

1 HONG KONG LEGISLATIVE COUNCIL -- 8 May 1991

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 8 May 1991

The Council met at half-past Two o'clock

PRESENT

HIS EXCELLENCY THE GOVERNOR (PRESIDENT)

SIR DAVID CLIVE WILSON, G.C.M.G.

THE CHIEF SECRETARY

THE HONOURABLE SIR DAVID ROBERT FORD, K.B.E., L.V.O., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE SIR PIERS JACOBS, K.B.E., J.P.

THE ATTORNEY GENERAL

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.

THE HONOURABLE STEPHEN CHEONG KAM-CHUEN, C.B.E., J.P.

THE HONOURABLE CHEUNG YAN-LUNG, C.B.E., J.P.

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

THE HONOURABLE MARIA TAM WAI-CHU, C.B.E., J.P.

DR THE HONOURABLE HENRIETTA IP MAN-HING, O.B.E., J.P.

THE HONOURABLE CHAN YING-LUN, O.B.E., J.P.

THE HONOURABLE MRS RITA FAN HSU LAI-TAI, O.B.E., J.P.

THE HONOURABLE CHENG HON-KWAN, O.B.E., J.P.

THE HONOURABLE CHUNG PUI-LAM, J.P.

THE HONOURABLE HO SAI-CHU, O.B.E., J.P.

THE HONOURABLE HUI YIN-FAT, O.B.E., J.P.

THE HONOURABLE DAVID LI KWOK-PO, O.B.E., J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE PANG CHUN-HOI, M.B.E.

THE HONOURABLE POON CHI-FAI, J.P.

PROF. THE HONOURABLE POON CHUNG-KWONG, J.P.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, J.P.

THE HONOURABLE MRS ROSANNA TAM WONG YICK-MING, O.B.E., J.P.

THE HONOURABLE TAM YIU-CHUNG

DR THE HONOURABLE DANIEL TSE, C.B.E., J.P.

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

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

THE HONOURABLE MICHAEL LEUNG MAN-KIN, J.P.  
SECRETARY FOR TRANSPORT

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

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE MICHAEL CHENG TAK-KIN, J.P.

THE HONOURABLE DAVID CHEUNG CHI-KONG, J.P.

THE HONOURABLE RONALD CHOW MEI-TAK

THE HONOURABLE MRS NELLIE FONG WONG KUT-MAN, J.P.

THE HONOURABLE MRS PEGGY LAM, M.B.E., J.P.

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE

THE HONOURABLE LAU WAH-SUM, O.B.E., J.P.

DR THE HONOURABLE LEONG CHE-HUNG

THE HONOURABLE LEUNG WAI-TUNG, J.P.

THE HONOURABLE JAMES DAVID McGREGOR, O.B.E., I.S.O., J.P.

THE HONOURABLE KINGSLEY SIT HO-YIN

THE HONOURABLE MRS SO CHAU YIM-PING, J.P.

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

THE HONOURABLE MRS ELSIE TU, C.B.E.

THE HONOURABLE PETER WONG HONG-YUEN, J.P.

THE HONOURABLE MRS ANSON CHAN, J.P.  
SECRETARY FOR ECONOMIC SERVICES

THE HONOURABLE PETER TSAO KWANG-YUNG, C.B.E., C.P.M., J.P.  
SECRETARY FOR HOME AFFAIRS

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, I.S.O., J.P.  
SECRETARY FOR HEALTH AND WELFARE

THE HONOURABLE MARTIN JOHN LEWIS, J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

THE HONOURABLE IAN ROBERT STRACHAN, J.P.  
SECRETARY FOR SECURITY

THE HONOURABLE CHRISTINE CHOW KWAN-TAI, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

ABSENT

THE HONOURABLE PETER POON WING-CHEUNG, O.B.E., J.P.

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

THE HONOURABLE MARTIN GILBERT BARROW, O.B.E.

IN ATTENDANCE

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR LAW KAM-SANG

Papers

The following papers were laid on the table pursuant to Standing Order 14(2):

Subject

Subsidiary Legislation L.N. No.

Merchant Shipping (Prevention and Control of  
Pollution) Ordinance 1990

Merchant Shipping (Prevention of Oil  
Pollution) (Amendment) Regulations 1991..... 177/91

Marine Fish Culture Ordinance

Fish Culture Zone (Designation) (Amendment)  
Order 1991.....  
178/91

Interpretation and General Clauses Ordinance

Rectification of Errors Order 1991.....  
179/91

Shipping and Port Control Ordinance

Shipping and Port Control (Specification of  
Areas) Notice 1991.....  
180/91

Oral answers to questions

Access to tertiary education

1. PROF. POON asked: In view of the sharp increases of tertiary education fees beginning 1993-94, will the Administration inform this Council what measures will be taken to maintain the declared principle that no one will be barred from access to tertiary education because of lack of means?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, under the Local Student Finance Scheme, grants and loans are available to students studying at University and Polytechnic Grants Committee-funded institutions. Grants are provided to cover tuition fees and other academic expenses while loans are for living expenses.

The scheme is means-tested but not subject to any cash limit. The level of assistance will automatically be adjusted in the light of inflation and changes in fee level. When tuition fees are increased in 1993-94, the maximum grant payable under the scheme will be increased from the present \$18,260 to \$28,500. This should ensure that no student who has been offered a place will be denied of tertiary education because of lack of means.

PROF. POON: Sir, I understand that there are needy cases which for reasons beyond the control of the students do not satisfy the criteria for receiving assistance under the scheme. So will the Secretary inform this Council what steps the Government will take to simplify the application procedures so that more students can be benefitted from this scheme?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, we accept that there will always be students whose personal and family circumstances are unique and particularly complex and may require special consideration. There is sufficient flexibility under the existing scheme for such cases to be looked at. As a matter of fact, the Joint Committee on Student Finance has a Review Sub-committee to look at these special cases. As regards the simplification of procedures, the Joint Committee advises the Government on the policy of the scheme as well as monitoring on the operation of it. Since 1990 the Committee has introduced a number of improvements to simplify the procedure. The first relates to family income. Prior to 1990, incomes of parents and all siblings were in fact included in the calculation of family income, but since 1990 a simple family approach has been introduced and only the income of parents and 30% of the income of those unmarried children living in the same household are taken into account. Of course, in exceptional circumstances where students receive no financial support, these are dealt with flexibly. Apart from this simple family approach, we have also introduced a system of interviewing applicants in alternate years instead of every year. For the coming year, we hope to abolish the requirement to submit applications under statutory declarations, and we also hope to simplify

and to speed up the payment procedure.

