate disputes and arguments concerning building management. The Government and the legislature must still make more efforts. I always believe that as long as we can all work with one heart, there will be no problem which cannot be solved.

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

MR WONG KWOK-HING (in Cantonese): Madam President, it has been two years since the First Reading of the Building Management (Amendment) Bill 2005 in April 2005. In the past two years, the Bills Committee convened totally 51 meetings, holding thorough discussions on the Government's proposed amendments. In the Bills Committee, we also put forward various proposals on dealing with the inadequacies of the Bill.

The reason for such prolonged discussions is that building management problems are numerous and complex, and there have been many arguments over the arrangements concerned. However, I still think that the various amendments proposed in the Bill are all very desirable. This is especially the case with the many issues which have been highly contentious so far, one example being the definition of "majority" votes. In the past, the appointment of an MC or the appointment of a new MC was based on "majority" votes. But what is meant by "majority" votes? This has led to many disputes. The Bill now proposes to adopt the principle of "majority rules" in place of "majority" votes. This will provide greater clarity in implementation. There is also the example of vote counting. Should abstention votes and invalid votes be counted? Under the proposed amendment, such votes will not be counted.

My purpose of citing these examples is to show that the Bill should merit our support because it contains many progressive proposals. However, it is also a great pity that the Government has still refused to accept many reasonable and sensible proposals. The deliberations of the Bills Committee have touched upon many technical amendments. I do not intend to discuss them one by one here. But I still hope that the Government can put forward further amendments in respect of the following issues. And, I also hope that the Government can give us a reply on the timeframe of follow-up. First, I maintain that a list of urgent matters should be formulated for purposes of procurement under urgent circumstances. The Government has not accepted this proposal. I maintain that OCs should be allowed to formulate their own lists of urgent matters to cope with emergencies. Such lists are necessary. The reason is that in the course of building management, many accidents requiring emergency repairs will crop up, and time is of the essence in such urgent cases. The costs of urgent repairs may be very highly, at times exceeding $200,000 or 20% of the annual budget of an OC. In such cases, it will be necessary to convene a general meeting before a decision can be made, thus delaying the progress of repairs. To tackle this problem, a list of urgent matters can be formulated by experts and passed by an owners' general meeting beforehand, so that OCs or management companies can cope with emergencies. Unfortunately, however, the Government has deleted this proposal, excluding the formulation of a list of urgent matters from the scope of the proposed amendments. Consequently, the flexibility available to OCs and management companies in coping with urgent repairs will be greatly reduced. This is the first point.

The second point concerns third party risks insurance. During the discussions on this issue, some expressed the view that unauthorized building works (UBWs) should also be covered by insurance. But I do not buy this viewpoint because as their name suggests, UBWs are illegal structures. Since UBWs are defined as such, why should OCs still take out any insurance policies for them? If UBWs are also covered, owners' desire of removing them will be weakened because they will think that even if an accident occurs, there will be third party risks coverage and they will not have to bear any responsibility. How can we accept something like this?

The Bill admittedly proposes many amendments in respect of building management, but such amendments are unable to rectify many structural problems. For instance, no legislation on regulating property management companies has been enacted so far. This is the third point I want to raise.

Currently, a property management company in Hong Kong can start operation as soon as it obtains a Business Registration Certificate. Such companies are of varying sizes. Some of them may be well-established, but the practices of others may be altogether questionable. Some property management companies many manage up to several thousand households, collecting more than a million dollars in management fees. The Government's regulation of property management companies is frankly much too loose, leading to huge variation of quality. These companies have also managed to bully individual owners by capitalizing on the loopholes of the legislation concerned. The Bill does not deal with the issue of regulation this time around. I find this most regrettable.

Although the Bill provides that a management company must maintain separate accounts for the fees collected from the buildings under its management, it does not specify any penalties for those companies for non-compliance. This will seriously injure the interests of countless owners. In case a management company really embezzles management fees, the OC concerned can only rely on civil proceedings to get the money back. Since most OC members work in this capacity on a voluntary and part-time basis, it will be entirely unrealistic to ask them to instigate any civil proceedings. The fact is that the closure of several management companies in recent years has already inflicted heavy losses on the affected OCs and owners, but they have no means to recover their losses.

For this reason, the Government should introduce a licensing system for property management companies and impose legislative control on them. Regulation and penalties are the only means of protecting owners' interests. Madam President, as a matter of fact, even security guards must hold a licence. Why should property management companies be exempted from licensing? Why should there be such double standards? In the course of discussions, the authorities claimed that the first phase of studies would not be completed until June 2007. I hope that the Government can quicken the pace of enacting legislation. If not, it cannot deny its responsibility in case any property management companies run into trouble again.

The fourth point is about the handling of property management disputes. I maintain that it is necessary to establish a Building Affairs Tribunal for the special purpose of handling disputes related to building management. The virtue of establishing this tribunal is that the sides involved will not have to hire any lawyers. And, the informal setting can also enable them to resolve their

disputes in a focused, expeditious and comparatively economical manner. In this connection, I have repeatedly advised that we should follow the "quick, clean and simple" example of the existing Labour Tribunal.

At present, disputes related to building management and those specified under the Building Management Ordinance may be referred to the Lands Tribunal for handling and a ruling. However, Members must realize that since the Lands Tribunal is responsible for hearing disputes relating to 23 Ordinances, it must hear large numbers of cases, with the result that the hearing of building management-related cases is necessarily delayed. As the number of building management-related disputes is ever increasing, the establishment of an independent tribunal will enable us to handle such cases more efficiently, in a "quick, clean and simple" manner.

(THE PRESIDENT'S DEPUTY, Mr Fred LI, took the Chair)

In some cases, the owners and OCs concerned may bring disputes related to building management before the Court. But once they do so, they will have to pay very high costs. An OC may pay the litigation costs by using the fund amassed from the management fees collected from individual owners. However, such funds are often limited in amount. Even if one such fund can amass to a certain amount, say, several million dollars or even $10 million, as in the case of some large housing estates, the money must still be reserved basically for building repairs. It must not be used lightly for litigation. Therefore, in the final analysis, individual owners are always disadvantaged financially, unable to rival management companies owned by large consortia. If the Government can establish a specialized tribunal, individual owners will be able to resolve building management-related disputes in a comparatively economical manner.

Actually, as early as 1993, when the then Legislative Council scrutinized the Multi-storey Buildings (Owners' Incorporations) (Amendment) Bill 1992, it already recommended the Government to establish a building management tribunal to handle building management-related disputes. But the Government rejected the proposal on the ground of resource shortage. This has led to the situation today.

The establishment of a tribunal aside, the Administration should also consider the idea of setting up a mandatory arbitration mechanism for handling disputes involving only some owners or small amounts of money.

The fifth point concerns my proposal that the Government should establish a mechanism for amending DMCs, with a view to rectifying unfair DMC provisions and thus protecting individual owners' interests. In this connection, the Government should try to tackle the problem at source. At present, DMCs are usually drawn up unilaterally by property developers. The Government also provides a number of standard DMC templates. But the drawing up of DMCs is still basically under the control of property developers. They can unilaterally include many restrictions unfavourable to individual owners. Once an individual owner puts down his signature at the time of property sale, the DMC will immediately become effective in its entirety. All subsequent purchasers will then be forced to accept this unequal agreement. As a result, individual owners must all suffer heavy losses in terms of management fees, the sharing of maintenance costs and the undivided shares for common parts.

There is another example. Why have so many house developments in the New Territories been unable to set up OCs? The reason is just the same. Therefore, apart from reviewing the situation at source, the Government must also handle the issue of establishing a mechanism for amending the unfair provisions of many existing DMCs. Unfortunately, however, the amendment exercise this time around does not touch upon this point. I feel most sorry about it.

Deputy President, the five proposals mentioned by me were not accepted by the Government in the course of scrutiny. I hope that the Government can put forward a timeframe of follow-up actions when giving its reply.

What is more, I will move an amendment regarding the handover wok between the new and outgoing management companies. When I move this amendment, I will give my views in detail. I hope that Members can render their support. Thank you, Deputy President.

MR LEUNG YIU-CHUNG (in Cantonese): Deputy President, I very much agree with Mr Alan LEONG, who remarked just now that those Members like us

who serve their constituents in the districts are quite experienced in building management issues.

This is true. As Members know, building management problems are very complex and frequent. Both in the case of private residential buildings or factory buildings, there are many management problems for us to solve.

What problems are involved? There are the conflicts between majority owners and individual owners, between majority owners and OCs, between management companies on the one hand and OCs and individual owners on the other, and between property developers on the one hand and individual owners and OCs on the other. These are all relationships marked by an intricacy of interests at stake and many other problems. As a result, they are more often than not obliged to have a third-party arbiter to resolve problems in many cases.

Of all the conflicts mentioned by me, the most important problem is that very often, individual owners are caught in a helpless position at the end. Therefore, it is basically desirable to have DMCs, for they can help people handle certain problems in principle. But as Members know, and we must still ask, "Who draw up DMCs in the very first place?" As rightly pointed out by many Honourable colleagues just now, DMCs are either drawn up by property developers or based on the DMCs of some very old buildings. All DMCs thus drawn up are out of keeping with the times. Such DMCs are very unsatisfactory, whether from the perspective of individual owners or from that of administration and operation. This explains why a Bill on building management has been put forward. It is hoped that the situation can be rectified and the problems solved.

The amendments this time around are further amendments. As mentioned by many colleagues, there is already very great improvement in many respects. I certainly agree because as mentioned by many colleagues just now, we simply cannot see any unsatisfactory aspects in the proposed amendments. But what is the point I am trying to make? Deputy President, the point is that I did not personally join the Bills Committee, so I do not know which problems raised by Members at the meetings were rejected by the Government. This is what I find most regrettable. Anyway, I will certainly agree to and support the amendment of the Ordinance.

However, Deputy President, I am not optimistic. I am not optimistic at all. Why? Although the Ordinance will become much clearer in many ways,

there are still many problems, such as the definition of "majority" mentioned by Mr WONG Kwok-hing just now. The definition is much clearer now; it must mean more than half of the votes. This is a much more precise definition. From this example, we can notice that there are improvements in many respects. But one very great problem still remains unresolved, Deputy President. Suppose any side, be it the OC or the management company, does not follow the requirements of the Ordinance, what can be done? This is the greatest problem. If one of the parties does not act according to the DMC or the soon to be passed legislation, what can be done? What actions can be taken? In particular, what can individual owners do when they notice that an OC or management company does not comply with the Ordinance in everything it does despite the supervision of the majority owner?

I do not know what the Secretary may advise them to do. The only thing they can do is just to bring the matter before the Court. Well, everybody knows that one can bring practically everything before the Court. But do individual owners have the means and ability to bring these problems before the Court? This is the greatest problem.

Mr Alan LEONG pointed out many building management problems we are facing. I believe many colleagues have themselves encountered such problems, one example being the legality of proxy instruments presented at general meetings. There is often the problem of counterfeit signatures. Although it may be clear that a certain signature is not the genuine signature of the person concerned, what can be done? Is it possible to override the decision of the general meeting? No, it is not possible, unless there is a court order and it can be proved that the signature is forged by someone else. All such problems faced by individual owners simply cannot be solved. It is a great pity that despite the many amendments proposed this time around, the Ordinance will still be unable to solve the fundamental problems.

At the end of the day, the Ordinance will remain essentially the same, very much like a "toothless tiger" unable to effectively prevent those people or organizations with power and influence, be it management companies, majority owners or OCs, from continuing to bully individual owners. Because there still remain several problems which, in our opinions, must be solved. Unfortunately, no solutions can be found in the amendments to the Ordinance.

Just now, I heard several Members remark that the first problem is about the establishment of a tribunal. A tribunal will serve as a venue where

problems can be resolved more effectively. This was what Mr Alan LEONG referred to as efficiency and effectiveness just now. I certainly agree to his advocacy of efficiency and effectiveness. But is all this enough? I must add that it is much more important for us to ensure that individual owners can satisfy the requirements on bringing a case before the tribunal. If the proposed tribunal can really be like the Labour Tribunal as described by colleagues, individual owners will not have to hire any lawyers and can do their own defence. This is simple and quick, and people may also choose to do their own defence. The whole thing will be meaningful only when people can bring a matter before the tribunal whenever necessary.

Therefore, without the proposed tribunal, the Ordinance will remain a "toothless tiger", something of very little significance. This is the first problem.

The second problem is that as we know, OCs are civil organizations and thus private organizations by definition. As a result, the Government will argue that it should have nothing to do with them. This means that OCs will be treated differently from Mutual Aid Committees (MACs) in terms of establishment and operation. Since MACs are set up with the assistance of the Government, staff of District Offices will be deployed to assist in or even monitor their operation.

Since OCs are different in nature, the Government will not do anything except, perhaps, assigning a staff member from a District Office to attend their meetings. Deputy President, the staff member is just there in attendance, meaning that he will just listen. He will not even express any opinions, that is, he will not even bother to explain the provisions of the existing Ordinance. He will not dare to do so either because he may not necessarily be well versed in the Ordinance. So, he will not dare to offer any explanation. Even when he is posed a question, he will reply that he does not know anything, or that he must seek legal advice. In the end, nothing is done. For this reason, individual owners and OCs often find themselves in a very helpless situation in the course of operation. In many cases, they simply cannot obtain any instant opinions or advice to help them handle things. Members all know that many private buildings are managed by OCs. If OCs cannot obtain any government assistance, it will be very difficult for them to operate smoothly in many ways. The problem will not be very serious if all OC members (that is, both individual owners and the majority owner) are co-operative and prepared to work selflessly

for the common good. Unfortunately, however, this is often not the case in reality. Those colleagues with the experience will know this only too well. Therefore, they often hope that there can be a third party. In particular, the public always think that things will be very different and problems will diminish in dimensions or simply disappear if District Offices can offer them advice.

It is a great pity that District Offices do not adopt such an attitude, nor do they want to play such a role. Consequently, many unnecessary operational problems, many unnecessary conflicts and many unnecessary disputes have emerged.

For this reason, District Offices should really review their role and how best they can foster community harmony, shouldn't they? As Members know, an OC that can function smoothly will help foster community building in great measure. In particular, such an OC can play a very important role in promoting neighbourhood relationship and community management. I maintain that the Home Affairs Bureau should review the role of District Offices and their extent of involvement, with a view to improving building management.

Deputy President, finally, I maintain that the passage of the Bill today will help those buildings with already good management to function more smoothly. In the case of those buildings fraught with various management problems, the situation will remain just the same and their problems will not be solved by the passage of the Bill.

Regarding the problems mentioned by me, if they still refuse to attend a general meeting even after the OC has obtained the signatures of 5% of the owners, what can be done? Such cases do exist in reality. There are many such cases in the buildings within my constituency. Even though 5% of the owners have signed up, they still refuse to attend the general meeting. What can be done anyway? To take the matter to Court? Therefore, as pointed out by many colleagues just now, this "toothless" ordinance must be amended sooner or later to give it meaningful legislative effect. Without such effect, all efforts of colleagues to amend it will be wasted.

Deputy President, I so submit.

MR JAMES TO (in Cantonese): Deputy President, earlier today I spoke in my capacity as Chairman of the Bills Committee, and now I would like to talk about

my personal views and thoughts as well as those of the Democratic Party on the subject.

Deputy President, a balance has to be struck between quite a number of interests in this piece of legislation. There are many different possibilities to it. A balance has to be struck between the interests of the owners and the management companies and at times another balance has to be struck between the management companies and the owners' corporation (OC). There are of course, some OCs which are good and some which are no good. There are some OCs which are very responsible while some would abuse the procedures. The situation is actually rather complicated and so I may need to cite a few examples for illustration. At the beginning, we may think that only some very simple issues are involved. But why after giving the issues serious thoughts, we found that things are not so simple after all? This is because we need to think thoroughly before any balance can be struck.

To give an example, as Mr LEUNG Yiu-chung has mentioned, the term of office of the chairman of an MC has apparently expired and he should step down, but he continues to stay in that office and refuses to convene an owners' general meeting. He should step down according to the rules. So we think, why do we not come up with some kind of restriction? That is to say, we will specify that after a certain number of months after the term of office has expired, the appointment will automatically expire in validity. This means that person is no longer serving on the MC and unless and until he is elected again, he shall have no powers vested in him.

At first I thought that such kind of restriction was quite sensible. Because this is like achieving a final success after putting up last-ditch efforts. However, we should remember that if this is really the case, there are possibilities that an owners' meeting cannot be convened for various reasons. The cause of this failure to convene an owners' meeting may be some benevolent will or some very malevolent or some diabolic reasons even. Right? Then, what can that building do? Some important decisions cannot be made and the management of that building may sink into a state of anarchy. Then will such kind of restriction do any good to the building in question?

However, if it is not done this way, the person concerned may consider that his term of office is still valid and up to and until the successful convention of the next owners' meeting. And so this person will make use of this

loophole and cling to his office. As long as he has not stepped down, he may enter into numerous contracts with other people since what he can do within his powers is to sign contracts. These may be binding on the OC and consequently the OC may be left in an unfavourable position. Certain *fait accompli* may be produced. So there can be lots of possibilities. Hence we have to strike a balance.

Or we may have some questions which may look simple. Do owners have the right to inspect bills, invoices and receipts? The reason is that it is the OC which hires the management company and all its expenses are paid by the owners, therefore, it is perfectly alright for owners to checks bills, invoices and receipts. But we need to think about problems that may arise out of this. When a big housing estate has got thousands of residents and thousands of owners, can each and every one of the owners go and check the bills, invoices and receipts every day? If this is the case, does the management company have to make the bills, invoices and receipts ready for inspection by people every day? Even if only the bills are to be inspected, there would have to be a few staff to handle that, for we do not know how many people will come to inspect the bills. Thus, a balance must be struck between many sides.

I have once thought that in theory, the MC is supposed to act on behalf of the owners in administrative matters when owners' meetings are not held. Therefore, in theory, the owners can say to the MC, "Since you are elected by us, there is no reason why we cannot sit in your meetings." To go further from this example, someone may say, "Since I have elected Members to the Legislative Council, there is no reason why I cannot sit in the Legislative Council meetings. There is no reason why after I have elected you people and once you people are in control of everything, I am not allowed to come and listen." But the question in practice is, if there are really a few thousand people or a few hundred owners who want to sit in whenever a meeting is held, then does it follow that a venue that can hold a few hundred people will have to be arranged every time? If the owners all come, then what should be done? Of course, if no owners come, then things will be easy.

So when we approached this issue from a simple perspective at the beginning, many of the courses of action would seem to be correct. Another example is, when efforts are successful in getting an agenda of the MC, would it be necessary at least that the agenda be posted? Actually, at the beginning, the Government also said that the agenda of MCs should be posted. But then

people asked at once, "For how long should it be posted? Where should it be posted? Who is to be punished if it is not posted? Would punishment be necessary?" So there were piles of questions. It is therefore necessary that we can think hard and come up with a workable proposal that will take into account everyone's interest.

Some OCs will do a very good job while some do it very poorly. Personally, I think that many of the disputes between owners stem from mistrust or difference in opinions. And if anything goes wrong, these people will resort to a very radical course of action. So no matter what may be the cause of a dispute, it would be better if there can be more attempts to settle disputes and conduct mediation.

Of course, in some big housing estates (and these could be as big as an entire District Council constituency), there may be some political wrestles. Or a management company may want to linger on even when things have turned against it. It wants to get contracts and so it will favour some owners or ban the dissemination of information among owners. All in all, a terribly intricate network of relations may be involved, and there are elements of politics, business and interpersonal relationship mixed with it as well. Things will get very confusing. Since there are bound to be quarrels where there are people and there is nothing we can do about it, so the system that we design should hopefully balance the interests of all parties. Should a dispute arise, people should go to a special tribunal which can handle the case fast and in a simple and inexpensive manner.

During the deliberations in 1992, Mr Allen LEE was the Chairman of the Bills Committee and incidentally, I was the Deputy Chairman. On this occasion, I am Chairman of the Bills Committee. During the deliberations last time, I had given serious thoughts to it and my view was that it was a very thorny issue. I did my best that time. This time around I would like to mention in passing that the team of officials in charge of this Bill has been doing a good job and they have attended to very fine details. They responded to Members' many comments and irrespective of whether or not these comments made any sense, they would give a reply. They would find many examples and even present a host of arguments for and against so that Members could be put in a better picture and this certainly facilitated discussion. This is an open-minded attitude and I have high regards for this team of officials on this occasion.

All right, then what other problems remain unsolved? The first one is of course, education and support. We can imagine that if major changes are to be made and if the OCs in Hong Kong which number a few thousand do not get themselves well-versed in these and if they are confused, we will all be blamed. The Government will get blamed and so shall we. People will blame us lawmakers for setting up such a lousy system which is so chaotic. The OCs will say that they may not be perfect, but they have been working like that for more than a decade. And since the practice has been in use for such a long time, why all of a sudden is this discarded? What can be done? Of course, you may say that with the new system, the workload can be reduced. In the past, the forming of an OC had to publish a notice in the newspaper. But if the relevant amendment is passed, this would become unnecessary because we think that it does not make any sense and it is useless. A sum of some $1,000 can thus be saved with this requirement being scrapped. Will no one blame you if no notice is placed in the newspaper? No. I think people may still blame you. Why? People may say that they will only read about the notice when it is put up in the newspaper because they do not live there as their flats have been leased and they are not informed by the tenants. This of course comes back to the perennial question of how a balance can be struck. People will blame you no matter what you have done. Having said that, I think it is very important to have sufficient brewing beforehand and there should be education and support, as well as talks and briefings on it. With respect to the manpower needed to assist in the education work, I think that given the short span of time, people like liaison officers, District Council members and various political parties should be called in. It would be better if The Law Society of Hong Kong can be approached to send in some lawyers — of course they will have to be well-versed in the relevant information before they can be of any help. For if not, they will only make things worse. It is important to launch an all-out effort to educate and do it together. If not, the result will be if someone has done anything wrong, people will take the matter to the Court because people will be unhappy about the decision. Hence there will be lots of lawsuits and terrible headaches. There may even be problems like whether or not the contracts executed are valid.

Second, and for this I would not go into details, and that is, a tribunal specifically tasked with handling such matters must be set up. This must be done quickly.

Third, I notice that there is something called tender rigging. In certain tendering exercise where a vast sum of money is at stake in the contracts, often exceeding $1 million or even $10 million, this kind of tender rigging will appear. There are also myriads of other tricks that may be employed. Hence the law-enforcement agencies should be wary of that, for it turns out that there are people who make use of the fact that less people will know when a notice is published in a certain newspaper than other ones and so the information is kept to their own inner circle. Furthermore, people who bid in tenders may even go to the extreme of buying flats in the building concerned and become owners themselves. And they may put up a deceptively upright look and become members of the OC, thereby getting insider information. Actually, it is not so costly to buy a flat and for an old building, the money needed may just be some hundreds of thousand dollars. The money thus spent is well worth it if they can secure the contract eventually. For this reason, the law-enforcement agencies and the Home Affairs Department must watch out for these things. However, for all the years past and notwithstanding these phenomena, I fail to see many tactics used by the Home Affairs Department to tackle them. I do not know if it has ever noticed these things. I have seen the Commissioner of the ICAC come out and say something. The Commissioner even said that many of the matters are in fact very trivial. In my opinion, if they really want to tackle these, they should adopt a proactive approach to investigate and launch a pre-emptive strike on collected intelligence.

On the other hand, on the forming of OCs in individual housing estates, as some Honourable colleagues have talked about it, I will skip the subject. We have studied a long time on this occasion, we could not come up with any good recommendations. I therefore hope to discuss with the Government as soon as possible.

Moreover, with respect to the supervision of management companies, much has been said on it already. I recall the first debate on it was back in 1992, that was when I was first returned to the Legislative Council. So the issue has been discussed all the way from that time onwards to the present day. I understand that the crux of the matter is that it is not certain if some small and medium management companies will be eliminated and forced out of business in the process. But actually a classification system can be adopted. This is very important. And it is much better than what some Honourable colleagues have said, that it is very dangerous to see people who just flash a business registration

and they will plot with other people to get deposits worth up to $1 million or as much as $10 million.

As for lowering the number of votes required for the termination of the appointment of a management company, I figure the issue warrants studies. As there are really many large housing estates, and if not less than 50% of the shares are required, then this threshold may not be satisfied. I understand of course that there are problems, but generally speaking, the issue should be looked into and kept under close watch. If the percentage of shares is lowered, what solutions are available to address other problems at the same time?

Last, I would like to talk about amending provisions of a deed of mutual covenant (DMC). The issue has been under discussion ever since the time when Mr LAM was the Director of Home Affairs. Why should DMCs be amended? This is because there are really some unfair provisions in DMCs. In the past, this was done by way of legislation and now we think that under certain circumstances the Court should be allowed to have a mechanism to amend DMC provisions, given certain restraints imposed on it. In that case, there would be no need to gain consent from 100% of the owners, and it is impossible to gain 100% consent in any case.

I have talked about many of the unfair provisions in sub-deeds of DMCs and I hope the Government can think about the issue. The kinds of buildings involved include many commercial buildings, shopping malls or industrial buildings. But in actual fact, the nature of the problems there is no different from what we faced more than a decade ago concerning the so-called long-term appointment of management companies found in principal DMCs. The only difference is that this now applies to sub-deeds. In my opinion, the Government must think over the unfair provisions there to see if there can be any solutions.

I do not think there is any way to address all the problems at once. But the more I work on this, the more I find that there are new things to be learned. After serving in the Bills Committee and deliberating on this Bill for two years, I come to realize that there are lots of problems that I have never dreamed of, or even if I have thought about them, when the problems are brought up, the Government may say it has never heard of them. Moreover, even if it has heard about them, a good solution may not be found at once. During this

two-year period, and after such intensive deliberation sessions during which my brain activities were revved up, I have become smarter and can look more incisively into things. I also come to learn that not everything will have a solution and after the Bill is passed, there would still be lots and lots of adjustments to be made and lots and lots of problems will crop up. I hope owners, tenants and management companies will address the problems together. However, at the end of the day, if there is no tribunal to give a final solution to problems which remain unresolved despite the sincerity of the parties involved, then things may go really wrong. So this may well be the final solution and I hope the Government can do it as soon as possible.

MISS CHOY SO-YUK (in Cantonese): Deputy President, residential properties are the most valuable assets of a vast majority of families in Hong Kong. For many small property owners have toiled for a great part of their lives before they can buy a home of their own. If there is no rigorous set of laws or a comprehensive regulatory system to manage their assets properly, how can these small property owners put their mind at rest? So the DAB supports any suggestion that will help improve the relevant laws or perfect the relevant regulatory system.

Based on this principle, the matters dealt with under this Bill are only relatively minor and technical, that is, rationalizing the procedures for electing members of a Management Committee (MC) and help Owners' Corporations (OCs) to discharge their duties and exercise their powers. However, nothing is mentioned on institutional issues of a more fundamental nature, including the setting up of a licensing regime for property management companies. In any case, the Bill does serve to fill up certain gaps in the existing law and clarify ambiguities and areas that may easily lead to contention such as those about the holding of OC meetings, procurement of services and handling of proxy instruments. In all these areas, the proposed provisions have made express stipulations, hence dispelling many worries which are actually unnecessary. Therefore, the DAB welcomes and supports this Amendment Bill.

The DAB attaches great importance to the scrutiny of this Bill because this relates to the interests of so many property owners in Hong Kong. While serving in the Bills Committee, I raised scores of written questions on two occasions in an attempt to clarify ambiguities and inconsistencies in the Bill or in

the relevant policy. This facilitated the deliberations, making them more comprehensive.

The performance of government representatives is worthy of our praise. During the 51 meetings convened by the Bills Committee, the many views expressed by members were all considered carefully by government representatives who took painstaking efforts to explain government views and position on the issues concerned. They also accepted many of the reasonable views expressed at the meetings and took the initiative to propose relevant amendments to improve the Bill.

Earlier on Mr James TO has heaped praises on the bureau officials in charge of the Bill, I do share his view. I appreciate the work done by officials like Isaac and Mrs CHEUNG who are sitting in the Chamber now. I believe if we have more officials who are as well-versed in the relevant law as they are, deliberations on other Bills would go smoother and be more of a pleasure.

Sorry, Deputy President, I do not know where my thoughts have led me. *(Laughter)* Deputy President, I have just talked about the areas which they took the initiative to propose amendments. For example, under the existing law, when owners vote to elect members of an OC, the candidates must get more than 50% of the votes before they are deemed elected. However, there is a great problem with this practice. For apart from old tenement buildings, the number of members of an OC in a building would, as a general rule, have more than 10 people, and if all of them must get more than 50% of the votes before they can be deemed elected, there would have to be many rounds of polling. So while this practice can still be barely acceptable in single-block buildings, the polling procedure in buildings with more flats or housing estates of a large size would be extremely lengthy and cumbersome. Meetings may even have to be adjourned to a later date. This would make owners less keen on taking part in the election. In view of this, we are glad to see that the Government has accepted the proposal made by the DAB to adopt the "first past the post" voting system instead of an over 50% majority support as the voting system to be adopted by an MC to pass its resolutions. As the elections are rationalized, the entire voting procedure is simplified.

Unfortunately, the authorities have not adopted the practice in its entirety and the result is that when owners vote to decide the number of members in an OC, the over 50% majority support system is still used. In our opinion, as not

every owner will have a professional expertise in building management, so if a resolution leads to the appearance of a different voting system, the owners will certainly get confused. Another source of contention which is unnecessary may arise. This is especially the case when two related resolutions on the number of members and who can be members are likely to appear in one and the same owners' general meeting. The DAB and the Government have talked on many occasions about this, but the Government has not taken on board our view. We hope that the Government can give serious thoughts to it and the DAB will follow up the issue in the meantime.

Another area which is not sufficiently dealt with in the Bill is the issue of the neutrality of property management companies. As we all know, since a property management company is engaged by all the owners, it should be free from bias and adhere to the principle of neutrality. This is because endless disputes will ensue if favouritism is found or even merely suspected. The harmony and mutual trust between owners will be destroyed. In view of this, the DAB considers that the practice used by many property management companies to collect proxy instruments from the residents of each flat from door to door on the request of the OC or the majority owner is unreasonable and far from being desirable. This is especially the case when the agenda in the owners' general meeting is about matters like the elections for another term of office of the OC or the appointment of a property management company, and so on. Suspicions would easily be aroused that the existing DC or the principal owner are making use of "public" resources to their own advantage and that the lobbying and canvassing of votes by their opponents will be adversely affected.

In order that there can be a level playing field, we think that the management companies should try to avoid suspicions and stay away from the work of collecting proxy instruments from residents from door to door. Instead, they should focus on technical and procedural matters like the collection of proxy instruments, registration, notifying and announcing households with proxies, and so on. This will demonstrate their neutrality. We know that the Bill may not be able to cover all the relevant contents but we urge the Government to reflect our concern in the guidelines to be drafted later.

Another relatively significant proposal of the Bill is changing the requirements with respect to the procurement of goods and services for a building. It is proposed that there should be a change of the existing

requirement which is any procurement of a value which exceeds $100,000 or a sum which is equivalent to 20% of the annual budget of an OC, whichever is the lesser, shall be made by tender. The new requirement is: any procurement of goods or services exceeding $200,000 in value or 20% of the annual budget of an OC, whichever is the lesser, shall be done through tendering. Also, any tender of a value exceeding 20% of the annual budget of an OC shall be accepted or rejected upon the passage of a resolution of owners at a general meeting. This is an additional procedure to be cleared. The DAB welcomes this proposal, for this will increase transparency in building management matters and hence reduce the chances of disputes.

Also, we consider that owners have the undisputed right to know whether or not their OC is involved in any lawsuit and they are entitled to express their views on that matter. The DAB welcomes the Administration's decision to agree to move an amendment to specify that irrespective of whether the OC is sued or when the OC decides to initiate a legal action, the MC shall have the obligation to inform the owners.

I would now like to turn to Mr WONG Kwok-hing's amendment. Mr WONG proposes that when a building replaces a management company, the outgoing manager must hand over the relevant properties, account books and records within two days of the change. We have talked with the trade specifically on that point and were told that it is impossible in practice to complete the handover in such a short time. Moreover, disputes between management companies and buildings would often need to go to the Court and so it is more unlikely that any dispute will be resolved in such a short span of time as two days. Certainly, we should put the interests of the small property owners first, but we should also take into account the normal operation of the relevant trade. If we are to put down such a step which does not work into the law for no justifiable reason only to find out that it cannot work after the law is passed, then it would only serve to undermine the prestige of the Ordinance and affect the interests of the small owners direct. We have raised the point with Mr WONG in the hope that he can change the time requirement to seven days which is more practicable or to limit the requirement to hand over the properties and information to cases where the OC has given a three-month notice to terminate the appointment of a manager. However, Mr WONG Kwok-hing does not agree to this counter-proposal, therefore, I am afraid the DAB is unable to support Mr WONG's amendment.

Since the Bill makes many changes to the existing procedures, after its passage today, there must be large-scale and pervasive publicity on the new law so that owners, OCs and property management companies will all be familiar with the new requirements. As the Government thinks that the Bill will clarify many ambiguous and unclear issues that used to exist in the law, we hope very much that the front-line workers of the Home Affairs Department can provide more concrete views and guidelines when they attend OC meetings in future so that buildings can be given substantial assistance in improving the management or defusing disputes caused by misunderstanding.

Deputy President, as I have pointed out at the beginning of this speech, even if the Bill can be passed today, it only represents some remedial work on some details or the delineation of certain ambiguities in law. As for other more fundamental issues, such as a licensing regime or the setting up of a Building Affairs Tribunal, and so on, they have not been touched in this Bill at all.

At the end of last year, the Harmony Property Management Limited suddenly closed down and there was suddenly a vacuum in the management of 46 private buildings under its management. The Albert House incident led to the liquidation of the Housing Management Agency Limited and it was found that the company owed 150 buildings nearly $16 million in management fees. Consequently, many small property owners found that their money had gone down the drain. In another case handled by me personally, a management company was found to have performed so badly that it was only after much painstaking efforts that a new OC was formed to replace the original OC. However, the management company counteracted by claiming millions of dollars in severance pay for the employees working in each building under its management. These examples serve to illustrate that the problem we face is that in the absence of a supervisory mechanism, there is a great divergence in the performance and standards of property management companies. The result is that building management problems are rampant.

Therefore, I moved a motion in this Council in November 2006 to urge the Government to introduce a licensing regime for property management companies. It is unfortunate that the official reply I get to date is that the findings of a relevant consultancy study would be published in mid-2007, to be followed by a second round of consultation for which no deadline is set. As to whether a licensing regime would be implemented or even when a decision can be made on

that, no reply is given. In other words, nothing can be expected even in the distant future. I hope the Secretary, the Director and the relevant Bureau can tackle the issues with the vigour and dedication they showed during deliberations on the Bill. There is no need for any more consultation and the recommendations which have been unanimously endorsed by this Council should be put into force as soon as possible.

As I have said, apart from the Government, the trade and the community have indicated support for the proposals very clearly. We agree that a licensing regime is not a panacea that cures every ill once it is administered. Our aim is that by introducing this licensing regime, the greatest problems in regulating the trade can be addressed and other thorny issues can be tackled as well.

In last year's motion debate, I also mentioned that a Building Affairs Tribunal should also be established. This proposal was made because we sense that property management disputes are usually rather cumbersome in nature and the money at stake is not too much, being just in the region of a few thousand dollars to some $10,000 or so. We believe that this Tribunal once established, would act like a triage mechanism for building management disputes so that the increasing number of disputes can be dealt with in a simple and speedy manner.

Deputy President, the DAB supports the Bill and the amendments proposed by the Administration. We also urge the Government to listen to the sound advice tendered and to consider the suggestions made by the DAB, thereby taking concrete steps to improve building management. I so submit.

DR KWOK KA-KI (in Cantonese): Deputy President, the Building Management (Amendment) Bill 2005 is actually a sequel to the Building Management (Amendment) Bill 2000.

As a matter of fact, a few days ago we discussed a very important topic in this Chamber, namely, urban redevelopment or urban renewal. Any Honourable colleague or public officer who has been involved in or has handled urban redevelopment or urban renewal matters would understand that establishing a sound Owners' Corporation (OC) is a prerequisite to carrying out urban renewal or building renewal. In Hong Kong, most of the small property owners are facing some big problems which are common to owners in old urban

areas, those of old buildings, or those who have moved into those new large residential blocks alike. As they deal with problems in building management or in forming OCs, they will meet various kinds of problems.

The Amendment Bill which is introduced on this occasion stems from a need. We know that from 29 April 2005 to this day, the Bills Committee has held 51 meetings and deliberated on problems related to 21 items. But what has come as a disappointment to us is that there are still many problems that cannot be dealt with in this Bills Committee. Let me just give a few examples. First, it happens very often especially in those new-style buildings, that is, those large housing estates as we call it, an OC can only be formed only after a lot of problems or difficulties have appeared. However, even if an OC is formed, the owners will find that they will still face great difficulties when they have a dispute with the majority owner. Let me cite an example. Now in many buildings or large housing estates, the shopping malls, offices and car parks take up a very significant portion of the entire housing estate. When it comes to the question of the right to manage these areas or replace a management company, there would be big clashes between the small property owners and the giant developer. However, given the state of the existing laws, often there is nothing these small property owners can do. Many of these giant developers will resort to using ownership shares to gain control over the small property owners or even bully them, hence these owners cannot take good care of their interests.

Second, many buildings would have to overcome many difficulties before they can set up an OC. Nowadays there are very long periods before buildings in a large housing estate are completed and ready for occupation. In some of these large housing estates, the completion of the first phase of development and the last phase can span five to seven years or more. Within this period of five to seven years or more, there is no way whatsoever that an OC can be formed by the owners of these new housing estates. We can just look at the examples of large housing estates like the South Horizons, the Galaxia or many others, when owners are almost ready to engage in renovation works or set up an OC, all their assets or the money they can spare would have been all used up by the majority owner or the developer. The situation may be so bad that when they have gained a say in financial matters at last, they would have to face tens of million dollars of deficits. This is a huge problem indeed. It is unfortunate that in this Amendment Bill, the focus or the work done by the Government seems to fall only on the OCs, and on issues like clarifying the internal administration and responsibilities of Management Committees (MCs). Having said that, I am not

saying that this Amendment Bill is useless, on the other hand, it has offered great help to clarify the functions of an MC and likewise, the legal liabilities of those working in OCs are delineated in both a clear and reasonable manner. The Amendment Bill has also made clear provisions on legal liabilities and on some of those controversial areas or ambiguities about OC and MC meetings and voting.

However, after reading the entire Bill, I find that no improvement has been made to the problems which I have just mentioned as well as those faced by large housing estates. Has it ever occurred to the Government that the parts in a large housing estate on which small property owners have no say, that is, commercial parts or the car parks under the majority owner's direct control, should be dealt with separately? This is a crucial point and it relates to the principle of equity.

Third, has the Government ever considered any transitional measures for buildings that are completed or occupied in phases so that the interests of the owners can be safeguarded before all the flats are occupied or before the owners are able to set up an OC pursuant to this law? I think that this is very important too. This Building Management (Amendment) Bill 2005 does not touch on this area, so I hope that the Government can deal with it at the soonest.