MR DAVID CHEUNG: Sir, will the Secretary inform this Council whether Government will consider more non-means-tested loans?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Joint Committee on Student Finance has recently set up a working group to study the need for supplementary schemes. The working group consists of representatives from tertiary institutions as well as student representatives. The group will assess in depth the feasibility and the financial implications of possible supplementary schemes, such as the Institutional Financial Aid Scheme or non-means-tested loan scheme.

MR PETER WONG: Sir, the Secretary has informed us that the maximum grant is likely to rise by some 56%. Can she confirm that the actual provision expected to be granted by the Finance Committee will also be increased by this amount?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as I mentioned in my main reply, the scheme is not cash-limited. We estimate that in 1993-94 the expenditure on grants will increase from the present \$45 million to \$270 million as a result of the increase in fees.

PROF. POON: Sir, as far as I know, three surveys on student expenditure were conducted in 1979, 1982 and 1988 respectively. Will the Secretary inform this Council whether the current Grant and Loan Scheme has taken into account the latest findings in the 1988 survey?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Joint Committee on Student Finance will keep the scheme under regular review. For example, the loans available under the scheme are regularly adjusted to take into account inflation.

Entry visa

2. MR PANG asked (in Cantonese): Will Government inform this Council:

(a) how many visitors who had obtained a visa for entry into Hong Kong were refused entry by the Immigration Department in the past three years;

(b) under what circumstances visitors holding a valid visa will be refused entry into Hong Kong; and

(c) whether there is any channel for such visitors to appeal against the decision and ask for an adjudication by an independent body before they are removed from Hong Kong? If not, what are the reasons?

SECRETARY FOR SECURITY: Sir, the number of visitors who held visas for Hong Kong but were subsequently refused permission to land was 575 in 1988, 614 in 1989, 305 in 1990 and 94 so far this year.

The possession of a visa does not guarantee that the visitor will definitely be admitted into Hong Kong. Visas do not confer the right to land, nor the right of abode. Therefore, under section 11(1) of the Immigration Ordinance, an immigration officer may refuse a visitor leave to enter Hong Kong, even if he holds a visa.

Such a visitor can, for example, be refused admission if it is discovered that false representations were employed or material facts were concealed for the purpose of obtaining the visa; or that there had been a change of circumstances since the visa was issued which removed the basis of the holder's claim to admission.

Any person aggrieved by a decision of an immigration officer may lodge an objection under section 53(1) of the Immigration Ordinance. In the case of a visitor with a visa for Hong Kong, this should be by notice in writing to the Chief Secretary within 14 days. The objection will then be considered by the Governor in Council who may vary, reverse, or completely change the original decision. However, making an objection in this way does not give a visitor the right to remain here pending a decision. This is made clear in section 53(7) of the Immigration Ordinance.

MR PANG (in Cantonese): Sir, according to the third point mentioned in the reply, a visitor can be refused admission into Hong Kong notwithstanding that he is a visa holder, if there had been a change in circumstances since the visa was issued. I want to ask the Government whether the Immigration Department, on discovering a change in circumstances after the visa was issued, will inform the holder before his arrival



at Hong Kong that his visa has been cancelled, and advise him not to come to Hong Kong?

SECRETARY FOR SECURITY: Sir, as a matter of general practice the Immigration Department will try to inform an applicant as soon as possible by writing to him direct or by contacting his sponsor in Hong Kong. However, in the case of visas issued by overseas visa posts on behalf of Hong Kong, the Immigration Department may not have the opportunity to do so prior to the arrival of the visitor.

MR TIEN: Sir, could the Administration confirm to this Council that even in other democratic countries such as the United States and the United Kingdom, their immigration officials have the right to refuse entry to a person with a valid visa without having to give a specific reason on the spot, and that Hong Kong's position is no different in that comparison?

SECRETARY FOR SECURITY: Sir, yes. The position is that it is possible in other countries, for example the United Kingdom, for a person to be refused right of entry even when he has a visa and not to be given a reason for not being allowed to enter.

MR TAI: Sir, may I ask the Administration whether political reasons are ever grounds for refusal of entry to persons who have obtained a valid visa for Hong Kong?

SECRETARY FOR SECURITY: Sir, the answer is yes.

MR MCGREGOR: Sir, can a British embassy without reference to Hong Kong refuse to issue a visa to a person intending to visit Hong Kong? If so, for what reason?

SECRETARY FOR SECURITY: Sir, to my knowledge the answer to that question is no.

MR PANG (in Cantonese): The Secretary said just now that the Immigration Department

did try to contact the sponsors in Hong Kong of visitors whose visas had been approved by the Department; can I know the number of such cases in the past and do we have any this year?

SECRETARY FOR SECURITY: Sir, we do not keep statistics of the numbers of people who have been informed that their visa has been cancelled.

Karaoke centres

3. MRS TU asked: Will the Government inform this Council whether it will consider requiring karaoke centres to be operated in licensed premises with proper sound proofing, ventilation and fire safety installations and so on to ensure public safety and to minimize nuisance to nearby residents?

SECRETARY FOR HOME AFFAIRS: Sir, at present, there is no requirement for karaoke centres to obtain specific licences for their operation. However, many karaoke centres are located within establishments which provide food and/or liquor for consumption. Any such establishment is required to obtain a licence under the Public Health and Municipal Services Ordinance before operating. As a pre-requisite for obtaining such a licence, they are required to obtain fire safety and structural safety certificates from the relevant authorities. Thus these establishments will be required to comply with specified fire safety, building and ventilation requirements. Some karaoke centres are run as clubs, the premises of which will be subject to the Clubs (Safety of Premises) Bill which I am introducing into this Council this afternoon.

Noise inside karaoke centres is controlled under the Noise Control Ordinance administered by the Environmental Protection Department, while noise nuisance caused by the patrons outside these centres is subject to control under the Summary Offences Ordinance by the police.

The Administration is now looking into the practicability of licensing control of karaoke activities in the licensing system which may require compliance with specific safety requirements and other requirements as specified in the licensing conditions.

MRS TU: Sir, would Government agree that the police cannot deal with numerous complaints night after night by residents living near karaoke centres in unlicensed premises? And will Government take urgent action to impose licensing conditions before we have serious fires, an increase in mental disorders, and incidents that disturb public order?

SECRETARY FOR HOME AFFAIRS: Sir, if I may take the second part of the question first, the answer is yes. With regard to the first part of the question, I think the problem probably has been somewhat exaggerated because in 1990 we received a total of 102 complaints and these resulted in seven warning letters and five noise abatement notices being issued and one of the operators concerned being prosecuted and fined \$10,000.

Spiraling prices of flats

4. MR DAVID CHEUNG asked: In view of the unreasonably high increase of prices of flats in recent months, will Government inform the Council:

(a) what the factors leading to such hefty increase are;

(b) whether Government intends to exercise any sort of control; if not

(c) what measures Government will take to help the people of Hong Kong to own their own flats; in order to encourage them to stay?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the recent increase in the prices of flats appear to have been caused by a combination of factors, such as renewed interest in purchases after the Gulf War; rising affluence stimulating further demand for both first-time home ownership and trade-ups; lowering of mortgage interest; general relaxation in bank loans; increase in the cost of construction and labour; marketing strategies of property developers; and an expectation that prices may go up further.

Government policy is not to intervene in a free market economy, or exercise pricing control on properties. However, with current market conditions in mind, a number of measures have been taken to reduce unscrupulous trading in the property

market, and to improve pre-sale arrangements. The Administration is currently assessing these measures to see if further action is warranted.

A number of proven schemes continue to encourage home ownership. They include the Home Ownership Scheme, the Public Sector Participation Scheme, and the Home Purchase Loan Scheme; and also a proposal that sitting tenants in rental flats in Housing Authority estates purchase their own flats.

MR DAVID CHEUNG: Sir, will the Secretary inform this Council whether Government would consider speculation as being a factor?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, speculation certainly was not being lost sight of in the latter part of my main answer when I referred to an expectation that prices may go up further. But there are three points to note on speculation. Firstly, the prices of property in Hong Kong, as in other parts of the world, are subject to fluctuation. Secondly, the recently publicized increase in the prices of flats is mainly confined to the pre-sale of small to medium size flats in some desirable residential developments. And thirdly, one other point to make is that any rapid increase in flat prices cannot be sustained if it goes beyond the purchasers' affordability, and there are already signs of more stable property prices in the last couple of weeks.

MISS LEUNG (in Cantonese): Sir, is legislative control one of the measures the Government is considering in order to prevent speculative activities by real estates agents in the sale of pre-completed flats?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, this is one of the things that we are currently looking at and mention was made of this in a recent ICAC report. The Consumer Council is also studying this. We would have to think through these proposals thoroughly because legislative control will not necessarily prevent speculation. We would have to weigh up what legislation and its enforcement can achieve and whether the effort would merit the expense, bearing in mind that speculative activities ebb and flow on the economic tide. And legislation, as we see it in this sort of exercise, would only be used as a last resort where all other administrative means have failed and where it can be shown that legislation would

substantially achieve the objectives.

MR TIEN: Sir, in a free market economy, prices, for example, of flats increase and decrease solely according to supply and demand. Will the Administration confirm that it is difficult to define and act upon what purports to be an unreasonably high increase or unreasonably high decrease in a free market economy which we strive to maintain up to and after 1997?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I think I could confirm that, Sir.

MR MICHAEL CHENG (in Cantonese): The Secretary has mentioned in his main reply that marketing strategies of property developers is one of the factors leading to the hefty increase in flat prices. Could I ask whether the Government is prepared to act against this man made factor; if so, what means or counter strategies will be employed?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the marketing strategy that I referred to in my main answer relates to publicity schemes of developers when they put things out on the market. The second part of Mr CHENG's question asks of counter strategies. In this regard, there are certain things we have already been doing in fact. For example, we have required developers to provide adequate advance notice to potential buyers regarding the price and availability of flats; we have required developers to introduce a system of registration during pre-sale; and we have allowed an increase in the initial deposit payable by the potential purchaser upon signing the Preliminary Purchase Agreement, as well as an increase in the forfeiture amount if the potential purchaser fails to execute the formal Agreement for Sale and Purchase. Now these measures or strategies, if I may so put it, have gone some way towards improving the order during pre-sale and the general environment of the pre-sale. But we are now looking to see whether those measures are enough and what other measures we should therefore take.

MR DAVID CHEUNG: Sir, assuming as expected that the prices may go up further, will the Secretary inform this Council whether in Government's view, or in his view, the current price level of flats is still within the affordability of the general public

-- and I emphasize general public?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, that is a difficult question to answer because affordability varies from person to person and I cannot really say whether people can or cannot afford it. But what I can say is that, as I also said in an earlier answer a moment ago, there are already signs of stable property prices in the last couple of weeks and the increased supply of residential property, estimated at 60 000 units in the next 18 months, should also help to stabilize property prices. So I would hope that the sort of situation that I was being asked to respond to will not actually eventuate.

MISS LEUNG (in Cantonese): Sir, could the Secretary inform this Council whether the recent spate of speculative activities in the sale of pre-completed flats has reached the stage that warrants government intervention?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, the Government is already, as I have explained, taking some action on this. But we feel that this is something where there is room for looking to see if there are extra things we can do. We are in close contact with the Real Estate Developers Association and the Consumer Council to look at various additional measures, other than the ones that I have spelt out, to see whether they are practical and enforceable.