Fourth, I would like to look at the role played by the Home Affairs Department (HAD) in this matter. I have personally taken part in some OC and community work and I find that people in general think that the HAD does not play a sufficient role in offering assistance in establishing OCs and in helping their operation or dealing with legal problems. The HAD lacks the initiative as well. Whenever something happens, the HAD will come to the aid of the buildings concerned. They are those buildings in which some incident has taken place or these are the so-called "target buildings" which Members may have heard about. In these cases, the District Offices will offer some help. However, we can see that in these old or new housing estates, the District Offices will deal with problems that arise when buildings of various sizes want to set up OCs. It also helps them to regain the right to manage their buildings and estates in a fair manner. In many cases, the small property owners have nowhere to turn to and when they want the District Offices to intervene, what they get is only some official replies saying that they can recommend some publications to these small property owners and they can consult the HAD if they

have any questions, and so on. Many small property owners who want to set up their OC will feel isolated and helpless. The Government has got a responsibility and it should have a policy in offering sufficient support. It should offer support both in terms of manpower and information to buildings which have set up OCs or those who have yet to do so. After all these years, I still do not think that the HAD has played its proper role in this and so I am greatly disappointed.

In addition, up to now the Government is unable to set up a Building Affairs Tribunal and I wish to express my great disappointment with that as well. We know that the small property owners will face disputes of various sizes. They may be those financial disputes related to the OC, some works that need to be carried out like building renovation works or the appointment of works contractors. If legal action (including civil action) has to be initiated between owners or between owners and the OC, this would be a terrible waste of both time and efforts. The small property owners may be scared off too. I therefore hope very much that the Government will stop making any delays on this and it must look into the issue after the passage of this Amendment Bill and set up a Building Affairs Tribunal. This tribunal should be vested with the powers and responsibilities to assist the owners and OCs concerned in handling disputes concerning their buildings and these disputes may include those in financial management. This is very important.

Many Honourable colleagues have pointed out and I have also noticed that the regulation effected by the Government on property management companies is far from being adequate. We have just seen many examples and problems about how small property owners are unfairly treated or even bullied by the property management companies. Many of these property management companies are in fact affiliated companies of the developer and many of the things they do are for the protection of the developer or the majority owner so that they can gain the most benefits at the expense of the interests of the small property owners. Should a dispute arise, as these companies are well-versed in the law and some administrative practices of the trade, they would in many cases exploit the loopholes in law. An example is that before the establishment of an OC, they would have a free hand in appropriating assets or even to the extent of incurring huge deficits. This is also a major reason why many of the buildings I have contact with would not dare to replace their property management company even to this date.

Often times the integrity and acts of these property management companies are highly questionable. But up to now the Government has been reluctant to introduce a licensing and registration regime for property management companies. It is reluctant to formulate any regulatory standards as well. The result of this is tantamount to giving a big leeway to these companies. In my opinion, the Government has the obligation to regulate these companies. Failing to do it would mean that no proper protection is given to the interests of the small property owners of various buildings, be they old or new, large or small. The small property owners will not be able to manage their buildings properly as well. This could even be the greatest obstacle standing in the way of renewal. The Government has got both the ability and the chance to impose regulation on the property management companies outside the scope of this piece of legislation. I hope the Secretary can tell us, when he makes a response later, the actual timetable which the Government has got in regulating property management companies and when work on this can commence officially.

I also notice that when discussions were held on problems faced by housing estates formed by detached houses, it was pointed out that support from the Government was not adequate. Some members of the Bills Committee requested the Government to formulate some transitional arrangements in the Bill so that owners from these housing estates can have the power to manage some public areas like roads or facilities in their housing estates. These owners should be given such power. But even when the work of the Bills Committee was about to finish, the Government still failed to address the problems. I also hope that when the Secretary makes a response later, he can explain clearly what the future arrangement for housing estates composed of detached houses is. I believe there is a great possibility that this Bill will be passed today. However, for the tens of thousands of property owners, does this mean that they will get good management of their properties?

For those owners who are intent on improving their living conditions, the management of their housing estates or those who hope to obtain a greater extent of participation in or recover their right to the management of their properties, I do not think this law will be of great help to them. Of course, this law will give them power, perfect the self-regulatory system of OCs and lay down the powers and duties of OCs in a clear manner. This law also facilitates more participation from the owners in the operation of OCs. But what happens after an OC is established? When owners face unfair treatment by the moneyed and powerful management companies and the majority owners, what can they rely on?

As they want to deal with the problems they face and as they hope to seek justice by resorting to legal action, they would have to confront the giant developers or their subsidiary management companies. These small property owners are completely powerless to contend with them in Court. Even if an OC is set up, if the Government is bent on having its way and when it turns a blind eye to these small property owners or when it does not care a bit about their plight, then I would think that there is no excuse for it.

I hope very much that after this law has come to force, the Government can deal with the issues mentioned by the many Honourable colleagues today quickly and separately. These include the most important ones on setting up a tribunal and the regulation of property management companies. When OCs regain the right to manage their buildings from the property management companies in future, the Government must give OCs unequivocal support. The most important thing is to enact a law on protecting the small property owners so that they will know how they can get what they deserve with respect to the many other buildings in the hands of the majority owner such as the shopping malls and the car parks.

In any case, this Bill should be passed and so I would support its Second Reading. I so submit. Thank you, Deputy President.

MR LEUNG KWOK-HUNG (in Cantonese): Deputy President, all legislative exercises will reveal what government policies behind them are like or how it operates. In this regard, Honourable colleagues have expressed gratitude to officials from the Home Affairs Department (HAD) and so I do not need to do the same thing over again.

What I wish to point out is that it seems the Government does not have any stand in amending this piece of legislation, that is, it does not have any expectations for it. What then should private buildings in Hong Kong be like? The crux of the matter is that the Government manages so many public housing estates and the practice is proven, and what it does next is to privatize some buildings.

I hope the Government can be sympathetic to the plight of the small property owners and notice that the current legislation would have the following

intended or unintended consequences. The first one is that before an owners' corporation (OC) is established, the monopolizing conglomerate can hand over a housing estate to a management company and then the management company can require that no decision can be made on any matter unless there is an over 50% majority in the votes cast by owners present in an OC meeting. This is tantamount to not being able to change anything. The management company is like having been given a permanent rice bowl and it can enjoy the rice in it for as long as it pleases. If this problem is not solved, then what should these small property owners do? In fact, has this subject not been discussed? Some people say that since the threshold is so high, does it mean that nothing can be changed? Has the Government made its position on this clear? Will the threshold be lowered? Does "majority" mean more than 50% of those who attend the meeting, more than 50% of all the owners or more than 30% of the owners? No answer is given by the Government.

Donald TSANG has said that he will do what he says and he will do a good job. He said many times when running in the election that Alan LEONG could not do anything and only he could get anything accomplished. But has he ever directed his officials or his accountability officials to do their job well? This is a crucial point.

Most small property owners may not like me, unless they need help from me. But I wish to tell these small property owners that what is found inside will determine how things look from outside and what those at the top like to do, more so will those under them love to do. When this society of ours can tolerate small circle elections to carve up advantages, this Government of ours will likewise do the same. Why are the interests of the small property owners not looked after? Because they do not have any votes. Hey, buddy, why are Members of the Legislative Council or members of the District Councils talking all the time, be they really like it or not? This is because they have got no other choice. If they do not talk, they will be out of work. Buddy, listen to what they say, "I am really very much worried about you, now you are at the point of death." This is how Donald TSANG talks to the developers, "I am very much worried about you, and you will all be dead once this law is amended." So how is that going to be amended? The votes under the control of the developers, taking those in the hands of LI Ka-shing alone, roughly translate into more than 100. How dare anyone do anything to him? The votes in the hands of Cheung Kong, Sun Hung Kai and New World amount to quite a few hundred. This explains why the Government is so hesitant when it is to amend the laws, when it

knows perfectly well that the small property owners are tossing in their beds, passing sleepless nights away in fear and tribulation.

I got a telephone call not long ago and it was from an old fellow in Chai Wan. He told me that he had learnt today that he would not have to pay the legal costs that amounted to hundreds of thousand dollars. He won the lawsuit. I thought, this old fellow is earning a living by giving private lessons and doing translation, and if he loses in the lawsuit, even if his wife does not scold him, he will have to take his own life. This is because he will have to sell his flat to pay the legal costs. Why does this old fellow challenge the corrupt OC under the bad system these days only to be sued by it with the funds of the owners? The reason for this is that under the Building Management Ordinance (BMO), what the Government is doing is, as the saying goes, keeping only the child but not the mother. The case is like stories in Cantonese movies. What is this all about? In the 1970s, as the number of buildings grew drastically, the Government did not have the capacity to manage this vast number of buildings and since it was worried about the consequences of these buildings not getting any management, so it was hoped that a law would be enacted to get people to do the job. These people would be given great powers. At that time, it was only a stop-gap measure. When it came to the 1990s, when the law was to be amended again, the developers had become full-fledged and property stocks were inflating in value. How could the law be amended there and then?

We can see that OCs can do nothing about the management companies formed by the developers together with their henchmen or protégés. Why can a "sunlight" bill not be enacted to require that all these be reported? Hey buddy, this is something we may say too. What should be reported are things like how much money is to be paid, what are found or not found and all these things should be put on the website for everyone to see. Is this management company a subsidiary of his? Is that company related to him in any way? Why can these not be done? Show everything and the cat is let out of the bag if that is done. The question now is, even this kind of minimal regulation does not exist. No wonder public opinion is asking, "Can there be such things? Can there be cartels?" This is actually cartel practice real and simple. This means that only one party will take up everything, like in funeral services only one party will be in charge of everything from the casket, the plot in the cemetery to the floral wreaths. This is cartel. Our government does not want to enforce the law to crack down on unfair practices and so it lets them form a cartel which covers everything from the works to the supplies. All these are done in the name of the

Father, so to speak — meaning that nothing will be done and cannot be done about what they do.

I wish to ask the Government one thing, the pain and suffering of the small property owners under these circumstances are not only limited to bullying by the giant conglomerates but now also from triad activities. When these people go to buy a flat, they are posing as owners to engage in tender rigging for their own benefits. Why does the Government not do something about such matters? The Independent Commission Against Corruption (ICAC) is not doing nothing, is it not competing with the police for work? This is something we all know. Why when the people involved in these incidents go to the ICAC, they will get a reply that they should get all the proof ready before lodging a complaint? Is this not a joke? Is the ICAC not experts in eavesdropping? When we discussed the law on eavesdropping, was it not said that if the ICAC was not allowed to engage in eavesdropping and such like activities, many people would be straight in for a bad time? Why can the ICAC not use such methods? Can it not pose as someone to catch the offender unawares? The other people can resort to tricks like buying a flat and demand an exorbitant sum of money from a developer who wants to purchase the entire building for redevelopment. If one or two or three of these cases are properly dealt with, these people will know that they will have to face very stiff costs if they do such things. But the Government does not do it and our system is just one which tries to tackle a problem as it crops up.

There is another thing which I cannot help but mention it. What is the logic of the Government? From the 1970s to the 1990s and even today, the situation is like what the British political scientist Thomas HOBBES said. He said, if you want to want to live a good life, you got to surrender your powers to a monarch. There is no other way out. You got to sign a contract with the monarch and after you have signed it, you got to remain silent, unless you think you are under a tyranny and you must rebel. Buddy, you want the people of Hong Kong rise up in rebellion? If these people want to rebel, they would be stopped if only one or two words are uttered. The most absurd thing of all is that it used to be a kind of private ownership, but after the property management company has acted in concert with the OC and amassed all the powers, the people would be deprived of all their human rights, to the extent that they cannot even distribute a leaflet, post something up or even send a letter. This is something I have never heard of before. Why can this power make those freedoms of expression, speech, demonstration and assembly which a common

person can exercise on other occasions all the time cannot be exercised in the place where he lives? This is a problem indeed.

(THE PRESIDENT resumed the Chair)

With respect to the situation of buildings and structures under the control of a minority, the Government can be said to be condoning these people who exercise their rights unchecked in the loopholes of the existing law. We know that for all they do, they do not have to bear any criminal liabilities. If someone has done something that he should not have done and if he does not mend his ways even after he has been told so, then the case must be brought before a tribunal. But if the tribunal is not doing a good job, then the case must be decided in a Court. However, an order must be given before that can happen. Buddy, it would be great if the Commissioner of Police works that way. It would be great if I do not have to bear any criminal liability when I hold an assembly without informing the police of my intention to hold such an assembly. The question is, I will be held criminally liable at once when I hold an assembly of 31 people without informing the police. But why can someone lead a cosy life at home when what that person is doing will affect the well-being of millions of people? What is affected may well be the only asset of these people, but this Government of ours will not care. It has vested its powers in a leviathan — a monster, then it leaves that monster alone and lets it eat the people. After it has finished eating, the people will be accused of putting up a rebellion. This is what HOBBES said. It so happened that there were indeed people in Britain who almost rose up in rebellion and they even beheaded their king.

But in our case, the heads of the small property owners fall onto the ground at first. We see unfair things which appear due to the ownership shares. The giant conglomerates control the shopping malls, car parks and office premises and the small property owners are forced to bear unreasonable management fees. All these happen because these giant conglomerates have got enough votes in their hands. This is the real-life situation in Hong Kong, right? The Government allows the rich to rob the poor, if only there are enough votes. Right? Should there be a minimum wage? Yes, if only there are enough votes. All these situations can be said to be a down-to-the-marrow blending of the absurdities and irrationality of colonial rule with the monstrosity and abnormality fathered by the new SAR Government which tilts towards the

business sector. This is the monstrosity which Donald TSANG has talked about. Actually, we do not have to go to heaven to enjoy a blissful state. If only there is vision in the Government and if only it can pledge to the small property owners, saying, "I, Donald TSANG, does not just want to win those 800 votes but the 6 million votes." Then presto, he can make it. If Donald TSANG says, "Buddy, I will not change my mind regarding the small property owners, you had better go home", then it will be the end of him right at that moment, and he will never be elected.

So democracy is actually not a system and it is not purely a system. There is truth in this statement. The conservatives and the communists are correct when they say that it is a way of life and it pervades into every aspect of our life, be it clothing, food, housing and transport. With respect to transport, the merger of the two railway corporations, plus the state of affairs caused by the privatization of public assets or The Link REIT only serve to prove that without democracy, power in our society will concentrate only in the hands of a minority. When public assets are privatized, we will only get poorer, the poor people will only be worse off and those who were not poor people will now become poor people. This is what this BMO has caused. If anything should happen to anyone, they should go to talk and discuss with the Members of this Council. But if the effect is not seen within three years, they will even be criticized as standing in the way of things. Chairman MAO taught us to go from bottom up three times and from the top down to the bottom three times. Secretary Dr Patrick HO should see that point because he is in charge of patriotic education matters. The meaning of "three up, three down" is to go up from the bottom to the top then back to the bottom again three times over. I wish to ask the Secretary for Home Affairs whether the HAD has undergone this "three up, three down" process and how many consultation sessions have been held. I do not think any such session has ever been held.

We may be saying here that if the law is implemented, we are afraid that the people may not be able to understand it. But actually the Government has never mentioned it to the people. The people have never taken part in its formulation. The case is like our small circle elections and the people can only stand on the side and watch the show, Buddy. If work has to be done, the Government may say, where does the money come from? Let me tell you, there is actually a way to get the money. This is to deduct 2% or 3% from the profits earned by the developers or to deduct 3% from the profits earned by the

large property management companies, and then use the money to set up a tribunal. Why should this be done? Because they have earned the money from other people and because they have been making profits all the time. It would only serve them right to take from them what they have got and then in a sense, use it on them again, unlike the situation now when the wicked can use the money of the OCs to fix the good people up. The Government should do it this way and if that practice is followed, not only will there be money but other problems will also be addressed. However, I can tell you all that the Government will never do it. Because Donald TSANG is elected by 800 people, not the small property owners.

MISS TAM HEUNG-MAN (in Cantonese): All along the policy of the Government is to encourage owners of each residential building to form an owners' corporation (OC) of their own and engage in management work of their building. This account for the frequent amendments to and reviews conducted of the Building Management Ordinance (BMO) over the past years. The amendments to the BMO on this occasion involve many provisions and we have spent more than a year to complete deliberations on the BMO. This proves that the amendments proposed are both important and complicated.

Of the many themes covered in this Ordinance, the one which attracts most of my attention is the issue of the personal liabilities of members of a Management Committee (MC) in carrying out the decisions which they have made in the course of discharging their duties in an OC. This is precisely the reason why so many people are hesitant about serving as members of an MC. The amendments proposed by the Government in this regard should be approved.

However, the Government's proposal is only to vest powers in the Court by amending the law so that the Court can rule in respect of each individual case whether or not members of an MC have discharged their duties pursuant to the BMO in good faith and in the interest of the OC. This being the case, the worries of the people in this respect may not be allayed. It is because it is not clear as to what is meant by in good faith and what the standards used by the Court are. So the Government must provide some simulated cases for illustration when it explains the law clearly to the people, for this will make them know clearly what is the meaning of the provisions after amendment.

In addition, with respect to provision on the financial matters of an OC, apart from the annual audit, all procurements valued at $200,000 or more or take up 20% or more of the annual budget of the OC in question shall be subject to tender and decision in a general meeting. These are changes made in respect of financial matters and such practices are recognized. The most important thing is that an independent bank account should be opened to deal with management fees and the income and expenditure of the OC concerned. This is very important as there was a case a few years ago when a property management company incurred financial losses to many small property owners because it had embezzled the funds of the buildings under its management. Therefore, it is very important that an amendment of this Ordinance requires that an independent bank account be opened for such purpose.

Moreover, generally speaking, it is hoped that the proposals made in this Bill and the Committee stage amendments proposed by the Government can be put into practice soon after the Bill has passed Third Reading today. However, I am more concerned about the implementation of the Bill after its passage.

As a matter of fact, occasionally I would get enquiries and complaints from residents in my district on property management and the operation of an OC. They complained that the OC has not acted according to the regulations or that the OC meeting was not held in accordance with procedures. It is pointed out that that the people sent by the Home Affairs Department (HAD) are all muddled-headed and they cannot explain the provisions of the BMO clearly. The result is things only get worse. Some Honourable colleagues have mentioned earlier that HAD staff attending the annual general meetings upon invitation would only sit there and say nothing. They are there only to see if the votes are correctly counted and they will never give any legal advice. Therefore, when the housing estate in which I live holds its annual general meeting, I will certainly get a legal adviser who agrees to provide service for free. This is because people from the HAD do not serve any practical purpose.

I can see two problems here, one is that the people are not well-versed in the BMO and the other is that government officers cannot play their role well and solve problems for the people. In this way, even if we do our duty well and amend the law properly, the result gained will only be less than the input.

If this Bill is passed today, the Government should take immediate action to make the people understand the main points of the new law through various channels of public education. Also, the Government can organize briefing sessions, workshops or even training courses for people who are engaged in property management or interested in it. This will enable them to understand the provisions of the BMO.

For people working in the HAD such as the community officers or building liaison officers, and so on, the Government should provide them with suitable and sufficient training so that they can be kept in a clear picture of the amended Ordinance and give effective replies to public enquiries. If not, the Government is like wasting our time and efforts in deliberating on the Bill.

Besides, Honourable colleagues have also talked much about the Building Affairs Tribunal. I support this idea. Many people cannot solve their disputes because they are not familiar with the legal procedures and they do not have money for litigation. When owners cannot solve their problems, the Building Affairs Tribunal would be a crucial channel to solve their problems. So this tribunal is indeed very important. I hope the Government can follow up this demand.

Moreover, some problems in supervision have also been brought up. For example, when some property management companies are not subject to any regulatory regime, they can take away their clients' money, then go away and close down. Under the present system, if only people have applied for a business registration, they can formally engage in property management work or provide such service. However, modern property management is much more than just providing security or cleansing services. It also involves many other professional areas such as financial management or knowledge in law. On top of that, a spate of incidents involving closures of property management companies in recent years has incurred losses to the small property owners. The Government cannot afford to sit back and do nothing. Many Honourable colleagues have put forward a demand earlier, that is, they hope that a regime regulating property management companies should be set up. I support this idea.

Honourable colleagues have also mentioned unfair deeds of mutual covenant (DMCs). I share their view. The housing estate where I live has the same problem and that is about some unfair DMCs entered into between the

developer and the Government. They used one company to sign all the provisions and that company left as soon as the buildings were completed. These DMCs, including those on the repair and maintenance of public areas, bus stops, noise barriers, and so on, are unfair. The ownership was sold to the small property owners after the completion of the buildings and then the company left at once. Who then should bear the responsibility? The small property owners, and they incur losses. When they bought their flats, nobody told them clearly that they had to shoulder the repair and maintenance costs of public facilities like the bus stop and the noise barriers. They were really kept in the dark. The Government may say, "Have you not hired a legal adviser to tell you these things? Have you not read the terms of the DMC clearly? Have you not done this and that?" The problem is that the small property owners simply do not have the relevant knowledge to understand the terms clearly. The result of unfair DMCs is that the small property owners will run into losses. Mr WONG Kwok-hing put it very well earlier and I agree with his view, that is, the present mechanism should be reviewed at source and these unfair DMCs must be reduced at source.

I also agree with another point made by Mr WONG Kwok-hing, that there are many unfair things about DMCs and I agree with what should be done to deal with and follow up so many unfair DMCs that are in existence. At present, there is no channel or department to cope with this problem or to conduct a review of it. Though we have amended the BMO now, who is to deal with problems related to it and to take follow-up action after the BMO is amended? The answer is there is no one in charge of these matters. What should be done about these unfair DMCs still in existence? Will the DMCs of new buildings be subject to regulation? Has anything been done to make these DMCs fairer? Would the small property owners not be put into shame again? The amendments we have now do not address these problems. I believe Honourable colleagues in this Council will follow this up and I would also support their views.

Therefore, Madam President, I hope the Government can accept the proposals I have made just now on a supervisory regime for property management companies and those on unfair DMCs. It must not only implement the Bill properly but also when it is to amend the BMO again — I do not know when — it would respond to more demands from the small property owners. This will prevent people who have spent all their wealth to buy a home from

getting a nightmare because of problems caused by an inept management and regulatory regime, or unfair DMCs.

With these remarks, I support the resumption of Second Reading. Thank you, Madam President.

MRS SELINA CHOW (in Cantonese): President, about this Bill which we are examining, not only has it been discussed for two years but actually a rather lengthy consultation on it was conducted two years ago. No matter where we are or in whatever discussion with Owners' Corporations (OCs) or owners' committees, they are all very concerned about this issue and ask when a Bill on Cap. 344 would be introduced. In general, they know that this exercise is in progress and they also know about what we are working on this time around. If we have set a target to formulate a Bill which is nothing short of being perfect, I am afraid this target cannot be reached now. On the other hand, I think we must know very well that this is the first step taken so that owners can have a formal system to go by and they can do what they have to do.

When we are studying this Bill, what we do is to search for some vital points of equilibrium. We know that even though some owners are prepared to give their time and effort to serve on the owners' committee or OC, this would very likely to be a thankless job despite the hard effort put in. We should formulate a sound system of laws and regulations for the owners to follow. At the same time, as these people possess certain powers by virtue of their being returned by an election and they can exercise these powers on behalf of the other owners, so they are bearing heavy responsibilities indeed.

On the one hand, we cannot formulate any such laws and regulations which would place these people who want to use their time and efforts to serve others on a voluntary basis in a very difficult position. But on the other hand, we should appreciate that as these people are representatives of other owners and they are entrusted to manage the building concerned on their behalf, especially in money matters, so they should be given protection.

These things often remind me that building management is a foundation stone of the democratic system. Why? If we cannot do a good job in managing a building through democratic procedures, I do not think there is any

chance this society can achieve the goals we have in mind by means of democracy. We see that in western societies, many things will first start from the local community or a building. So this is a very good channel of education to make people fulfil their civic responsibilities.

I trust that in this course of examination of the Bill, we have studied many times the provisions in great detail and even discussed and argued over them on many occasions. In this connection, I must praise Mrs CHEUNG and Mr CHOW for their patience. They are very knowledgeable on this topic and this applies not only to the Bill but also to the entire exercise. They are well-versed in different arguments in various areas. So they can really enable Members to give serious thoughts to the many issues at hand.

However, I am worried that after the law is passed and comes into force, how many owners and representatives elected from among the owners know clearly about the contents and aims of these provisions. I think this can be achieved only through a finely executed education process. Why is a law made anyway? Because the past practice where owners had to cope with the problems on their own does not work, so a framework has to be laid down now. This framework is commonly recognized as one which is fair and which can be followed by all parties. But do they understand that fully?

In the district I am working there are many buildings which hope to have their own OC. I know that the District Office has sent some of its staff to give the residents briefings. Often they have to start from scratch. After this Bill has been passed, education efforts should be made and the District Office must be careful about that and it must train up people who can do the education work related to this Bill well.

Besides, many Honourable colleagues have mentioned earlier, and I have also heard the same thing from co-workers in my district that even if building owners ask the District Offices to send staff to attend their meetings, though the District Offices would certainly send some people over, these people would not dare to say anything in the meetings. Therefore, many Honourable colleagues have criticized them, saying that they do not speak up and they are useless. As far as I know, they are very afraid to speak up. Why? We know that in these meetings, there are often various parties playing a game of a tug-of-war and

there are conflicts and clashes. These District Office people think that they are caught in between and so they do not dare to speak up.

The Government may really have to think about this and see how it can help its staff to do their work in a very professional manner. Besides, the staff have undergone some training and they are very knowledgeable in these matters. So they should explain the relevant information to the owners in a most fair and professional manner. This is because they are a third party and they are objective. If they can handle events in a fair and objective manner, people will all listen to their advice. They will also respect them and appreciate the help rendered. However, if they just sit there and say nothing, it will make people think that their attendance is perfunctory and they will not be invited again. The result is that the District Office will not be able to play its part anymore.

Besides, I agree very much with what many Honourable colleagues have said that although there is indeed a law which seeks to regulate building management, matters in this area are getting more and more complicated. And this may result in greater financial burden for the owners, such as when there are things like mandatory building inspections and repair and maintenance of old buildings, and so on. All these would require the OC to play a role which is quite complicated. This is especially true when there are many contracts with provisions for compliance and enforcement. The owners will need to spend much time and consider problems in many areas and so at times clashes become inevitable.

For all these reasons, as the Liberal Party has said before, and we also agree very much with what some Honourable colleagues have suggested, that the Government should give more thoughts to setting up a Building Affairs Tribunal. In our opinion, as the tribunal is not a very high-level judicial venue, it should be able to play a part in arbitration and mediation to help owners arrive at a preliminary settlement of their disputes. This will enable the OCs to function in greater harmony and even better. We think that it should be useful in that area. After the Bill is passed into law today, we can take this matter forward.

We are in full support of this Bill as it will make a law for compliance by owners so that they can take the first step in doing a good job of building management. However, what comes next is more hard work of vital importance. Thank you, President.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If no other Member wishes to speak, I will now call upon the Secretary for Home Affairs to speak in reply.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, first of all, I wish to express my heart-felt thanks to Mr James TO, Chairman of the Bills Committee on Building Management (Amendment) Bill 2005 (the Bills Committee), and other members for the time and efforts they have spent on the Bill. I also wish to thank the 11 Members who have spoken today.

The Bill was introduced for Second Reading in April 2005. This was followed by almost two years of scrutiny. The Bills Committee convened a total of 51 meetings, conducting thorough and in-depth discussions on the clauses of the Bill and various aspects of building management. Many valuable opinions have been put forward to increase the clarity of the Bill and facilitate the discharge of building management responsibilities by owners.

In our view, most of the recommendations made by the Bills Committee and individual members are conducive to enhancing building management. We have therefore decided to accept these recommendations and will move amendments later on at the Committee stage.

As I mentioned during the Second Reading of the Bill, the Bill aims mainly to rationalize the appointment procedures of a management committee (MC), assist owners' corporations (OCs) in performing their duties and exercising their powers and safeguard the interests of property owners. The proposals set out in the Bill and the amendments I am going to move all seek to achieve such aims. We hope that these amendments can further improve the existing Building Management Ordinance (BMO), especially in respect of the more controversial issues, such as the appointment of an MC and its members, appointment of proxy, procurement of supplies, goods and services by OCs and managers and financial arrangements for OCs and managers.

Madam President, I wish to take this opportunity to explain the proposals set out in the Bill and the relevant amendments on the areas mentioned above.

First, the appointment of an MC for the establishment of an OC. According to section 3 of the existing BMO, an MC may be appointed at a duly convened meeting of the owners in accordance with the deed of mutual covenant (DMC). If the DMC contains no provision for the appointment of an MC, the relevant procedures set out in the BMO shall be followed. The existing provisions of the BMO may cause doubts over whether the provisions in the DMC or those in the BMO should prevail. For this reason, we propose to stipulate clearly in the BMO that for an MC to be formed under the BMO, the owners have to follow the procedures set out in the BMO, instead of DMCs.

Following the appointment of an MC, the owners shall have to appoint MC members. As an MC may have 10 to 20 members, there are practical difficulties in applying the "majority" voting system for the appointment of all MC members. For this reason, we will propose amendments based on the voting system set out in the Legislative Council Ordinance and the District Councils Ordinance, so that OCs can adopt the "first past the post" voting system in appointing MC members. We will also move amendments to rationalize the method of filling a vacancy in an MC under the existing BMO. All these amendments can enable OCs to function more smoothly.

Second, I wish to discuss proxy instruments, which many Members have also mentioned. Since the existing BMO does not contain any detailed requirements for the appointment of proxy at owners' meetings, many disputes have arisen among owners. The Bill proposes to set an absolute deadline for submitting proxy and include a standard format of proxy instrument in the BMO for adherence by OCs and owners. During the scrutiny of the Bill, members proposed to include a provision on the cross-checking of proxy instrument in the BMO. We have accepted members' recommendation and will move an amendment to the effect that the secretary of an MC should acknowledge receipt of all proxy instruments and post information in respect of those flats where a proxy instrument has been submitted in a prominent place of the venue of the owners' meeting. It is hoped that this can make the appointment of proxy more transparent and open, thus minimizing disputes among owners.

Third, in the Bill, we propose to enhance the procurement requirements for OCs and managers. Any procurement of goods or services with a value

exceeding $200,000 shall be done through tendering and accepted or rejected upon the passage of a resolution of the owners at a general meeting. Besides, at the request of the Bills Committee, we will also move amendments to effect that a procurement contract that does not meet the requirements under the BMO may be voided by a resolution passed by the owners at a general meeting. Any person who has signed a procurement contract that does not meet the stipulated requirements may be held personally liable for any claims arising from the contract.

Fourth, regarding the financial arrangements for OCs and managers, we propose in the Bill to stipulate that the manager shall open and maintain one or more segregated trust/client accounts for holding money received in respect of the management of the building with the OC as the client. This can prevent the manager from merging the management fees received from different buildings into one single bank account, so that the interests of owners can be effectively protected. Besides, we will also move an amendment to stipulate further that where an OC is required to have an accountant to audit financial statement, the audited the financial statement, together with the accountant's report, must be laid before the annual general meeting of the OC. On the Bills Committee's recommendation, we will also move amendments to stipulate that under the conditions specified in the BMO, owners may inspect documents such as bills, invoices and receipts. These amendments will help increase the transparency of the financial arrangements of OCs.

Apart from the abovementioned proposals, the amendments to be moved by the Government also cover other proposals relating to the operation and meeting procedures of OCs. These amendments will enable OCs to operate more smoothly.

Members such as Mr Albert CHAN, Mr Alan LEONG, Mr WONG Kwok-hing, Mr James TO and Dr KWOK Ka-ki put forward many other proposals, and during the scrutiny of the Bill, many members of the Bills Committee expressed the hope that the ambit of the Bill be expanded to cover other issues such as the formation of OCs in estates of detached houses and the amendment of DMCs. It must be pointed out, however, that since all these issues involve very complex legal issues and will bring forth huge impacts, careful studies must first be conducted. For this reason, the Bills Committee in general does not agree to include these issues in the amendments contained in the

Bill. We shall continue to study such issues in conjunction with the parties concerned and report to the Panel on Home Affairs in due course.

We understand that besides the amendments proposed in the Bill, many Members are also very concerned about the procurement of third party risks insurance by OCs. For this reason, I wish to take this opportunity to say a few words on the relevant provisions. As a matter of fact, when the Government drew up the Building Management (Amendment) Ordinance 2000, it already introduced a new section requiring all OCs to procure third party risks insurance from insurance companies. In order to implement the new provision, when we put this Bill before the Legislative Council in 2005, we also submitted the Draft Building Management (Third Party Risks Insurance) Regulation, in which provisions on the mandatory procurement of third party risks insurance by OCs are set out in detail. During its scrutiny of the Bill, the Bills Committee also conducted thorough discussions on the Draft Regulation and offered plenty of valuable advice. After the passage of the Bill, we will submit the third party risks insurance regulation to the Legislative Council as soon as possible, with a view to expeditiously implementing the mandatory procurement of third party risks insurance by OCs for the better protection of owners and the general public.

Just now, Mr WONG Kwok-hing, Mr James TO, Miss CHOY So-yuk, Dr KWOK Ka-ki and Miss TAM Heung-man mentioned the establishment of a licensing system for property management companies. We appreciate Members' concern, and the Government adopts an open attitude towards this issue at the present stage. With a view to grasping more relevant information, we are currently conducting a phased study on introducing a regulatory scheme for the local property management companies. In the first phase, we will collect and analyse information relating to three aspects, namely, the present situation of the property management industry in Hong Kong, overseas practices in regulating property management companies and the regulatory regime for other comparable industries or professionals in Hong Kong. The first-phase study is expected to be completed around June this year. On the basis of the findings of the first-phase study, we will consider whether we should launch the second-phase study to assess the necessity or otherwise of a regulatory scheme. We would also report the findings of the first-phase study to the Legislative Council Panel on Home Affairs.

Almost all Members who spoke just now mentioned the establishment of a Building Affairs Tribunal. In this connection, the Housing, Planning and Lands Bureau has invited, in the context of the "Public Consultation on Building Management and Maintenance", members of the public to express views on this issue, and the Bureau will announce the consultation findings at a later time.

Finally, I wish to say a few words on the commencement of the Bill. Mr James TO, Miss CHOY So-yuk and Miss TAM Heung-man have rightly pointed out the importance of publicity and education in their speeches. They are worried that the public may have difficulties in adapting to the new requirements of the BMO. We do understand that the amendments this time around cover a very wide range of issues and introduce many changes to the operation of OCs. Therefore, in order to allow sufficient time for OCs and owners to understand and adapt to the new requirements, we have reached an agreement with the Bills Committee. Under this agreement, with the exception of the amendments relating to the procurement of third party risks insurance by OCs, all other provisions shall not take effect until three months after the passage of the Bill, that is, 1 August 2007. Following the passage of the Bill, we will immediately launch a series of publicity activities to familiarize the public with the new arrangements under the Ordinance. Seminars will be held and booklets and other information distributed to enable OCs and owners to gain a deeper understanding of the new requirements under the legislation.

Madam President, the commencement of the Bill will further improve the existing Building Management Ordinance, enable OCs to manage private housing properties more effectively and bring greater protection and convenience to property owners. I sincerely hope that Members can vote for the Bill and the various amendments proposed by the Government.

Thank you, Madam President.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the Building Management (Amendment) Bill 2005 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): Building Management (Amendment) Bill 2005.

Council went into Committee.

Committee Stage

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

BUILDING MANAGEMENT (AMENDMENT) BILL 2005

CHAIRMAN (in Cantonese): I now propose the question to you and that is: That the following clauses stand part of the Building Management (Amendment) Bill 2005.

CLERK (in Cantonese): Clauses 1, 7, 8, 12, 18, 21, 26, 30, 31, 35, 37, 38, 41, 42, 43, 45, 47, 48, 50, 52 to 59, 62, 63, 67 and 69.

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 clauses stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Clauses 2 to 6, 9, 10, 11, 13 to 17, 19, 20, 22 to 25, 27, 28, 29, 32 and 33, Part 4, clauses 36, 39, 40, 44, 46, 49, 51, 60, 61, 64, 65, 66 and 68.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move the amendments to clauses 2 to 6, 9, 10, 11, 13 to 17, 19, 20, 22 to 25, 27, 29, 32, 33, 36, 39, 40, 44, 46, 49, 51, 60, 61, 64, 65, 66 and 68, the addition of paragraphs (aa) and (i) to clause 28 and the amendments to paragraphs (b), (e) and (g) thereof and the deletion of Part 4 from the Bill, as set out in the paper circularized to Members.

I wish to give a concise account on the major points in the various amendments. First, the appointment procedures of an MC. We propose to stipulate in the Bill that owners who want to establish an OC and appoint an MC must follow the procedures set out in the BMO, instead of the Deed of Mutual Covenant (DMC).

Second, requirements for the appointment of MC members. We propose that OCs shall adopt the "first past the post" voting system for the appointment of MCs. We have also proposed amendments to rationalize the method of filling a vacancy in an MC under the existing BMO.

Third, we also propose a series of amendments in regard to proxy instruments, including the introduction of a standard format and provisions on cross-checking. These measures can make the appointment of proxy more open and transparent, thus minimizing disputes among owners.

Fourth, we propose to stipulate clearly in the Ordinance that any procurement with a value exceeding the specified threshold must be done through

tendering and shall be accepted or rejected at a general meeting of owners. This requirement will apply not only to OCs but also building managers.

Fifth, we also propose a number of amendments to the financial arrangements for OCs and managers, with a view to increasing the transparency of books and providing owners with greater protection.

All the aforesaid amendments can enable OCs to operate more smoothly and better protect owners' interests. The Bills Committee has conducted extensive discussions on these amendments and generally agreed to them. I hope Members can support the amendments. Thank you, Madam Chairman.

Proposed amendments

Clause 2 (see Annex II)

Clause 3 (see Annex II)

Clause 4 (see Annex II)

Clause 5 (see Annex II)

Clause 6 (see Annex II)

Clause 9 (see Annex II)

Clause 10 (see Annex II)

Clause 11 (see Annex II)

Clause 13 (see Annex II)

Clause 14 (see Annex II)

Clause 15 (see Annex II)

Clause 16 (see Annex II)

Clause 17 (see Annex II)

Clause 19 (see Annex II)

Clause 20 (see Annex II)

Clause 22 (see Annex II)

Clause 23 (see Annex II)

Clause 24 (see Annex II)

Clause 25 (see Annex II)

Clause 27 (see Annex II)

Clause 28 (see Annex II)

Clause 29 (see Annex II)

Clause 32 (see Annex II)

Clause 33 (see Annex II)

Part 4 (see Annex II)

Clause 36 (see Annex II)

Clause 39 (see Annex II)

Clause 40 (see Annex II)

Clause 44 (see Annex II)

Clause 46 (see Annex II)

Clause 49 (see Annex II)

Clause 51 (see Annex II)

Clause 60 (see Annex II)

Clause 61 (see Annex II)

Clause 64 (see Annex II)

Clause 65 (see Annex II)

Clause 66 (see Annex II)

Clause 68 (see Annex II)

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

MR WONG KWOK-HING (in Cantonese): Chairman, with respect to the contents mentioned by the Secretary earlier, I wish to express my view on clause 13. Clause 13 is on procurements made by OCs. Although it is stipulated in the provision that open tender is required, a point was raised during the discussions in the Bills Committee that in case of emergency, there should be procurements for emergency repairs and maintenance. Unfortunately, the Government deleted that provision and this is regrettable.

A lot of money may be involved if emergency repairs and maintenance with respect to a building has to be made. Such emergencies may be that the lift may go suddenly out of order or the fuse in the electricity metres may be burnt, and so on. Under normal procedures, a notice should be issued a certain number of days in advance, a meeting should be convened a certain number of days in advance and a certain number of people as prescribed by law should come to pass the relevant motion. It is only when all these are done that procurement can be made in respect of that item in need of emergency repairs and maintenance. Would there be a need to follow the original procedures to cope with the needs of emergency repairs and maintenance when the abovementioned emergency cases occur?

During the discussions held in the Bills Committee, we raised the point that an OC could consult some professionals and experienced management companies and draw up a list of items that might entail emergency repairs and maintenance. Then the OC can convene an owners' general meeting according

to that list and owners can vote to decide whether or not preparation should be made to guard against such a rainy day. This proposal is sensible, but the Government has not accepted it. The proposed provision was even deleted. I hope the Government can make a response to the question of what should be done. Will the authorities take any follow-up action? If not, this proposed amendment would leave behind a great defect.

Then I would like to talk about clause 28. Although the Secretary said earlier that requirements would be imposed to regulate management companies, as I spoke at the beginning of the Second Reading debate, the existing law stipulated that these management companies should open independent bank accounts for those independent OCs. But if they have not done so, they will not be sanctioned. Chairman, what should be done in case of this "lawless state" when management companies do not have to bear any criminal liabilities?

In fact, a certain property management company closed down sometime ago and quite a number of OCs were affected. Some time even earlier, a well-established property management company also closed down. The effect was far-reaching, for many OCs were instantly left penniless because all their money had been deposited in the consolidated account of that management company. So what should be done? Why in this exercise to amend the law, the Government does not make any such amendments? I hope the speech made by me will move the Secretary into giving some thoughts to that. Can the Government think that over?

The third point I wish to add is about clause 33. It is provided *inter alia* that after the passage of the law, the OCs will be compulsorily required to take out third party insurance. This is a good thing. But in the Bills Committee deliberations, I raised the point that an insurance policy should not cover unauthorized building works. Since these are illegal structures, they are unlawful, so how can an insurance policy cover these structures which contravene the law? The effect of this is counterproductive and it is like encouraging people to erect illegal structures and use them to get statutory and insurance protection. The effect is most negative. Since we have pointed out these problems which are so devastating and since the Government has such great powers to draft and amend provisions, if it does not plug the loopholes and remove the blind spots mentioned, it would leave three areas in the Building

Management Ordinance much to the regret of the small property owners in Hong Kong.

I hope very much to hear a positive response from the Government later. Thank you, Chairman.

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

MR LEUNG KWOK-HUNG (in Cantonese): I am quite amused at hearing Mr WONG Kwok-hing's speech, because in the speech I delivered earlier, I also said that I wished to move the Secretary and those officials. In fact, I think the officials are quite responsible people. The problem is that we are living in a society where the Chief Executive is elected by 800 people. I have said many times that the real estate developers and other people who make money out of managing buildings or related matters have made the Government powerless, unable to offer any protection to the small property owners. Therefore, I hope that Mr WONG Kwok-hing will really vote in support of democracy, for if not, whatever we say every day will never help things at all.

I have also talked many times about why Members care for the residents. The Members may not be doing this out of goodwill, only that they cannot help but care for the residents, otherwise they will not be elected. For the Chief Executive, he needs to care about the interests of the several hundred real estate developers. I hope Mr WONG Kwok-hing will consider joining the democratic camp and together we will fight and monitor the Government.

MR WONG KWOK-HING (in Cantonese): May I interrupt by virtue of the Rules of Procedure?

CHAIRMAN (in Cantonese): Mr WONG Kwok-hing, he has actually finished speaking. But as it is now the Committee stage, you may speak more than once. Would you like to speak again?

MR WONG KWOK-HING (in Cantonese): Thank you, Chairman. I would like to respond to the goodwill Mr LEUNG Kwok-hung has extended. If he had

listened carefully to the contents of the clauses I talked about, he would have known that they are about the handling of problems in building management between owners and between owners and management companies, as well as how the conflicts between them can be solved. It is hoped that the interests of small property owners can be looked after in a rational manner and that there can be effective management by management companies. All these suggestions are based on facts and sound reasoning, and I do not think one should stretch the matter too far and take the discussion to the political plane. Thank you, Chairman.

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

MR JAMES TO (in Cantonese): (in Cantonese): Chairman, I support the clauses regarding procurement, that is, if the service of the incumbent supplier is used, no open tender will be required after a resolution on it is passed at a general meeting of the owners. This practice can be introduced as a trial. But it would be best if there is a tendering exercise because the market price and related information so obtained in tendering can help the owners make a real choice. Of course, we understand that although all owners know that information can be obtained this way, they may not want to obtain it. If they think the quality and price are acceptable on the whole, they will continue to engage the incumbent supplier and they need only pass a resolution on it. Even so, we should be mindful of the problems in this regard.

As for Mr WONG Kwok-hing's remark earlier that the third party insurance must never cover illegal structures, actually, much discussion was held on it in the Bills Committee. Most Members, including me, thought that these should be covered. Why? I think that the matter should be considered the other way round, that is, we are not trying to protect the owners but the people who may be made victims, such as those injured by fallen objects, for which they are not at fault. These innocent victims may be workers or pedestrians. If there is no third party insurance, of course it would not matter so much if there is the financial means to pay out compensation. But if there is not, that is, when those who have erected illegal structures do not have the financial means to pay any compensation, the third party can be given greater protection. Under some

circumstances, such as when there is great difficulty in taking out an insurance policy, it would in practice help the owners remove those illegal structures.

In any case, there is a certain degree of difficulty and controversy here. I hope that there can be detailed discussions on that in the next round, that is, on passing the subsidiary legislation. However, as far as I know and at this preliminary stage, if it is a fact that no insurance policy can be taken out in the market, it would not be something we can choose even if the protection is included.

Lastly, on a list for emergency matters, we have discussed that in detail. I also agree with the view held by the Government. If a list is required — of course this is not to be determined by us since the conditions of each building vary — it is very likely that there may be abuse if a list is ambiguous. Besides, who is to decide what is meant by "emergency"? In some cases, this will greatly reduce the need for mandatory tender. Apart from that, the standards that we require are already raised. For example, is a procurement with a value of $200,000 considered important? The Government has actually provided some figures on that, even if it is a large housing estate, unless something happens to all the facilities at the same time, then it is true that it would be under $200,000..... We can also see some emergency cases and if emergency procurement before the convention of a general meeting is already sufficient, I think for the time being, between the two..... This is because if a tender system is to be made mandatory, we would need to see if it is sufficient in actual practice.

Many of the decisions made at the Bills Committee would have pros and cons, and that applies to some practices agreed by a majority and subsequently accepted by the Government. We must keep a close watch on the actual operation so that a review can be conducted on the next occasion and improvements made.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): If no other Member wishes to speak, I will now invite the Secretary for Home Affairs to speak again.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, the Government does not think that the proposal on third party risks insurance should also cover unauthorized building works. However, we shall conduct further discussions when the regulation on third party risks insurance is tabled before the Legislative Council.

Regarding the liabilities of management companies, we will consider the issue during our study on introducing a regulatory scheme for property management companies. As for lists of urgent matters, the Bills Committee has also given detailed consideration to the necessity or otherwise of their formulation. Quite a number of members hold that the formulation of a list of urgent matters will achieve the opposite result of causing more operational problems. Most members support the present amendments.

Thank you, Madam Chairman.

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

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): As the amendment to Part 4, which deals with deletion, has been passed, Part 4 is deleted from the Bill.

CLERK (in Cantonese): Clauses 2 to 6, 9, 10, 11, 13 to 17, 19, 20, 22 to 25, 27, 29, 32, 33, 36, 39, 40, 44, 46, 49, 51, 60, 61, 64, 65, 66 and 68 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That the clauses as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CHAIRMAN (in Cantonese): Committee now deals with the remaining amendments to clause 28.

CHAIRMAN (in Cantonese): Both the Secretary for Home Affairs and Mr WONG Kwok-hing have separately given notice to move amendments to add paragraph (h) to clause 28.

Committee now proceeds to a joint debate. I shall first call upon the Secretary for Home Affairs to move his amendment to add paragraph (h) to clause 28.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam Chairman, I move the amendment to add paragraph (h) to clause 28, as set out in the paper circularized to Members.

This amendment concerns the obligations of a manager after the end of his appointment. Under paragraph 8 of Schedule 7 to the existing Building Management Ordinance, if the manager's appointment ends, he shall, within two months after such, deliver to the owners' committee or the manager appointed in his place any books or records of accounts related to the control, management and administration of the building. During the Bills Committee's discussions

on the relevant clauses, some members expressed the view that the two-month period was too long, and that it should be shortened. Following members' detailed discussions, we agreed to amend the relevant clauses and drastically shorten the period to 14 days.

We now propose to stipulate in the Ordinance that unless the movable property concerned must be used for the purpose of preparing financial statements, the outgoing manager should deliver such property to the owners' committee or the new manager as soon as practicable after the end of his appointment and in any event no later than 14 days. We are of the view that this amendment can significantly improve the existing situation. Most members of the Bills Committee approve of this amendment. I hope Members can support the Government's amendment. Thank you, Madam Chairman.

Proposed amendment

Clause 28 (see Annex II)

CHAIRMAN (in Cantonese): I now call upon Mr WONG Kwok-hing to speak on the Secretary for Home Affairs' amendment as well as his own amendment, but if the Secretary for Home Affairs' amendment is agreed, Mr WONG Kwok-hing may not move his amendment. If the Secretary for Home Affairs' amendment is negatived, Mr WONG Kwok-hing may move his amendment.

MR WONG KWOK-HING (in Cantonese): Before I comment on my amendment, I would like to thank the Secretary for Home Affairs who has just responded to the suggestions I made at the preceding stage, saying that follow-up action would be taken on issues such as insurance policies not covering illegal structures, the control of the bank accounts of the owners' corporations (OCs) by management companies, and so on. I am grateful for this.

Chairman, originally I wanted to propose three amendments at the Committee stage. But since the Government accepted two of my proposals, that is, first, on the requirement to have a definite term of office for OCs; second, there must be an agenda for a meeting of the Management Committee (MC) and it shall be posted in public places prior to the meeting. I welcome very much

the Government's acceptance of these two proposals, therefore, there is no need for me to propose the amendments concerned.

Lastly, I have proposed an amendment in respect of the handover of business for the new and outgoing management companies. Although the Government proposes that the deadline should be changed from two months to 14 days and this is some progress made, I think that this is still not good enough. I once hoped that it would be better if the Government would reconsider my proposal and in this way I would not have to propose this amendment. But unfortunately, the Government refused to accept it and so I have to propose the amendment. My premise is that the interests of owners and tenants should be given the first priority. Also, I think some sound regulation should be imposed on the handover of business between property management companies. Actually, this is a proposal from a property management company which is not unscrupulous, for if the handover of business for the new and outgoing property management companies has to pass a transitional period as long as 14 days, it would not only be unfair to the new company but it will also leave many uncertainties about the rights of owners and tenants in the building concerned. Originally, I hoped to specify a period of time and it would be most preferable to have an immediate handover. However, after seeking the advice of some legal professionals, I changed it to two days, that is, 48 hours. This change meets the needs as when the contract of a management company is terminated at very short notice, then the 48 hours would serve as some sort of buffer to prepare for a sound handover of business. The proposal is very simple, but the Government still refuses to accept it, therefore, I am compelled to propose an amendment to that.

The most important reason why I propose this amendment is that I have helped in the setting up of many OCs and offered them assistance too. I was elected the chairman of an owners' committee for many years and I used to be the chairman of an OC, too. I witnessed actual cases of handover of business between new and outgoing management companies. Based on the views which the OCs and many owners have expressed to me and my own experience, I think that the handover period cannot be as long as 14 days which is two weeks and that is 336 hours. During that transitional period, I think apart from records and documents such as account books, ledgers, and the records of income and expenditure of management fees as stated in the original legislation which can be dealt with separately, there are also many other crucial matters related to

building management and things such as keys, passwords or some record cards which are essential to the routine operation of the building concerned. All these must be handed over within a short time.

According to the experience I have gathered, there should be a handover in at least 10 items. These items are essential and of course, that building should have these things in the first place. They are: first, the keys to the meter rooms. If the keys of the meter rooms are not handed over to the new management company, what would happen if there is a power failure? The fuses used in many buildings are very expensive and they are not available in the local market and even if they are ordered from overseas, they cannot be immediately available. If there is no handover of the keys, what would happen if there is a power failure?

Second, keys of common areas such as the air-conditioning switch room which have an inalienable title. If they are not handed over to the new management company, what should be done?

Third, the fresh and flushing water supply. The keys to the main switch, that is, the keys to the control room, are also very important.

Fourth, the keys to the pump room. The pump room is an important facility inside a multi-storeyed building. Apart from being essential to the supply of fresh and flushing water, if the keys to the pump room cannot be found, then all things will come to a standstill if there is flooding. What should be done if there is flooding, pipes get burst and the lifts rendered out of service?

Fifth, if there is a car park and there is no handover of the keys and the passwords to the gates of the car park, then what should the owners do? And what about the tenants?

Sixth, if the walkie-talkies used by the security guards and the management staff are not handed over to the new company, it would mean losing all the contacts and means of communication. What should be done?

Seventh, the keys and passwords of the closed circuit television (CCTV) surveillance system. These are also very important to its management.

Eighth, the keys are also important to the management of the inlets and outlets of towngas and LPG gas pipes.

Ninth, about the management, operation and control of all kinds of public facilities in the building with inalienable title, such as swimming pools, fitness rooms, reading rooms and clubs, and so on, they also require keys and passwords which have to be handed over as well.

Tenth, the detailed plans of the power circuits, fuel pipes, fresh and flushing water pipes, the layout of drainage pipes, the distribution of CCTVs in the building or housing estate and plans about all kinds of public facilities. If the outgoing management company does not hand over these plans to the new company and if the former is playing all sorts of tricks within the 14-day period, it will be the small property owners who suffer. They will not know what to do if an incident occurs.

Chairman, summing up the above 10 essential elements to building management operations, if these properties are not delivered by the outgoing company to the new management company at the soonest, I have to ask the Secretary these questions. What kind of liability you would assume if there is an accident? What kind of consequence will the Government have to bear? What will the Legislative Council do? If we pass the 14-day period (that is, 336 hours) proposed by the Secretary, we should think about what should be done as well. I therefore consider amending the period to two days would be more reasonable. It is very important that the handover of these management items be completed within 48 hours. During this interim period of handover of the property management business, efforts must be made to ensure that the liabilities in the four areas which put the small property owners at a disadvantage should be borne by the holder of the property and the newly-appointed management company instead of the small property owners. These areas are: disruption in operation, management getting out of control, contingencies in crisis and prevention of risks. Why should a grey area like this remain, leaving the small property owners in a helpless state?

Apart from these problems and my queries on these dangers, during the discussion, I made it clear to the Government and told the officials the plight of the small property owners on numerous occasions. However, the Government did not make any clear response, nor did it make any pledge on protection. What was said was only that many management companies did not agree so much

with my view and it was said that such a situation would seldom happen and the risk was very low, and so on. All that we heard over and over were these two reasons. The Government did not accept this proposal from me, much to my regret.

Chairman, in view of this, I am forced to propose this amendment. Irrespective of the background of Members, be they returned by geographical constituencies or functional constituencies, or the political party to which they belong or their party affiliation, I hope that they can put aside their perceived views and ponder over the issue with calmness of mind and from the perspective of the interest of the owners and tenants. Just put themselves in their shoes and imagine they are owners of a building, would they agree that there should be a 14-day transitional period or a two-day period? Please change positions and think it over. Which kind of handover of business is advantageous to the owners and to property management? Which kind of handover would reduce uncertainties to a minimum? Which kind of practice is more in line with common sense? I do not wish to see Members do anything without thinking. We all should think it over with a scientific frame of mind before casting our votes in the interest of the people, the small owners and the tenants. Thank you, Chairman.

CHAIRMAN (in Cantonese): Members may now debate the original clause and the amendments jointly.

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

MR JAMES TO (in Cantonese): Chairman, I support the amendment originally proposed by the Government. In fact, things are unlike the situation described by Mr WONG Kwok-hing, Members should be able to get the picture after reading the provisions carefully. I have thought about this point very carefully and I have studied with Honourable colleagues in the meetings very carefully.

Now the requirement is to deliver the properties as soon as practicable and in any event no later than 14 days. Judging from the many cases in our experience, there are actually two scenarios. First, the management company considers it as failing to follow the procedures when you terminate its contract.

Therefore, it will argue with you and this is not a question of 14 days, two months or two days. It will only deliver the properties after the lawsuit is over. So this is the greatest problem.

As for those which do not belong to this scenario, that is, those which want to bargain or make extortions using this deadline of 14 days. In practice it is the management company which is placed at a most disadvantageous position. Why? With respect to the information which Mr WONG Kwok-hing has talked about, first, it cannot say why they are not delivered as soon as practicable. Also, if it is really placed in such a situation, I think the company is required to deliver things immediately, not two days. And the compensation amount can be very great should an incident really happens.

In some cases, the system or the entire operation can be very large in scale. With respect to system management, do we think that the handover of business can certainly be completed in two days? On this basis and owing to the need to strike a balance and be fair to all the parties concerned, if the company cannot explain why things are not delivered as soon as practicable, it has in effect lost its case. If it can give an explanation, then 14 days will be the deadline. In view of the fact that the Ordinance should be applicable to many scenarios, including handover arrangements of a mega scale, I think that a suitable balance is 14 days.

Personally, I would keep a close watch on the situation. Honestly, Members of the Council would get cases and complaints of this nature every day. If it really happens that in certain cases this provision is found to be inappropriate, I would ask the Government to amend it. However, given the present circumstances and based on the overwhelming majority of cases which form our experience and in view of the number of reasons cited by me just now, this can be regarded as a suitable balance already. Thank you.

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

(No Member indicated a wish to speak)

CHAIRMAN (in Cantonese): Mr WONG Kwok-hing, do you wish to speak again?

MR WONG KWOK-HING (in Cantonese): Chairman, if no more members would like to speak, then I wish to speak for the last time.

Chairman, I would like to cite two examples for Members' consideration. Knowing that the 14-day transitional period does exist would not lead to the consequence mentioned by Mr James TO, that if the requirement of as soon as practicable cannot be met, then the 14-day period would be taken as the deadline. Why is it not 13 days? Or 12 days? He should tell us the reason.

In my opinion, it should be two days. Actually, I intended to make the handover of business immediate. However, owing to the stipulations in the provision, people from the legal profession told me that this would not work and the guidelines must be complied with. So I changed it to two days. And I have spoken on the reasons.

Mr TO also raised the point that if things did not work after this examination, the issue would be brought up again in future. We all know how difficult it is to amend the Building Management Ordinance. The amendment on this occasion is possible only after discussions for a number of years before any legislative attempt is made. Once the Bill is passed, I believe it would be many years afterwards that any remedial action can be taken to rectify the inadequacies caused on this occasion. I believe we will have to pay this heavy price after the votes are cast today.

Chairman, I would like to cite two examples. The first one is still fresh in our memory. After the China Motor Bus had stopped operating bus services, the New World Motor Bus took over. At that time, bus services affected every person in Hong Kong and they were vital to people's living, can we afford to have a 14-day transition? This will not work. A building or a housing estate affects the living of many people and we just cannot afford to leave a 14-day vacuum. I said that we should put ourselves in their position and ask ourselves. Can Members do that?

The second example may be somewhat exaggerated, but after thinking it over, I would say that it makes some sense still. Ten years ago, that is, on 1 July 1997, Hong Kong was returned to China. The handover between the Chinese and the British sides could not be completed after a 14-day transitional period. There is no way which the British Government returns Hong Kong to

China on 1 July and, as for the detailed arrangements, such as the keys of the Governor's House, the keys of the Government Headquarters, and so on, are to be returned to China within 14 days. Will that work? No, not at all.

Why should we leave a vacuum such that the owners will be put in a difficult position? Why should the tenants be put in a likewise difficult position due to this vacuum? I do not think it makes any sense at all. With respect to the two examples cited by me, I think Members can see for themselves what the answer should be. I believe Members are all intelligent people and I need not tell them the answer.

Actually, my greatest concern is this handover of business, the management of the buildings in question being affected. The failure to effect a speedy handover would cause problems in operation and routine services. Why can the handover of keys, passwords or plans not be completed fast and without any disruptions? What is wrong about it? Why is it so hard to do it? Please say it. If you want to support the 14-day idea and call it a balance of interests of all sides, then please say it. But he cannot. There is no way we can tolerate this lawless state for 14 days. There will be a lot of uncertainties and a lot of conflicts will arise. The Home Affairs Department will get a heavy headache. It simply does not make any sense.

Chairman, we should go by our own standards in making a judgement of what is right or wrong. We cannot agree to everything which the officials say. We cannot parrot the words of the Government. We got to have independent thinking. We need to endorse what is correct and refute what is wrong. Only by doing so can we help our society make any progress. And only by doing so can we help the Government govern correctly and effectively. So the reason why I propose this amendment is to help the small property owners, the management companies and in fact also the Government in administration. Secretary, I am well-intentioned in doing all this. But I do not think we can influence the authorities and make the Government accept my amendment.

I think if we just blindly support the 14-day handover period as proposed by the Secretary, I would like to put it solemnly to Members who do so: you will have to bear the burden of history, for you will be queried day after day by small property owners who are bullied. As for the answer, history is going to give you the answer.

Chairman, I do not mind at all when Mr TO said in the House Committee and the meeting today when he introduced the amendment that Mr WONG Kwok-hing who raised this point and proposed the relevant amendment belongs to the minority and he is the only Member who holds such a view. This is a fact, and I do not mind at all. I think I have come to this view only after giving it serious thoughts and consulting the small property owners and owners' corporations (OCs). I think I am a lone fighter for my cause. The view expressed by me makes sense. I would insist on my amendment even if it is not passed. I do not think we should follow other people blindly, or yield to pressure or succumb to the instigation of anyone. We should hold fast to the truth. I am convinced that regardless of the support given by the majority or the minority, truth cannot be determined simply by a round of votes in this Council. I am convinced that to find the truth, we will have to look outside this Council and know what the people of Hong Kong, the small property owners and all the OCs in Hong Kong think and how they pass a judgement on the matter.

Chairman, as for the voting scenario, I have analysed the situation long ago and my conscience is clear. I will face the storm and stress of it with peace of mind and a contented smile. I smile at the way the Government succeeds in lobbying its friends. I smile when I think of the decision made by the Government of not to consider other options as it has got enough votes in its hands. When I look farther ahead and think about the negative effect this will bring, I grow somewhat worried for the authorities. However, since I have poured out the thoughts in my mind and my conscience is clear, I can stand tall in the face of history.

Chairman, I can envisage the outcome of this voting. So I would like to make use of this opportunity to make a call to all the small property owners, OCs and management companies in Hong Kong in this solemn Chamber of the Legislative Council. Ladies and Gentlemen, if this amendment proposed by the Secretary which calls for a 14-day transitional period is passed later, it should be clear to all of you that this law cannot in any way protect you. In view of this, I hope you can do something to protect your own rights and interests. What can be done? When you are to engage a management company, you should stipulate a clause in the contract to the effect that when the term of appointment is terminated and the related properties are to be delivered to the new management company, this handover must be completed immediately and no vacuum period can be left. It is only in this way that the rights and interests of the OCs and the small property owners can be safeguarded and that the new and outgoing

management companies can complete the handover of business smoothly. If only each and every one of the OCs will enter into contracts with such specific terms with their management companies, it would not matter if the law states that the transitional period is 14 days. It would not matter if the law fails to protect us. We can do something to help ourselves. So let us do something to protect our rights and interests.

Chairman, I am convinced that history will give an impartial answer to the votes cast today. I am also convinced that when the majority of the OCs in Hong Kong enter into contracts which stipulate a specific handover period when they are to engage management companies, the clause proposed by the Secretary which would be passed later will become a laughingstock in history. The Secretary will only make an outright fool of himself when he proposes an amendment that fails to protect the people.

Chairman, I have made these remarks with great sincerity, with my heart deeply moved. Though I am a lone fighter and I cannot turn back the tides, I am convinced that at the end of the day, history will hand down its fair judgement and vindicate what I do. Thank you, Chairman.

CHAIRMAN (in Cantonese): Members, the time now is just passed nine o'clock in the evening and according to our usual practice, I will inform Members at this juncture whether or not I am prepared to finish the unfinished items on the Agenda.

I received a request from Mr Albert HO two hours ago, that he hoped that his motion on "Protecting the right of the Chinese victims to demand compensation from Japan" could be dealt with ahead of schedule. However, according to Rule 15(c) of the House Rules, as the first motion would be moved by Miss CHOY So-yuk on behalf of the Panel on Environmental Affairs, so I will not use my discretion to adjust the order of the transaction of business.

Mr Albert HO made the request because the several of lawyers from Japan would very much like to listen to the debate held by Honourable Members on this topic. I therefore consulted the representatives of most of the Members of this Council two hours ago and they came to the unanimous view that the original order on the Agenda be adhered to until the conclusion of this meeting.

I therefore inform you all that I am afraid I cannot promise you that you may go home before midnight. *(Laughter)*

MISS CHOY SO-YUK (in Cantonese): Chairman, I have no doubt whatsoever about Mr WONG Kwok-hing's sincerity. But I think that he …… I shall be very brief because I know that Members all want to go home now. I think he may have overstated the whole thing, so I feel the need to explain why we do not support him, to put the record straight.

Actually, insofar as the handover period is concerned, I do not think that it should be any "big deal", be it 14 days or two days. I just think that we may be making things a bit difficult for others if we demand them to deliver all movable property and accounts and books within two days. As I mentioned in my speech just now, can Mr WONG Kwok-hing reserve this for companies which have received notification three months in advance? The reason is that a company which has received notification three months in advance will certainly be able to complete the work of handover within two days. I suppose this is more reasonable. But we have talked with the industry and even some OCs also think that it is much too unreasonable to demand a company which has just received notification to complete the handover immediately or within just two days.

Just now, I listened very carefully to Mr WONG when he mentioned the 10-odd areas requiring better arrangement. I naturally do not wish to see such incidents. But like it or not, if any problems arise and the outgoing management company refuses to deliver the keys, one may have to pry the locks. There is nothing else one can do. One can only break the locks and then replace them. Actually, the 10-odd problems mentioned by Mr WONG can all be solved after breaking the locks.

Mr WONG delivered quite an impassioned speech just now. I really hope that Members can realize that we all want to do something. But I do not think that a handover period of 14 days will be the end of the world to all OCs.

(Mr WONG Kwok-hing rose to his feet, intending to speak)

CHAIRMAN (in Cantonese): Please let Mr LEUNG Kwok-hung speak first.

MR LEUNG KWOK-HUNG (in Cantonese): Chairman, I am moved by Mr WONG Kwok-hing's speech. I may vote for his amendment.

Mr WONG has criticized me for escalating the issue to the political plane. I have not done so. His speech can actually bear out one moral — if not because of the so-called executive-led approach, if not because some Members are not directly elected, his impassioned advocacy might have produced some impacts on this legislature. I do not mean to say that those Members who do not support Mr WONG today are wrong. I would rather say that it is the system that is at fault. I heard him talk about history, about the rights of people. This reminds me of the experiences of many rights activists in the Mainland. I sincerely hope that he can reconsider the idea of joining the democratic camp. That way, he can make sure that all property owners and Hong Kong people can enjoy equal rights and determine their own fates. I hope that he can support my resolution on holding a referendum.

I am moved by Mr WONG. I will vote for his amendment. I do not know whether he will also be moved by me and switch to support my cause. 4 June is fast approaching. I hope that he can be sensible and reasonable.

MR WONG KWOK-HING (in Cantonese): Chairman, I understand that you do not want to waste any time and Members all want to dispose of this quickly, therefore, my reply will be very brief. I appreciate Mr LEUNG Kwok-hung's remarks and respect his views. I wish to thank him for his support, for his decision to vote for my amendment.

As for Miss CHOY So-yuk's remarks, I hope that she can clearly understand my speech and closely examine my amendment. And, I also hope that she can carefully recall what I said in the dozens of meetings in the past. There were a number of inaccuracies in her speech just now, so I must make a clarification here.

First, I am not asking for the handover of all properties and accounts within two days. Her claim is certainly wrong. I hope Miss CHOY can understand what I am talking about. I have always been very clear in pointing out that what must be handed over swiftly are only those important things required for building management and day-to-day operation, such as keys, floor plans and codes. At the very beginning of my speech, I already said that the

handover of accounts and books could be dealt with at a later time. I hope that Miss CHOY will not make any mistakes.

Second, according to Miss CHOY, she has consulted all employees in the industry. I think this is mere exaggeration, because I know many property management companies, and their employees have formed their own trade unions. I have in fact consulted them on my suggestion through this channel. Maybe, Miss CHOY has also consulted many employees in the industry. But she must not claim that she has consulted them all. The word "all" is simply inaccurate.

She remarked that Mr WONG Kwok-hing had overstated the whole thing. I may be a bit emphatic, but that is only because the situation is rather serious. This affects the interests of owners, individual owners and shop tenants, and the normal operation of property management companies is also affected. If Members really do not have any preconceptions, they must themselves make enquiries with property management companies. They will then know that at the time of handover, all parties will want to fix a date to settle all things immediately. Nobody wants a delay. Even two days are much too long.

What is more, I must tell Members that I have been an MC chairman for many years, more than 10 years. I also have many years of experience in the work of OCs, and I have drawn many lessons from such experience, painful they may be. I assisted dozens of buildings in forming OCs and handling their disputes. I have not "invented" the problem I have raised. It is a reflection of their opinions. I very much hope that Members can once again consider their voting decisions carefully and calmly. They must not make a wrong decision, or they will find it very difficult to offer any explanation to their supporters. Thank you, Chairman.

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

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr WONG Kwok-hing's amendment requires the outgoing manager to deliver the movable property mentioned in the clause to the owners' committee or the manager

appointed in his place no later than two days after his appointment ends. We do not think that this proposal is feasible. For this reason, I do not support this amendment.

As I have mentioned, the period of delivery for a manager is two months under the existing Ordinance. We have already proposed an amendment which shortens the period substantially to 14 days. In other words, this will already bring substantial improvement to the present situation. The proposed amendment relates to the provisions in Schedule 7 to the Ordinance, which is entitled "Mandatory Terms In Deeds Of Mutual Covenant". This means that all managers must comply with the relevant requirements. For this reason, if the Government's amendment is passed, an outgoing manager shall be obligated to deliver the movable property to the owners within 14 days irrespective of the provisions of the DMC.

Before putting forward the proposed amendment, we studied a number of DMCs and manager contracts. Generally, the period ranges from one month to two months. Therefore, the amendment proposed by the Government will already shorten the period very substantially, thus facilitating owners' taking over of building management and effectively protecting their interests.

When considering the proposed amendment, there are two points to note. On the one hand, we hope that we can provide owners with greater protection. But on the other hand, we must also consider whether the provision concerned is reasonable to managers or not, and whether or not they are capable of complying with it. We hold that since Mr WONG's amendment requires the outgoing manager to complete the handover within two days at the latest, there will be practical difficulties in implementation. This is especially true in the case of large housing estates, where a manager may have to manage dozens of housing blocks and several thousand flats. In such cases, there may be huge quantities of movable property that must be delivered to the owners' committee or the new manager. As a result, it will be difficult for the outgoing manager to complete the handover within two days.

Mr WONG has raised the point that some managers may seek to delay the handover, which is why it is necessary to limit the period to within two days. As pointed out by some Members during the relevant discussions in the Bills Committee, in cases where a dismissed manager is reluctant to resign, the major

point of dispute is often connected with whether or not the OC has terminated the appointment of the manager concerned according to the procedures set out in the Ordinance, instead of the deadline for delivering instruments and movable property. Mr WONG's amendment will only impose an unenforceable provision on a manager, which is not a desirable practice indeed.

We maintain that the Government's amendment, which requires the outgoing manager to deliver the relevant movable property to the owners' committee or the manager appointed in his place within 14 days at the latest, can already strike a proper balance between owners' interests and managers' practical difficulties in compliance. I therefore hope that Members can support the Government's amendment.

Thank you, Chairman.

CHAIRMAN (in Cantonese): Before I put to you the question on the Secretary for Home Affairs' amendment to clause 28, I wish to remind Members that if that amendment is agreed, Mr WONG Kwok-hing may not move his amendment to clause 28.

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

(Members raised their hands)

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

(Members raised their hands)

Mr WONG Kwok-hing rose to claim a division.

CHAIRMAN (in Cantonese): Mr WONG Kwok-hing has claimed a division. The division bell will ring for three minutes, after which the division will begin.

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

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

Dr Raymond HO, Mr Fred LI, Dr LUI Ming-wah, Mrs Selina CHOW, Mr James TO, Mr CHEUNG Man-kwong, Mr CHAN Kam-lam, Mrs Sophie LEUNG, Mr SIN Chung-kai, Dr Philip WONG, Mr WONG Yung-Kan, Mr Jasper TSANG, Mr Howard YOUNG, Dr YEUNG Sum, Mr LAU Kong-wah, Ms Emily LAU, Miss CHOY So-yuk, Ms LI Fung-ying, Mr Frederick FUNG, Ms Audrey EU, Mr Vincent FANG, Dr Joseph LEE, Mr Daniel LAM, Mr Jeffrey LAM, Mr Andrew LEUNG, Mr Alan LEONG, Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr CHEUNG Hok-ming, Mr WONG Ting-kwong, Mr Ronny TONG and Miss TAM Heung-man voted for the amendment.

Mr WONG Kwok-hing, Mr LEUNG Kwok-hung and Mr KWONG Chi-kin voted against the amendment.

Mr TAM Yiu-chung abstained.

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

THE CHAIRMAN announced that there were 37 Members present, 32 were in favour of the amendment, three against it and one abstained. Since the question was agreed by a majority of the Members present, she therefore declared that the amendment was carried.

CHAIRMAN (in Cantonese): As the amendment moved by the Secretary for Home Affairs has been passed, Mr WONG Kwok-hing may not move his amendment to clause 28, which is inconsistent with the decision already taken.

CLERK (in Cantonese): Clause 28 as amended.

CHAIRMAN (in Cantonese): I now put the question to you and that is: That clause 28 as amended stand part of the Bill. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese):

New clause 3A	Section added
New clause 9A	Incorporation
New clause 10A	Powers of corporation generally
New clause 13A	Section added
New clause 49A	Insurance policy to be made available by management committee for inspection
New clause 50A	Powers and duties of an administrator.

SECRETARY FOR HOME AFFAIRS (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.

As new clauses 3A and 13A both involve addition of sections, I wish to take the opportunity to give a brief explanation. Clause 3A is about how votes should be counted in the meetings of OCs and MCs. We propose to stipulate clearly in the Ordinance that abstention votes shall be disregarded for the purpose of determining whether there is a majority of votes for a resolution. The amendment can facilitate the smooth conduct of OC meetings and increase the clarity of the relevant provisions of the Ordinance.

In new clause 13A, I propose that in case an OC becomes either side of a lawsuit, the MC shall notify the owners by posting a notice about the details of the case during the specified period. This proposal can help enhance owners' right to know and offer further protection to their interests.

Clauses 9A and 10A are respectively about the formation of OCs and the rationalization of the procedures for replacing MC members at OC meetings. Clauses 49A and 50A are purely technical amendments. I hope Members can support the Second Reading of the new clauses mentioned above.

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 3A, 9A, 10A, 13A, 49A and 50A.

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

Proposed additions

New clause 3A (see Annex II)

New clause 9A (see Annex II)

New clause 10A (see Annex II)

New clause 13A (see Annex II)

New clause 49A (see Annex II)

New clause 50A (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 Bills

PRESIDENT (in Cantonese): Bill: Third Reading.

BUILDING MANAGEMENT (AMENDMENT) BILL 2005

SECRETARY FOR HOME AFFAIRS (in Cantonese): Madam President, the

Building Management (Amendment) Bill 2005

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 Building Management (Amendment) Bill 2005 be read the Third time and do pass.

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

(Members raised their hands)

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

(No hands raised)

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

CLERK (in Cantonese): Building Management (Amendment) Bill 2005.

MEMBERS' MOTIONS

PRESIDENT (in Cantonese): Members' motions. Proposed resolution under the Interpretation and General Clauses Ordinance to extend the period for amending the Sewage Services (Sewage Charge) (Amendment) Regulation 2007 and the Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 2007.

I now call upon Mr Fred LI to speak and move his motion.

PROPOSED RESOLUTION UNDER THE INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR FRED LI (in Cantonese): Madam President, at the House Committee meeting held on 13 April 2007, Members resolved to form a Subcommittee to scrutinize the two Amendment Regulations under the Sewage Services Ordinance and a Technical Memorandum regarding procedures and methods for sampling and analysis of trade effluents tabled at the Legislative Council meeting on 28 March 2007. Members also agreed that a motion be moved under my name as Deputy Chairman of the House Committee to extend the scrutiny period for the subsidiary legislation concerned and the Technical Memorandum to allow sufficient time for the Subcommittee to hold deliberations.

Madam President, I now move the motion standing in my capacity as Deputy Chairman of the House Committee to extend the scrutiny period for the two foregoing Amendment Regulations. Details of the motion are set out on the Agenda. I urge for Members' support of the motion. I will move another motion later on to extend the scrutiny period for the Technical Memorandum regarding procedures and methods for sampling and analysis of trade effluents.

Mr Fred LI moved the following motion:

"RESOLVED that in relation to the -

(a) Sewage Services (Sewage Charge) (Amendment) Regulation 2007, published in the Gazette as Legal Notice No. 45 of 2007; and

(b) Sewage Services (Trade Effluent Surcharge) (Amendment) Regulation 2007, published in the Gazette as Legal Notice No. 46 of 2007,

and laid on the table of the Legislative Council on 28 March 2007, the period for amending subsidiary legislation referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) be extended under section 34(4) of that Ordinance to the meeting of 16 May 2007."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Fred LI be passed.

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

(No Member indicated a wish to speak)

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

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Proposed resolution under the Sewage Services Ordinance to extend the period for amending the Technical Memorandum on Procedures and Methods for Sampling and Analysis of Trade Effluents.

I now call upon Mr Fred LI to speak and move his motion.

PROPOSED RESOLUTION UNDER THE SEWAGE SERVICES ORDINANCE

MR FRED LI (in Cantonese): Madam President, I move that the motion on extending the scrutiny period for the Technical Memorandum on Procedures and Methods for Sampling and Analysis of Trade Effluents be passed. Details of the motion have been set out on the Agenda.