MR ARCULLI: Sir, firstly, before I ask the question, I would like to declare my interest as a director of several property companies in Hong Kong. Would the Secretary please advise whether in discussions with the Real Estate Developers Association reasonable and practical proposals put forward by the Administration, or indeed by the Consumer Council, have been accepted by the Real Estate Developers Association?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, we are still in contact with the Real Estate Developers Association. I think it would be fair to say that they are having no difficulty with some of the proposals but some difficulty with others. So we are continuing our discussions in that regard.

MR MCGREGOR: Sir, speculation is a normal function of any market but not really when the speculators wear white gloves. Does the Secretary accept that speculation in flat prices is to some extent affected by organized crime? If so, what will the Government do to combat what could be in fact a very serious problem?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, we have discussed this problem before in this Chamber. In fact the measures that I described for improving the sale procedures of the pre-sale of uncompleted flats were devised with the speculative organization by triads in mind. So they serve a dual purpose. These measures that I described, as I said, have gone some way towards improving the order during pre-sale.

MR POON CHI-FAI (in Cantonese): Sir, after a recent speculative sale of flats, the Secretary for Planning, Environment and Lands said on a public occasion for environmental protection that the Government would not intervene or consider it necessary to take further action on that. Would the Government inform this Council whether these words are in contradiction to the concern of and the measures taken by the Government as stated in the second paragraph of the main answer? What actions will the Government take to prevent misleading and subjective assertions of this kind to be made in public as these remarks may indirectly make things worse?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I am not aware that anything I have said has contradicted what anybody else or myself have said in this regard, Sir.

Investments by the Land Fund

5. MR CHAN asked (in Cantonese): With reference to the recent investment of the Land Fund in buying a 6% stake in Hong Kong International Terminals Limited, will the Administration inform this Council whether the Government was aware of the investment and had encouraged it?

FINANCIAL SECRETARY: Sir, investments by the Special Administrative Region Land Fund

are a matter for the Land Fund Trustees. The Hong Kong Government was aware of this investment, but it is not for the Hong Kong Government to encourage or discourage any particular investment.

MR CHAN (in Cantonese): Sir, may I request the Government to consult the British Government on whether this investment complies with the stipulations regarding the use of the Land Fund set out in Annex III of the Sino-British Joint Declaration?

FINANCIAL SECRETARY: Sir, there are various communications between the Hong Kong Government and Her Majesty's Government. I cannot give Members the details of any communications but I have noted what Mr CHAN has said.

MR MCGREGOR: Sir, can the Government state the parameters of the investment decisions open to the Trust, for example, could the Government invite the Land Fund to invest in the PADS project, and could the Fund be used to purchase foreign assets, including those in China?

FINANCIAL SECRETARY: Sir, the circumstances in which the Fund can be used for investment in various infrastructural projects are set out in the Joint Declaration and the activities of the Land Fund are governed, as Members will recollect, by a trust document which has been published.

DR LEONG: Sir, can the Administration inform this Council whether there are any important communications to the Hong Kong Government with regard to the Land Fund made, for example, to ensure that the Fund's investment does not upset the linked exchange rate?

FINANCIAL SECRETARY: Sir, I am afraid that any communications that take place are confidential and I cannot give particulars this afternoon.

MR PETER WONG: Sir, can the Financial Secretary inform this Council how the Land Fund



Trustees discharge their duty to account to both the Hong Kong Government and to the people of Hong Kong over their activities?

FINANCIAL SECRETARY: Sir, I think I am right in saying that there is no direct avenue of accountability. As I said in answer to an earlier question, the activities of the Land Fund are governed by a trust document and that trust document has been published. May I refer Mr Wong to that document?

MR MCGREGOR: Sir, can the Financial Secretary advise on the actual ownership of the funds in the Land Fund? Do the funds belong to Hong Kong since the money was raised here, and could they be used to improve Hong Kong's credit worthiness on the international financial market, for example?

HIS EXCELLENCY THE PRESIDENT: The last part of that just slips it in as something for which the Hong Kong Government might conceivably be responsible. Can I remind Members of the Standing Orders which require that questions have to be on a matter for which the Hong Kong Government is responsible? With that caveat I shall ask the Financial Secretary to answer. And one further point, Mr MCGREGOR, before the Financial Secretary answers. When you asked it you could have put in "could the Hong Kong Government enquire whether", or words to that effect, which would have made it more easily in order.

MR MCGREGOR: Sir, I meant to put that in.

HIS EXCELLENCY THE PRESIDENT: Thank you.

FINANCIAL SECRETARY: Sir, I think the existence of the Land Fund is well known. I referred to it myself when I delivered my Budget. The very fact that it exists is something that may well be taken into account by possible lenders to the Hong Kong Government.

MR ANDREW WONG: Sir, is the Government prepared to make representations to Her Majesty's Government in connection with this particular investment as it is clearly in violation of Article 6 of Annex III of the Sino-British Joint Declaration which states that "the HKSAR Government's share of the premium income shall be deposited in banks incorporated in Hong Kong and shall not be drawn on except for the financing of land development and public works in Hong Kong"?

FINANCIAL SECRETARY: Sir, I do not want to debate with Mr WONG what he said about the breach of the Joint Declaration. So my answer to his question should not be taken as any sort of admission. If certain events come to our knowledge which we consider it is appropriate to inform Her Majesty's Government, we will do so.

Traffic congestion in the North District

6. MR CHEUNG YAN-LUNG asked (in Cantonese): In view of the serious traffic congestion experienced in the North District as a result of a large number of vehicles using the Man Kam To Crossing, will Government inform this Council

(a) what are the causes for the drivers' reluctance to use the Sha Tau Kok and Lok Ma Chau Crossings; and

(b) what measures will be taken to encourage drivers to use the two crossings mentioned in (a) above so as to alleviate the pressure on the Man Kam To Crossing?