Madam President, I urge Members to support the motion.

Mr Fred LI moved the following motion:

"RESOLVED that in relation to the Technical Memorandum on Procedures and Methods for Sampling and Analysis of Trade Effluents, published in Special Supplement No. 5 to the Gazette on 23 March 2007, and laid on the table of the Legislative Council on 28 March 2007, the period for amending technical memorandum referred to in section 13(3) of the Sewage Services Ordinance (Cap. 463) be extended under section 13(5) of that Ordinance to the meeting of 16 May 2007."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Fred LI be passed.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Fred LI be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Two motions with no legislative effect.

First motion: Overseas experience in air quality control, management of municipal solid waste, renewable energy and total water management. I now call upon Miss CHOY So-yuk to speak and move her motion.

OVERSEAS EXPERIENCE IN AIR QUALITY CONTROL, MANAGEMENT OF MUNICIPAL SOLID WASTE, RENEWABLE ENERGY AND TOTAL WATER MANAGEMENT

MISS CHOY SO-YUK (in Cantonese): President, I move that the motion as printed in the Agenda be passed.

The Legislative Council Panel on Environmental Affairs has all along monitored the strategies, legislation and various measures employed by the

Government for improving the environment. In order to gain hands-on understanding of the relevant experience of overseas countries, the Panel formed a delegation to visit Japan, Denmark and Finland in August this year for the purpose of exchanging views with a number of organizations and government departments there in order to obtain first-hand information. Such information will provide reference that would enable us to monitor the Government when it implements the relevant policies and plans in future.

Since the findings and observations of the delegation have already been recorded in detail in the delegation's report, and copies of it have already been sent to all Honourable colleagues and the Administration for reference, I do not intend to repeat them here. Next, I shall put forward several points of opinion on behalf of the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB).

As I take a retrospective look at the entire visit, I have some very strong feelings, that is, all these countries have very good foresight and determination in taking forward environmental protection. Even at the time when their respective societies had yet to feel the urgency of environmental problems, the governments had already identified the right direction and implemented the environmental measures with great momentum, which eventually overcame all the hurdles in carrying out environmental initiatives. And time has testified that they have taken the right path. We have great admiration for these governments with such foresight, and their achievements are also the envy of many people.

In the case of Hong Kong, if only the Government has the sincerity and is prepared to resolve to make some efforts, I believe we can definitely achieve much more than they did in the past in promoting the work of environmental protection. The rationale of this is self-evident. First of all, the circumstances have changed now. The people nowadays have a much higher environmental awareness than before. Everyone has wakened up to the fact that environmental initiatives cannot brook any more delay. So, with regard to investments required for all kinds of environmental projects, not only can they easily secure support, but the people will also demand the Government to do more and do it quicker. Therefore, with the support of public opinions, the promotion of all kinds of environmental initiatives will be "smooth sailing", without running into any major obstacle.

Secondly, the environmental problems faced by Hong Kong nowadays are definitely much tougher than those faced by the above countries in the past. For example, when Japan developed the technologies for rubbish separation and disposal in the past, I believe their landfills did not have the problem of having only five years of life, as in the case of Hong Kong now. Let me cite another example. In Denmark, when they promoted renewable energy, the air quality was definitely not as bad as ours now — our air pollution has frequently exceeded the limits. As for Finland, of course their people had never experienced the kind of serious shortage of water supply in Hong Kong when water was supplied once every four days, and their main water sources have never been threatened by frequent pollutions, and so on. In Hong Kong, under the atmosphere of the great urgency of the pollution problems, the people are prepared to support and comply with environmental policies and measures as far as possible.

Besides, environmental technologies have made rapid advancements in recent years. For environmental work and projects that done by these countries in the past, we will only do even better, with higher efficiency and at lower costs now. Some of the measures were only dreams then, but now they can happen in reality and become technologies under consideration. For example, more and more garbage that cannot be recycled in the past is now the treasured goods of the recycling operators. In the past, vehicle fuels were only restricted to petroleum and diesel. Now, we have electricity, hybrid power, bio-diesel and even hydrogen. Therefore, under the current circumstances where the technological conditions have become mature, the promotion of environmental protection now will definitely be more effective than before.

Unfortunately, in spite of the availability of all sorts of favourable conditions, Hong Kong has been quite slow in making a start in such work now. As such, it is not surprising at all that we have to admire the brilliant achievement of others while, at the same time, feeling sad and miserable at the slow progress of Hong Kong.

President, I have never intended to say "The moon is always brighter overseas". And it has never been my intention to introduce all the overseas measures wholesale into Hong Kong because each place has its unique conditions and strengths. We must identify a direction most suitable for ourselves. Besides, the environmental technologies and equipment have been used in these countries for quite some time. By now, we can in fact choose from much more, newer and better environmental technologies for our adoption. Yet, in spite of

what I have just said, I still think that this fact-finding visit of the delegation has enlightened me a lot, and I have benefited a lot in the process.

One of the points of enlightenment is, from the successful experience of these countries visited by us, it is evident that if we hope to carry out environmental initiatives more effectively, the co-operation of the people and the foresight and commitment of the government are indispensable. Here, I hope, for the sake of our next generation, all Honourable colleagues can monitor the Government's environmental initiatives more actively in future. And the DAB has also made an important decision: That we shall substantially step up the intensity of our environmental work in future.

The second point is, although goals are very important in environmental work, the success of such is also dependent on how it is promoted. Of course, the Government must be committed to such work, and should not backtrack easily. However, it cannot insist on implementing the measures regardless of the circumstances. It must adequately take care of the aspirations and worries of the people.

Let us take the case of Tokyo as an example. Before incineration plants were constructed there, the municipal government had discussed the project proposals with the local residents for a very long time. If I have not mixed up the dates, it took altogether 14 years, and there had been numerous amendments, major or otherwise. And finally a consensus was reached. In the process, no one accused the government of imposing the decision on the people, nor had there been any dissatisfaction with the "executive-led" style of the government in putting forward some "unchangeable proposals". Of course, it had never been easy to develop such a harmonious relationship between the government and the people. It is contingent on how respectful a government is towards public opinions. For example, when the Government seeks to launch some significant and far-reaching proposals, has it only reserved a short period of two to three months for consultation? Or has it exerted pressure on the parliamentary assembly, urging Members to improve their efficiency in discussing business so as to cope with the progress of the development, and so on?

President, one of the prerequisites for successful implementation of the proposals is to take full heed of the aspirations of the people. Hence, when the Danish Government promoted renewable energy, it had first considered such

issues as the need for the people to shoulder the increase in electricity tariffs, and the increases in the operating costs of the power plants, and so on. And then it introduced some loan schemes to enable the people to participate directly in the promotion of renewable energy through making investments in such projects.

It is exactly how the Danish Government promoted renewable energy that brings me the third point of enlightenment. It makes me realize that environmental protection should never ask any single party to make unilateral sacrifice; instead, it should call for the development of some multi-win investment proposals for all the parties concerned. In fact, a good environmental project can improve the environment on the one hand, and also generate income and create employment opportunities on the other.

In Denmark, once we entered the urban area, solar panels could be seen everywhere; and once we were in the rural area, wind turbines could be seen everywhere. Even by the side of a cottage, we could find a wind turbine. The gentleman guiding our delegation had secured some low-interest loans from the Government to own a wind turbine. After asking some further questions, we found that making investment in a wind turbine is quite similar to buying a flat for investment in Hong Kong, and the amount of investment required is also quite similar. Buying a wind turbine requires an amount equivalent to some HK$3 million. The returns from this investment are quite stable, and the price would not fluctuate too much. The repayment period is roughly 10 years. The operation and maintenance of wind turbines are relatively simple, for a mobile phone is all that is required for turning the wind turbine on and off. As such, different forms of renewable energy such as wind turbines and solar panels can be seen everywhere in the country. Since the government has established a good system, together with the provision of incentives, it has become a common practice for the people to make investments in renewable energy. Of course, the success of this system actually depends on a very crucial prerequisite, that is, the approval for renewable energy and the relevant facilities to be connected to the local power grid.

Another successful example is Japan. Since a comprehensive waste separation and recycling system has been established there, together with other factors such as reasonable prices for materials to be recycled and an abundant supply of such materials, the recycling industries are developing prosperously and fully self-sufficient. Not a single cent of government subsidy is required for the recycling industries and no "foreign rubbish" is allowed to be imported

into the country. We reckon that such industries have created a lot of employment opportunities and fed many families, and thus have brought enormous economic benefits to Japan.

The last point of enlightenment has brought me some verification. In the past, with regard to many environmental proposals, many excuses were cited by the Government to say this proposal was not feasible and that proposal was technologically immature. I think most of them were just excuses, miles away from the truth.

Let us take waste separation as an example. In the past, the Government always said that it was not feasible to implement the separation of dry and wet refuse because the people would not comply with it and also the processing of wet refuse required large areas, so it could not be implemented in Hong Kong. However, we saw that a similar system had been operating very smoothly in Japan, and there, only very small areas are used for processing wet refuse.

Another example is the treatment of sewage. The Government has always claimed that there is inadequate space for implementing secondary treatment because we cannot carry out any more reclamations. However, in Finland, they have chosen to do it in caves. Since the refuse transfer station of the Western District is established in a cave, should the Government also not consider whether sewage can be treated in caves?

On the issue of generating electricity by wind power, the Government's reply always contains the following points: unstable power supply; unavailability of sites for constructing wind turbines; obstruction to scenic views and generation of noises; and non-acceptance by the people, and so on. We can take a look at the situation in Denmark. Renewable energy accounts for 28% of the total power consumption of the entire country, yet its electricity supply system has remained relatively stable even on a long-term basis. As for the case in Hong Kong, I heard that the highest required proportion is 10%, and the Government considers that it should be about 2% to 3%. I absolutely cannot understand why such a small proportion would make the local electricity supply system unstable. In fact, if we can have a good financing system, adequate incentives and the approval for connection to the power grid, no matter what will happen, the situation will not be as bad as ours today — always remaining at the discussion and consultation stage. Regarding the Government's allegation that the wind turbines are eyesores and will have adverse impact on our scenic view,

I think my niece and the young man joining us on the trip must be among the first ones opposing such a viewpoint. When we drove around Europe for sightseeing, they thought the wind farms are one of the most beautiful scenes and kept asking why wind farms were not built in Hong Kong. In fact, an off-shore wind farm near the airport of Copenhagen is a famous scenic spot for tourists. If someone says that the noise generated by wind turbines is annoying, I can provide the experience this delegation gained on this trip. In Denmark, when we were driven to see a wind farm, our vehicle stopped by the side of a giant wind turbine. When we were still inside the vehicle, colleagues listened attentively to find out how great the noise was. We nearly could not detect any unusual noise. It was only after the doors of the vehicle were opened that we started to hear some humming noise. But that was not any high-pitched noise, nor was it particularly annoying.

President, it was indeed a very good arrangement for the Government to send relevant officials to join us on our fact-finding trip on different technologies and facilities. On behalf of the delegation, I would like to thank the Secretary for arranging for officials from different departments to accompany us in our visit to different places. At the same time, I also hope that this move would enable the Government's representatives to learn from the successful experience of other places, and I hope that they can expeditiously do better in the work of environmental protection in Hong Kong.

With these remarks, President, I beg to move.

Miss CHOY So-yuk moved the following motion: (Translation)

"That this Council notes the Report of the Delegation to Study Overseas Experience in Air Quality Control, Management of Municipal Solid Waste, Renewable Energy and Total Water Management and urges the Government to consider the findings therein."

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Miss CHOY So-yuk be passed.

MR VINCENT FANG (in Cantonese): Madam President, I am speaking in support of the recommendations contained in the report. I hope the

Government can adopt some measures that are suitable for Hong Kong. I am particularly concerned about the disposal of municipal solid waste, not because the retail trade will be affected by the Product Eco-responsibility Bill that will be tabled by the Government to implement a pilot scheme of levying the plastic bag tax. Instead, I am concerned about the issue because if we cannot effectively reduce solid waste, no matter how much tax we can collect, we have no way of extending the service life of our landfills and reducing the rubbish on the earth.

Much of the waste is the derivatives of consumables, such as glass bottles, which we cannot avoid using. Even if in future the Government extends the scope of the tax to include containers of drinks or packaging materials, it is still impossible to reduce the production of such waste. I have repeatedly mentioned in this Council that the most effective waste reduction measures are recycling and re-using waste. I have suggested that the Government should recycle glass bottles. Unfortunately, the Government replied that the cost of recycling glass bottles was too high, the cost-effectiveness of the recycling industry is not too high, and it would be quite difficult to attract investors.

However, this year, three young people from Hong Kong have successfully recycled glass bottles into glass tiles, and they have begun to make some marginal profit half a year into production.

Last week, a whole container of metal waste and electrical waste was stolen. Why on earth would someone bother to steal waste, which is commonly known as "rubbish"? The reason is very simple. The prices of metals have surged globally, and this has the effect of pushing up the prices of metal waste. As long as such waste is worth some good money, there must be some people who would like to recycle them.

Of course, not all kinds of rubbish are valuable. However, the list of valuable rubbish will absolutely not be limited to aluminum cans, waste paper and polyester plastic bottles. In fact, we have glass bottles, as mentioned above, as well as food remains which can be processed into animal feed and fertilizers, as the delegation witnessed in this visit.

In fact, Hong Kong should really draw reference from Tokyo's 3R approach to solid waste disposal, namely, reducing, re-using and recycling.

In the aspect of reducing waste, I think the most important initiative is publicity. In Japan, there is no plastic bag tax. But all the people have good environmental awareness. People who have visited Japan will realize that there are very few rubbish bins on the streets because they would usually bring the rubbish home and dispose of it according to categories. And then waste that can be incinerated will be sent to the incineration plants, so as to lessen the pressure on the landfills. And the remaining rubbish will be disposed of by some other methods.

I know Hong Kong people strongly resist incineration plants. But with scientific and technological advancement, even Tokyo can accept the existence of incineration plants. The Liberal Party thinks that Hong Kong can draw reference from this fact.

With regard to "recycling", I have talked to some wholesalers who said that the industry would support the past practice of "refunding deposits on the return of bottles" if the Government is willing to provide some incentive. Recently, I have bought a drink imported from the United States at a retail shop. On the polyester bottle, it is stated that it carries a refund value of US$0.05. This serves as an incentive to encourage consumers to return the bottle for re-use. In the past, all milk bottles, glass bottles of soft drinks, and even beer bottles can be returned for refund of deposits, and the result was quite good. Therefore, I hope the Government can discuss with manufacturers, wholesalers and retailers, so as to identify ways of re-using containers, thus reducing waste disposal.

Of course, the most effective method is still recycling. Therefore, Hong Kong should learn the experience of the Sapporo Municipal Government in developing its EcoPark and promoting green recycling industries. Hong Kong's own EcoPark is still on the drawing board after so many years. By now, there is still no definite date for its commissioning and this has made a computer recycling company withdraw its original plan of establishing its operation in the EcoPark in order to avoid incurring further losses caused by repeated delays.

The Government stresses that it would not finance the development of any individual industries. However, the green recycling industries are industries that have a bearing on the survival of each and every one of us. So, even

developed countries would finance the development of waste recycling industries. If we can successfully reduce solid waste, it would mean extending the service life of our landfills, thus in effect helping the Government to save money. In the international arena, many emerging industries are related to environmental protection. If we can promote the development of green industries in Hong Kong, it will be beneficial to the economic development of Hong Kong.

Hong Kong is currently enjoying a very considerable fiscal surplus, and the situation will be maintained in the next few years. We can definitely afford the provision of some incentives to encourage local enterprises to develop waste recycling industries as well as attracting international recycling firms to set up plants in Hong Kong, so as to explore new development directions for the waste of Hong Kong. I sincerely hope that the Administration can seriously consider such a solution that can benefit all the parties concerned.

I so submit. Thank you, Madam President.

MS AUDREY EU (in Cantonese): President, this motion today is on the report submitted by a delegation of the Panel on Environmental Affairs to study the environmental experience in overseas countries last year. First of all, I would like to thank members of the delegation for making the efforts of visiting so many countries, and I certainly hope that the authorities can make reference to and follow up the many recommendations in the report.

In fact, as the report has said, nowadays, the environmental pollution problem has become increasingly serious in Hong Kong. Since the '70s of the last century, the environmental problems have been a concern to the people for more than 30 years. Ever since its inception in April 1986, the Environmental Protection Department (EPD) has formulated many plans and improvement measures during the past 21 years. I believe when the Secretary delivers her speech later on, she will reiterate the many initiatives undertaken by her. However, when we raise our heads, we find that the blue sky has gone; we now have a much narrower Victoria Harbour; the cross-harbour swimming race has already been suspended; and there are more and more "wall-like buildings" surrounding us. Even if we stay at home, we would not find the indoor air particularly fresh, and we may even be living under the threat of the sick building syndrome.

What actually is the problem? I think it is very simple. The first problem is of course a matter of determination. President, you must recall that when the Chief Executive came to this Council last year, I asked him, on the issue of energy conservation, why the reduction target was set at only 1.5% per year. I remember he challenged our Legislative Council to see who would be the "squanderer" and who could save more energy. Recently, the Friends of the Earth released a report which indicated that we had reduced energy consumption by 20%, whereas the Government has reduced 14%. In fact, President, the point is not on our victory over the Government. Instead, the Government has made the mistake of setting the target too low. Whenever we discuss environmental protection issues with the Government, the officials would often say that they have already done quite well, and the situations were even worse elsewhere. The Government has not set a higher target, nor does it have any determination, how can we expect it to enact legislation or provide matching measures in a package for the purposes?

The second problem is, once some parties with vested interests are involved, we can do nothing. The situations in overseas countries are different. For example, Denmark relies on wind power for generating electricity. Why can it succeed? Apart from the availability of land for establishing wind farms, it also opens up its power grid and adopts the policy of promoting renewable energy.

In the case of Hong Kong, of course I know whenever renewable energy is mentioned, the Government would say that Hong Kong suffers from an acute shortage of land. However, the Government should actually first establish the mechanism by opening up the power grid. If this is done, many other companies and consortia would come to Hong Kong to make investments. At present, the market in Hong Kong is actually in a state of oligopoly, therefore, no matter what we say here, the problems will remain unsolved.

Let us take a look at the situation in Japan. It has a sound community recycling system. It has also adopted a system of producer responsibility to encourage manufacturers not to produce waste. In the aspect of air quality, the Tokyo Government provides the incentive in the form of a loan scheme to lure diesel vehicle owners to replace their vehicles with more environmentally-friendly vehicles — in this aspect, Japan has adopted the same practice as ours, but on the other hand, it has done even better than we do. It has done what we in the Legislative Council have requested the Government to do but only to be refused. What is it? It is the formulation of a timetable

specifying seven years as a time limit. All vehicles failing to meet the standards by this time limit will not be allowed to run on the roads. Yet, this cannot be done in Hong Kong. Whenever such measures are raised, the Government would become most hesitant. Besides, in the promotion of green rooftops to alleviate the heat island phenomena, the Tokyo Government has enacted legislation to stipulate that all new sites with a floor space larger than 1 000 sq m must introduce some greening initiatives to a certain proportion of its rooftops and walls.

Here in Hong Kong, whenever we propose this to the Government, it would invariably say that at present the Electrical and Mechanical Services Department already has its ventilation guidelines in place. As such, why does the Government not enact legislation to facilitate its compliance? The Government insists that the set of guidelines is for the reference of the MTR Corporation Limited. I would like to say this to the Secretary specifically: Since railways fall within the ambit of the Government, and the Secretary said that the authorities had formulated the ventilation guidelines for reference, and up till this moment, both the KCRC and West Rail (sic) are fully Government-owned, but the property developments on top of MTR stations have all become "wall-like buildings". Under such circumstances, how can we expect other government departments to comply with the guidelines of the Government? Without any legislative effect, how can we expect compliance by the developers? Whenever our discussions touch upon environmental issues, the Government would have its own considerations.

In Hong Kong, we have many environmental measures. Whenever some problems are raised, such as the Schemes of Control Agreement of the two power companies, the implementation of such measures would meet with great resistance, thereby preventing many such environmental measures from working towards the cores of the problems. This explains why we cannot see the blue sky again, and it also explains why we cannot make the people satisfied in spite of the fact that we have already done a lot on the issue of environmental protection.

President, I would like to turn to the issue of electricity tariff. The more we save electricity, the stronger ground the power companies would have in applying for an increase in the tariff they charge. It is in effect punishing the people. This also explains why Hong Kong should learn from overseas countries on many issues. If it is strictly technical issues that are involved, I

believe we can borrow their experience quite easily. But if problems involving policies or structures remain unsolved, we shall never make any advancement in environmental protection.

From the changes that have taken place in the names of the Bureau in charge of environmental policies over the years, we can see the problem of the SAR Government in this area. During the outbreak of the avian flu, the Planning, Environment and Lands Bureau was changed to the Environment and Food Bureau. Later, when the Lok Ma Chau Spur Line crisis broke out, and after the introduction of the accountability system for principal officials, it was changed to the present Environment, Transport and Works Bureau. Recently, I heard that it will soon be changed again. It may evolve into a Development Bureau, and then all the works projects will have to be launched very soon, and possibly even environmental issues may have to give way. I hope the Secretary can give full play to her functions in environmental protection. Thank you, President.

MR TAM YIU-CHUNG (in Cantonese): President, last summer, I joined the delegation of the Panel on Environmental Affairs led by Miss CHOY So-yuk on a visit to Japan. But I did not take part in the entire trip of the delegation. I just joined the Japan leg. For the leg in Japan, we had gained an understanding of their latest situation and experience in abating air pollution, separating and disposing of garbage. Japan started earlier than us in the work of improving air quality and minimizing greenhouse effects. They have adopted many measures over the years and their waste disposal technologies are also more advanced. For this reason, we hope to draw reference from their experience.

During the several days of our stay in Tokyo, the sky was always "foggy", and the blue sky was a rare sight. Therefore, if we say the situation in Hong Kong is bad, it seems that Japan is not much better. The traffic on the roads was more congested than what we had seen several years ago. I believe the exhaust emitted by vehicles must be quite enormous. In explaining the various emission reduction measures, the official of the Environmental Protection Bureau of Tokyo said that the city had made less than substantial progress in improving air quality. This is mainly attributable to the fact that most of the measures are voluntary in nature, so the effects are limited. However, what impressed me most were the very strict requirements imposed by the municipal government on government departments in the aspects of emission reduction and

energy conservation. How strict are they? I can recall that a notice was posted outside the office of the Environmental Protection Bureau of Tokyo to which we had visited: "In order to save energy, the indoor temperature is set at 28°C. Informal attire is welcome." Therefore, we had to remove our jackets and ties right after entering the office. With the room temperature set at 28°C, the venue was really rather stuffy. However, they seemed to have adapted to it. Of course, the weather there was not as humid as that in Hong Kong. But for us, people from Hong Kong, we really had difficulties adapting to such conditions. But the staff members of that office were well at ease. From this, we can see that, if government departments can take the lead and act as an example for the people, it will be more convincing to the people, and thus be able to motivate the people into using less energy. Of course, I am not saying that the Secretary should change the temperature from 25°C to 28°C immediately. I can imagine that, if the 28°C suggestion is really accepted, I shall definitely be condemned by everyone. I have cited this example only to illustrate that they are really more conscientious than we are in this aspect.

Another area that also merits our deep thought is the adoption of proactive measures by Tokyo to minimize the "heat island phenomena". It is stipulated in the laws of Tokyo that, in designing new buildings, the site on which a new building is to be constructed should reserve 30% as the greening zone after deducting the actual area occupied by the new building. For owners hoping to add greening zones to their existing buildings, there is a dedicated department for briefing them on what to do, such as ways of greening their roofs. On the contrary, in Hong Kong, we have been making no progress in greening our urban area. With regard to the design requirements of new buildings, the Government is even unwilling to make the basic air ventilation impact assessment a statutory requirement, let alone making it compulsory to launch greening projects. As a result, in recent years, the so-called "wall-like buildings" have been erected one after the other, thus making the living environment of the people hotter and hotter.

Refuse disposal is also a very significant problem in Tokyo. It is understood that more than 10 incineration plants have been built along the Tokyo Bay, basically one for each district, and each incineration plant will dispose of the living wastes of about 500 000 people. The officials admitted that there had been great controversies in the construction of these incineration plants, and the negotiations between the government and the people had dragged on for as long as seven to 10 years. The final resolutions could be summarized into three

points: First, technically, it must not affect the health of the residents in the vicinity; secondly, it is stipulated that the plant would only process refuse generated by residents of the district, that is, each district is responsible for processing its own refuse. So, one's own refuse should neither benefit nor adversely affect other districts. Thirdly, additional community facilities should be built. So, heated swimming pools, libraries and amenity rooms, and so on, are built by the side of such incineration plants. The authorities said that these facilities were not compensation, but meant to make residents welcome these incineration facilities and feel comfortable with them. The incineration plants visited by us are all situated in the urban area, and they have several common characteristics: First, some of the refuse will be transported through pipelines, thus preventing pollution caused in the course of storage and transportation. Secondly, it has laid down very stringent environmental protection requirements. So, apart from meeting the emission targets, the pollutants must also secure the acceptance of the residents. Looking at them from the outside, one simply cannot tell that the premise is an incineration plant. Even the chimneys are constructed to resemble the outlook of buildings and they are also painted in colours, thus making them look like landmark buildings of their respective districts. And in the neighbourhood of the incineration plants, we also could not detect any odour or foul smell. Thirdly, the incineration plants have become the educational tools for heightening the environmental protection awareness of the residents. It is because many students and residents would visit these incineration plants every year and see the process of incinerating garbage. From such details, we can see that the municipal government there has adopted an attitude that does not attach the first priority to economic viability. Instead, they put greater emphasis on how to make garbage disposal harmless. In Hong Kong, we lack holistic consideration for this kind of overall co-ordinated community development. For example, the Administration has just been stressing that it is essential to construct an incineration plant in Tuen Mun. But to the residents, the authorities have not mentioned anything on the kind of compensation that would be provided to them; how such plants would benefit them or what should be done in terms of community environmental protection, and so on. Therefore, I think it would be very difficult to ask the residents to accept the proposal.

Besides, Tokyo has also adopted the global 3R approach (reduce, re-use and recycle) in managing or reducing municipal solid waste, I find that they have achieved very good results. They are particularly brilliant in the separation of

garbage. It is because through long-term education, all the Japanese households have already formed the habit of voluntarily separating garbage. Thus, we should also make more effort in this aspect.

Certainly, many environmental issues are being discussed now in Hong Kong, and environmental groups would put forward some new proposals almost every week, but we still need to make more efforts in this aspect.

MR JEFFREY LAM (in Cantonese): Madam President, colleagues of the Panel on Environmental Affairs visited Japan, Denmark and Finland in August last year and published a report last month, suggesting that Hong Kong should draw reference from the successful experience of other countries in handling environmental issues. The Liberal Party agrees with this basically.

First of all, I would like to discuss the issue of improving air quality. In order to tackle the problem at root, we have to identify its causes. I believe we are well aware that the major sources of air pollution in Hong Kong are emissions from power plants and motor vehicles. As such, we have always supported a carrot and stick mechanism to induce the two power companies to reduce emissions of exhaust air. We also support the introduction of emissions trading, so as to clean up the air and make it even fresher in the region.

The Liberal Party also supports the development of renewable energy. However, I would like to point out that we must carefully assess whether it is cost-effective or not in pursuing the use of renewable energy. Let us take the wind power station of Hongkong Electric Company on Lamma Island as an example. The wind turbine by the seaside occupies an area of approximately 2 500 sq m and towers nearly 71 m in height, but it can only supply electricity to 250 families at most. Furthermore, given the unstable velocity of wind in Hong Kong, the power generator that costs tens of million dollars annually are only able to operate 20% to 40% of the time throughout the year. It is estimated that it will take as long as 30 years before the wind power station can recover the costs involved.

On the other hand, the CLP Power Hong Kong Limited also announced last year that it was planning to build an offshore wind farm off Ninepin Islands with a total investment of $3 billion, which is almost two times the cost of generating power by using coal or natural gas. Since the two power companies

will try to seek the maximum rate of returns from their investment on renewable energy, will it lead to an increase or a reduction of electricity tariffs? Maybe an increase is more likely than a reduction.

Although solar power is used in many overseas countries, this form of energy is used only for small-scale power generation. Besides, it is four times more costly than power generation using conventional methods. Recently, the Housing Department has invested $3 million to install solar panels in the Lam Tin Estate. Irrespective of the fact that this can reduce the electricity bill by more than $40,000 annually, it will take more or less 70 years to recover the costs involved. Certainly, we do support the implementation of these pilot schemes, and we hope that the relevant technologies can make some breakthroughs very soon, so as to keep reducing the costs. Only in this way can these technologies be applied to the daily lives of the people.

Madam President, with regard to the reduction of motor vehicle emissions, the Financial Secretary has, in this year's Budget, announced a tax concession scheme for environmentally-friendly vehicles, which the Liberal Party has been advocating for a number of years. However, we believe that this is only the first step in the right direction. There have been major breakthroughs in recent years in environmentally-friendly fuels for motor vehicles, such as compressed natural gas, ethyl alcohol, bio-diesel and even hydrogen. Take natural gas for motor vehicles as an example. Motor vehicles using natural gas will emit 70% less carbon monoxide and 50% less nitrogen oxide than vehicles using gasoline. In overseas countries, many heavy trucks are using natural gas now. Therefore, I believe the Government should carry out pilot schemes to provide land for building natural gas filling stations and offer tax concessions. Driven by rising demand, environmentally-friendly motor vehicles will naturally proliferate in the city, while air at the roadside will become fresher.

Madam President, apart from the pursuit of a quality life, and in addition to having fresh air, we should also reduce the amount of refuse we produce, because the amount of solid waste we produce is increasing year on year at a rate of 3.5%. Since all the four refuse incineration plants in Hong Kong have closed down, whereas the three landfills are also on the verge of reaching capacity, the problem is literally looming over our head. As such, the Liberal Party believes that the high-efficiency green incineration plants built by the municipal government of Tokyo are a good example from which we should draw reference.

Conventional incineration plants produce not just obnoxious odour but also black smoke and toxic emissions containing dioxin, posing a threat to residents in the vicinity. The next generation environmentally-friendly incineration plants have employed mature technologies in terms of their outlook, emissions control, deodorization and utilization of heat generated in the process of the incineration, and so on.

Let us take the city of Tokyo as an example. As Mr TAM Yiu-chung has mentioned just now, almost every sub-district within the city has built a green incineration plant. The plants come in different designs: Some of them have triangular-shape chimneys, and some of them feature paintings on the external walls, so that the plants can blend in better with the surrounding environment. In order to canvass support from local residents, the municipal government of Tokyo has taken the initiative to build libraries, bathing halls, exhibition centres and small shops near the incineration plants. In doing so, the government can save the residents from environmental pollution on the one hand and provide more community facilities on the other, therefore it is a case of doubling the benefits. The Liberal Party believes that we should learn from this experience.

Lastly, I would like to talk about the EcoPark in Tuen Mun. Waste reduction calls for the provision of an effective mechanism. The EcoPark was scheduled to become operational upon completion of its building project last year. However, it is still not operational to date. I hope the Government can speed up the work in this regard, so as to take the work of environmental protection one step further.

Madam President, I so submit.

MR JAMES TO (in Cantonese): President, both Hong Kong and Tokyo are major economic and financial cities. Both cities are marked by large numbers of high-rise buildings and a huge amount of emissions discharged by motor vehicles. Both cities are similarly facing the same problem of air pollution.

The delegation made a fact-finding visit to Tokyo on air quality control. A Green Building Program is in place in Tokyo, under which administrators of building construction or expansion projects are required to submit their plans of action on energy conservation and other environmental measures, including the requirement to indicate in advertisements for condominiums the environmental

performance so that prospective buyers can make an informed decision. Since April 2001, the municipal government of Tokyo has required greening rooftops and wall surfaces for new grounds and buildings that have a ground surface area of over 1 000 sq m (250 sq m for public facilities). Furthermore, the government also encourages the use of materials that do not hold heat on the ground or surfaces of buildings to tackle the problem of the so-called "heat island" phenomena, which is a local high-temperature zone caused by city activities. These are measures for abating the problem of global warming.

The idea of rooftop greening is similar to the measures introduced in Hong Kong earlier for promoting environmental protection and innovation in building design. However, the measures have been abused by real estate developers in Hong Kong, who capitalized on the measures to "boost" their profit margins. Therefore, there is still room for improvement as far as the relevant mechanisms in Hong Kong are concerned.

Hong Kong is, in some ways, unique, in that buildings are built in very close proximity. Furthermore, in recent years, high-rise buildings are built to designs where buildings sit one next to another shoulder to shoulder. Both these two features have made it hard for local heat currents produced in the city to disperse. Wall-like buildings at the waterfront are blocking offshore winds from blowing inland, affecting the air circulation of the inland area, aggravating the accumulation of heat and intensifying the heat island phenomena. They also indirectly contribute to the worsening of air pollution.

The Hong Kong Government should model on the proactive approach taken by the municipal government of Tokyo to formulate measures and regulations expediently to alleviate the problem of air pollution caused by wall-like buildings at the waterfront and the heat island phenomena.

At the policy level, when planning for land use is undertaken, the Planning Department should reduce the plot ratio as much as possible, reduce height and development density, avoid excessively high and shoulder-to-shoulder buildings that obstruct air circulation, and formulate more stringent guidelines on air ventilation to require that only low-rise buildings be built at the waterfront. The Government can also specify a lower plot ratio in the conditions of sale for individual sites, and require that the Hong Kong Planning Standards and Guidelines — the Guidelines on Town Planning and Guidelines on Air

Ventilation must be adhered to insofar as the designs of the buildings are concerned, so as to minimize the impact of new buildings on residents living in the vicinity.

The Government should make it mandatory for real estate developers to conduct air ventilation assessment on major development projects and disclose their master layout plans as well as the assessment reports. In addition, the Government should carry out town planning design and air ventilation assessment for development projects already in progress that have attracted public attention and for which air circulation assessment has not been carried out yet. Besides, the Government should disclose relevant reports and layout plans and propose improvement measures.

The West Kowloon constituency, to which I belong, is an area seriously plagued by the so-called "wall effect". Many wall-like buildings in the district, from the MTR Kowloon Station to the Sham Shui Po District, are built shoulder to shoulder in a way like a wall encircling Jordon, Yau Ma Tei, Tai Kok Tsui and the old district of Sham Shui Po. These wall-like buildings include Sorrento and the Harbourside, both being superstructures of the MTR Kowloon Station, One Silver Sea, the Long Beach, Park Avenue at Tai Kok Tsui, as well as Metro Harbour View of Sham Shui Po.

According to a survey conducted by Green Sense, the wall-like buildings in West Kowloon have literally sealed off 63% of the shoreline, and they have seriously reduced the amount of offshore winds blowing inland, thus affecting the health and quality of living of residents living in the area. Green Sense worked with the Office of LAM Ho-yeung, District Council member of the Democratic Party, in conducting a survey to interview residents living in the area. According to the findings of the survey, of the several hundred residents interviewed, 72.5% of them opined that indoor ventilation during summer has become less satisfactory or slightly less satisfactory than in the past; 43.4% of the respondents indicated that there is an increased risk for them and members of their family to develop respiratory tract problems (such as nose allergy and asthma); 76.5% of the responding residents indicated an increased spending on air-conditioning, and their monthly electricity bills have shown marked increases by $100 to $200.

Of the recent applications for land sale under the Application List system, two applications have been made for two pieces of land located in West

Kowloon, and one of them is located in the Yau Ma Tei Reclamation area (at the intersection of Hoi Wan Road, Yan Cheung Road and Yau Cheung Road) with a plot ratio of 7.5. Coupled with the floor area for which exemption is given on account of environmental design, even higher buildings can be built, which will further aggravate the existing wall effect in West Kowloon. Another application is for a lot located in the Tai Kok Tsui Reclamation area, a place that is already surrounded by five different private housing estates of wall-like buildings. Yet, the height restriction for this lot at the waterfront has turned out to be 140 m, meaning that the buildings could be built to a height of at least 40 storeys. This is totally in breach of the Guidelines for Air Ventilation, which stipulates that low-rise buildings should be built at the waterfront.

For the purposes of controlling and improving air quality, the Government should, apart from reducing emissions, adopt proactive measures to tackle the wall effect and heat island phenomena. The SAR Government has an undisputed obligation to impose more stringent conditions for land planning and to include more stringent land grant provisions to the effect that developers will have to take into account and address the issues of air ventilation, so that only low-rise buildings can be built at the waterfront areas in order to prevent buildings from obstructing the flow of offshore wind and the sea view, and to improve the living environment and air quality for the protection of the health of the people.

With these remarks, I support the motion.

MS EMILY LAU (in Cantonese): President, I rise to speak in support of Miss CHOY So-yuk's motion. I am also a member of this delegation. As other Honourable colleagues have said, we have been enlightened a lot. I also agree with Miss CHOY So-yuk in saying that the arrangement this time is helpful in that different officials have joined the delegation with regard to different issues, and we hope that when we really discuss such issues in future, we will all know what the other side is talking about. I hope even the authorities would also find such visits useful.

In particular, I would like to discuss the issues which we are increasingly concerned about, including the situation in the United States. President, we did not visit the United States this time. But all the people are very concerned about the global warming problem because the television stations in the United States have recently featured many programmes on the issue. I believe such

programmes must have made the Americans panic a lot. In fact, many Hong Kong people are also very much frightened by this issue. If we do not do something about it, it could be a very major catastrophe.

When we visited Japan, we already saw that they were very concerned about this issue. One of the things they wish to control is carbon dioxide. When coal or petroleum is burnt, carbon dioxide will be released. It does not produce any smell and it is not visible. In fact, it does not bring about any direct impact on our health, but its impact on greenhouse effect is substantial. Therefore, Japan has formulated a new emission reduction target, namely, reducing the emission of greenhouse gases including carbon dioxide, which has been included by them as an air pollutant.

In fact, many debates in this regard have been conducted in Hong Kong, and we have discussed them in our meetings too. I hope the Secretary can give us some positive responses. We always say that since Hong Kong is a very small place, it would not be possible for us to do a lot on the issue of global warming. However, I believe that, since Hong Kong is an international city, we must do something on this issue, thus making people feel that we are really making some gradual progress. Therefore, I hope we can set out our own targets in reducing greenhouse gases emission.

We must discuss another issue, which is also relevant to the Secretary, that is, the Scheme of Control Agreements (SCAs) of the two power companies. They are still conducting negotiations, and we hope that the future outcome can include regulation of the emission of carbon dioxide, because the two power companies are emitting 70% of such emissions in Hong Kong. For this reason, we hope the Secretary can talk to Secretary Stephen IP, thus making people feel that we would also do something in this regard.

In fact, President, the Panel on Environmental Affairs has scheduled a discussion on the issue of global warming on 28th of next month. We also hope that all the parties interested in the issue or all those who have some opinions can contact the Legislative Council and they are welcome to express their viewpoints.

When we visited Denmark, we found that the people there were also very anxious about this subject matter. Their answer to this problem is to develop renewable energy. In fact, they started developing renewable energy as early as

the '70s. They were triggered to think about what they should do by the energy crisis then. Therefore, they have proceeded to develop wind energy, solar energy, and so on. Now, their renewable energy account for 28% of their total energy supply. They said the proportion would surge to 29% by 2010. How about us? We are hoping that we can reach 1% by 2012, 2% by 2017 and 3% by 2022. Don't you find this ridiculous?

Some colleagues mentioned that windmills could be seen everywhere in Denmark. A Danish official took us to the windmills. He said some people complain that the windmills are making too much noise. Miss CHOY said earlier that actually the noise was not that loud. She also said that some might even criticize the windmills as being too noisy and eyesores; but if the windmills belonged to you, you might think differently. I also agree with this point. The critical issue is how we can help more people, such as making some investments, to make these things belong to them.

I understand the point mentioned by Mr Jeffrey LAM just now, that the costs must be higher if renewable energy is used to generate electricity. However, we must tell the people, the use of something may entail certain costs. If we keep on using petrochemical energy, we may have to pay some other costs. It would be ideal if the authorities can help the people. But the people must understand at the same time that, if we want to use some forms of clean energy, so as to make the weather and global warming problems less severe, we must be prepared to pay some costs.

I feel that the Secretary must summon up sufficient courage to discuss this with the people. It is most important for us to set out our goals. Therefore, in this connection, I hope we can raise the target percentages of using renewable energy for generating electricity, instead of just keeping them at just 1% or 2%. We should proceed with work in this direction more boldly.

Back to my discussion of the SCAs. We must formulate some measures which are favourable to some small-to-medium companies with renewable energy facilities. If they can generate electricity and be able to connect to the power grid, then they can generate electricity for their own use if their power generation is successful; if not, they can have assistance from the power grid. I have mentioned this subject to the Secretary on some other occasions — if such companies are not allowed to connect to the power grid, they will not be able to proceed any further. In Denmark, this can be done. At that time, the

Secretary said that this could be considered. But it seems that Secretary Stephen IP had said that this could not be considered at all. I hope both of you can sit down and have a thorough discussion about this issue. If this requirement cannot be satisfied, it would be very difficult for them to launch any development projects.

Therefore, I very much hope that the Secretary can provide us with some concrete answers in her reply, so as to let everyone know that Hong Kong has also set down its own goals. Some people even suggest that we should not only have goals, but also enact laws to specify the timeframe for achieving certain goals. This has actually reflected that many people are getting more and more impatient, thinking that the developments in many different aspects are very worrying. Not only our health is affected, but our next generation will also be affected too. If this problem of global warming is not tackled timely, some of the places may be flooded by water to the extent that the entire city would become invisible; some other places may become arid; and some frightening scenes may appear in some other places. I hope Hong Kong people can be more pragmatic. Let us join hands to tackle these problems together.

I so submit.

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

(No Member indicated a wish to speak)

SECRETARY FOR THE ENVIRONMENT, TRANSPORT AND WORKS (in Cantonese): President, I am indeed very delighted to have listened to the speeches delivered by several Members who are all very concerned about environmental problems. And in one visit overseas, they have come to learn that the environmental initiatives of many developed countries are very advanced. After witnessing such measures at work in person, they have definitely developed much higher demands and greater concern for the environmental work in Hong Kong.

In fact, I very much agree with most of the views presented in Members' speeches. But I think it is not true that Hong Kong has done nothing at all. Members always say that I keep mentioning the work that has been done in this

area in Hong Kong. But if Members can recognize that we really have done something in this regard in Hong Kong, I do not have to keep repeating such work and arguing with them. As a government official, of course I must explicitly state that such work has really been done in Hong Kong, and there is no reason that the situation of Hong Kong should be as bad as that of Third World countries. However, I found that, when Members rose to speak, they did not mention some very important principles. I also hope that we can enjoy the same conditions as in Finland and Denmark, with only a small population but vast expanses of land. If so, many of those problems can easily be solved. For example, the wind turbines mentioned by Members, I have also seen them in Germany. If we have an extensive piece of land, the low "humming" noise made by the wind turbines will not be too intolerable. But if such low-pitched noise is produced in the centre of a highly congested city, it would have very great adverse effect on human beings since the penetration of such low-pitched noise is quite high. Hence, the situation in Hong Kong is very much different. I am not saying that only places with vast pieces of land can have wind turbines built on them, whereas places with less space cannot do so. This may not be a universal truth. However, we must of course examine Hong Kong's situation, and we must also understand the restrictions we are subject to.

Besides, some Members mentioned that the intensity of our work in improving the air pollution situation had not been good enough, mainly because we have not done very well in formulating policies, while we are also afraid of the possible reactions from the large consortia and the people. Consequently, we dare not do anything. However, if we have the support of Honourable Members and, for example, if legislation on the principle of "polluter pays" is passed, it would greatly enhance the strength of protecting the environment. This is because we hope the people will develop association and behaviour, meaning that the people would realize there is some connection between their behaviour and environmental protection, and then they would change their living habits, thus bringing about some comprehensive improvement to the overall environment. If we only rely on government initiatives to promote the cause, then the progress would be very slow.

Did you not mention that we had not formulated good policies? If I have the time, I would also make some overseas visits. During the past five years, I have also made a couple of overseas visits, and I have also held some discussions

with environmental officials coming to Hong Kong from many different countries. One of our good policies is to encourage the people to use public transport as the major mode of transport and we have succeeded in implementing this. Nowadays, more than 90% of the people make use of public transport in carrying out their daily activities. Officials from other cities often ask us how we can achieve this as this would substantially reduce vehicular flow on the roads. Although our city is very congested, the formulation of this public transport policy has helped ameliorate the problem.

Mr Jeffrey LAM asked why we did not adopt some other fuels or gases as well, such as CNG, hydrogen or some other fuels. Let me first discuss two kinds of gases. Now all the taxis and some of the minibuses have adopted LPG. But in fact there exists a very major restriction, that is, the provision of the infrastructure is difficult. The problem cannot simply be solved by the purchase of a piece of land, and then build on it a filling station, instead of residential development. Is this possible? I believe Members all know that the greatest difficulty we faced in introducing LPG to Hong Kong was the need to identify suitable sites to build filling stations where residents' safety index must meet the international standards. It is because safety has all along been stressed in Hong Kong. I have also tried to explore this area: If we can really make use of hydrogen economy, how we should cope with the situation through our provision of the infrastructure, in order to enable us to use different gases and minimize the pollution caused by fuels. This is a concrete problem. Other cities with a lower population density do not have such problems.

In regard to the problem of the wall effect, I very much agree that great improvement must be made to the town planning of Hong Kong. I recall that, about 10 years ago, since the overall town planning necessitated the construction of high-density buildings, so as to achieve the 85 000-flat target, any area in the city that could be used for constructing buildings would be used for this purpose. Even some vacant public areas in existing housing estates were used to erect additional buildings, thus leading to buildings crowded together in such a closely packed manner. I believe that, with the change in policies, we shall act accordingly and no longer allow the wall effect to obstruct the free flow of air in the urban area. However, it takes time to untie these hard knots. We cannot possibly pull down all these buildings today in a bid to eliminate the wall effect. This is impossible. Members must all find this suggestion ridiculous. I hope

all of us can work together to change the policy which worsens the air quality just for the sake of a certain need in our living.

Besides, I would also like to rectify some facts with regard to solid waste. Several Members said that there had been some delay in our EcoPark project. But, in fact, there has been no delay at all. Tender for the entire project was invited at the end of last year, and it will be commissioned within this year. We have received all the tender documents and are in the final process of examining them, and the EcoPark will become operational as originally scheduled. We have drawn reference from Sapporo of Japan and other places in designing the EcoPark. And I have also visited Australia, but the approach adopted there is not entirely the same. In order to put recycling economy into practice, the Government must do something in terms of land. As the Government finds that the most crucial problem in Hong Kong lies in the exceedingly expensive land, so any recycling industries must need government assistance in terms of land before they can be successful.

We have also made good progress in the separation and collection of refuse. Of course, I think there is still room for improvement. At present, 700 000 households, that is about 2 million people, have already participated in our recovery scheme, and the quantity of recovery is also quite substantial. We have been keeping watch on the technologies used in Japan, where we drew reference in many aspects such as the disposal of kitchen waste. It is because in the past the kitchen waste had to be heated, which consumed a lot of electricity, before it could be re-used. Yet, its cost-effectiveness depends on the continuous advancement of the relevant technologies to make such operation viable and self-sufficient.

With regard to the greenhouse effect, the Hong Kong Government has actually joined a United Nations Convention on greenhouse gases since the middle of the '90s and we have been trying to reduce greenhouse gases to the 1990 level, and the target was attained after a period of time (Appendix 2). Of course, with the increase in population and economic activities, the greenhouse effect has started to surge. In spite of this, we have not stopped implementing the package of energy conservation measures designed at that time. Not only the Government's own operation has to save energy, the Electrical and Mechanical Services Department has also issued all kinds of indices to promote and educate the people ways of raising energy efficiency.

I wish to mention one point in passing. The energy index established for government buildings seems to be very low. In fact, it applies not only to buildings, but also the operation of the entire Government. Recently, I have reviewed the data once again because of a competition between the Government and the Legislative Council. The Government has started implementing an energy conservation campaign since 2000 (Appendix 2), so the figure has been declining gradually year by year. We are not saying that we have to replace all the light bulbs by the energy-saving light bulbs. Instead, we shall keep updating the energy conservation measures in phases. The figure of 1% or 1.5% actually covers other operations as well, such as the water supply system, the sewage treatment plants and fresh water treatment plants and so on. The scope of further reducing energy consumption will be limited after the reduction that had been achieved in energy conservation during the past few years. Besides, regarding street lighting, we have a proposal which was implemented in 2003-2004 (Appendix 2) — that is, the brightness of illumination of street lighting will be reduced in the middle of nights for conservation of energy. Since we have already achieved such a great saving in energy, the remaining scope of further saving is limited. Since only offices are involved this time, and other operational functions are excluded, so the 1.5% does not apply. As for offices, of course we still have some scope of reducing energy consumption this year because the five-day week has been implemented. With the exclusion of all Saturdays, there can be some scope of increase in the reduction of energy consumption. Therefore, I hope we do not have to argue over the figures. We must bear in mind that the energy conservation campaign will never stop and it will become increasingly difficult to strive for further reduction.

If Members accept what Mr TAM Yiu-chung mentioned just now, I would definitely accept it as well. As in the case of Japan, a law has been enacted to stipulate that the temperature of all offices should be set at 28°C. If this is adopted, I think many people would curse me and everyone will find it very stuffy. Mr TAM gave a vivid description of the situation in those offices. I do not know whether the other Members on the delegation also found it intolerable. Of course, the Japanese do have a very strong determination to save energy.

Regarding greening projects, I believe, in terms of administration, they are feasible in Hong Kong. I can tell Members, during the past three years, millions of trees have been planted — altogether more than 3 million trees. We

shall continue carrying out greening projects in all construction projects by all means. Can we follow Japan's example in requiring greening projects to be implemented on the rooftops of all buildings? Of course, we are different from Tokyo. There are height limits for buildings in Tokyo because it is situated in the earthquake zone. So their buildings will not be taller than a certain height. For our buildings, experts say that if greening projects were implemented on the rooftops of buildings with 30 or 40 storeys, it would be very difficult to maintain the healthy growth of the plants. So, there must be certain limits. Certainly, the Architectural Services Department will have to provide some detailed guidelines in this regard and examine how the greening projects can be implemented better in Hong Kong.

I believe that, in today's motion debate, there should not be any major differences in opinions. We all have the same aspirations. I am very glad that the delegation has put forward many observations and viewpoints. There are also suggestions on how Hong Kong should learn from other places in areas that they are doing better; that we should continue adopting an open and pragmatic attitude in borrowing overseas experience wherever applicable to the circumstances in Hong Kong, and that efforts should be made to make our environment better in such aspects as management, technologies and policies. Thank you, President.

PRESIDENT (in Cantonese): Miss CHOY So-yuk, you may now reply. But you have only four seconds.

MISS CHOY SO-YUK (in Cantonese): President, I would like to thank the six Members who have spoken. I hope we can work together to strive for the protection of the environment of Hong Kong.

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Miss CHOY So-yuk be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

PRESIDENT (in Cantonese): Second motion: Protecting the right of the Chinese victims to demand compensation from Japan.

I now call upon Mr Albert HO to speak and move his motion.

PROTECTING THE RIGHT OF THE CHINESE VICTIMS TO DEMAND COMPENSATION FROM JAPAN

MR ALBERT HO (in Cantonese): President, thanks to the co-operation and concession by Members of various political parties, I can propose this motion on demanding compensation from Japan, so I would like to express my gratitude for this. I also wish to express my warm welcome and gratefulness to the three representatives from the national Lawyers Group for Chinese War Victims' Compensation Claims, who have come a long way from Tokyo to observe the debate, and they include Mr Tooru TAKAHASHI, Mr Akira IZUMISAWA and Prof Yukio WANI. For 15 years, the groups representing Chinese war victims claiming reparation in Japan, including more than 300 voluntary lawyers in the Lawyers' Group and over 1 000 supporters, have persevered in the face of hardships and exerted their utmost to assist victims in China to take legal action and wage a legal battle, without receiving any reward and they even had to dig into their own pockets. The Chinese people will always remember this and I also wish to express my greatest respect to all the lawyers present.

This year marks the 70th anniversary of the Marco Polo Bridge Incident that happened on 7 July and also the 70th anniversary of the Nanjing Massacre. To debate a motion demanding compensation from Japan today has great

historical significance. For 60 years after the end of the War, the Japanese Government has all along failed to fulfil its postwar responsibilities properly. It has not truly atoned for its war crimes and the crime of aggression, nor has it given the victims any righteous compensation. In the early 1990s, some Japanese with a sense of justice started a movement to support civilian victim groups in a number of Asian countries such as China, Korea, and the Philippines in demanding compensation from Japan, thus forming a civil movement with great social and moral power that draws the attention of international opinion.

What is the significance of the civil movement to demand compensation from Japan? Here, I wish to quote the comments of Mr Hiroshi OYAMA, head of the Defense Counsel for the Lawsuits of Chinese War Victims, made in a symposium attended by Chinese and Japanese scholars in 1999, "To those Chinese who took legal action, the significance of the legal action is most obvious. They have the right to demand compensation from Japan for the damages caused by the atrocities committed by the Japanese army. Such right is based on the International Humanitarian Law, the international human rights law and the private international law. This is an outstanding problem that has so far remained unresolved in Japan. Besides, this legal action has drawn world-wide attention to the conscience of the Japanese. This is a genuine issue concerning the history and value judgement of the Japanese. If they cannot admit frankly the crimes committed by their own country in the past and adopt the sincere attitude of atoning for their crimes from the bottom of their heart, it will not be possible for our country to assume responsibility and pay compensation. In the final analysis, the issue of postwar compensation is a matter of the understanding that the Japanese have gained of their history.".

I think these comments exhibit a strong awareness of history, which is very insightful. In fact, the attitude of the Japanese Government has all along shown a lack of understanding and even a refusal to recognize the responsibility of Japan in starting the War. The impression that Japan gives the outside world is that the apologies tendered by its state leaders in the past either lacked sincerity or were not comprehensive and thorough enough. For example, in 1995, the Prime Minister, Tomiichi MURAYAMA, apologized to the peoples of neighbouring Asia on the 50th anniversary of the end of the War. However, he did so by way of private comments made in his home and this apology was in the end not supported by the Diet by way of a resolution. In 2005, the Prime Minister, Junichiro KOIZUMI, apologized for the crimes of aggression at the

Asian-African Summit, however, after the meeting, he refused to state clearly that he would not make visits to the Yasukuni Shrine. In 2002, the Japanese Government approved the textbooks whitewashing Japan's history of aggression published by right-wing groups and to date, it still refuses to express repentance to China and the Chinese people in writing. Recently, the Prime Minister, Shinzo ABE, even said there was no evidence showing that the Japanese army had forced Asian women to work as comfort women. Although he subsequently apologized to the victims who had been comfort women, the remarks that he let slip in fact reflect the inner world of many mainstream politicians in Japan.

More importantly, so far, in addition to the crime of starting the war of aggression, the Japanese Government also adopts an attitude of evasion or even denial towards the various kinds of war crimes committed by Japan during the War. Firstly, on the demands for compensation made by hundreds of thousands or even millions of slave labourers, the Japanese Government claimed in Court that the responsibility laid in civil corporations, not in the Government. However, during the war, had large corporations such as Mitsubishi, Mitsui, Nishimatsu and Kajima not been converted from civilian to military uses? Without the assistance of the Japanese army using force, how possibly could civilian corporations dragoon and enslave so many labourers?

In addition, concerning the germ warfare waged by Unit 731, the Japanese Government is even more reticent and secretive and refuses to disclose any government files, still less assume responsibility. The only exception is the crimes involving comfort women. Under the pressure of international opinion, the former Foreign Minister, Yohei KONO, admitted to such a crime in 1993 and made an apology, however, he refused to enact legislation to offer compensation. In 1996, after stepping down as Prime Minister, MURAYAMA raised ¥100 billion from the consortia in Japan and established the Asian Women's Fund to offer US$25,000 as condolence money to each comfort woman, however, China, Taiwan and most of the comfort women in Korea were unwilling to accept the condolence money and continued to demand that Japan convert the Asian Women's Fund into compensation by way of legislation before they would accept the offer. In the end, the Asian Women's Fund was dissolved in March this year. From this incident, we can see that the Japanese Government is unwilling to face up to various war crimes or to acknowledge its past history, and it is also not sincerely repentant.

After the War, the civil movements to demand compensation are in fact not just directed at Japan but also at countries like Germany, the United States and Canada. With sustained campaigning by the Sanhedrin, a number of funds were still maintained by Germany in the 1980s for survivors of the Holocaust. In 1999, the money in the funds ran into a total of more than 68 billion Deutschemarks and in 2000, Germany again established a US$5 billion fund known as the "Remembrance, Responsibility and the Future" Foundation for slave labourers, many of whom being Europeans. In addition, after four decades of civil campaigning, American and Canadian citizens of Japanese ancestry eventually succeeded in winning compensation for having been unjustly put into internment camps by their Governments during WWII. The parliaments of the United States and Canada passed laws on civil liberties in 1990 separately to offer US$20,000 or CAN$25,000 in compensation to each victimized citizen. In addition, the former President of the United States, George BUSH senior and the Canadian Prime Minister, Brian MULRONEY, also sent personally signed letters to the victims to apologize and convey their condolences. If countries like Germany, the United States and Canada are all willing to offer compensation to individual victims, why can Japan not do so?

Concerning international opinion, the former Californian Congressman, Mike HONDA, successfully proposed and had a resolution passed in the Californian congress calling on Japan to apologize and pay compensation for its war crimes, particularly over the issue of comfort women. He has now become a Federal Congressman in the House of Representatives of the United States and has proposed in this capacity a similar resolution, which will be debated in the second half of this year. A Canadian Member of the Parliament, Olivia CHOW, also submitted a resolution on 27 March this year to demand an apology and compensations from Japan for its crimes relating to comfort women. I hope and also believe that the foregoing two resolutions reflecting social justice and conscience can be passed in the parliaments of the United States and Canada as soon as possible.

It is a basic human right of the victims of war crimes to seek compensation from the perpetrators and this right cannot be denied by the treaties signed by countries. The China-Japan Joint Statement of 1972 and the China-Japan Peace and Friendship Treaty of 1978 have in fact only dealt with the responsibility of war indemnity between China and Japan, however, the right of individuals in society to seek compensation should not be affected. Not only do scholars in China, Japan and in the international community generally agree with this legal

principle, in the past, it was also accepted by a number of Courts at the district level in Japan. Although the Supreme Court in Tokyo may rule against the individual right of victims to demand compensation the day after tomorrow, this movement involving conscience and justice will not just end here.

President, no matter if the judgements on these several dozen cases are in favour of the plaintiffs or not, the Courts all confirmed the historical fact that the victims were persecuted. Not only did they express great sympathy for the victims, they also called on the Japanese Government to find a just and humane solution. I now quote part of the judgement on the case of SHAO Changshui delivered by the Judge of the Miyazaki District Court: "This Court finds that defendant Mitsubishi Materials Corporation forced the plaintiff SHAO Changshui and others to undertake slave labour in mines under poor working conditions and it was aware of how this group of labourers had been abducted to Japan. Based on the time bar principle, this Court cannot but rule that the defendant no longer has any legal responsibility, however, the facts of abduction and forced slave labour examined and affirmed by the Court cannot be denied. The Court is convinced that the plaintiff, SHAO Changshui, and others were abducted to Miyazaki to engage in forced slave labour and they went through immense physical and mental suffering. This tragedy will be recorded in the history of this country forever……Japan must accept these facts sincerely and try all means to resolve this issue involving Chinese victims from the viewpoint of morality and humanity.". Therefore, we strongly demand that the Japanese Government recognize the historical facts relating to its war crimes and enact legislation speedily to offer compensation to individual victims.

President, ever since I became involved in the case to claim compensation for war currency in Hong Kong in 1992, I have attended numerous meetings where testimony was given to war crimes and become acquainted with many victims and survivors personally, and I have listened to their traumatic stories and painful memories. Each time, even as I felt great pity and sympathy for their misfortune, I also felt fortunate that I was born in a peaceful postwar era and in a peaceful society. I feel that it is the moral responsibility of this and the next generations to make justice prevail for these unfortunate victims of the last generation, so that they can restore their dignity and have some consolation. I remember that in 2002, after we lost the case in the first trial of the Hiroshima forced labour case, the victims lodged an appeal to the Hiroshima High Court. At that time, I went personally to Hiroshima to have a gathering with the lawyers' group representing the victims and its supporting members. In the

gathering, we made the following declaration, "To fight for justice for war crime victims is a matter of conscience for both the Chinese and the Japanese.". Today, I wish to take the opportunity of moving this motion to state once again that no matter what the ruling of the Court in Tokyo in Japan will be, we swear that we will never waver in our commitment in this joint cause of conscience.

Last month, the Premier, Mr WEN Jiabao, visited Japan and his mild and generous speech in the National Diet of Japan could of course help improve the diplomatic relations between China and Japan and even promote co-operation between China and Japan in jointly developing the oilfields in the East Sea. However, frankly speaking, this so-called ice-thawing trip could not heal the historical wounds of the victims of war crimes. In 2005, Japan requested a permanent membership of the Security Council of the United Nations, however, it was opposed by international civil groups which mobilized 42 million people throughout the world to take part in a signature campaign on the Internet to oppose this move. People who voiced their opposition are not hostile to Japan. They only demanded that Japan deal with its postwar responsibilities properly first, including making an apology and paying compensation before it can play a leading role in the United Nations. This voice in civil society is strong and powerful.

Finally, many victims of war crimes are now very senile. In the past 15 years, many of the survivors whom I knew have passed away one by one. I hope the Central Government can follow the examples of other countries in setting up a fund to give greater care to these victims by providing medical care and subsidies on living expenses, so that they can feel that there is still kindness in this world.

With these remarks, I support the motion.

Mr Albert HO moved the following motion: (Translation)

"That this Council strongly requests that in interpreting the China-Japan Joint Statement (1972) and the China-Japan Peace and Friendship Treaty (1978), the Japanese Government and the relevant authorities must not unilaterally affirm that the two aforesaid agreements have nullified the right of the Chinese people to demand compensation from the Japanese Government and corporations in respect of personal losses and sufferings

arising from the war crimes committed during the Second World War (WWII), and that the Chinese people have, under these two agreements, given up their right to demand such compensation, and demands the Japanese Government to expeditiously legislate for the making of righteous compensation to the victims of the war crimes committed during the WWII; this Council also urges the Central Government to take measures to protect the right of the Chinese people victimized by the war crimes committed during the WWII to demand compensation from Japan and provide them with humane care.".

PRESIDENT (in Cantonese): I now propose the question to you and that is: That the motion moved by Mr Albert HO be passed.

MR FREDERICK FUNG (in Cantonese): President, recently, Premier WEN Jiabao has just concluded his visit to Japan and there is hardly any need to elaborate on the significance of this visit. Last Autumn, the Japanese Prime Minister, Shinzo ABE, visited China soon after taking office and this "ice-thawing" return visit by Premier WEN, the first time that a leader of our country set foot on Japanese soil after the deterioration of the high-level relationship between China and Japan in recent years, seems to mark a move towards a new turning point in Sino-Japanese relationship.

However, on this visit made by Premier WEN, it seems various mass media have focused on the usual sincere and affable image displayed by Premier WEN in his visits and they reported how he had come down off his high horse, went jogging and practised Tai Chi in a park in Tokyo, talked with ordinary Japanese and how he played baseball with university students in Kyoto, thus projecting his image as "the Premier of the ordinary people". President, even as this image becomes deeply rooted in public perception, have we looked clearly at whether or not, against the backdrop of the loud applause that Premier WEN received in the Japanese Diet, Sino-Japanese relations have truly moved towards normalization?

Even though it seems that various prominent commentators have described this visit as having achieved the aim of "ice thawing", people with a clear mind can see that both the Chinese and Japanese sides have obviously toned down or

downplayed the contradictions between them and no actual solution has ever been proposed. The Chinese people also understands that the thorn on the side that hinders the normalization of Sino-Japanese relations is precisely the inability of Japan to adopt a proper attitude towards its history of aggression against China and its attitude of evasion and even denial towards its atrocity of starting the war. Given this kind of attitude displayed by the Japanese Government, may I ask how Sino-Japanese relations can be normalized easily?

President, first, I thank Mr Albert HO for moving this motion today. This timely move reminds us that behind the one-sided voice acclaiming the closer tie between China and Japan, the Japanese Government still chooses to blatantly deny its past malevolent act of aggression against China, still turning a blind eye to the wounds inflicted on the Chinese people as a result of the war started by it.

The motion today is also a timely reminder that an important precedent in judgement on a case of Chinese civilians claiming compensation from Japanese companies will soon be set. According to information, at present, more than 20 cases of Chinese people claiming compensation through the Courts in Japan are still being dealt with. The case involving the Nishimatsu Construction Co. Ltd. mentioned by Mr Albert HO this time was a legal action taken by Chinese labourers claiming compensation for being abducted to Hiroshima to work as slave labourers. It will have a direct bearing on the outcomes of more than 20 other cases of claims for compensation filed by civilians which are now being dealt with.

President, I wish to point out that one important legal point in this case involves the unilateral interpretation by Japan of two documents signed by the Chinese and Japanese Governments, namely, the China-Japan Joint Statement and the China-Japan Peace and Friendship Treaty. If the Japanese side is intent on making such unreasonable interpretations, it is tantamount to shirking the responsibility for starting the war and for the irreparable damage it caused to the Chinese due to its various wartime atrocities, as well as denying civilians of the right to demand war indemnity from the Japanese Government and Japanese corporations in the future.

These two solemn political and diplomatic documents signed by China and Japan are the important basis on which the two countries established their ties.

Although they may have ruled out the possibility of the Chinese Government claiming war indemnity from the Japanese Government, they definitely do not negate the right of civilians to demand compensation for war from the Japanese Government or Japanese corporations. The Japanese definitely cannot make unilateral interpretations of these two diplomatic documents and distort them to suit its absurd argument that civilians do not have the right to demand compensation. The Chinese Foreign Ministry spokesman, QIN Gang, pointed out clearly in a press conference in March that for China and Japan, "No one-sided interpretation of the important principles and issues in the China-Japan Joint Statement, including a judiciary interpretation, should be given by either side."

Therefore, the Hong Kong Association for Democracy and People's Livelihood strongly supports the motion moved by Mr Albert HO today to demand, before the Court in Tokyo delivers its judgement, that the Japanese Government and Courts respect the formal diplomatic documents signed by the two countries and stop making any unilateral interpretation. More importantly, the Japanese should reflect deeply on its atrocity of starting its war of aggression, so that those Chinese who suffered tremendously as a result can see justice done and prevail. I believe that no matter how much compensation Japan offers, it is practically impossible to make up for the suffering that the Chinese went through back in those years. However, if the judgement on compensation turns out to be favourable, the significance is extraordinary because this will show that Japan assumes full responsibility for starting the war and its atrocities, and it will also do justice to Chinese victims who suffered back in those years.

President, as the saying goes, the past not forgotten is a guide to the future. Only by learning from history and admitting to one's wrongdoings can one avoid repeating the mistakes and benefit the posterity. I am sure that if the Japanese Government continues to be intransigent and choose to deny history, no matter how many ice-breaking or ice-thawing visits there are between China and Japan, all will be in vain. Japan must reflect deeply and thoroughly on its past history, admit to its past evil acts, assume responsibility for starting the war and for its atrocities, formally apologize and pay compensation. Only in this way can that thorn stabbed deeply in the heart of every Chinese be removed and a long-term friendly relationship between China and Japan be truly established.

With these remarks, President, I support Mr Albert HO's motion.

PROF PATRICK LAU (in Cantonese): President, the fourth of May will come next week and each year, around this time, various Chinese communities in the world will organize activities to commemorate the May Fourth Movement and remind us once again the unequal treatment China was subjected to in the hands of Japan and various foreign powers, as well as the subsequent dark reign lasting three years and eight months in Hong Kong under the invasion and occupation of the Japanese army.

I very much agree that as a righteous move, the Japanese Government should show atonement for and offer compensation to those Chinese who were victimized during WWII. However, I think compensation alone is not enough. We should proactively make greater efforts and by means of such historical facts, stepped up national education to remind our next generation and even the generation after the next not to forget the mistakes made by Japanese militarism. Moreover, we should learn a lesson from this and spread the message of world peace.

On stepping up education, I think that apart from providing more information in school textbooks and teaching materials on this, it is also necessary to build a thematic museum of history to relate the historical facts of Hong Kong under Japanese occupation, as well as presenting to us the sorrowful history of how the residents of Hong Kong were brutalized by Japanese soldiers in vivid ways such as photos, models and accounts, so that the next generation can understand these historical facts.

President, at present, we can still learn from old folks the miseries of their life under the occupation, for example, the military notes introduced in Hong Kong by the Japanese army at that time, forced repatriation to one's hometown, the establishment of comfort stations, the ration of six taels and four maces of rice and the policy of Japanization. These measures wreaked havoc in social order, caused strains in food supply and disrupted external links, thus leading to the unnecessary deaths of large numbers of residents or deaths by starvation due to a shortage of food. However, as the old folks grow older and even departed from this world, there are less and less people who can give a personal account on all this.

Therefore, we must build a thematic museum of history on this as soon as possible and record what the older generation saw and heard systematically and completely when they still have the material evidence and before their

memories go hazy, so that the younger generation can appreciate the suffering that their forebears went through and the scourge of the war caused by militarism.

At present, museums recording how the Jews were brutalized by the Nazi German army can be found all over the world, for example, the Jewish Museum in Berlin, Germany, the Holocaust History Museum in Jerusalem and the Museum of the History of Polish Jews, which are all designed to constantly remind the younger generations not to forget this painful piece of history by means of genuine records.

In fact, at present, many Hong Kong people, in particular, young people, do not understand and even do not know what happened during the occupation because the historical information in textbooks or in society concerning the Japanese invasion of China and the occupation of Hong Kong for three years and eight months is really meagre, so they do not have any profound feeling for the suffering. Moreover, they have an incomplete understanding of the development of these important historical events of far-reaching implications.

A decade will soon have passed since the reunification, however, the attitude towards the policy on national education has remained as indifferent as that in the era of the colonial administration. Is it time that this was changed?

President, I hope the Government can listen to the comments made by Members today. Apart from demanding righteous compensation and care, it should also proactively formulate policies, including building a museum of history on the "three years and eight months" and educate the public on the historical facts by various approaches and from various angles, so as to learn from past experience and spread the message of peace.

I so submit. Thank you, President.

MR CHEUNG MAN-KWONG (in Cantonese): President, the Sino-Japanese war ended more than 60 years ago, however, not only has Japan not atoned for its aggression and atrocities, quite the contrary, it has kept distorting the historical facts of its invasion of China, amended its Peace Constitution so that it can deploy troops overseas and is reviving militarism on the pretext of

anti-terrorism and self-defence, so how can China and Asian countries not heighten their vigilance?

Japan was defeated but it has never repented, which is in stark contrast with Germany. The Nazi war criminal, Hans FRANK, said when serving his sentence in Nuremberg, "A thousand years will pass, but the guilt of Germany will never be erased." However, Hideki TOJO of Japan shouted before his death, "Long Live His Majesty the Emperor!". When visiting Poland, the former German Chancellor, Willy BRANDT, knelt down before the memorial for Jewish victims, however, all past Japanese Prime Ministers visited the Yasukuni Shrine to pay tribute to the souls of war criminals.

Although Shinzo ABE has not visited the Yasukuni Shrine to date, still, China must not be naive. Shinzo ABE's maternal grandfather, Nobusuke KISHI, is a Class A war criminal who invaded China, however, Shinzo ABE said, "The people who are said to be so-called Class-A criminals were tried and convicted as war criminals at the Tokyo tribunal, but they were not war criminals under domestic laws. That also was the case with my relative.". It can be seen that the only difference between Shinzo ABE and Nobusuke KISHI is that the former has replaced his military uniform with a suit.

Recently, Shinzo ABE has trumpeted a lot of views, saying that accounts of the Japanese army seizing women to serve as comfort women were fabrications. Nariaki NAKAYAMA, a member of the Japanese Diet from the Liberal Democratic Party, even said that comfort stations were like tuck shops in schools and they had to hire workers and determine prices on their own. The distortion of the historical facts of Japanese invasion of China by the Japanese rightwing is an occurrence we are inured to and the resentment of the Chinese has been dulled. We lack the will to preserve history like the Jews and the determination of the Koreans to strike back in desperation. As a result, it has enabled the Japanese rightwing to advance its devious designs, and this will lead to a big mistake in history. A country can be vanquished, but its history must not be erased. If China wants to really rise, how can it allow Japan to erase its history of invasion of China, such that comfort women are humiliated once again?

For this reason, I implore WEN Jiabao and his mother not to trust Shinzo ABE easily and still less should he be intoxicated by the applause of the Japanese Diet and the flashes, thus forgetting the disaster and lessons of the Sino-Japanese

War, forgetting the desire of the Japanese to alter history, forgetting the fact that Japan is still occupying the Diaoyutai which belongs to China, forgetting the tragedies of the Nanjing Massacre and comfort women and forgetting the right of victims of the Sino-Japanese War to demand compensation from Japan. Today, the motion moved by Mr Albert HO represents the will of the Chinese people and demands that as a righteous move, the Japanese Diet enacts legislation speedily to order the Japanese Government and Japanese corporations to pay compensation and show repentance to victims of its wrongdoings in WWII, so that true remorse can bring closure to the history of the Sino-Japanese War.

The Japanese Government and Judiciary cannot unilaterally deprive Chinese people of the right to claim compensation on account of the China-Japan Joint Statement and the China-Japan Peace and Friendship Treaty. The significance of Chinese civilians demanding compensation is that by doing so, people will be reminded of the history of the War, so that the Japanese Diet cannot evade the issue of culpability for the war and dignity can be restored to the victims of war and justice will prevail for them. Despite the passage of six decades since the War, it is precisely the Japanese Diet, which gave WEN Jiabao a thunderous standing ovation, that still refuses to pass any resolution to atone for the crimes of invasion of China and to assume responsibility for the War and for paying compensation. How can we believe that there is sincerity and remorse in its applause and how can we allow Japan to play the role of a Permanent Member responsible for keeping world peace in the United Nations?

Today, the motion moved by Mr Albert HO is sending a message of peace to Japan and the world, however, peace must be founded on a profound and intense reflection of history and war. After the War, large-scale activities to commemorate the catastrophe of being bombed by atomic bombs are held in Japan each year. Kenzaburo OE, a Japanese writer and Nobel Laureate in Literature, wrote an essay entitled "The Co-existence of Peace and Hope". He said, "Before we urge the world to remember Hiroshima, we have to make a reckoning of the moral responsibility and past history of Japan.". Today, the conscience of the educated in Japan has been awakened. China, as the victim of war, should reflect even more deeply and extensively on this piece of painful history. History is the flame in the soul of a people. When the genocide in concentration camps has been etched forever in the memory of the Jews and the voices of the Japanese have gone hoarse with accusations of their extermination by the atomic bomb, how can China be silent on the history of 200 000 compatriots killed innocently in the Nanjing Massacre, on civilians demanding

compensation for slave labour and on the molestation and brutal murder of comfort women?

China cannot let the limited force in civil society demand justice for victims of the war single-handedly. WEN Jiabao cannot just heed the applause in the Japanese Diet but disregard the demand for compensation in Chinese society. A country represents its people, justice and history, so how can it let the humiliated elderly labourers and comfort women seek redress from Japanese law Courts and world opinion in their elderly years? How possibly can it avoid assuming the responsibility of a country and assisting victims of war in demanding compensation? Today, the significance of Mr Albert HO's motion lies in the fact that this is the first popularly-elected representative council on Chinese soil to demand formal compensation from the Japanese Government and Japanese corporations. I also hope that the National People's Congress of China can also pass a similar resolution, so that the soldiers and civilians who sacrificed themselves in the War of Resistance Against Japan can rest in peace and the surviving victims of war find some consolation.

With these remarks, President, I support the motion and welcome the Japanese friends in attendance.

MISS CHOY SO-YUK (in Cantonese): Today, when the Chinese are cheering and shouting in anticipation of the Olympic Games, being proud at the same time of the high-speed development of the economy and the increasing power of their nation, can we forget the humiliation we suffered under Japan's invasion of China? No, we cannot. We cannot forget the woeful wails, nor can we forget all sorts of humiliation. This is because the wounds inflicted by the Japanese army in its rampage in and atrocities against our country in WWII are still bleeding.

During the WWII, many Chinese women were abducted by the Japanese army and made to serve as comfort women. Even if they could survive the ordeal, they became infertile or contracted venereal diseases due to repeated sexual molestation. According to statistics, of the 14 000 comfort women who contracted venereal diseases, 3 000 were Chinese women. Similarly, a considerable number of Chinese were used as subjects in biological and chemical weapon tests and the death toll was estimated to be about 3 million people. The scourge of chemical weapons still lingers. In August 2003, when a development

was being carried out in the city of Qiqiha'er, some chemical weapons were inadvertently uncovered, thus leading to more than 40 deaths and injuries.

The injuries the Japanese army inflicted on the Chinese people are too numerous to enumerate. Regarding the persistent actions to pursue responsibility for the crimes committed by the Japanese army and to reclaim the dignity and demand compensation to which the Chinese are entitled, the DAB wishes to express its high degree of respect and support. These people who were fortunate enough to survive and the family members of other victims, with the assistance of Japanese lawyers and other citizens with conscience, have gone to Japan one after another to take legal actions. In June 1995, 10 people including GENG Zhun took legal action in the Tokyo District Court in Japan against a Japanese corporation, the Kajima Corporation, that enslaved Chinese labourers and this became the prelude to demanding compensation from Japan. Thereafter, Chinese comfort women, labourers, victims of chemical weapon tests and even the victims of the Nanjing Massacre all went to various districts in Japan to take individual legal actions to demand compensation.