SECRETARY FOR TRANSPORT: Sir, of the three border crossings, Man Kam To is the oldest and well-established route. It provides the most direct and convenient link to the centre of Shenzhen City and is therefore preferred by many Hong Kong lorry drivers.

We are fully aware of the current congestion at Man Kam To and have taken steps in conjunction with the Chinese authorities to relieve the situation. Following the opening of Lok Ma Chau Crossing in December 1989, some 1 900 vehicles previously using Man Kam To have been diverted to the new crossing with the full co-operation of the Chinese authorities. We have recently been informed that another 1 300 vehicles would be so diverted during this month. This should bring further relief to Man Kam To.

As regards the Sha Tau Kok Crossing, given an average daily traffic of about 2 000 vehicles, and taking account of peak-hour fluctuations, the current utilization is considered to be at the optimal level.

Sir, we will continue to monitor the situation and work closely with the Chinese authorities to achieve a more even distribution of traffic between the crossings.

MR CHEUNG YAN-LUNG (in Cantonese): Sir, will Government consider setting up a large vehicle holding area in Ta Kwu Ling which is adjacent to Man Kam To, so that goods vehicles can wait there for their turns to cross the border, thus avoiding jamming the traffic on roads throughout the North District?

SECRETARY FOR TRANSPORT: Sir, there are at present already two vehicle holding areas in Man Kam To with the northbound one providing for 500 spaces and the southbound one 120 spaces. These are considered adequate for the use of Man Kam To, but the real point is that we want to make better use of Lok Ma Chau because it is a new crossing with joint investment from both ourselves and the Chinese authorities. It is very much underused at the present time and it can be used far better and far more. Therefore our efforts are directed towards the better use of Lok Ma Chau in the years to come rather than to extend Man Kam To any further.

MRS LAM (in Cantonese): Sir, since licences currently issued by Government are valid for their respective crossings only, vehicles cannot be directed to other crossings even though a certain crossing is found to be congested. Will Government inform this Council whether it will consider making these licences valid for all crossings in the future?

SECRETARY FOR TRANSPORT: Sir, I think it is implied in the second paragraph of my main reply that the diversion of vehicles from one crossing to another requires the co-operation of the Chinese authorities. We have achieved some progress in seeking the diversion of Man Kam To vehicles to Lok Ma Chau. We will carry on seeking the co-operation of the authorities in China to make possible further diversions to the new crossing.

MR TAI: Sir, could I ask whether it would be possible to extend the opening hours of the border customs posts and whether there are difficulties being faced by the Administration in this regard?

SECRETARY FOR TRANSPORT: Again, Sir, this is a matter which we would like to raise with the Chinese authorities in our regular liaison meetings. At the present time Lok Ma Chau opening hours are from 9 am to 5 pm. We consider that on the Hong Kong side there is a possibility of extending the opening hours. We will try our best to convince the Chinese authorities of the need to extend the opening hours on both sides of the border to ensure that the use of Lok Ma Chau is being maximized.

MRS FONG: Could the Secretary clarify whether the restriction on the usage of these licences is imposed by the Hong Kong side or by the Chinese Government? Furthermore, when the Secretary mentions diversion, does that mean that these licences will then switch from one crossing to another or be given wider usage among the three crossings?

SECRETARY FOR TRANSPORT: Sir, the policy on vehicles linked to a particular crossing is set by the Chinese authorities for various reasons. We would be quite happy to consider a revised policy of transferring freely between crossings to maximize the use of the three crossings, in particular, the Lok Ma Chau crossing. As regards the question of the issuing authority, this is actually a joint effort between ourselves and the Chinese authorities, but on our side we would be happy to relax those requirements to maximize transport usage.

Staff retrenchment of Hong Kong Telecom Group

7. MR TAM asked (in Cantonese): Will the Government inform this Council:

(a) whether it was informed of the massive staff retrenchment by the Hong Kong Telecom Group beforehand and what action was taken by the Government in response;

(b) what role does it play in similar cases of staff retrenchment in public utility companies; and

(c) whether consideration will be given to amending the legislation so as to enhance job security for workers ?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Government was informed in advance of the Hong Kong Telecom Group's intention to merge certain functions in the Hong Kong Telephone Company and the Hong Kong Telecom International and to make redundant staff considered by the companies to be in excess of operational requirements. Discussions were held with the Group to ensure that the changes would not adversely affect their services to the public and Government's ability to regulate their franchised activities. The Government also offered advice to the Group on labour relations aspects, particularly the desirability to consult employees.

As regards the second part of the question, the staff levels maintained by public utility companies are essentially a matter for the companies concerned. So long as they meet the terms and conditions of their franchises, there would be no grounds for the Government to interfere in this aspect of the company management.

The Labour Department does, however, play an advisory and monitoring role in staff retrenchment exercises in general. The Department advises employers on how to handle retrenchments in a way that would minimize the impact on the employees involved. Employees are advised of their entitlements under the law and are assisted in finding alternative employment. Where there are disputes between employers and employees over retrenchment terms, the Department provides a conciliation service to resolve the differences. Where necessary, cases will be referred to the Labour Tribunal for adjudication.

Sir, as regards the last part of the question, the Employment Ordinance provides some degree of job security. Except for serious misconduct on the part of the employee, the employer is required to give notice or payment in lieu of notice before an employee can be dismissed. Additionally, if an employee is dismissed by reason of redundancy, he would be entitled to severance payment. Long serving employees who are dismissed by reason other than redundancy and elderly employees who retire on old age or health grounds are entitled to long service payments.

We do not consider it feasible to impose statutory restrictions on retrenchment. We must not put undue restrictions on the right of the employers and employees to enter into employment contracts or to terminate them. Hire and fire should remain

the prerogative of management. Equally, an employee should have the right to resign and move on to another job. Our main concern should be to ensure that the employees' entitlement under the Ordinance to compensation in the event of retrenchment is fully protected.