President, this afternoon, I had the pleasure to meet three representatives from the team of volunteer Japanese lawyers. They are now on the public gallery and, for long periods of time, on a voluntary basis, they have supported civilians in demanding compensation from Japan. Here, on behalf of the DAB, I express our heartfelt gratitude and highest respect for the three of them and hundreds of other voluntary Japanese lawyers as well as over a thousand supporters.

President, although various district Courts have ruled against the demands of the plaintiffs, what matters is that many Judges affirmed in their judgements the fact that the victims had been victimized. Last month, a case of Chinese civilians claiming compensation that had captured widespread attention was heard in the Tokyo Supreme Court in Japan. This case attracted extensive attention for two reasons. First, it was the first time that a case of demand for compensation by individual Chinese was heard in the Supreme Court and second, the focus of contention in this case is a matter of concern to both China and Japan.

The concern of the two countries lies in the fact that the Court in Japan wants to make a judicial interpretation of clause 5 of the China-Japan Joint Statement, that is, whether the relinquishment of the right to demand war

indemnity by the Chinese Government can be equated a relinquishment of the right to demand war compensation by individual nationals. On this point, the spokesman of the Chinese Foreign Ministry, QIN Gang, has made it clear that the China-Japan Joint Statement is a political and diplomatic document signed by the governments of the two countries and any interpretation of it, including judicial interpretation, should not be made unilaterally. The DAB does not support the Supreme Court in Japan in making a judicial interpretation unilaterally. We also understand that the judgement to be delivered by the Supreme Court will have a bearing on various kinds of cases demanding compensation filed by Chinese civilians now being heard in other Courts at the district level. For this reason, we are very concerned about the judgement to be delivered by the Supreme Court the day after tomorrow, that is, on 27 April, and we also want to reiterate the position of the DAB here.

We believe that the war indemnity for a country cannot be equated with the "compensation for individual damages" for civilians. On this point, when signing the China-Japan Joint Statement in 1972, Premier ZHOU Enlai already made it very clear that it was for the sake of China-Japan friendship that the Chinese Government gave up "war indemnity", however, what was given up was only governmental rights, not those of ordinary people. Subsequently, the spokespersons for the Foreign Ministry and the Foreign Minister, QIAN Qichen, also reiterated a number of times that civilian victims in the War of Resistance Against Japan could demand compensation for damages from the Japanese Government direct. Furthermore, the former Japanese Prime Minister, Tomiichi MURAYAMA, in advocating the establishment of the Asian Women's Fund in 1995, also proposed that the precondition for civilians, including the Chinese people, to claim compensation was to relinquish the right to take legal action against the Japanese Government. This in fact amounts to admitting that civilians have the right to claim compensation.

The other day, when Japanese Prime Minister Shinzo ABE was interviewed by the *Newsweek* of the United States, he expressed his sympathy and apologized on the issue of comfort women and admitted for the first time that Japan should assume responsibility for their trauma. However, even words expressing deep and thorough self-examination cannot compare with practical actions. Therefore, we believe that Japan should offer reasonable compensation to the victims to demonstrate its attitude that the Japanese Government is feeling truly responsible.

President, just now, I also made a phone call to my mother to tell her that we would debate this motion today. My mother also agreed that it is only by offering compensation to the victims of war that the Japanese Government can really show its sincerity in admitting to its mistakes and this is also the prerequisite before Japan can rise respectably again in the international community. I believe she has spoken the mind of a great majority of our compatriots.

With these remarks, President, I support the motion.

MR HOWARD YOUNG (in Cantonese): President, I rise to speak on the motion on behalf of the Liberal Party.

Today is the 70th anniversary of the War of Resistance against Japan. Seventy years ago on 7 July, the Lugouqiao Incident took place, unveiling Japan's full-scale invasion of China.

During the past two decades, groups after groups of war victims, including the so-called comfort women, Chinese forced labourers and holders of military notes issued by the Japanese Government have gone against all odds to file lawsuits with Courts in Japan to demand compensation. However, the Japanese authorities have rejected the plaintiffs' claims on all sorts of excuses.

On the 27th of this month, the Supreme Court of Japan will hand down a judgement in respect of a case lodged by Chinese forced labourers against Nishimatsu Construction Co. Ltd., which is a judgement with significant implications and far-reaching consequences.

The case was first tried by the Hiroshima High Court, which ruled in 2004 that Nishimatsu had to compensate the Chinese plaintiffs with an amount equivalent to HK$360,000 per person. That was the first time a Japanese High Court ruled in favour of Chinese forced labourers, but Nishimatsu immediately lodged an appeal with Japan's Supreme Court.

The judgement made by Japan's Supreme Court will have a binding effect on similar litigations lodged in Courts all over Japan. So if the judgement of the Supreme Court should rule against the Chinese individuals' right to claim

reparations, it will mean that all other similar lawsuits lodged in Japan will be lost. Generally speaking, judgements handed down by the Supreme Court cannot be overridden within 10 years. If so, the efforts of Chinese war victims and their supporters made during the past decade will become futile all in one go.

In fact, as many experts have pointed out, the China-Japan Joint Statement signed in 1972 does not imply that the right of individuals to claim compensation from Japan has been relinquished. More importantly, the Chinese Government has acknowledged on several occasions the right of Chinese individuals to claim reparations.

In 1992, the press spokesman of Chinese Foreign Affairs Ministry pointed out clearly that individual Chinese victims of the War of Resistance against Japan could claim reparations from Japan direct. In 1995, former Chinese Foreign Minister QIAN Qichen stated specifically that the China-Japan Joint Statement only relinquishes the country's right to claim compensation, and it does not relinquish such right of the individual. The right to individual compensation is a civil right that should not be interfered by the government.

In fact, the Netherlands, one of the signatories of the San Francisco Peace Treaty, had successfully claimed war reparation from Japan in 1956 on behalf of its victimized citizens for an amount of US$10 million. From this, we can see that there are precedents of Japan making compensation to war victims.

Even a Japanese Court, the Fukuoka District Court, had challenged that the right of Chinese plaintiffs to claim reparations might not necessarily be relinquished by virtue of the China-Japan Joint Statement and the China-Japan Peace and Friendship Treaty when it heard a litigation lodged by Chinese forced labourers in 2002.

In 2004, in the judgement handed down by the Tokyo High Court in a case lodged by Chinese comfort women, the Court rejected the Japanese Government's defence which alleged that "the right to claim reparations of individuals has been relinquished by the China-Japan Joint Statement".

When Premier WEN Jiabao visited Japan in early April, he acknowledged Japan's public confession of having launched the invasion and Japan's reflection and apology in this connection. However Premier WEN also pointed out that

Japan must live up to its open stance and undertaking by taking some concrete actions.

In this regard, we hope that Japan can act like another invading country of the World War II — Germany, which has demonstrated its undertaking to its war responsibilities and its commitment to compensation by way of legislation, through which decent reparations have been made to individuals victimized by its act of invasion.

In 1956, the German Bundestag endorsed an act on compensating Nazi victims. In 2001, the German parliament endorsed the setting up of a US$4.5 billion fund for compensating forced labourers who had worked for German enterprises during the War. In 2002, the amount of compensation the German Government had committed reached US$104 billion. Japan should learn from Germany for the candid and correct attitude it has adopted towards the issue of war crimes compensation.

Finally, I would like to point out that in recent years, the Central Government has given active support to the comfort women. We certainly support the stepping up of work in this area.

With these remarks, I support the motion.

DR YEUNG SUM (in Cantonese): Madam President, a country that cannot face its own history will find it hard to learn lessons from history, thus it will be hard for it to avoid repeating the crimes it committed in the past. It is most regrettable that, for over 60 years in the postwar period, the Japanese Government still has not formally, solemnly and properly handled the issue of its postwar responsibility, nor has it offered apologies and compensation for the war crimes it committed during its invasion of China.

Just now I had a chance to meet with three representatives from the deputation of lawyers from the Society to Support the Demands of Chinese War Victims, namely Mr Tooru TAKAHASHI, Mr Akira IZUMISAWA and Prof Yukio WANI. They are now sitting on the public gallery, and may I warmly welcome them to this Council. One of them told me that the deputation of lawyers is made up of more than 200 lawyers who volunteer to support Chinese war victims in demanding compensation from the Japanese Government. I

admire them very much for their sense of justice, their dedication and their selflessness.

One of the lawyers said that the Supreme Court in Japan would hand down a judgement on the 27th of this month on a relevant litigation, and he anticipated the judgement might be unfavourable to the cause of demanding compensation. However, he clearly pointed out that even if the Court handed down an unfavourable judgement, it would not in any way wipe away the crimes committed by the Japanese Government during its invasion of China. As a matter of fact, over the years, the Courts in Japan have confirmed the existence of such war crimes.

Madam President, the deputation has given us a book entitled *Has Justice Defeated Time?* with a subtitle of "10 Years of Post-War Litigations in Demanding Compensations for the Chinese Victims". One of the paragraphs of the book states, to this effect, that: the accumulation of facts of victimization as confirmed by the Courts has important social and historical significance. Unlike legal obligations, the significance of this lies in the fact that the nation, the Government and the National Diet of Japan are being confronted with their ethical, political and historical responsibilities. It is, therefore, evident that even if the final judgement of the Court is unfavourable to the cause of demanding compensation, the Courts in Japan have, over the years, already confirmed the existence of the war crimes committed by Japan during its invasion of China, which is now an indisputable fact. He also reminded us that we should keep on exerting pressure on the Chinese Government and demand the Chinese Government to pursue the matter with the Japanese Government in respect of Chinese victims' demands for apologies and compensation from the Japanese Government.

In his recent visit to Japan, Premier WEN Jiabao was warmly welcomed and applauded in the Japanese Diet. However, during his visit to Japan, which was described as an "ice-breaking journey", there was no mention of the crimes committed by Japan during its invasion of China, nor had any attempt been made to demand the Japanese Government to offer apologies and compensation for its crimes during its invasion of China. No wonder Premier WEN was so warmly welcomed and applauded by members of different parties within the Japanese Diet.

I sincerely hope that the Central Government can establish friendly relations with the Japanese Government at the diplomatic level, which will be conducive to the promotion of peace in the Asia-Pacific Region and, to a certain extent, in the world. But I would like to point out clearly that the Central Government must not give up its basic stance and ignore the dignity and interests of the Chinese people for the sake of public relations and foreign diplomacy. Having opened up the China market, the economy of China has taken off and the general livelihood of the people has been improved. This is an indisputable fact. However, economic improvements are no substitutes of the dignity and interests of the Chinese people.

Madam President, the German Government has candidly confessed the crimes the Nazis had committed, the war crimes committed by the Nazis in victimizing the Jewish people. Not only had the German offered their apologies, they had also provided adequate compensation. In addition, the German Government has endeavoured to tell the next generations this particular section of history through education. When people visit Germany, I believe they will visit the concentration camps that have been retained after the war. The German Government faces its war crimes actively and positively, thus leaving people a deep impression that the war crimes it once committed would definitely not happen once again. The way Germany handled the matter and the action it has taken have earned the respect of the people of different countries. The next generations will be able to learn a hard-earned lesson from this miserable history and this will bring hope for a better tomorrow in a turbulent world.

On the contrary, it is regrettable that the Japanese Government has not properly handled the war crimes it had committed, nor has it offered apologies or compensation. This has cast a shadow on the development of friendly relations between China and Japan after all. After the "ice-breaking journey", the Chinese people are still overwhelmed with a sense of sadness, because behind all the economic prosperity and applauses, the spectre left by the War is still lingering around. The way the Japanese Government handles the issue of their war crimes is like an ostrich sticking its head into the sand. Japan still has failed to straighten up itself and drive away the ghost of its own history.

However, the visiting lawyers from the Society to Support the Demands of Chinese War Victims have given me some hope of looking forward to a friendly

relationship between China and Japan. I very much hope that the voice of justice from both the peoples of China and Japan will enlighten the rulers, such that they can cast away the shadow of the War and prevent the miserable history from repeating itself again. May the light of justice shine forever.

With these remarks, Madam President, I support the motion.

MR WONG KWOK-HING (in Cantonese): President, every year, on the anniversaries of events such as the 7 July incident, the 18 September incident and the Nanjing Massacre, I, in my capacity as the Vice Chairman of the Social Policies Committee of Hong Kong Federation of Trade Unions (FTU), would usually join hands with other FTU representatives in going to the Japanese Consulate-General in Hong Kong to present petition letters to them. On those occasions, I would invariably run into members of the Hong Kong Reparation Association (HKRA), who were also petitioning the Japanese Consulate-General in Hong Kong under the leadership of their President, Mr NG Yat-hing.

Year in, year out, the hair of these HKRA members have turned from black to white, and their hairlines have been receding gradually. Many years ago, they were able to keep their legs straight while they walked, just like what we were doing when we were young. But now, many of them have become old, and their legs are crooked. In order to present their petitions demanding compensation and apologies from the Japanese Government, some of them continue climbing up the stairs step by step with the help of a walking stick. They would use the military notes issued by the Japanese Government during the Japanese Occupation and stick them onto their banners. Every time when I see them doing this, when I see the silhouettes of their bodies as they move before me, I could not help asking: Why do they insist on doing this? What for? I feel that they are doing that because justice has not been done to Hong Kong people who endured the Japanese Occupation for three years and eight months, and they are demanding that justice be done to Chinese soldiers and Chinese people who had been victimized during the Japanese invasion of China, and who have not received apologies and compensation from the Japanese Government. As such, the Japanese Government and relevant authorities certainly cannot unilaterally nullify the rights of the Chinese people to demand compensation

from the Japanese Government for the miseries and agonies they caused during the Japanese invasion of China.

I believe the demand for compensation made by the Chinese people and the citizens of Hong Kong bears significance that goes beyond monetary compensation. I would like to ask the Japanese Government, and the Japanese friends who are in the public gallery today, "Even if compensations were made, could the reparations compensate for the precious lives Chinese soldiers and Chinese people lost when they were slaughtered? Could the reparations compensate for the injuries and agonies inflicted on millions and millions of women who had been raped and humiliated? Could the reparations compensate for the injuries and agonies inflicted on millions upon millions of people, whose families were destroyed, whose parents were killed, and whose children were slaughtered?" The answer is "no". They cannot compensate anything at all.

But then why do these people keep on doing this? I believe their action aims at fighting against the revival of Japanese militarism, against those forces within Japan that are calling for the revival of Japanese militarism. They are reminding us not to overlook the spectre of Japanese militarism that is hovering over Asia and in the Pacific Region, and they are working for long-lasting peace for Asia and the world. I find their action most meaningful. As we can all see, the spectre of Japanese militarism keeps lingering and is constantly looking for the opportunity of resurrection.

I need only cite a few examples to illustrate this point. First, despite the objections raised by the Chinese Government and the objections from the governments and people who were victimized in the past, several Japanese Prime Ministers and major officials of the Japanese Government have visited the Yasukuni Shrine to raise militarism from death.

Another example is the alternation of school textbooks by the Japanese Education Department by changing the word "invasion" to "entry" in a bid to distort the historical facts of its invasion of China and the massacre it carried out in Nanjing. Yet another example is Japan's refusal to make confession and offer apologies, still less compensation, to women who were forced to become comfort women for the Japanese army. Therefore people who have been victimized are demanding compensation, and that explains why the HKRA has kept taking such actions. These are not actions taken against the Japanese

people or Japan as a nation; these are actions taken against the crimes of Japanese militarism and the increasingly rampant activities for promoting the revival of militarism in Japan.

Recently, the Chinese Premier made an "ice-breaking journey" to Japan with a view to strengthening communication between the governments and the peoples of the two countries and promoting friendship between the Chinese people and the Japanese people. In this regard, the Japanese Government responded positively in a friendly manner. The governments of the two countries have joined hands to create a new peaceful and friendly atmosphere, and I hope that under such favourable atmosphere, the peoples of both countries can work together to combat the revival of Japanese militarism and engage in renewed efforts to further peace in Asia and in the world. Meanwhile, the Japanese Government should acknowledge the rights and demands for compensation from people whom it once victimized. It should respond promptly and fairly to their demands and offer apologies and compensation to these victims in order to suppress the revival of Japanese militarism.

Finally, I would like to take this opportunity to extend my greatest appreciation to those Japanese lawyers for all the efforts they have made. I hope the Chinese people and the Japanese people can work together to suppress the revival of militarism.

MS AUDREY EU (in Cantonese): President, first of all, I would like to thank Mr Albert HO for proposing this motion today. As a matter of fact, I have known Mr Albert HO since our time in the university. From the time I first got to know him, he has always dedicated himself to the cause of serving the nation, fighting for justice and protecting the rights of the people. There are people who claim to be patriotic, and there are people who use money to show their patriotism. But some others only use their sincerity and actions to testify his patriotism. Therefore, I would like to thank him in particular. Unfortunately, although he has been patriotic all through the years, he still cannot get a Home Visit Permit.

Just now he introduced me to a group of volunteer Japanese lawyers. When Ms Emily LAU met with these Japanese lawyers, she asked them about the Japanese people's view of this issue. The Japanese lawyers told us that the

Japanese people do not care too much about this, so what we are seeing are just the views of the minority. As such, I kept thinking and wondering: How do they look at patriotism in their own country? However, I think the spirits of these lawyers have clearly been cast in the book they gave us. Dr YEUNG Sum already told us the title of the book just now, so I do not repeat it now.

However, there is a paragraph from the book that, in my opinion, is worth quoting: "Turning the absolutely impossible into something possible, this is the litigations record passionately composed by unwavering lawyers. Facing incidents of international human rights infringement, a good number of lawyers have united together under the common cause of seeking justice for all human beings. The litigations were a long process that went beyond the boundaries of countries. It is like boring into the hard rock surface for an enormous number of times in order to dig through a formidable body of hard rock and open up a tunnel. Through this struggle, it demonstrates to people all over the world a much sought-after, exemplary attitude of life of these lawyers, who live their lives as human beings."

President, when compared to the Japanese, the Germans, who have experienced the two world wars, have managed to look the matter in the face regarding the crimes they committed during the War. Not only has the German Government apologized in public, they are also candid about the war crimes they committed during the War, such as genocide, through educating the next generations of those historical facts in schools. In Germany, an automobile factory has provided compensation to war victims who were conscripted to wartime labour. Furthermore, the factory has erected a monument at its Wolfsburg headquarters to show its remorse. The sincerity displayed by the German people has earned them trust and acceptance, and Germany is now reunited with the big family of Europe.

On the contrary, in Japan, not only are people in both the business and political circles evasive about the crimes they committed during the War, they are also trying to gloss over them by all means. Both the China-Japan Joint Statement and the China-Japan Peace and Friendship Treaty are mentioned in this motion. In fact, the Foreign Affairs Ministry issued a statement in 1995, stating that the said treaty does not relinquish the rights of individuals to demand compensation. On 15 March this year, the Foreign Affairs Ministry issued another statement stating that it is inappropriate for Japan to make unilateral

interpretation of the treaty and urged the Japanese Government to handle its postwar responsibility properly.

In fact, wartime victims demanding compensation from the Japanese Government and companies working in collaboration with militarists who tormented them during the War is a legal way of seeking justice and protecting their rights at a non-government level. Before justice is done, the bitterness and hatred between the two countries cannot be resolved. Having the courage to confess the crimes committed in the past and to make appropriate compensation are acts of bravery that should be done by a truly strong country. I hope the Japanese Government can stop dodging the issue and start thoroughly untying this dead knot tied by it more than six decades ago.

I believe the people make a government and its politicians. Therefore, I believe that, regardless of whether we are dealing with the Court or the Japanese Government, it is most important that the Japanese people themselves should be able to honestly face and admit to the mistakes they made during the War. I hope that the spirits and the examples of volunteer Japanese lawyers who are present today on the public gallery can have a strong influence on the people of Japan, and may I wish them a happy outcome when the judgement on their appeal is handed down by the Court on 27 April. I believe, as Mr Albert HO said, regardless of the judgement, these volunteer lawyers and members of the Society to Support the Demands of Chinese War Victims will persevere with this cause of conscience. I also believe that, regardless of whether the outcome is favourable or not, their actions, their selfless dedication, their noble deeds and spirits will definitely turn a new and glorious leaf in Sino-Japanese history. Thank you, President.

MR LAU CHIN-SHEK (in Cantonese): President, I rise to speak in full support of the motion moved by Mr Albert HO.

I believe the motion before us will receive extensive and full support from Members of this Council. I believe all the more that we support the motion moved by Mr Albert HO in order to support the Chinese people in demanding compensation from the Japanese Government not just because we are Chinese, but also because we all pursue peace and justice, which are common values treasured by the international community.

President, as Mr Albert HO said just now, the postwar campaigns on demanding compensation from Japan first began nearly two decades ago. In the past, I visited Japan several times to participate in conferences and actions in connection with demands for compensation. I have also met with many people demanding compensation, including war victims of the World War II (WWII), their family members, as well as people with a passion for peace and justice. I could sense that in insisting on our demand for compensation from Japan, we are not only asking that justice be done to victims of the War, but we are also hoping that, through this move, we can caution the Japanese Government against moving towards militarism.

President, in recent years, some moves made by the Japanese Government and some rightists have, to a certain degree, upset people who are longing for peace. Amendments to Japan's postwar Peace Constitution have been formally listed on Japan's legislative agenda, meaning that Japan intends to actively expand the scope of activities of the Japanese army. On issues relating to war victims such as the comfort women, and so on, is Japanese Prime Minister Shinzo ABE willing to offer apologies to the war victims sincerely and to assume the responsibility accordingly? His stance has been wavering. Distorting and altering the history of Japan's invasion of China are "tricks" employed by individual rightist organizations in Japan during the past two decades, which reveal that these people have all along refused to face up squarely to the historical truth and facts.

Therefore, one of the major meanings of the campaign on demanding compensation from Japan is to alert the Japanese people to the historical facts by means of education, with the ultimate goal of building up a Japanese society which has true respect for human rights as well as love and passion for peace.

President, as far as I understand it, although militarist thoughts have some following in the Japanese Government, political arena and major consortia, they belong to the minority in Japan after all. On the contrary, there are progressive forces in Japan which we should find out more about, and they do deserve our respect. These are people who have shown deep remorse for the atrocities committed by the Japanese soldiers of the previous generation. They have also taken the initiative of conducting in-depth investigations into the crimes Japan committed during the WWII, which they then disclose to the new generation of

Japan as a means of education and as countermeasures against militarist thoughts. People from such progressive forces are our friends who have been striving with us in our quest for long-lasting peace in Asia.

Two years ago, in a debate held in this Council on opposing Japan's textbooks distorting the historical facts of Japan's invasion of China, I mentioned a Japanese friend, by the name of Yukio WANI, whom I had known for many years — he is sitting on the public gallery today. Mr Albert HO and I first met WANI in the early '90s when we attended a conference held in Tokyo on compensation in relation to the Pacific War. At that time, WANI was already busying himself in helping Hong Kong bearers of military notes issued by the Japanese Government to demand compensation. During the past decade, WANI has published a series of alternative Hong Kong tourist guide books and organized Japanese tours to Hong Kong. However, the destinations of the tours organized by him are not ordinary tourist attractions like the Peak or Ocean Park; instead, he visits places in Hong Kong where Japan occupied during its invasion of Hong Kong. He is trying to educate the newer generation of Japanese people by showing them the historical facts. At the same time, on several occasions when Albert HO and I were attending conferences in connection with campaigns of demanding compensation in Japan, we received administrative support from Japanese friends like WANI. On one particular occasion, these Japanese friends helped Albert HO and I to stage a demonstration in front of the Yasukuni Shrine against the revival of militarism. In 1995, at that time Tomiichi MURAYAMA was the Prime Minister of Japan, WANI had prepared for us pens, ink and banner when the Pacific Conference was held, so that we could wave a banner in protest of the revival of militarism on an occasion in the presence of Tomiichi MURAYAMA and the Japanese Diet speaker. As a matter of fact, there are many progressive elements in Japan like Yukio WANI.

President, with regard to the present campaign of demanding compensation, I have to reiterate one point, that demanding compensation is as important as demanding sincere and conclusive apologies from Japan to war victims for the mistakes Japan committed during the War. Among groups fighting for compensation and war victims I have met in the past, many of them have a common belief, and that is, "apologies without compensations are hypocritical apologies, and compensations without apologies are unrighteous compensations". Therefore, I firmly believe that the Japanese Government

must apologize and compensate for the mistakes and crimes it committed in the WWII; both are equally important and neither of them should be missing.

President, Premier WEN Jiabao visited Japan recently on an "ice-breaking journey". On the day of Japan's Grand Spring Festival last week, neither Prime Minister Shinzo ABE nor any ministerial head visited the Yasukuni Shrine. The number of Cabinet and Diet members visiting the Yasukuni Shrine was smaller than last year too. We can say this is a change for the better. As a matter of fact, in today's Japanese political arena as well as Japanese society, there are certain social factors contributing to Japan's attitude in evading its historical responsibilities and sugar-coating militarism, and to a certain extent, they represent some kind of social forces in the Japanese community. However, while we are denouncing right-wing ideas and militarism, it is more important to team up with the peace-loving forces and progressive forces in mainstream Japanese community. Only by thoroughly understanding the Japanese society and the pluralistic nature of the people of Japan, coupled with greater concerted efforts with the progressive forces of Japan, can we counteract militarism. And only by doing so can the campaign of demanding compensation stand any chance of success, and that Sino-Japanese relations can move forward in an active and friendly direction.

With these remarks, President, I support Mr Albert HO's motion.

DR FERNANDO CHEUNG (in Cantonese): Today is the 70th anniversary of the 7 July Lugouqiao Incident. Seventy years ago, Japan waged a full-scale aggressive war against China. Starting from the day on which Japan conducted massive military campaigns in Manchuria, the War lasted as long as 14 years. The fate of the Chinese nation was hanging in the balance, and the conflicts between China and Japan kept intensifying as the ongoing war continued to expand to a greater scale over a period of time lasting for half a century. In the end, Japan was defeated in World War II. Another half a century has passed now. Unfortunately, the hatred that was brought by the War did not come to an end with the reflection on the War. China and Japan have established diplomatic tie for more than 30 years, yet the peoples of both countries still have not built up any trust between each other. The dark cloud that has weighed heavily on the relationship of the two countries has not dispersed.

In the streets of Japan, we can always see trucks of right-wing organizations laden with amplifiers and speakers running around in streets and alleys. In the bookstores of Japan, right-wing magazines can easily be found, which do not only deny Japan's history of invasion, but also criticize China as trying to hamstring Japan by emphasizing historical responsibility. Over the Internet, there are many websites that promote right-wing ideas. Some of them even criticize the Wikipedia website as distorting historical facts when it says 300 000 people were killed in the Nanjing Massacre.

This historical perspective finds no market in Japan. Although there are not too many rightists, they appear to carry a lot of weight when it comes to influencing the Government of Japan. Successive Japanese Prime Ministers have publicly dismissed the historical facts, visited the shrine that commemorates war criminals, altered historical facts in school textbooks, annexed Diaoyutai islands, propagated the China threat theory, increased military expenses, and even endeavoured to strive for joining the Security Council of the United Nations as a permanent member. All these moves have taken place against the abovementioned background. Of course, that includes repeated rejections of demand for compensation made by Chinese civilians to the Courts in Japan.

The arrogance displayed by Japan is in stark contrast to the acute war reflections Germany has made. When former West German Chancellor Willy BRANDT dropped to his knees at a monument commemorating Jewish victims, people all over the world could feel how deeply Germany had repented for the war crimes committed by it. This certainly was not just a posture. In the early period of the postwar reconstruction, Germany placed emphasis on the contents of school textbooks in an effort to rectify the distorted historical view imposed by the Nazi regime. After the reunification, the Bundestag, German's federal parliament, passed a new anti-Nazi law which stipulates that sympathizing with and denying Nazi crimes are both offences under the law.

Germany started providing war reparation at a very early stage. The local government formulated the Federal Compensation Law that seeks to make compensation to individual war victims. Apart from the Reconciliation Fund set up by the government, German enterprises also teamed up to form funds for compensating forced labourers conscripted by the Nazis. Although the United States has long relinquish its right to demand compensation from Germany, the right it relinquished is restricted to "compensation at the government level",

which is unrelated to "compensation at the people's level". Therefore, during the past few years, American Jewish and prisoners of war have been able to receive certain amounts of compensation.

By contrast, the Courts in Japan and the Japanese Government have kept rejecting the demands for compensation made by the Chinese civilians at the non-government level. Regardless of whether they are wartime Chinese forced labourers, victims of bacterial weapons and chemical weapons, comfort women, or wartime orphans of Japanese ancestry, lawsuits filed invariably lost their cases. Japan based its arguments on the two treaties signed between China and Japan when the two countries established diplomatic ties. It opines that by virtue of the treaties, the right of the Chinese people to demand compensation from Japan has been relinquished. However, China has stated that the right thus relinquished is restricted to compensation at the government level, and it is unrelated to the right to demand compensation at the level of individuals.

According to principles of international law, the invading party is liable to making compensation, and war reparation at the level of the country is entirely different from compensation a country is liable to individual war victims. There are specific provisions in international covenants with respect to war crimes that victims can file a lawsuit to hold the offending party responsible, and that is not subject to any time limit. Therefore, when Courts in Japan rejected demands for compensation on the ground that the time limit for filing a case had expired, that was in breach of international law. On the contrary, demands for compensation from Japan made by the Chinese community are based on solid reasons without any ambiguities.

The Chinese people have been painstakingly making demands for compensation from Japan for over a decade. The endeavour has reached a critical moment now. The Supreme Court of Japan is handling a specific debate which focuses on whether or not the right of Chinese people to demand compensation for damages arising from the War has been relinquished. If the Court should give a judgement supporting the notion, not only all past efforts will go down the drain, it will also mean that the Chinese people will find it very difficult to file similar lawsuits in Japan in future. According to past experience, when Sino-Japanese relationship is in the ebbs, the Chinese Government is willing to exert greater pressure on Japan. For example, under the forceful demand from the Chinese Government, Japan agreed earlier on to give a one-off compensation to a group of victims affected by chemical weapons.

Naturally, the Supreme Court of Japan is capitalizing on the thawing Sino-Japanese relations fostered by Premier WEN Jiabao's visit to Japan to hold this sensitive debate now. I hope the Chinese Government can make its voice heard at this critical moment by expressing its unequivocal opposition to any interpretation made unilaterally by Japan.

Apologies without compensations are hypocritical. Besides, the Japanese Government has never made any formal apology for the war crimes it committed to the Chinese people and the peoples of other Asian countries. On the contrary, politicians in Japan constantly make provocative remarks in this regard, and they have flatly denied Japan's responsibility in the War. The Chinese Government should come forth and categorically dismiss this attitude of Japan as totally unacceptable.

Lastly, I would like to thank Mr Albert HO for proposing this motion debate, and I am very much indebted to a group of righteous Japanese friends. I would like to pay tribute to the deputation of lawyers from the Society to Support the Demands of Chinese War Victims who attend our meeting in this Council today. President, I so submit.

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

(No Member indicated a wish to speak)

PRESIDENT (in Cantonese): If not, then I now call upon Mr Albert HO to reply. But you have only three seconds.

MR ALBERT HO (in Cantonese): President, I would like to once again express my highest regards and sincere thanks to the deputation of volunteer lawyers and members of the Society to Support the Demands of Chinese War Victims.

PRESIDENT (in Cantonese): I now put the question to you and that is: That the motion moved by Mr Albert HO be passed. Will those in favour please raise their hands?

(Members raised their hands)

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

(No hands raised)

PRESIDENT (in Cantonese): I think the question is agreed by a majority respectively of each of the two groups of Members, that is, those returned by functional constituencies and those returned by geographical constituencies through direct elections, who are present. I declare the motion passed.

(Observers on the public gallery applauded)

NEXT MEETING

PRESIDENT (in Cantonese): May I ask those people on the public gallery refrain from applauding. I now adjourn the Council until 11.00 am on Wednesday, 2 May 2007.

Adjourned accordingly at four minutes past Twelve o'clock in the morning.

Annex I

SHENZHEN BAY PORT HONG KONG PORT AREA BILL

COMMITTEE STAGE

Amendments to be moved by the Secretary for Security

Clause	Amendment Proposed
2(1)	(a) By deleting the definition of "Particularized Description".
	(b) In the definition of "public officer" –
	(i) in paragraph (a), by deleting "and";
	(ii) by deleting paragraph (b).
	(c) In the definition of "Relevant Date", by deleting everything after "means the" and substituting "day appointed under section 1(2) for the coming into operation of sections 3 and 5, being the day on which the Shenzhen Bay Port referred to in paragraph (2)(a) of the preamble commences operation;".
	(d) In the Chinese text, in the definition of "法院", by deleting "、審裁處或裁判法庭" and substituting "或審裁處".
3	By deleting the clause and substituting –
	"3. Declaration of Hong Kong Port Area

(1) The area delineated by the description set out in Schedule 1 ("Particularized Description") is declared as the Shenzhen Bay Port Hong Kong Port Area.

(2) The Particularized Description comprises -

(a) the description of the area of the Clearance Area set out in Part 1 of Schedule 1;

(b) the description of the area of the Shenzhen section of the Shenzhen Bay Bridge set out in Part 2 of that Schedule; and

(c) the maps in Part 3 of that Schedule.".

5 By deleting subclauses (2), (3) and (6).

6(1) By deleting "Land" and substituting "Notwithstanding that the land use right of the Hong Kong Port Area is acquired by way of a lease as mentioned in paragraph (3)(b) of the preamble, land".

8(1) By adding "the territorial limit of a particular pre-existing right or obligation is extended to include the Hong Kong Port Area if the sole ground for such

contention is that" before "section 5(4)".

9 By deleting subclauses (3) and (4).

10 By deleting subclause (3).

14 By deleting the clause and substituting -

"14. Expiry of this Ordinance

(1) This Ordinance shall expire at midnight on 30 June 2047, which is the day on which the land use period of the land use right of the Hong Kong Port Area acquired by way of the lease mentioned in paragraph (3)(b) of the preamble is to expire.

(2) If the land use right is terminated earlier or the lease is renewed after its expiry -

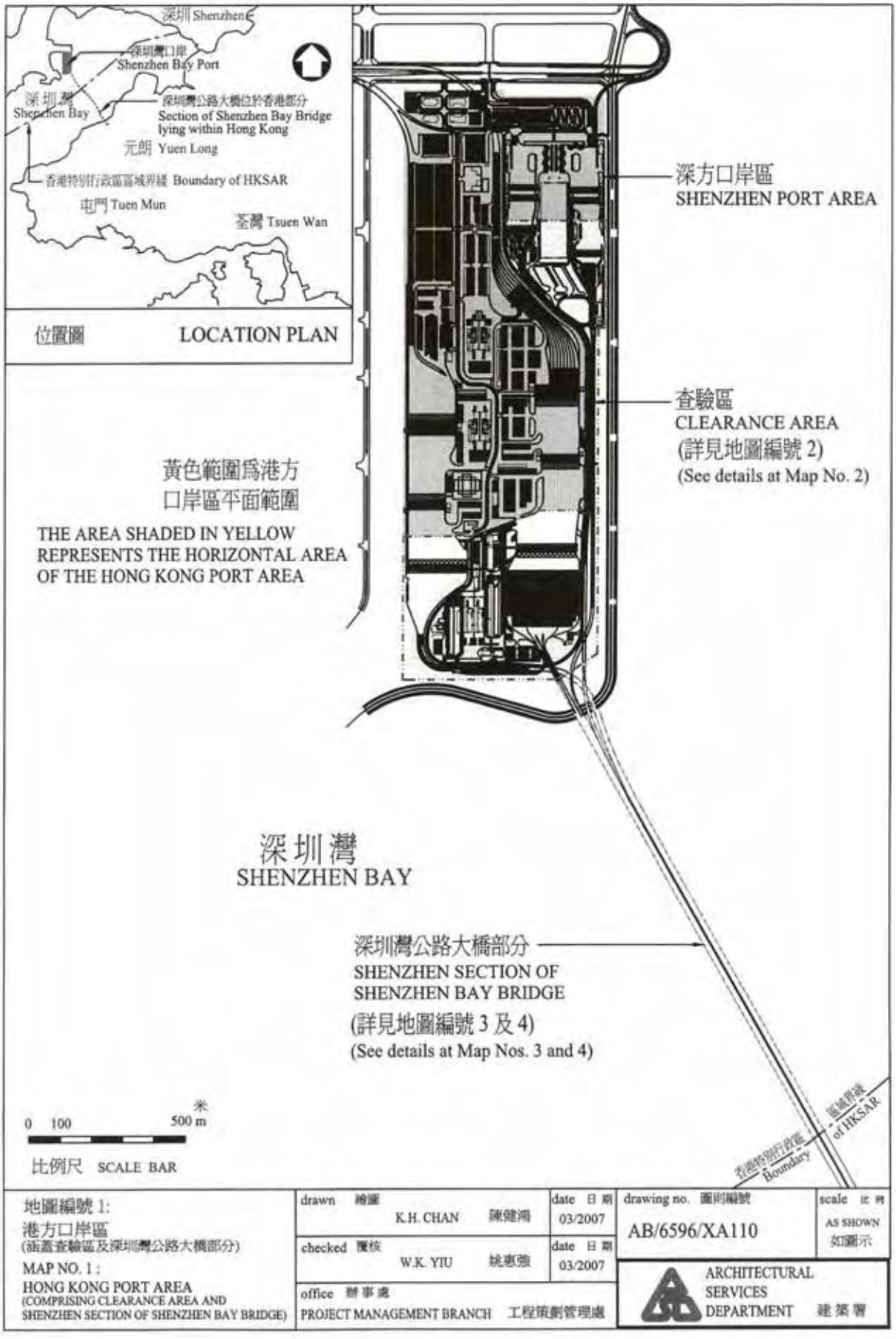
(a) the Secretary for Security shall by notice in the Gazette publicize the date on which the land use right or the lease (as so terminated earlier or renewed) is to expire ("the published date"); and

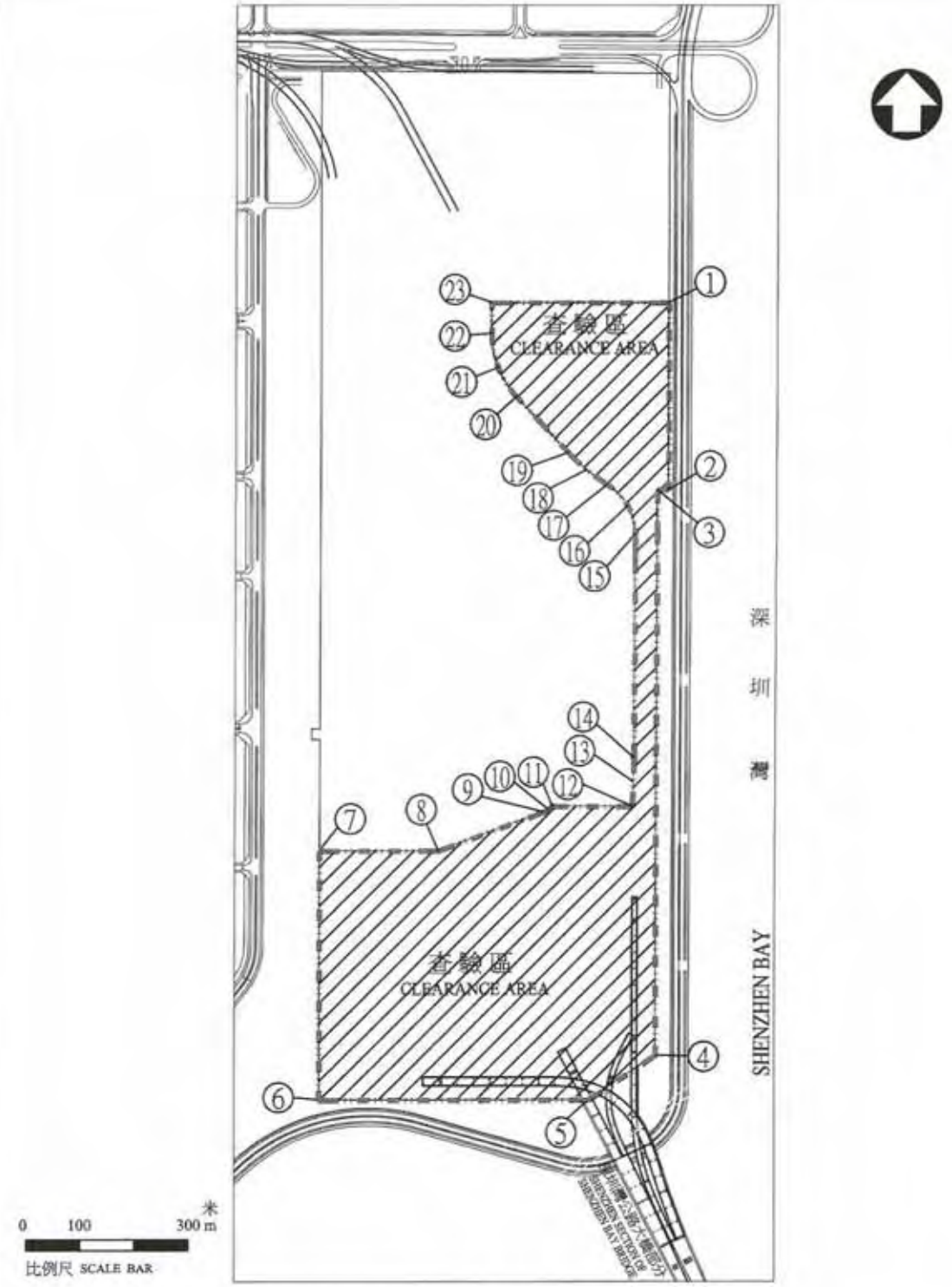
(b) this Ordinance shall expire at midnight on the published date.".