MR TAM (in Cantonese): Sir, despite the various provisions under the labour legislations mentioned in the reply, the Administration cannot provide job security to the workers. Will the Administration reconsider proposals put forward by the labour sector, that is, that the unfair dismissal legislation in the United Kingdom be extended to Hong Kong and that workers' unions be given the right of negotiation under the law?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the basic problem with unfair dismissal legislation is the legal definition of what is and what is not unfair and unreasonable. The unfair dismissal legislation in the United Kingdom attempts to protect workers from unfair dismissal by providing for reinstatement, re-employment or compensation. The actual effect of the legislation, however, is believed to be quite limited. While most cases began as demands for reinstatement, the majority ended up as compensation cases. For the rare cases of reinstatement, they seldom work out because of the ill feeling on both sides, and the original intention of providing for job security is not being achieved. As a practical alternative to unfair dismissal legislation, we have in Hong Kong long service payment. We believe that a statutory requirement for an employer to make payment to a dismissed employee, based on his age and length of service, would achieve much the same result as an employee's entitlement to monetary compensation under the UK legislation while avoiding the need for complex and expensive procedure to establish that a dismissal has been unreasonable.

MR MCGREGOR: Sir, since the Government was an adviser -- in fact so far as I can see a principal adviser -- in this case, is the Government satisfied with the arrangements made by Hong Kong Telecom for the redundant employees?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the compensation package offered by the two companies fully meets the requirements under the Employment Ordinance, and to that extent they have satisfied the statutory requirement.

MR TIEN: Sir, referring to the fifth paragraph of the Secretary's reply, could the Secretary please confirm to this Council that the basic right of the employer will not be legislated against? By right, I refer to the right to terminate an employment contract and the right to dismiss, be it fair or unfair dismissal; after all, payments have been made to the employee regardless of redundancy or retrenchment.

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the conditions under which an employer can terminate the employee are set out under the Employment Ordinance.

MR PANG (in Cantonese): Sir, in her reply a moment ago, the Secretary for Education and Manpower seemed to be satisfied with the retrenchment exercise of the Hong Kong Telecom Group. Could the Secretary inform this Council whether long service is required before an employee is entitled to some degree of job security, which she mentioned, that is provided under the Employment Ordinance? I would say if the Administration does not amend the legislation, employees will have no job security at all. May I ask whether this will have wide repercussions on the prosperity and stability of the Hong Kong society? Also, if some employees are not eligible for compensation, has the Government considered what impact it will have on them?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Employment Ordinance has provision for notice of termination of employment or wages in lieu of such notice. Mr PANG was asking whether we could give more advance notice. Now the Labour Department has always encouraged employers to adopt fair and reasonable employment practices. The search for alternatives, such as voluntary early retirement, re-training or identification of possible hardship cases, is always important in reducing the impact on the employee. A purely statutory provision for more advance notice of redundancy may not necessarily solve the problem. As regards the impact on labour relations as a whole, the retrenchment exercise is the result of the reorganization of two companies; it has no bearing on other companies. There has been no indication that labour relations in other companies have deteriorated.

MR ARCULLI: Sir, will the Secretary please inform this Council whether the

Administration has monitored what efforts, if any, have been made by the Hong Telephone Company and the Hong Kong Telecom International to find alternative employment for their redundant staff, and with what success?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the Labour Department has been in close touch with the management of the two companies in its efforts to find alternative employment for the employees. As far as the Labour Department is concerned, its Local Employment Service and its Higher Education Employment Service are assisting the re-trenched employees to find alternative employment. A special counter is assigned to each branch office to give priority registration to these employees. Also promotional visits are made, especially to solicit suitable vacancies, and a special vacancy pool has been set up to centralize the processing of these vacancies.

MR TAM (in Cantonese): Sir, according to a business magazine, service standards of the Hong Kong Telecom Group apparently have fallen recently to a level lower than that of some countries in the Asian Pacific region. How has the Administration responded to and acted towards this? Will this massive staff retrenchment further aggravate the situation?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the regulation of the activities of a franchised company falls within the purview of the Economic Services Branch. So if I may defer to my colleague, the Secretary for Economic Services.

HIS EXCELLENCY THE PRESIDENT: I will pass it to the Secretary for Economic Services but the question is only in order if it relates to the original question.

SECRETARY FOR ECONOMIC SERVICES: Sir, I am not aware that there has been any deterioration in the standards of service provided by the Hong Kong Telecom International Group. We have certain key indicators of service standards, for example, in terms of the time taken to respond to complaints and the time taken to respond to applications for telephone service. In neither of these areas have we detected any deterioration in service standards.



MR MCGREGOR: Sir, with respect, I do not think the Secretary answered my first question and I would like to repeat it. Since the Labour Department -- and therefore the Hong Kong Government -- was a principal adviser to the company, and since a number of measures were taken by the company to improve the situation of the workers, is the Government generally satisfied with the work done by the company on behalf of the redundant employees? Could I have a yes or no?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, as I have said, as far as the compensation package is concerned it matches the statutory requirement. As for other assistance, yes.

Statement taking by police

8. DR IP asked: Will Government inform this Council whether consideration will be given to making it a standard procedure for the police to receive reports of all cases of sex abuse, rape, battered wives and children and so on, at the victims' home or a place of choice to relieve the victims of the embarrassment of giving their statements at the police stations?

SECRETARY FOR SECURITY: Sir, the police do have standard procedures to provide for flexibility in respect of location in receiving reports or taking statements from all victims of crime. These are set down in Police General Orders and the Manual of Criminal Investigation for the guidance of all officers.

For cases of offences such as battered wives and child abuse, a plain clothes officer can, upon request, take statements from the victim and other witnesses at a place or places of their choice. If the victim is willing to give a statement in a police station, a separate room will always be used. In the case of sexual offences in particular, every effort is made by the police to protect the victim and to avoid embarrassment and disturbance to that victim. Female victims of such cases are interviewed by a woman officer whenever possible.

DR IP: Sir, my question has not been answered. It was explicitly on whether receiving

such reports can be made a standard procedure rather than on request as it is at present. I would be grateful if a simple yes or no answer could be given, and if it is no, why not?