Schedule 1	Within the square brackets, by deleting "2" and substituting "3".
Schedule 1, Part 1, Section I	In the Notes, by adding - "3. The setting out coordinates of the Clearance Area are shown in the map titled "Setting out Coordinates of Clearance Area" (Map No. 2) in Part 3.".
Schedule 1, Part 2, Section I	In the Notes, by adding - "4. The setting out coordinates of ramps A-E and the bridge are shown in the map titled "Setting out Coordinates of Bridge Surface of Shenzhen Section of Shenzhen Bay Bridge" (Map Nos. 3 and 4) in Part 3.".
Schedule 1	By adding -

"PART 3

MAPS

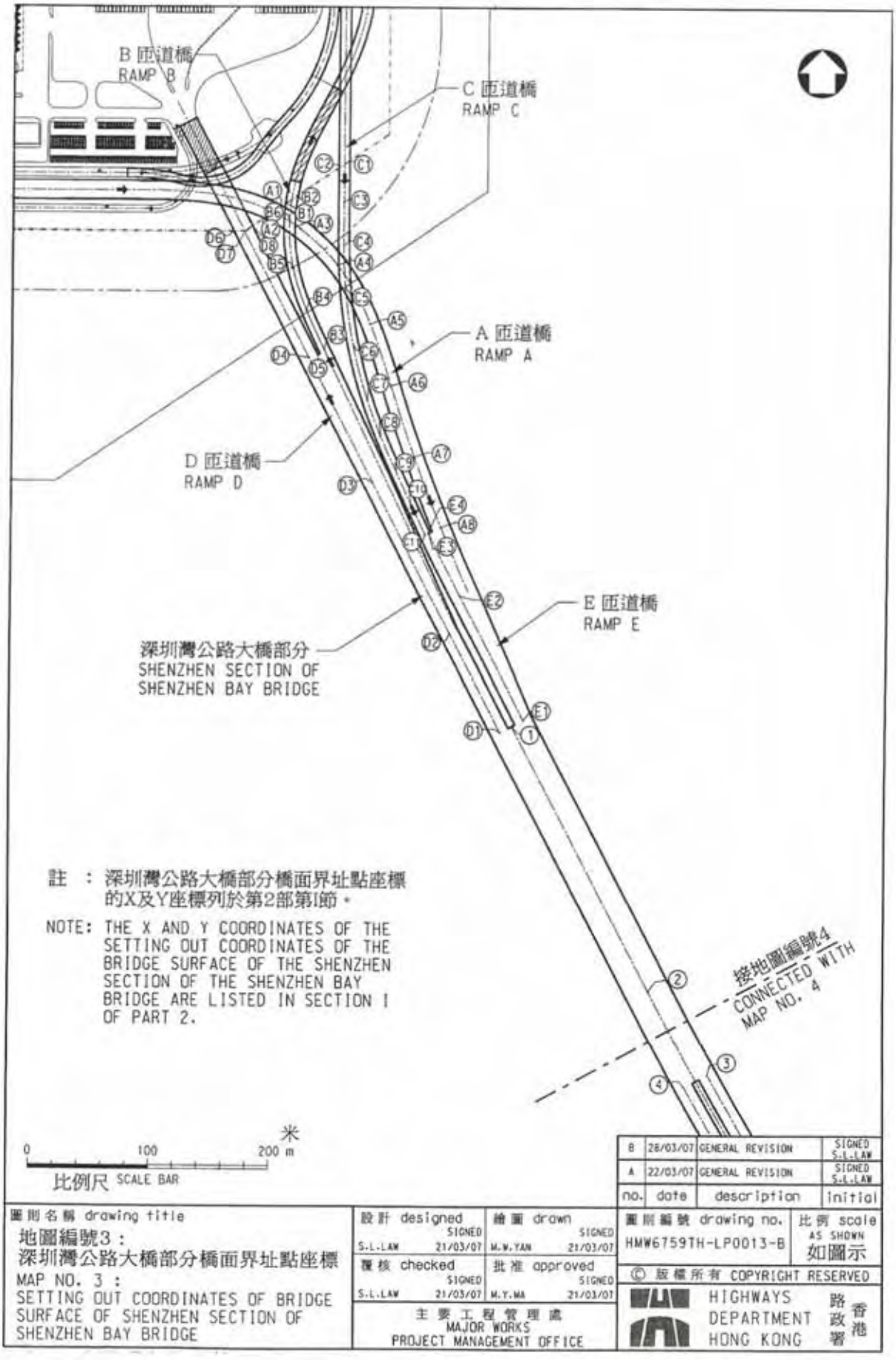

深圳 Shenzhen
深圳灣口岸
Shenzhen Bay Port
深圳灣
Shenzhen Bay
深圳灣公路大橋位於香港部分
Section of Shenzhen Bay Bridge lying within Hong Kong
元朗 Yuen Long
香港特別行政區管域界線 Boundary of HKSAR
屯門 Tuen Mun
荃灣 Tsuen Wan
位置圖 LOCATION PLAN
深方口岸區
SHENZHEN PORT AREA
查驗區
CLEARANCE AREA
(詳見地圖編號 2)
(See details at Map No. 2)
黃色範圍爲港方口岸區平面範圍
THE AREA SHADED IN YELLOW REPRESENTS THE HORIZONTAL AREA OF THE HONG KONG PORT AREA
深圳灣
SHENZHEN BAY
深圳灣公路大橋部分
SHENZHEN SECTION OF SHENZHEN BAY BRIDGE
(詳見地圖編號 3 及 4)
(See details at Map Nos. 3 and 4)
0 100 500 m 米
比例尺 SCALE BAR
香港特別行政區 Boundary of HKSAR
地圖編號 1:
港方口岸區
(涵蓋查驗區及深圳灣公路大橋部分)
MAP NO. 1:
HONG KONG PORT AREA
(COMPRISING CLEARANCE AREA AND SHENZHEN SECTION OF SHENZHEN BAY BRIDGE)
drawn 繪圖 K.H. CHAN 陳健鴻
date 日期 03/2007
checked 覆核 W.K. YIU 姚惠強
date 日期 03/2007
office 辦事處 PROJECT MANAGEMENT BRANCH 工程策劃管理處
drawing no. 圖則編號 AB/6596/XA110
scale 比例 AS SHOWN 如圖示
ARCHITECTURAL SERVICES DEPARTMENT 建築署

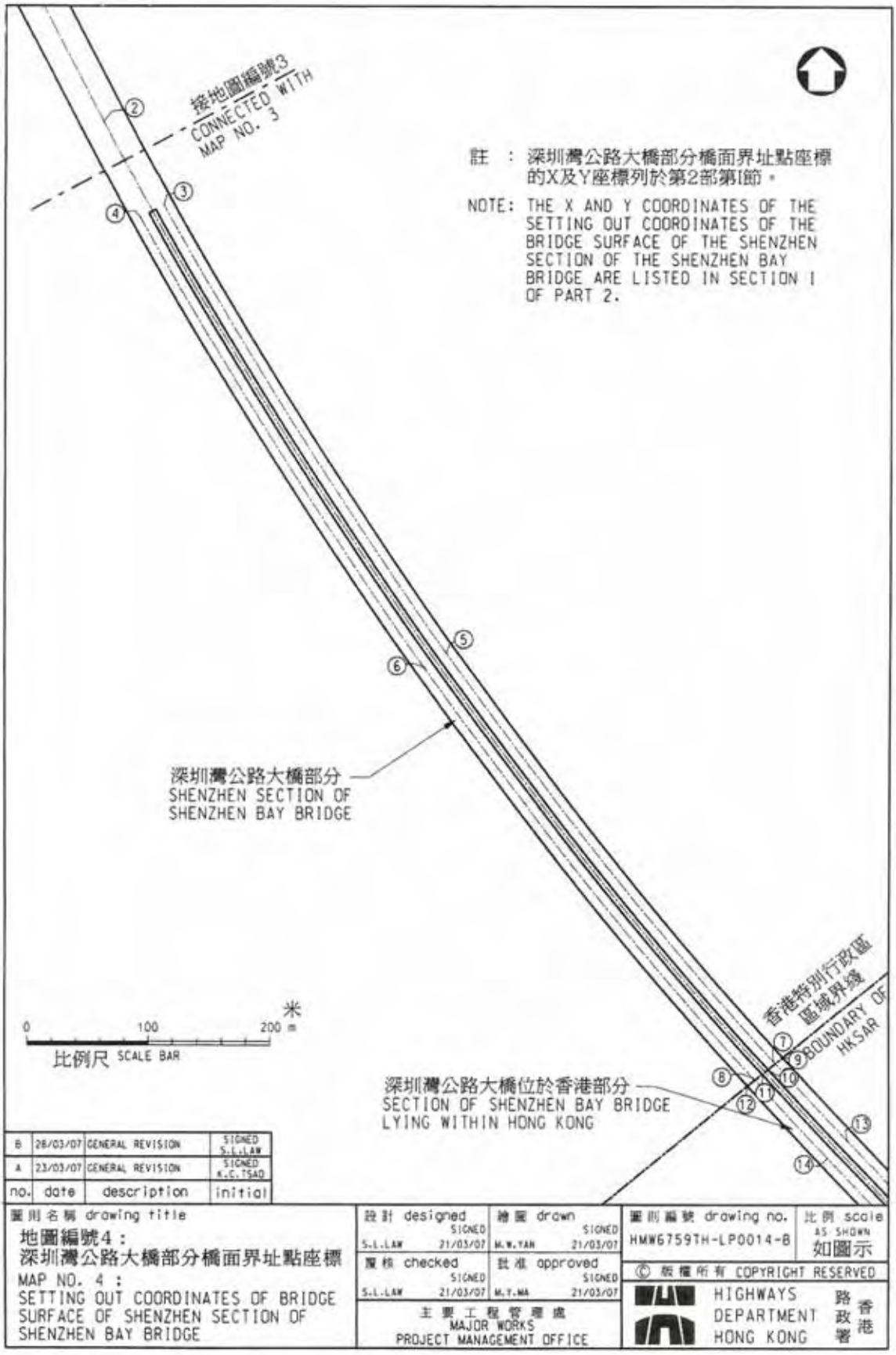


註 ：查驗區 (斜線範圍) 界址點座標的X 及Y座標列於第 1 部第 I 節。

Note : The X and Y coordinates of the setting out coordinates of the Clearance Area (hatched area) are listed in Section I of Part 1.

地圖編號 2: 查驗區界址點座標 MAP NO. 2 : SETTING OUT COORDINATES OF CLEARANCE AREA	drawn 繪圖 K.H. CHAN 陳健鴻	date 日期 03/2007	drawing no. 圖則編號 AB/6596/XA111	scale 比例 AS SHOWN 如圖示
	checked 覆核 W.K. YIU 姚惠強	date 日期 03/2007		
	office 辦事處 PROJECT MANAGEMENT BRANCH 工程策劃管理處		ARCHITECTURAL SERVICES DEPARTMENT 建築署	


B 匝道橋
RAMP B
C 匝道橋
RAMP C
A 匝道橋
RAMP A
D 匝道橋
RAMP D
E 匝道橋
RAMP E
深圳灣公路大橋部分
SHENZHEN SECTION OF
SHENZHEN BAY BRIDGE
接地圖編號4
CONNECTED WITH
MAP NO. 4
註 ： 深圳灣公路大橋部分橋面界址點座標的X及Y座標列於第2部第I節。
NOTE: THE X AND Y COORDINATES OF THE SETTING OUT COORDINATES OF THE BRIDGE SURFACE OF THE SHENZHEN SECTION OF THE SHENZHEN BAY BRIDGE ARE LISTED IN SECTION I OF PART 2.
0 100 200 m
米
比例尺 SCALE BAR
B 28/03/07 GENERAL REVISION SIGNED S.L.LAW
A 22/03/07 GENERAL REVISION SIGNED S.L.LAW
no. date description initial
圖則名稱 drawing title
地圖編號3：
深圳灣公路大橋部分橋面界址點座標
MAP NO. 3 :
SETTING OUT COORDINATES OF BRIDGE SURFACE OF SHENZHEN SECTION OF SHENZHEN BAY BRIDGE
設計 designed SIGNED S.L.LAW 21/03/07
繪圖 drawn SIGNED M.W.YAN 21/03/07
覆核 checked SIGNED S.L.LAW 21/03/07
批准 approved SIGNED M.Y.MA 21/03/07
主要工程管理處
MAJOR WORKS PROJECT MANAGEMENT OFFICE
圖則編號 drawing no. HMW6759TH-LP0013-B
比例 scale AS SHOWN 如圖示
© 版權所有 COPYRIGHT RESERVED
HIGHWAYS DEPARTMENT HONG KONG
路政署 香港


接地圖編號3
CONNECTED WITH
MAP NO. 3
註 ： 深圳灣公路大橋部分橋面界址點座標的X及Y座標列於第2部第I節。
NOTE: THE X AND Y COORDINATES OF THE SETTING OUT COORDINATES OF THE BRIDGE SURFACE OF THE SHENZHEN SECTION OF THE SHENZHEN BAY BRIDGE ARE LISTED IN SECTION I OF PART 2.
深圳灣公路大橋部分
SHENZHEN SECTION OF
SHENZHEN BAY BRIDGE
0 100 200 m 米
比例尺 SCALE BAR
香港特別行政區
區域界線
BOUNDARY OF
HKSAR
深圳灣公路大橋位於香港部分
SECTION OF SHENZHEN BAY BRIDGE
LYING WITHIN HONG KONG
B 28/03/07 GENERAL REVISION SIGNED S.L.LAW
A 23/03/07 GENERAL REVISION SIGNED K.C.TSAO
no. date description initial
圖則名稱 drawing title
地圖編號4：
深圳灣公路大橋部分橋面界址點座標
MAP NO. 4 :
SETTING OUT COORDINATES OF BRIDGE SURFACE OF SHENZHEN SECTION OF SHENZHEN BAY BRIDGE
設計 designed SIGNED S.L.LAW 21/03/07
繪圖 drawn SIGNED M.W.YAN 21/03/07
覆核 checked SIGNED S.L.LAW 21/03/07
批准 approved SIGNED M.Y.MA 21/03/07
主要工程管理處
MAJOR WORKS
PROJECT MANAGEMENT OFFICE
圖則編號 drawing no. HMW6759TH-LP0014-B
比例 scale AS SHOWN 如圖示
© 版權所有 COPYRIGHT RESERVED
HIGHWAYS DEPARTMENT HONG KONG 香港路政署

".

Schedule 2	Within the square brackets, by deleting "ss. 9 & 14" and substituting "s. 9 & Sch. 3".
Schedule 3	Within the square brackets, by deleting "s. 9 &".
Schedule 3	In the heading, by deleting "FOR PURPOSES OF SECTION 9 OF THIS ORDINANCE" and substituting "DESCRIBED FOR PURPOSES OF SECTION 1(d) OF SCHEDULE 2".
Schedule 3, section 1(a) and (b)	By adding "the Chief Executive (including the Chief Executive in Council)," before "a public officer,".
Schedule 4	Within the square brackets, by deleting ", 10 & 14" and substituting "& 10".

SHENZHEN BAY PORT HONG KONG PORT AREA BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable James TO Kun-sun

Clause	Amendment Proposed
Schedule 2, section 1 [NEGATIVED]	By adding – "(e) a policy of insurance required by – (i) section 4 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272); or (ii) section 40 of the Employees' Compensation Ordinance (Cap. 282).".

SHENZHEN BAY PORT HONG KONG PORT AREA BILL

COMMITTEE STAGE

Amendments to be moved by the Honourable James TO Kun-sun

Clause	Amendment Proposed
2(1) [NOT PROCEEDED WITH]	By adding – ""Insurance Authority" (保險業監督) means the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap. 41);".
New [NEGATIVED]	By adding in Part 5 – "**15A. Agreement to be enforced by Insurance Authority** The Insurance Authority shall enforce any agreement made between him and any insurer within the meaning of - (a) section 2 of the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272); or (b) section 3 of the Employees' Compensation Ordinance (Cap. 282), for the purposes of extending the territorial limit of a pre-existing right or obligation to include the Hong Kong Port Area.".

Annex II

BUILDING MANAGEMENT (AMENDMENT) BILL 2005

COMMITTEE STAGE

Amendments to be moved by the Secretary for Home Affairs

Clause	Amendment Proposed
2	By deleting the clause and substituting - **"2. Commencement** This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice published in the Gazette.".
3(c)	In the proposed definition of "member", by deleting "paragraph 2(1)(a) or 5(2)(a) of Schedule 2" and substituting "section 14(2) or paragraph 2(1)(b), 5(2)(a), 6 or 6A of Schedule 2".
New	By adding - **"3A. Section added** The following is added in Part I - **"2B. References to majority of votes**

For the avoidance of doubt, in determining whether a resolution is passed by a majority of the votes of owners, or members of a management committee, at a meeting convened under this Ordinance, the following shall be disregarded -

(a) owners or members, as the case may be, who are not present at the meeting;

(b) owners or members, as the case may be, who are present at the meeting but do not vote;

(c) blank or invalid votes;

(d) abstentions.".

4(a) In the proposed section 3(1)(c), by deleting "an owner" and substituting "one owner".

4(b) In the proposed section 3(2)(a), in the Chinese text, by deleting "多數票" and substituting "過半數票".

4(c) (a) In the proposed section 3(3)(a), by deleting "any person referred to in subsection (1)(b)" and substituting "the person referred to in subsection (1)(b) (if any)".

(b) In the proposed section 3(3)(b), by deleting "any person referred to in subsection (1)(a)" and substituting "the person referred to in subsection (1)(a) (if any)".

(c) In the proposed section 3(3)(c), by deleting "any person referred to in subsection (1)(a) or (b)" and substituting "the person referred to in subsection (1)(a) or (b) (if any)".

(d) By deleting the proposed section 3(4)(b) and substituting -

"(b) the resolutions that are to be proposed at the meeting and are related only to the appointment of a management committee and the incorporation of the owners.".

(e) In the proposed section 3(6), by deleting everything after "building" and substituting a full stop.

(f) In the proposed section 3(10)(a)(ii), by deleting "sealed or stamped with the seal or stamp" and substituting "impressed with the seal or chop".

(g) By deleting the proposed section 3(10)(b) and (c) and substituting -

"(b) the instrument appointing a proxy shall be lodged with the convenor at least 48 hours before the time for the holding of the meeting;

(c) the instrument appointing a proxy is valid only if it is made and lodged in accordance with paragraphs (a) and (b);

(d) a proxy appointed by an owner to attend and vote on behalf of the owner shall, for the purposes of the meeting, be treated as being the owner present at the meeting; and

(e) where an instrument appointing a proxy is lodged with the convenor, the convenor shall -

(i) acknowledge receipt of the instrument by leaving a receipt at the flat of the owner who made the instrument, or depositing the receipt in the letter box for that flat, before the time for the holding of the meeting;

(ii) determine the validity of the instrument in accordance with paragraph (c); and

(iii) display information of the owner's flat in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the information to remain so displayed until the conclusion of the meeting.".

(h) By adding -

"(11) Subject to subsection (12), the convenor shall keep all the instruments for the appointment of proxies that have been lodged with him for a period of at least 12 months after the conclusion of the meeting.

(12) Where a management committee is appointed at a meeting of owners convened under this section -

(a) the convenor shall deliver to the management committee immediately after the conclusion of the meeting all the instruments for the appointment of proxies that have been lodged with him; and

(b) the management committee shall keep the instruments for a period of at least 12 months after the conclusion of the meeting.

(13) Subject to subsection (14), where a meeting of owners convened under this section is adjourned, subsections (3), (4), (5), (6), (7), (8), (9), (10), (11) and (12) shall apply to the adjourned meeting as they apply to the original meeting.

(14) Where a meeting of owners convened under this section is adjourned, a valid instrument appointing a proxy made for the purposes of the original meeting shall remain valid for the purposes of the adjourned meeting unless -

(a) contrary intention is shown on the instrument;

(b) the instrument is revoked; or

(c) the instrument is replaced by a new instrument appointing a proxy.".

5(c) (a) In the proposed section 3A(3A), by deleting "any person referred to in section 3(1)(a) or (b)" and substituting "the person referred to in section 3(1)(a) or (b) (if any)".

(b) By deleting the proposed section 3A(3B)(b) and substituting -

"(b) the resolutions that are to be proposed at the meeting and are related only to the appointment of a management committee and the incorporation of the owners.".

(c) In the proposed section 3A(3D), by deleting everything after "building" and substituting a full stop.

(d) In the proposed section 3A(3H)(a)(ii), by deleting "sealed or stamped with the seal or stamp" and substituting "impressed with the seal or chop".

(e) By deleting the proposed section 3A(3H)(b) and (c) and substituting -

"(b) the instrument appointing a proxy shall be lodged with the convenor at least 48 hours before the time for the holding of the meeting;

(c) the instrument appointing a proxy is valid only if it is made and lodged in accordance with paragraphs (a) and (b);

(d) a proxy appointed by an owner to attend and vote on behalf of the owner shall, for the purposes of the meeting, be treated as being the owner present at the meeting; and

(e) where an instrument appointing a proxy is lodged with the convenor, the convenor shall -

(i) acknowledge receipt of the instrument by leaving a receipt at the flat of the owner who made the instrument, or depositing the receipt in the letter box for that flat, before the time for the holding of the meeting;

(ii) determine the validity of the instrument

in accordance with paragraph (c); and

(iii) display information of the owner's flat in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the information to remain so displayed until the conclusion of the meeting.".

(f) By adding -

"(3I) Subject to subsection (3J), the convenor shall keep all the instruments for the appointment of proxies that have been lodged with him for a period of at least 12 months after the conclusion of the meeting.

(3J) Where a management committee is appointed at a meeting of owners convened under this section -

(a) the convenor shall deliver to the management committee immediately after the conclusion of the meeting all the instruments for the appointment of proxies that have been lodged with him; and

(b) the management committee shall keep the instruments for a period of at least 12 months after the conclusion of the meeting.

(3K) Subject to subsection (3L), where a meeting of owners convened under this section is adjourned, subsections (3A), (3B), (3C), (3D), (3E), (3F), (3G), (3H), (3I) and (3J) shall apply to the adjourned meeting as they apply to the original meeting.

(3L) Where a meeting of owners convened under this section is adjourned, a valid instrument appointing a proxy made for the purposes of the original meeting shall remain valid for the purposes of the adjourned meeting unless -

(a) contrary intention is shown on the instrument;

(b) the instrument is revoked; or

(c) the instrument is replaced by a new instrument appointing a proxy.".

6(b) (a) In the proposed section 4(5), by deleting "any person referred to in section 3(1)(a) or (b)" and substituting "the person referred to in section 3(1)(a) or (b) (if any)".

(b) By deleting the proposed section 4(6)(b) and substituting -

"(b) the resolutions that are to be proposed at the meeting and are related only to the appointment of a management committee and the incorporation of the owners.".

(c) In the proposed section 4(8), by deleting everything after "building" and substituting a full stop.

(d) In the proposed section 4(12)(a)(ii), by deleting "sealed or stamped with the seal or stamp" and substituting "impressed with the seal or chop".

(e) By deleting the proposed section 4(12)(b) and (c) and substituting -

"(b) the instrument appointing a proxy shall be lodged with the convenor at least 48 hours before the time for the holding of the meeting;

(c) the instrument appointing a proxy is valid only if it is made and lodged in accordance with paragraphs (a) and (b);

(d) a proxy appointed by an owner to attend and vote on behalf of the owner shall, for the purposes of the meeting, be treated as being the owner present at the meeting; and

(e) where an instrument appointing a proxy is lodged with the convenor, the convenor shall -

(i) acknowledge receipt of the instrument by leaving a receipt at the flat of the owner who made the instrument, or depositing the receipt in the letter box for that flat, before the time for the holding of the meeting;

(ii) determine the validity of the instrument in accordance with paragraph (c); and

(iii) display information of the owner's flat in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the information to remain so displayed until the conclusion of the meeting.".

(f) By adding -

"(13) Subject to subsection (14), the convenor shall keep all the instruments for the appointment of proxies that have been lodged with him for a period of at least 12 months after the conclusion of the meeting.

(14) Where a management committee is appointed at a meeting of owners convened under this section -

(a) the convenor shall deliver to the management committee immediately after the conclusion of the meeting all the instruments for the appointment of proxies that have been lodged with him; and

(b) the management committee shall keep the instruments for a period of at least 12 months after the conclusion of the meeting.

(15) Subject to subsection (16), where a meeting of owners convened under this section is adjourned, subsections (5), (6), (7), (8), (9), (10), (11), (12), (13) and (14) shall apply to the adjourned meeting as they apply to the original meeting.

(16) Where a meeting of owners convened under this section is adjourned, a valid instrument appointing a proxy made for the purposes of the original meeting shall remain valid for the purposes of the adjourned meeting unless -

(a) contrary intention is shown on the instrument;

(b) the instrument is revoked; or

(c) the instrument is replaced by a new instrument appointing a proxy.".

9(c) In the proposed section 7(3)(e), by deleting "paragraph 2(1)(a)" and substituting "paragraph 2(1)(b)".

New By adding -

"9A. Incorporation

Section 8 is amended by adding -

"(1A) The Land Registrar shall not issue a certificate of registration to more than one corporation for a building in respect of which a deed of mutual covenant is in force.".

10 By deleting the clause and substituting -

"10. Land Registrar to maintain register of corporations

Section 12 is amended -

(a) in subsection (1), by adding ", and permit any person to inspect the register at any reasonable time to ascertain, in connection with the management of buildings, the particulars of a corporation entered in the register under

subsection (2)" after "corporations";

(b) in subsection (2) -

(i) by repealing paragraph (d) and substituting -

"(d) the name and address of -

(i) the chairman of the management committee;

(ii) the vice-chairman (if any) of the management committee;

(iii) the secretary of the management committee;

(iv) the treasurer of the management

committee;
and

(v) any other person who is a member of the management committee but does not fall within the description of subparagraph (i), (ii), (iii) or (iv);";

(ii) by adding -

"(da) the name and address of the insurance company with which the corporation has effected a policy of insurance under

section 28(1) and the period covered by the policy of insurance;".".

New By adding -

"10A. Powers of corporation generally

Section 14 is amended by adding -

"(4) Paragraph 6 of Schedule 2 shall, with necessary modifications, apply for the purposes of appointing an owner to replace a member of the management committee by the corporation under subsection (2), as it applies for the purposes of appointing an owner to fill a vacancy in a management committee by the corporation.".

11(a) (a) By deleting subparagraph (ii) and substituting -

"(ii) by repealing "secretary, treasurer and other holders of office of the management committee appointed in accordance with the Second Schedule" and substituting "secretary and treasurer of the management committee appointed under section 14(2) or paragraph 2(1), 5(2), 6 or 6A of Schedule 2";".

(b) By adding -

"(iii) by adding "in aggregate" before "not exceeding";".

13 By deleting the clause and substituting -

"13. Supplies, goods and services

Section 20A is amended -

(a) in subsection (2) -

(i) by repealing "Any" and substituting "Subject to subsection (2A), any";

(ii) in paragraph (a), by repealing "$100,000" and substituting "$200,000";

(iii) in paragraph (b), by repealing "as may be approved by the corporation by a resolution passed at a general meeting" and substituting "as the Authority may specify by notice in the Gazette";

(b) by adding -

"(2A) Subsection (2) does not apply to any supplies, goods or services which but for this subsection would be required to be procured by a corporation by invitation to tender (referred to in this subsection as "relevant supplies, goods or services") if -

(a) the relevant supplies, goods or services are of the same type as any supplies, goods or services which are for the time being supplied to the corporation by a supplier; and

(b) the corporation decides by a resolution of the owners passed at a general meeting of the corporation that

the relevant supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution, instead of by invitation to tender.

(2B) Where any supplies, goods or services are required under subsection (2)(b) to be procured by invitation to tender, whether a tender submitted for the purpose is accepted or not shall be decided by a resolution of the owners passed at a general meeting of the corporation.";

(c) by repealing subsection (3);

(d) by adding -

"(5) A contract for the procurement of any supplies, goods or services shall not be void by

reason only that it does not comply with subsection (1).

(6) Where any supplies, goods or services are required under subsection (2) to be procured by invitation to tender, a contract for the procurement of the supplies, goods or services which does not comply with subsection (2) or (2B) -

(a) subject to any resolution passed by the corporation under paragraph (b) or any order made by the court under subsection (7), shall not be void by reason only that it does not comply with subsection (2) or (2B);

(b) subject to any order made by the court under subsection (7), may be avoided by the corporation by a resolution of the owners passed at a general meeting of the corporation but only for the reason that it does not comply with subsection (2) or (2B).

(7) In any legal proceedings in relation to a contract for the procurement of any supplies, goods or services to which subsection (2) or (2B) applies, the court may make such orders (including whether the contract is void or voidable) and give such directions in respect of the rights and obligations of the contractual parties as the court

thinks fit having regard to all the circumstances of the case, including (but not limited to) the following factors –

(a) whether the supplies, goods or services have been procured by invitation to tender;

(b) whether a general meeting of the corporation has been convened to consider the procurement of the supplies, goods or services;

(c) whether the Code of Practice referred to in subsection (1) has been complied with;

(d) whether the contract has been split, for the sole purpose of avoiding the compliance of the

requirements in subsection (2) or (2B), from a contract which should have been made for the procurement of supplies, goods or services of greater value;

(e) whether the supplies, goods or services were urgently required;

(f) the progress of any activities or works in relation to the supplies, goods or services;

(g) whether the owners have benefited from the contract;

(h) whether the owners have incurred any financial loss due to

the contract and the extent thereof;

(i) whether the supplier of the supplies, goods or services under the contract has acted in good faith;

(j) whether the supplier of the supplies, goods or services under the contract has benefited from the contract; and

(k) whether the supplier of the supplies, goods or services under the contract has incurred any financial loss due to the contract and the extent thereof.

(8) For the purposes of subsection (7), where the court makes an order that the contract is voidable at the instance of the corporation, it shall also make an order that a general meeting of the corporation be convened and held in such manner as the court thinks fit, so as to decide whether the contract is to be avoided.

(9) For the avoidance of doubt, subject to section 29A, any person who enters into a contract for the procurement of any supplies, goods or services otherwise than in compliance with subsection (2) or, if applicable, subsection (2B) may be personally liable for any claims arising from the contract.".".

New By adding -

"13A. Section added

The following is added -

"**26A. Management committee to display information about legal proceedings**

A management committee shall notify the owners of any legal proceedings to which the corporation is a party -

(a) in the case of proceedings against the corporation, by displaying a notice containing the particulars of the proceedings in a prominent place in the building within 7 days of receiving any court documents commencing the proceedings, and causing the notice to remain so displayed for at least 7 consecutive days;

(b) in the case of proceedings by the corporation, by displaying a notice containing the particulars of the proceedings in a prominent place in the building within 7 days of issuing any court documents commencing the proceedings, and causing the notice to remain so displayed for at least 7 consecutive

days.".".

14 By deleting paragraph (a) and substituting -

"(a) in subsection (1), by repealing everything after "every 12 months," and substituting -

"financial statements which -

(a) shall be signed by -

(i) the chairman of the management committee; and

(ii) the secretary or the treasurer of the management committee;

(b) if subsection (1A) is applicable, shall be audited under that subsection; and

(c) together with the accountant's report made under subsection (1A), if any, shall be laid before the corporation at the annual general meeting of the corporation convened in accordance with paragraph 1(1) of Schedule 3.";".

14(c) In subparagraph (ii), by deleting the full stop and substituting a semicolon.

14 By adding -

"(d) in subsection (4), by adding "the inspection of any documents referred to in such accounts and records," after "records),".".

15 In the proposed section 29A(1), by adding "and in a reasonable manner" after "in good faith".

16 By deleting the clause and substituting -

"**16. Interpretation**

Section 34D is amended -

(a) in subsection (1) -

(i) by repealing the definition of "manager" and substituting -

""manager" (經理人), in relation to a building, means the DMC manager or any other person who for the time being is,

for the purposes of the deed of mutual covenant, managing the building;";

(ii) by repealing the definition of "owners' committee" and substituting -

""owners' committee" (業主委員會), in relation to a building, means the committee of owners (howsoever named) formed under or in accordance with the deed of mutual covenant in respect of the building.";

(iii) by adding -

""DMC manager" (公契經理人), in relation to a building, means the person who is specified in the deed of mutual covenant to

manage the building;";

(b) in subsection (3), by adding "and Schedule 7" after "this Part";

(c) by repealing subsection (4).".

17 By deleting the clause and substituting –

"17. **Right to establish corporation and conduct business**

Section 34J(4)(a) is amended by repealing "Part II" and substituting "section 3, 3A, 4 or 40C".".

19(a) In the proposed section 40C(3), in the Chinese text, by deleting "多數票" and substituting "過半數票".

19(c) In the proposed section 40C(4), by deleting "any person referred to in section 3(1)(a) or (b)" and substituting "the person referred to in section 3(1)(a) or (b) (if any)".

19(d) (a) By deleting the proposed section 40C(5)(b) and substituting –

"(b) the resolutions that are to be proposed at the meeting and are related only to the appointment of a management committee, the incorporation of the owners and the appointment of a building management

agent.".

(b) In the proposed section 40C(7), by deleting everything after "building" and substituting a full stop.

(c) In the proposed section 40C(11)(a)(ii), by deleting "sealed or stamped with the seal or stamp" and substituting "impressed with the seal or chop".

(d) By deleting the proposed section 40C(11)(b) and (c) and substituting -

"(b) the instrument appointing a proxy shall be lodged with the convenor at least 48 hours before the time for the holding of the meeting;

(c) the instrument appointing a proxy is valid only if it is made and lodged in accordance with paragraphs (a) and (b);

(d) a proxy appointed by an owner to attend and vote on behalf of the owner shall, for the purposes of the meeting, be treated as being the owner present at the meeting; and

(e) where an instrument appointing a proxy is lodged with the convenor, the convenor shall -

(i) acknowledge receipt of the instrument by leaving a receipt at the flat of the owner who made the instrument, or depositing the receipt in the letter box

for that flat, before the time for the holding of the meeting;

(ii) determine the validity of the instrument in accordance with paragraph (c); and

(iii) display information of the owner's flat in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the information to remain so displayed until the conclusion of the meeting.".

(e) By adding -

"(12) Subject to subsection (13), the convenor shall keep all the instruments for the appointment of proxies that have been lodged with him for a period of at least 12 months after the conclusion of the meeting.

(13) Where a management committee or building management agent is appointed at a meeting of owners convened under this section -

(a) the convenor shall deliver to the management committee or building management agent, as the case may be, immediately after the conclusion of the meeting all the instruments for the appointment of proxies that have been

lodged with him; and

(b) the management committee or building management agent, as the case may be, shall keep the instruments for a period of at least 12 months after the conclusion of the meeting.

(14) Subject to subsection (15), where a meeting of owners convened under this section is adjourned, subsections (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) shall apply to the adjourned meeting as they apply to the original meeting.

(15) Where a meeting of owners convened under this section is adjourned, a valid instrument appointing a proxy made for the purposes of the original meeting shall remain valid for the purposes of the adjourned meeting unless -

(a) contrary intention is shown on the instrument;

(b) the instrument is revoked; or

(c) the instrument is replaced by a new instrument appointing a proxy.".

20 By adding before paragraph (a) -

"(aa) in subparagraph (i), by repealing "and the

occupiers and owners of a building";

(ab) in subparagraph (iv), by repealing "and the occupiers and owners of a building";

(ac) by repealing subparagraph (v);".

20(a) By adding "insolvency or" before "winding up".

20 By deleting paragraph (b) and substituting -

"(b) by adding -

"(xi) the avoidance of any arrangements, agreements or understandings, or parts thereof, made or reached in respect of the liability of corporations towards third parties;".".

22 In the proposed Schedule 1A, by deleting Forms 1 and 2 and substituting -

"FORM 1

INSTRUMENT OF PROXY FOR MEETINGS OF OWNERS

Meeting of the owners of .....

(description of building)

I/We, ...(name(s) of owner(s)), being the owner(s) of .... (unit and address of building), hereby appoint .....(name of proxy) *[or failing him .....(name of alternative proxy)], as my/our proxy to attend and vote on my/our behalf at the meeting of the owners of the building described above, to be held on the ..... day of .... *[and at any adjournment thereof].

Dated this day of .

(Signature of owner(s))

*Delete where inapplicable.

FORM 2

INSTRUMENT OF PROXY FOR MEETINGS OF CORPORATION

The Incorporated Owners of .....

(description of building)

I/We, ...(name(s) of owner(s)),

being the owner(s) of .....

..... (unit and address of building),

hereby appoint .....(name of proxy)

*[or failing him .....(name of

alternative proxy)], as my/our proxy to attend and vote on

my/our behalf at the [*general meeting/annual general meeting]

of The Incorporated Owners of .....

(description of building), to be held on the ..... day

of ..... *[and at any adjournment thereof].

Dated this day of .

(Signature of owner(s))

*Delete where inapplicable.".

23(b) By adding "18," after "14,".

23 By deleting paragraph (c) and substituting -

"(c) by repealing paragraph 1 and substituting -

"1. (1) The number of members of a management committee shall be as follows -

(a) where the building contains not more than 50 flats, the number of members shall be not less than 3;

(b) where the building contains more than 50 flats but not more than 100 flats, the number of members shall be not less than 7;

(c) where the building contains more than 100 flats, the number of members shall be not less than 9.

(2) Subject to subparagraph (1), the number of members of a management committee shall be decided by a resolution of the owners under paragraph 2(1)(a).

(3) Subject to subparagraph (1), the number of members of a management committee as decided under paragraph 2(1)(a) may be changed from time to time by a resolution of the owners passed at a general meeting of the corporation (except a general meeting of the corporation convened under paragraph 6A(1)).

(4) A management committee shall include the tenants' representative (if any) appointed under section 15(1).";".

23(d) (a) In subparagraph (i), by deleting the proposed paragraph 2(1) and substituting -

"(1) At a meeting of owners convened under section 3, 3A, 4 or 40C, after a management committee is appointed -

(a) the owners shall, by a resolution passed by a majority of the votes of the owners, decide the number of members of the management committee;

(b) subject to subparagraph (2), the owners shall, by resolution, appoint, from amongst the owners, the members of the management committee;

(c) the owners shall, by resolution -

(i) appoint a person, from amongst the members of the management committee, as the chairman of the management committee;

(ii) appoint a person, whether or not he is a member of the management committee, as the secretary of the management committee; and

(iii) appoint a person, whether or not he is a member of the management committee, as the treasurer of the management committee; and

(d) the owners may, by resolution, appoint a person, from amongst the members of the management committee, as the vice-chairman of the management committee.".

(b) In subparagraph (ii) -

(i) by adding -

"(2A) For the purposes of appointing the members of a management committee under subparagraph (1)(b) -

(a) where the number of candidates is not more than the number of members of the management committee to be appointed, the candidates shall be deemed to be appointed as members of the management committee, and a resolution to that effect shall be deemed to be passed under subparagraph (1)(b) accordingly;

(b) where there are more candidates than the number of members of the management committee to be appointed -

(i) the votes shall be given and counted in accordance with the simple or relative majority system of voting (otherwise known as the "first past the post" system of voting), under

which -

(A) an owner may vote for not more than the number of members of the management committee to be appointed; and

(B) the candidates to be appointed as members of the management committee are those who obtain the greatest number of votes and then the next greatest and so on until the required number of members of the management

committee is appointed;

(ii) if, after the counting is finished, a member of the management committee is still to be appointed and the most successful candidates remaining have an equal number of votes, the person who presides at the meeting shall determine the result by drawing lots, and the candidate on whom the lot falls is to be appointed as a member of the management committee.

(2B) For the purposes of appointing the chairman, vice-chairman (if applicable), secretary and treasurer of a management

committee under subparagraph (1)(c) and (d) -

(a) where there is only one candidate for the office of the chairman, vice-chairman, secretary or treasurer of the management committee, the candidate shall be deemed to be appointed as the chairman, vice-chairman, secretary or treasurer, as the case may be, of the management committee, and a resolution to that effect shall be deemed to be passed under subparagraph (1)(c) or (d), as the case may be, accordingly;

(b) where there is more than one candidate for the office of the chairman, vice-chairman, secretary or treasurer of the management committee -

(i) the votes shall be given and counted in accordance with the

simple or relative majority system of voting (otherwise known as the "first past the post" system of voting), under which the candidate to be appointed as the chairman, vice-chairman, secretary or treasurer, as the case may be, of the management committee is the candidate who obtains the greatest number of votes;

(ii) if, after the counting is finished, the most successful candidates for the office of the chairman, vice-chairman, secretary or treasurer of the

management committee have an equal number of votes, the person who presides at the meeting shall determine the result by drawing lots, and the candidate on whom the lot falls is to be appointed as the chairman, vice-chairman, secretary or treasurer, as the case may be, of the management committee.";

(ii) in the proposed paragraph 2(3) -

(A) by deleting "subparagraph (1)(a)" and substituting "subparagraph (1)(b)";

(B) by deleting "subparagraph (1)(c) or (d)" and substituting "subparagraph (1)(c)(ii) or (iii)";

(iii) in the proposed paragraph 2(4), by deleting "subparagraph (1)" and substituting "subparagraph (1)(b), (c) and (d)";

(iv) in the proposed paragraph 2(4)(a), by deleting "section 3(8), (9) and (10)" and substituting "section 3(7), (8), (9), (10), (11), (12), (13) and (14)";

(v) in the proposed paragraph 2(4)(b), by deleting "section 3A(3F), (3G) and (3H)" and substituting "section 3A(3E), (3F), (3G), (3H), (3I), (3J), (3K) and (3L)";

(vi) in the proposed paragraph 2(4)(c), by deleting "section 4(10), (11) and (12)" and substituting "section 4(9), (10), (11), (12), (13), (14), (15) and (16)";

(vii) in the proposed paragraph 2(4)(d), by deleting "section 40C(9), (10) and (11)" and substituting "section 40C(8), (9), (10), (11), (12), (13), (14) and (15)".

23(e) By deleting "paragraph 2(1)(a)" and substituting "paragraph 2(1)(b)".

23(f) (a) In subparagraph (i) -

(i) in the proposed paragraph 4(1), by deleting "paragraphs 2(1)(a) and 5(2)(a)" and substituting "section 14(2) and paragraphs 2(1)(b), 5(2)(a), 6 and 6A";

(ii) in the proposed paragraph 4(1)(a) -

(A) by deleting "proposed";

(B) in the English text, by deleting "the person's creditors" and substituting "his creditors";

(iii) in the proposed paragraph 4(1)(b), by adding "in Hong Kong or any other place" after "an offence".

(b) By deleting subparagraph (ii) and substituting -

"(ii) in subparagraph (2) -

(A) in sub-subparagraph (d), by adding "or (if he is the secretary or the office of the secretary is vacant) the chairman of the management committee" after "committee";

(B) in sub-subparagraph (e), by repealing ", or ceases to be qualified to be a member according to the deed of mutual covenant (if any), as the case may be";".

(c) In subparagraph (iii) -

(i) in the proposed paragraph 4(3) -

(A) by deleting "paragraph 5(2)(a)" and substituting "section 14(2) or paragraph 2(1)(b), 5(2)(a), 6 or 6A";

(B) by deleting "14 days" and substituting "21 days";

(ii) by adding -

"(3A) A member of the management committee who fails to comply with subparagraph (3) shall cease to be such member.";

(iii) in the proposed paragraph 4(4) -

(A) by deleting "section 7(3)(e) or";

(B) by deleting "14 days" and substituting "21 days";

(iv) by deleting the proposed paragraph 4(5) and substituting -

"(5) The secretary of the management committee shall -

(a) after receiving a declaration by virtue of subparagraph (3) from a member of the management committee appointed under

paragraph 2(1)(b), cause the declaration to be lodged with the Land Registrar within the period of 28 days referred to in section 7(1);

(b) within 28 days after receiving a declaration by virtue of subparagraph (3) from a member of the management committee appointed under section 14(2) or paragraph 5(2)(a), 6 or 6A, or by virtue of subparagraph (4), lodge with the Land Registrar the declaration.".

23(g) (a) In subparagraph (ii), by deleting the proposed paragraph 5(2) and substituting -

"(2) At an annual general meeting of a corporation at which the members of the management committee retire under subparagraph (1) -

(a) subject to subparagraph (2A), the corporation shall, by a resolution passed at the general meeting, appoint, from amongst the owners, the members of a new

management committee;

(b) the corporation shall, by a resolution passed at the general meeting -

(i) appoint a person, from amongst the members of the new management committee, as the chairman of the new management committee;

(ii) appoint a person, whether or not he is a member of the new management committee, as the secretary of the new management committee; and

(iii) appoint a person, whether or not he is a member of the new management committee, as the treasurer of the new management committee; and

(c) the corporation may, by a resolution passed at the general meeting, appoint a person, from amongst the members of the new management committee, as the vice-chairman of the new management committee.".

(b) In subparagraph (iii), by deleting the proposed paragraph 5(2A) and substituting -

"(2A) The tenants' representative appointed under section 15(1) shall be deemed to be appointed by the corporation as a member of the new management committee.

(2B) For the purposes of appointing the members of the new management committee under subparagraph (2)(a) -

(a) where the number of candidates is not more than the number of members of the new management committee to be appointed, the candidates shall be deemed to be appointed as members of the new management committee, and a resolution to that effect shall be deemed to be passed under subparagraph (2)(a) accordingly;

(b) where there are more candidates than the number of members of the new management committee to be appointed -

(i) the votes shall be given and counted in accordance with the simple or relative majority system of voting (otherwise known as the "first past the post" system of voting), under

which -

(A) an owner may vote for not more than the number of members of the new management committee to be appointed; and

(B) the candidates to be appointed as members of the new management committee are those who obtain the greatest number of votes and then the next greatest and so on until the required number of members of the new management committee is appointed;

(ii) if, after the counting is finished, a member of the new management committee is still to be appointed and the most successful candidates remaining have an equal number of votes, the person who presides at the

meeting shall determine the result by drawing lots, and the candidate on whom the lot falls is to be appointed as a member of the new management committee.

(2C) For the purposes of appointing the chairman, vice-chairman (if applicable), secretary and treasurer of the new management committee under subparagraph (2)(b) and (c) -

(a) where there is only one candidate for the office of the chairman, vice-chairman, secretary or treasurer of the new management committee, the candidate shall be deemed to be appointed as the chairman, vice-chairman, secretary or treasurer, as the case may be, of the new management committee, and a resolution to that effect shall be deemed to be passed under subparagraph (2)(b) or (c), as the case may be, accordingly;

(b) where there is more than one candidate for the office of the chairman, vice-chairman, secretary or treasurer of the

new management committee -

(i) the votes shall be given and counted in accordance with the simple or relative majority system of voting (otherwise known as the "first past the post" system of voting), under which the candidate to be appointed as the chairman, vice-chairman, secretary or treasurer, as the case may be, of the new management committee is the candidate who obtains the greatest number of votes;

(ii) if, after the counting is finished, the most successful candidates for the office of the chairman, vice-chairman, secretary or treasurer of the new management committee have an equal number of votes, the person who presides at the meeting shall determine the result by drawing lots, and the

candidate on whom the lot falls is to be appointed as the chairman, vice-chairman, secretary or treasurer, as the case may be, of the new management committee.".

(c) In subparagraph (iv), in the proposed paragraph 5(4), by deleting "subparagraph (2)(c) or (d)" and substituting "subparagraph (2)(b)(ii) or (iii)".

23 By adding -

"(ga) in paragraph 5A -

(i) by adding "or (3A)" after "paragraph 4(2)";

(ii) by repealing "if the secretary is not readily available, any other member" and substituting "if the office of the secretary is vacant, the chairman";

(gb) in paragraph 6 -

(i) by repealing subparagraph (1) and substituting -

"(1) Notwithstanding paragraph 1, subject to subparagraph (1A) and paragraph 6A, a vacancy in a management committee which occurs other than by

reason of the expiration of the term of office may be filled by the corporation or the management committee under subparagraph (3), (4) or (5), as the case requires.";

(ii) by repealing subparagraph (1A) and substituting -

"(1A) If the vacancy is caused by the tenants' representative ceasing to be a member of the management committee for whatever reason, the vacancy may be filled by the approved association (within the meaning of section 15(2)) appointing a new tenants' representative under section 15(1).";

(iii) by repealing subparagraphs (1B) and (2);

(iv) by adding -

"(3) If the vacancy occurs in the office of a member of a management committee (other than a vacancy caused by the tenants' representative ceasing to be a member of the management committee) -

(a) the corporation may, by a resolution passed at a general meeting of the corporation, appoint an owner to fill the vacancy till the next annual general meeting of the corporation at which the members of the management committee retire under paragraph 5(1); or

(b) if no general meeting of the corporation has been so convened or no appointment is made to fill the vacancy at a general meeting so convened, the management committee may appoint an owner to fill the vacancy till the next general meeting of the corporation.

(4) If the vacancy occurs in the office of the chairman or vice-chairman of a management committee -

(a) the corporation may, by a resolution passed at a general meeting of the corporation, appoint a person, from amongst the members of the management committee, to fill the vacancy till the next annual general meeting of the corporation at which the members of the management committee retire under paragraph 5(1); or

(b) if no general meeting of the corporation has been so convened or no appointment is made to fill the vacancy at a general meeting so convened, the members of

the management committee may appoint a person, from amongst themselves, to fill the vacancy till the next general meeting of the corporation.

(5) If the vacancy occurs in the office of the secretary or treasurer of a management committee -

(a) the corporation may, by a resolution passed at a general meeting of the corporation, appoint a person, whether or not he is a member of the management committee, to fill the vacancy till the next annual general meeting of the corporation at which the members of the management committee retire under paragraph 5(1); or

(b) if no general meeting of the corporation has been so convened or no appointment is made to fill the vacancy at a general meeting so convened, the management committee may appoint a person, whether or not he is a member of the management committee, to fill the vacancy till the next general meeting of the corporation.

(6) A person who is not a member of a management committee does not by virtue of his appointment as the secretary or treasurer of the management committee under subparagraph (5)(a) or (b), as the case may be, become a member of the management committee.

(7) For the purposes of filling the vacancy occurring in the office of a member of a management committee under

subparagraph (3)(a) -

(a) where the number of candidates is not more than the number of members of the management committee to be appointed, the candidates shall be deemed to be appointed as members of the management committee, and a resolution to that effect shall be deemed to be passed under subparagraph (3)(a) accordingly;

(b) where there are more candidates than the number of members of the management committee to be appointed -

(i) the votes shall be given and counted in accordance with the simple or

relative majority system of voting (otherwise known as the "first past the post" system of voting), under which -

(A) an owner may vote for not more than the number of members of the management committee to be appointed; and

(B) the candidates to be

appointed as members of the management committee are those who obtain the greatest number of votes and then the next greatest and so on until the required number of members of the management committee is appointed;

(ii) if, after the counting is finished, a member of the management committee is still to be appointed and the most successful candidates remaining have an equal number of votes, the person who presides at the meeting shall determine the result by drawing lots, and the candidate on whom the lot falls is to be

appointed as a member of the management committee.

(8) For the purposes of filling the vacancy occurring in the office of the chairman or vice-chairman of a management committee under subparagraph (4)(a), or the office of the secretary or treasurer of a management committee under subparagraph (5)(a) -

(a) where there is only one candidate for the office of the chairman, vice-chairman, secretary or treasurer of the management committee, the candidate shall be deemed to be appointed as the chairman, vice-chairman, secretary or treasurer, as the case may be, of the management committee, and a resolution to that

effect shall be deemed to be passed under subparagraph (4)(a) or (5)(a), as the case may be, accordingly;

(b) where there is more than one candidate for the office of the chairman, vice-chairman, secretary or treasurer of the management committee -

(i) the votes shall be given and counted in accordance with the simple or relative majority system of voting (otherwise known as the "first past the post" system of voting), under

which the candidate to be appointed as the chairman, vice-chairman, secretary or treasurer, as the case may be, of the management committee is the candidate who obtains the greatest number of votes;

(ii) if, after the counting is finished, the most successful candidates for the office of the chairman, vice-chairman, secretary or

treasurer of the management committee have an equal number of votes, the person who presides at the meeting shall determine the result by drawing lots, and the candidate on whom the lot falls is to be appointed as the chairman, vice-chairman, secretary or treasurer, as the case may be, of the management committee.";

(gc) by adding -

"6A. (1) Notwithstanding paragraphs 1 and 9, where the number of vacancies occurring in the offices of members of a management committee is more than 50% of the number of members of the management committee as decided under paragraph 2(1)(a) or, if that number of members has been changed under paragraph 1(3), 50% of the number of members so changed -

(a) the chairman of the management committee may convene a general meeting of the corporation for the sole purpose of filling the vacancies in the management committee; or

(b) if one of the vacancies occurs in the office of the chairman of the management committee, the remaining members of the management committee may appoint a person, from amongst themselves, to convene a general meeting of the corporation for the sole purpose of filling the vacancies in the management

committee.

(2) For the purposes of filling the vacancies in a management committee under subparagraph (1) -

(a) paragraph 6(3)(a), (4)(a), (5)(a), (6), (7) and (8) shall apply as it applies where the number of vacancies occurring in the offices of members of a management committee is not more than 50% of the number of members of the management committee as decided under paragraph 2(1)(a) or, if that number of members has been changed under paragraph 1(3), 50% of the number of members so changed; and

(b) Schedule 3 (except paragraph 1 of that Schedule) shall, subject to the following modifications, apply as it applies to a general meeting of the corporation convened by a management committee -

(i) where the general meeting of the corporation is convened under subparagraph (1)(a) and one of the vacancies occurs in the office of the secretary of the management committee, the references to the secretary of the management committee in Schedule 3 shall be construed as references to the chairman of the management committee;

(ii) where the general meeting of the corporation is convened under subparagraph (1)(b), the references to the chairman of the management committee in Schedule 3 shall be construed as references to the person

appointed under that subparagraph to convene the meeting;

(iii) where the general meeting of the corporation is convened under subparagraph (1)(b) and one of the vacancies occurs in the office of the secretary of the management committee, the references to the secretary of the management committee in Schedule 3 shall be construed as references to the person appointed under that subparagraph to convene the meeting.";".

23(h) (a) By adding before subparagraph (i) -

"(ia) in subparagraph (1)(b), by adding ", and held within 21 days of receiving such request" after "such request";".

(b) In subparagraph (i), in the proposed paragraph 8(2), by adding "and (if the treasurer of the management committee is not a member of the management committee) the treasurer of the management committee, and display the notice of meeting in a prominent place in the building" before the full stop.

(c) By deleting subparagraph (iii) and substituting -

"(iii) by repealing subparagraph (2A) and substituting -

"(2A) The notice of meeting may be given -

(a) by delivering it personally to the member of the management committee or (if the treasurer of the management committee is not a member of the management committee) the treasurer of the management committee;

(b) by sending it by post to the member or, if applicable, the treasurer, at his last known address; or

(c) by leaving it at the flat of the member or, if applicable, the treasurer or depositing it in the letter box for that flat.";".

(d) By deleting subparagraph (iv) and substituting -

"(iv) by repealing subparagraph (3);".

23 By adding -

"(ha) by repealing paragraph 10(4B) and substituting -

"(4B) The secretary shall display the minutes certified in accordance with subparagraph (4A) in a prominent place in the building within 28 days of the date of the meeting of the management committee to which the minutes relate, and cause the minutes to remain so displayed for at least 7 consecutive days.";".

23 By deleting paragraph (j) and substituting -

"(j) in paragraph 11 -

(i) in subparagraph (1) -

(A) by repealing "Notwithstanding any provision in a deed of mutual covenant to the contrary, where" and substituting "Where";

(B) by repealing everything after "in his own right" and substituting "and paragraph 4(1), (2)(a), (b), (c),

(d) and (f), (3), (3A) and (4) shall apply to the authorized representative.";

(ii) by repealing subparagraph (2) and substituting -

"(2) If an authorized representative ceases to be a member of a management committee under paragraph 4(2)(a), (b), (c), (d) or (f) or (3A), the body corporate may appoint another authorized representative in his place, and paragraph 4(1), (2)(a), (b), (c), (d) and (f), (3), (3A) and (4) shall apply to that other authorized representative.".

24 By adding -

"(ba) in paragraph 1(2), by adding ", and hold the general meeting within 45 days of receiving such request" after "such request";".

24(c) By deleting subparagraph (iv) and substituting -

"(iv) by repealing subparagraph (2) and substituting -

"(2) The secretary shall also, at least 14 days before the date of the meeting of the corporation, display the notice of meeting in a prominent place in the building.";".

24(d) By deleting subparagraph (iii) and substituting -

"(iii) in subparagraph (3) -

(A) by adding "and paragraphs 5(2), (2B) and (2C), 6(3)(a), (4)(a), (5)(a), (7) and (8) and 6A(2)(a) of Schedule 2" after "section 10(1)";

(B) by repealing "majority of votes of the owners" and substituting "majority of the votes of the owners voting either personally or by proxy";".

24(e) (a) In subparagraph (ii), by deleting "sealed or stamped with the seal or stamp" and substituting "impressed with the seal or chop".

(b) In subparagraph (iii), in the proposed paragraph 4(3), by deleting "24 hours" and substituting "48 hours".

(c) By adding -

"(iv) by adding -

"(4) The instrument appointing a proxy is valid only if it is made and lodged in accordance with subparagraphs (2) and (3).

(5) Where an instrument appointing a proxy is lodged with the secretary of the management committee -

(a) the secretary shall -

(i) acknowledge receipt of the instrument by leaving a receipt at the flat of the owner who made the instrument, or depositing the receipt in the letter box for that flat, before the time for the holding of the meeting; and

(ii) display information of the owner's flat in a prominent place in the place of the meeting before the

time for the holding of the meeting, and cause the information to remain so displayed until the conclusion of the meeting; and

(b) the chairman of the management committee or, if he is absent, the person who presides at the meeting, shall determine the validity of the instrument in accordance with subparagraph (4).

(6) The management committee shall keep all the instruments for the appointment of proxies that have been lodged with the secretary of the management committee for a period of at least 12 months after the conclusion of the meeting.";".

24 By adding -

"(ea) by repealing paragraph 5(2) and substituting -

"(2) A proxy appointed by an owner to attend and vote on behalf of the owner at a meeting of the corporation shall, for the purposes of the meeting, be treated as being the owner present at the meeting.";

(eb) by adding -

"5A. (1) Subject to subparagraph (2), where a meeting of the corporation convened under paragraph 1 is adjourned, paragraphs 2, 3, 4 and 5 shall apply to the adjourned meeting as they apply to the original meeting.

(2) Where a meeting of the corporation convened under paragraph 1 is adjourned, a valid instrument appointing a proxy made for the purposes of the original meeting shall remain valid for the purposes of the adjourned meeting unless -

(a) contrary intention is shown on the instrument;

(b) the instrument is revoked; or

(c) the instrument is replaced by a new instrument appointing a proxy.";

(ec) by repealing paragraph 6(3) and substituting -

"(3) The secretary shall display the minutes certified in accordance with subparagraph (2) in a prominent place in the building within 28 days of the date of the general meeting to which the minutes relate, and cause the minutes to remain so displayed for at least 7 consecutive days.";".

24(f) By deleting the full stop at the end and substituting a semicolon.

24 By adding -

"(g) by repealing paragraph 9.".

25 By deleting paragraph (b) and substituting -

"(b) by repealing the heading and substituting -

"MAXIMUM ALLOWANCES PAYABLE TO CHAIRMAN, VICE-CHAIRMAN, SECRETARY AND TREASURER OF MANAGEMENT COMMITTEE";".

25(c) By deleting the full stop at the end and substituting a semicolon.

25 By adding -

"(d) in the heading of column 3, by adding "for each person" after "per month".".

27(b) By adding "& Sch. 11" after "27 & 42".

27 By adding -

"(ba) by adding -

"1A. The management committee shall -

(a) at the request of not less than 5% of the owners, permit those owners or any person appointed by those owners to inspect any bills, invoices, vouchers, receipts or other documents referred to in paragraph 1 at any reasonable time; and

(b) permit any person authorized by the court to inspect any bills, invoices, vouchers, receipts or other documents referred to in paragraph 1 at any reasonable time.

1B. For the purposes of paragraph 1A(b), an owner may apply to the court for an order authorizing the owner, or any other person named in the application, to inspect any bills, invoices, vouchers, receipts or other documents referred to in paragraph 1.

1C. The court may make an order under paragraph 1B only if it is satisfied that -

(a) the application is made in good faith; and

(b) the inspection applied for is for a proper purpose.";

(bb) in paragraph 2, by repealing everything after "that period" and substituting ", display a copy of the summary in a prominent place in the building, and cause it to remain so displayed for at least 7 consecutive days.";".

28 By adding -

"(aa) in paragraph 1(2) -

(i) in sub-subparagraph (b), by adding ", and cause it to remain so displayed for at least 7 consecutive days" after "in the

building";

(ii) in sub-subparagraph (e), by adding ", and cause it to remain so displayed for at least 7 consecutive days" after "in the building";".

28 By deleting paragraph (b) and substituting -

"(b) in paragraph 2 -

(i) in subparagraph (2), by repealing everything after "expenditure" and substituting "and a balance sheet in respect of that period, display a copy of the summary and balance sheet in a prominent place in the building, and cause it to remain so displayed for at least 7 consecutive days.";

(ii) in subparagraph (3), by adding ", display a copy of the income and expenditure account and balance sheet in a prominent place in the building, and cause it to remain so displayed for at least 7 consecutive days" after "that year";

(iii) in subparagraph (6), by repealing the full stop and substituting -

"and -

(a) permit any owner, at any reasonable time, to inspect the audited income and expenditure account and balance sheet and the report made by the accountant or auditor in respect of the income and expenditure account and balance sheet; and

(b) on payment of a reasonable copying charge, supply any owner with a copy of the audited income and expenditure account and balance sheet, or the report

made by the accountant or auditor in respect of the income and expenditure account and balance sheet, or both, as requested by the owner.";".

28(e) By deleting the proposed paragraph 5(1) and (2) and substituting -

"(1) Subject to subparagraphs (2) and (3), the manager shall not enter into any contract for the procurement of any supplies, goods or services the value of which exceeds or is likely to exceed the sum of $200,000 or such other sum in substitution therefor as the Authority may specify by notice in the Gazette unless -

(a) the supplies, goods or services are procured by invitation to tender; and

(b) the procurement complies with the Code of Practice referred to in section 20A(1).

(2) Subject to subparagraph (3), the manager shall not enter into any contract for the procurement of any supplies, goods or services the value of which exceeds or is likely to exceed a sum which is equivalent to 20% of the annual budget or such other percentage in substitution therefor as the Authority may specify by notice in the Gazette unless -

(a) if there is a corporation -

(i) the supplies, goods or services are procured by invitation to tender;

(ii) the procurement complies with the Code of Practice referred to in section 20A(1); and

(iii) whether a tender submitted for the purpose is accepted or not is decided by a resolution of the owners passed at a general meeting of the corporation, and the contract is entered into with the successful tenderer; or

(b) if there is no corporation -

(i) the supplies, goods or services are procured by invitation to tender;

(ii) the procurement complies with the Code of Practice referred to in section 20A(1); and

(iii) whether a tender submitted for the purpose is accepted or not is decided by a resolution of the owners passed at a meeting of owners convened and conducted in accordance with the deed of mutual covenant, and the contract is entered into with the successful tenderer.

(3) Subparagraphs (1) and (2) do not apply to any supplies, goods or services which but for this subparagraph would be required to be procured by invitation to tender (referred to in this subparagraph as "relevant supplies, goods or services") -

(a) where there is a corporation, if -

(i) the relevant supplies, goods or services are of the same type as any supplies, goods or services which are for the time being supplied to the corporation by a supplier; and

(ii) the corporation decides by a resolution of the owners passed at a general meeting of the corporation that the relevant supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution, instead of by invitation to tender; or

(b) where there is no corporation, if -

(i) the relevant supplies, goods or services are of the same type as any supplies, goods or services which are for the time being supplied to the owners by a supplier; and

(ii) the owners decide by a resolution of the owners passed at a meeting of owners convened and conducted in accordance with the deed of mutual covenant that the relevant supplies, goods or services shall be procured from that supplier on such terms and conditions as specified in the resolution, instead of by invitation to tender.".

28(g) (a) By deleting subparagraph (i).

(b) By deleting subparagraph (ii) and substituting -

"(ii) by repealing subparagraph (1) and substituting -

"(1) Subject to subparagraph (5A), at a general meeting convened for the purpose, a corporation may, by a resolution -

(a) passed by a majority of the votes of the owners voting either personally or by proxy; and

(b) supported by the owners of not less than 50% of the shares in aggregate,

terminate by notice the DMC manager's appointment without compensation.";".

(c) By deleting subparagraph (v) and substituting -

"(v) by repealing subparagraph (4);".

(d) By adding -

"(via) in subparagraph (5A)(b), by repealing "subparagraph (1)" and substituting "subparagraph (1)(b)";

(vib) by adding -

"(5B) If a contract for the appointment of a manager other than a DMC manager contains no provision for the termination of the manager's appointment, subparagraphs (1), (2), (3) and (5A) apply to the termination of the manager's appointment as they apply to the termination of a DMC manager's appointment.

(5C) Subparagraph (5B) operates without prejudice to any other power there may be in a contract for the appointment of a manager other than a DMC manager to terminate the

appointment of the manager.";".

(e) By deleting subparagraph (vii).

28 By adding -

"(h) in paragraph 8 -

(i) by renumbering it as paragraph 8(2);

(ii) by adding -

"(1) Subject to subparagraph (2), if the manager's appointment ends for any reason, he shall, as soon as practicable after his appointment ends, and in any event within 14 days of the date his appointment ends, deliver to the owners' committee (if any) or the manager appointed in his place any movable property in respect of the control, management and administration of the building that is under his control or in his custody or possession, and that belongs to the corporation (if any) or the owners.";

(iii) by repealing subparagraph (2)(b) and substituting -

"(b) deliver to the owners' committee (if any) or the manager appointed in his place any books or records of accounts, papers, documents and other records which are required for the purposes of sub-subparagraph (a) and have not been delivered under subparagraph (1).";

(i) by adding -

"9. **Communication among owners**

The manager shall consult (either generally or in any particular case) the corporation at a general meeting of the corporation and adopt the approach decided by the corporation on the channels of communication among owners on any business relating to the management of the building.".

29 By adding -

"(ea) by repealing paragraph 8 and substituting -

"8. A meeting of owners may be convened by -

(a) the owners' committee;

(b) the manager; or

(c) an owner appointed to convene such a meeting by the owners of not less than 5% of the shares in aggregate.";".

29(f) In the proposed paragraph 9, in the English text, by deleting "or persons".

29 By adding -

"(ha) by repealing paragraph 12 and substituting -

"12. A meeting of owners shall be presided over by the chairman of the owners' committee or, if the meeting is convened under paragraph 8(b) or (c), the person convening the meeting.";".

29 By deleting paragraph (j) and substituting -

"(j) by repealing paragraph 14 and substituting -

"14. (1) An instrument appointing a proxy shall be in the form set out in Form 1 in

Schedule 1A, and -

(a) shall be signed by the owner; or

(b) if the owner is a body corporate, shall, notwithstanding anything to the contrary in its constitution, be impressed with the seal or chop of the body corporate and signed by a person authorized by the body corporate in that behalf.

(2) The instrument appointing a proxy shall be lodged with the chairman of the owners' committee or, if the meeting is convened under paragraph 8(b) or (c), the person convening the meeting at least 48 hours before the time for the holding of the meeting.

(3) A proxy appointed by an owner to attend and vote on behalf of the owner shall, for the purposes of the meeting, be treated as being the owner present at the meeting.".".

32 By deleting paragraph (b) and substituting -

"(b) by repealing paragraph (a) and substituting -

"(a) sections 3(8), 3A(3F), 4(10) and 40C(9) and paragraphs 1(2) and 5 of Schedule 3, paragraph 1A of Schedule 6 and paragraph 11 of Schedule 8 are specified;".".

33 By adding before paragraph (a) -

"(aa) in the heading, by repealing "**Obligations**" and substituting "**Matters**";".

33(a) (a) By deleting subparagraph (i) and substituting -

"(i) by repealing ", on behalf of the corporation and the occupiers and owners of a building,";".

(b) In subparagraph (ii), in the Chinese text, by deleting "該建築物的" and substituting "有關建築物的".

33 By deleting paragraph (b).

33 By deleting paragraph (c) and substituting -

"(c) in subsection (3), by repealing ", on behalf of the corporation and the occupiers and owners of a building,";".

33(e) In the English text, by deleting "the treasurer" and substituting "The treasurer".

33(f) In the proposed section 28(6A), by deleting "effected the policy of insurance" and substituting "effected a policy of insurance under subsection (1)".

Part 4 By deleting the Part.

36(3) In paragraph (a), by deleting "an annual general meeting" and substituting "a general meeting".

39 By deleting paragraph (b) and substituting -

"(b) in subsection (3) -

(i) by repealing "多數票" and substituting "過半數票";

(ii) by repealing "委任" and substituting "委出";".

40 By deleting paragraph (b) and substituting -

"(b) in subsection (4) -

(i) by repealing "多數票" and substituting "過半數票";

(ii) by repealing "委任" and substituting "委出".".

44 By deleting the clause and substituting -

"44. **Change of name**

Section 10(1) is amended -

(a) by repealing "the Third Schedule" and substituting "Schedule 3";

(b) in paragraph (a), by repealing "多數票" and substituting "過半數票";

(c) in paragraph (b), by repealing "a majority of".".

46 By deleting the clause and substituting -

"46. **Tenants' representative**

Section 15(1) is amended -

(a) by repealing "by resolution of not less than 50% of the votes" and substituting "by a resolution passed by a majority of the votes";

(b) by repealing "親自出席或委派代表出席投票" and substituting "由親自投票或委派代表投票".".

49 By deleting paragraph (a).

New By adding -

"**49A. Insurance policy to be made available by management committee for inspection**

Section 28(2) is amended by repealing "副本費" and substituting "複印費".".

New By adding -

"**50A. Powers and duties of an administrator**

Section 32(2) is amended by repealing "determination" and substituting "termination".".

51 By deleting paragraph (a) and substituting -

"(a) in subsection (1), by repealing "the Seventh and Eighth Schedules" and substituting "Schedules 7 and 8";".

51 By deleting paragraph (b) and substituting -

"(b) in subsection (2) -

(i) by repealing "the Seventh Schedule" and substituting "Schedule 7";

(ii) by repealing "多數票" and substituting "過半數票";".

51(c) By deleting subparagraph (ii) and substituting -

"(ii) in paragraph (b), by repealing "在業主親自出席或委派代表出席的按照公契召開及進行的業主大會上以多數票" and substituting "在按照公契召開和進行的業主大會上由親自投票或委派代表投票的業主以過半數票".".

51 By deleting paragraph (d).

60 By deleting paragraph (d).

60 By adding -

"(e) in paragraph 10(2), by repealing "多數票" and substituting "過半數票".".

61 By deleting the clause and substituting -

"61. Meetings and procedure of corporation

The Third Schedule is amended, in paragraph 5(1) -

(a) in sub-subparagraph (a), by repealing "全部業主的20%的人數" and substituting "業主人數的20%";

(b) in sub-subparagraph (b), by repealing "全部業主的10%的人數" and substituting

"業主人數的10%".".

64 By deleting paragraph (c) and substituting -

"(c) in paragraph 7(5A)(b) -

(i) by adding "in aggregate" after "the shares" where it twice appears;

(ii) by repealing "不少於50%份數" and substituting "份數不少於50%".".

65 By deleting the clause and substituting -

"65. **Terms added if consistent with deed of mutual covenant**

The Eighth Schedule is amended, in paragraph 11A(b), by adding "in aggregate" after "the shares".".

66 By deleting the clause and substituting -

"66. **Enumeration of owners**

Schedule 11 is amended, in paragraph (b), in column 2 of item 1, by repealing "共有人" and substituting "共同擁有人".".

68 By deleting the clause and substituting -

"68. **Forms**

The Schedule is amended, in Form 27 -

(a) by adding "in aggregate" after "the shares";

(b) by repealing "委任" and substituting "委出".".

Appendix 1

REQUEST FOR POST-MEETING AMENDMENT

The Financial Secretary requested the following post-meeting amendment in respect of Question 6

Lines 4 to 5, third paragraph, page 41 of the Confirmed version

To amend "…… increased from US$66.7 billion in end 2005 to US$91 billion in end 2006 ……" as "…… increased from US$667 billion in end 2005 to US$910 billion in end 2006 ……" (Translation)

(Please refer to lines 6 to 7, second paragraph, page 5840 of this Translated version)

Appendix 2

REQUEST FOR POST-MEETING AMENDMENTS

The Secretary for the Environment, Transport and Works requested the following post-meeting amendments

Lines 1 to 2, fifth paragraph, page 235 of the Confirmed version

To amend "…… the Hong Kong Government has actually joined a United Nations Convention on greenhouse gases since the middle of '90s and we have been trying to reduce greenhouse gases to the 1990 level, and the target was attained after a period of time. ……" as "…… the Hong Kong Government has actually added reference to the requirements of a United Nations Convention on greenhouse gases since the middle of '90s, and we have been trying to reduce greenhouse gases to the 1990 level, and the target had been attained after a period of time. ……" (Translation)

(Please refer to lines 1 to 4, fourth paragraph, page 6112 of this Translated version)

Line 1, first paragraph, page 236 of the Confirmed version

To amend "…… so the figure has been declining gradually year by year. ……" as " …… and set energy conservation goals in 2003, so the figure has been declineing gradually year by year. ……" (Translation)

(Please refer to lines 6 to 7, first paragraph, page 6113 of this Translated version)

Line 1, fifth paragraph, page 236 of the Confirmed version

To amend "…… which was implemented in 2003-2004 ……" as "…… which was implemented in 2005-2006 ……" (Translation)

(Please refer to lines 14 to 15, first paragraph, page 6113 of this Translated version)

Appendix I

WRITTEN ANSWER

Written answer by the Secretary for Housing, Planning and Lands to Mr LEE Wing-tat's supplementary question to Question 3

As regards two 40- to 50-storey buildings in Stubbs Road and a some 70-storey property development in Hung Hom, the developments referred to by the Member are The Summit and Highcliff on Stubbs Road and Harbourfront Landmark in Hung Hom. The Summit and Harbourfront Landmark were built on land sale sites sold in 1995 and 1997 respectively. The Highcliff site was an old lot with land exchange executed in 1972. There were no building height restrictions on the above sites under either the relevant outline zoning plans (OZPs), Conditions of Sale (in respect of The Summit and Harbourfront Landmark) or land lease (in respect of Highcliff) when the building plans were subsequently approved by the Building Authority under the Buildings Ordinance in 1993 for Highcliff, 1997 for The Summit and 1998 for Harbourfront Landmark. Building height restrictions applicable to these sites were imposed on the draft The Peak Area OZP in February 2001 (that is, about four and eight years after the building plans of The Summit and Highcliff were approved respectively) to protect the ridgeline and landscape, and on the draft Hung Hom OZP in April 2001 (that is, three years after the building plan of Harbourfront Landmark was approved) to ensure a "stepped height profile" for building developments in the reclamation area and protect the Kowloon ridgelines and urban townscape.