SECRETARY FOR SECURITY: The answer is no, Sir. The reason is that the police will encourage witnesses generally and victims to make a statement in a police station. This, of course, is the most efficient use of police resources. However, in all cases where the police wish to take a statement from a victim or a witness, they will take that statement at the place where the witness or victim asks that it be taken.

MR MCGREGOR: Sir, could the Secretary advise whether in cases of this kind where there is a feeling of shame by some of the victims, the courts can provide protection to the victim; in other words, if evidence can be taken confidentially to protect the identity of the victim?

SECRETARY FOR SECURITY: Sir, it is not at present standard procedure for this to be done but I will certainly consider what Mr MCGREGOR has said.

DR IP: Sir, would Government at least consider publicizing the fact that such persons affected can make requests and that their request to have their reports received at their place of choice will be considered favourably?

SECRETARY FOR SECURITY: Sir, I shall certainly do so.

MR ARCULLI: Sir, the Secretary has informed this Council that it is not possible to standardize procedures. Could he perhaps elaborate on whether the difficulty might involve the collection of evidence and possibly medical examination of the victim in question?

SECRETARY FOR SECURITY: Sir, that is not a consideration. The consideration is to make it as practical and helpful to the witness or the victim. Clearly, if an offence has occurred in the victim's home or place of employment, the police will wish to visit those premises and perhaps take the statement there.

MRS LAM (in Cantonese): Sir, given that very often victims of sex offences are traumatized both physically and psychologically, the police must take a very considerate and sympathetic approach when taking statements. Could I ask whether those female officers who interview the victims have received any special training in counselling?

SECRETARY FOR SECURITY: Sir, the police conduct special courses for selected officers on questioning techniques in the interview of victims of sexual offences and victims of child abuse. Lectures are provided to such police officers by the Senior Force Clinical Psychologist and also by Social Welfare Officers. Clearly, the emphasis in such questions must be on a discreet and sympathetic approach when interviewing a victim.

DR IP: Sir, would Government consider creating a special squad with special training, of course, to handle all such cases?

SECRETARY FOR SECURITY: Sir, we have not considered a special squad given the need to have people immediately available to help a victim, whether the victim be in Aberdeen or in Sheung Shui. We must be able to cover the whole of the territory quickly and help the victim as immediately as possible.

Written answer to question

Vegetable poisoning

9. MR MICHAEL CHENG asked (in Cantonese): In view of the frequent occurrence of vegetable poisoning cases in Hong Kong which affect public health, will Government consider reviewing existing procedures on inspection and testing of imported vegetables to prevent the occurrence of similar incidents?

SECRETARY FOR HEALTH AND WELFARE: Sir, since the first outbreak in 1987, there have

been five instances of poisoning by pesticides in vegetables imported from China.

Under the present procedures, the Shenzhen Import and Export Commodity Inspection Bureau requires farms which grow vegetables for export to submit information on the type, concentration and date of pesticides used on the crop. This, supplemented by random tests, enables the Bureau to determine if the vegetables are safe for human consumption. The vegetables are then cleared for export and tagged for identification.

In Hong Kong, staff of the Department of Health stationed at border control points ensure that only properly-tagged vegetables are imported. Screening, sampling and examination of imported vegetables are also carried out in Hong Kong. Any vegetables found to be contaminated are destroyed.

Following the recent outbreak earlier this year, the Department of Health's Hygiene Services Committee has reviewed existing procedures. This Committee, comprising the Municipal Councils and government departments concerned, has recommended enhancing control, intensifying vegetable sampling at the border and strengthening public education on the proper preparation of vegetables.

The Committee recognizes however that, in the final analysis, the best means of control is more effective enforcement at source. The Department of Health has, therefore, been meeting with the Shenzhen Commodity Inspection Bureau on ways for them to improve the tagging system, vegetable inspection and farm management. The Bureau has already barred the offending farms from further exporting vegetables to Hong Kong. The Department will continue to maintain close cross-border co-operation and hold regular meetings with the Bureau.

## First Reading of Bills

BANKING (AMENDMENT) (NO. 2) BILL 1991

EMPLOYEES COMPENSATION ASSISTANCE BILL 1991

PROTECTION OF WAGES ON INSOLVENCY (AMENDMENT) BILL 1991

BUSINESS REGISTRATION (AMENDMENT) BILL 1991

CLUBS (SAFETY OF PREMISES) BILL 1991

TOWN PLANNING (AMENDMENT) (NO. 2) BILL 1991

Bills read the First time and ordered to be set down for Second Reading pursuant to Standing Order 41(3).

Second Reading of Bills

BANKING (AMENDMENT) (NO. 2) BILL 1991

THE FINANCIAL SECRETARY moved the Second Reading of: "A Bill to amend the Banking Ordinance."

He said: Sir, I move that the Banking (Amendment) (No. 2) Bill 1991 be read the Second time. This Bill seeks to improve the regime regulating the change of control of locally incorporated authorized institutions and to update the regulations on risk concentrations.

Change of control

The present regime regulating the change of control of authorized institutions has some defects. First, there is no control over the acquisition of significant shareholdings, which stop short of full control, in an authorized institution's holding company. Secondly, shareholders of locally incorporated institutions are only required to seek the approval of the Commissioner of Banking for the exercise of their voting rights and control over the institution after they have acquired their interests. Thirdly, there is no provision enabling consent to be withdrawn from a shareholder or controller when there is evidence that he is no longer fit and proper.

To remedy these defects, the Bill seeks to empower the Commissioner to object, on specified grounds, to persons becoming or remaining controllers of authorized institutions incorporated in Hong Kong. In addition, prospective controllers will be required to seek the Commissioner's prior approval before acquiring their holdings. This will apply to holdings of 10% or more in an authorized institution's holding company. The proposed system is similar to that contained in the Insurance Companies Ordinance, which in turn is modelled on the Banking Act of the United Kingdom.

## Risk concentrations

As to risk concentrations, the concept of a "capital base", which was introduced into the Ordinance in 1986 in connection with the calculation of capital adequacy ratios, is now accepted as a more appropriate measure of an institution's ability to absorb risk. The proposal is to use this concept in place of "capital and reserves" as the basis for applying the large exposure limits under Part XV of the Ordinance. In addition, the exposure limits, now applicable to banks only, will be applied to all three classes of institutions.

When the industry was consulted on proposed changes to Part XV, the Hong Kong Association of Banks expressed some concern about the proposed reduction of the period of exemption from the maximum prudent lending limit for the underwriting of equities and debt from the existing three months to seven days. The proposal is intended to enable any potential exposure exceeding the 25% limit to be brought under supervision at an early stage.

Let me take this opportunity to explain that those institutions which are lead underwriters will be expected to discuss with the Commissioner and agree upon a set of limits within which they would expect to confine their risks in respect of underwriting positions once the Bill is enacted. Armed with fore-knowledge of what the Commissioner would be prepared to approve within agreed limits, institutions should be able to operate freely and without disruption of the market, whilst adhering to an agreed framework which limits risk exposure.

## Other amendments

Sir, the Bill also seeks to remove unnecessary barriers to disclosure to enable closer contact and collaboration between banking and other financial regulators locally and abroad. The overall confidentiality of information received for supervisory purposes is, however, preserved.

The principal proposals in the Bill have been discussed with and are supported by the Banking Advisory Committee and the Deposit-taking Companies Advisory Committee.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

EMPLOYEES COMPENSATION ASSISTANCE BILL 1991

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to provide for the protection of the entitlement of employees and others to compensation or damages for employment-related injury; for the protection of employers against default under policies of insurance in respect of their liability for such compensation or damages; for the establishment of a board and a fund for those purposes; and for incidental or connected matters."

She said: Sir, I move that the Employees Compensation Assistance Bill 1991 be read a Second time.

Under the Employees' Compensation Ordinance, a comprehensive range of employment-related compensation is available to protect workers and their families against loss of income in the event of injury and death. Since 1984, employers have been required by law to insure themselves against their liabilities to compensate their employees. Despite this provision, some workers still fail to receive compensation because of defaulting employers or insolvent insurers. Between January 1984 and July 1990, there were 86 such cases known to us involving about \$4 million of unsettled compensation claims.

To protect the full entitlement of workers under the Ordinance, the Government has decided to establish an Employees Compensation Assistance Scheme. The Scheme will be funded by a 1% levy on employees' compensation insurance premia. This levy came into effect on 1 July last year when the Employees' Compensation Insurance Levies Ordinance was enacted.

The Scheme will cover claims from employees who are injured as a result of accidents arising out of and in the course of their employment, or dependants of employees killed as a result of such accidents, who fail to receive compensation because of defaulting employers or insolvent insurers. Subject to a queuing system, payments will be made in all such cases in respect of accidents occurring on or after 1 January 1984, when compulsory insurance was first introduced.

In the case of insolvency of insurers, the Scheme will either pay the compensation on behalf of the employer or re-imburse him. The Scheme will cover accidents

occurring on or after 1 July 1990, provided these are covered by a valid policy of insurance on which the levy has been paid. It will not, however, cover the employer's liability in respect of accidents occurring before 1 July 1990, the date when the levy became effective. Any employer who has not paid the levy and who has doubts about the solvency of his insurer should consider extending or renewing his insurance policy, thereby paying the levy and securing protection against the insolvency of his insurer from a current date.

The Bill seeks to create the Employees Compensation Assistance Scheme by providing for the establishment of the Employees Compensation Assistance Fund and of a statutory board to administer it. The Fund Board will be a body corporate which shall consist of a Chairman, two members representing employers, two members representing employees, one member with expertise in the practice of accounting, investment or law, the Commissioner for Labour or his representative, and the Director of Legal Aid or his representative. The Bill also provides for the powers and functions of the Board, and other matters relating to the operation of the Scheme.

The Employees Compensation Assistance Scheme is an important landmark in our labour legislation. It increases the level of protection for employees against the unforeseen contingencies of their working lives and guarantees their entitlement to compensation under the law.

Sir, I move that the debate on this motion be adjourned.

Question on the adjournment proposed, put and agreed to.

#### PROTECTION OF WAGES ON INSOLVENCY (AMENDMENT) BILL 1991

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Protection of Wages on Insolvency Ordinance."

She said: Sir, I move that the Protection of Wages on Insolvency (Amendment) Bill 1991 be read a Second time.

The Employment Ordinance requires an employer to make long service payments to his employees under certain prescribed circumstances but the law does not require him to make any provision for these liabilities. It has been argued, with some



justifications, that if an employer does not make sufficient provision for his long service payment liabilities, he might run into financial difficulties when such liabilities arise, resulting in his employees being unable to obtain their entitlements.

The main problem in requiring employers to fund their long service payment liabilities is that it would tie up large amounts of working capital and, for small businesses, create disproportionate administrative overheads. An employer should be able to meet his long service payment liabilities unless he is insolvent, in which case, severance payment would be payable. Rather than pursuing the funding of long service payment, we propose, instead, that the employees' severance payment entitlement should be more adequately protected by extending the cover under the Protection of Wages on Insolvency Fund.

The Protection of Wages on Insolvency Fund is presently financed by a levy of \$100 per annum on each business registration certificate and branch certificate. The Fund now provides for the payment of wages in arrears up to \$8,000, unpaid wages in lieu of notice up to \$2,000 and severance payment up to \$4,000 to an employee whose employer has become insolvent.

To provide better protection to employees, we propose that the Fund's severance payment cover should be extended from \$4,000 to \$8,000 and 50% of any entitlement in excess of \$8,000. Compared with the present situation in which an employee earning, say, \$10,000 per month with 20 years' of service behind him gets only \$4,000 against his entitlement of \$120,000, he will now obtain \$64,000.

The proposed extension would ensure that full coverage would be given to a lower-paid employee whose entitlement does not exceed \$8,000. It would also protect the Fund from being depleted too quickly. If we were to cover severance payment entitlements in full for all employees, the cost would be very high. There is the added danger also that such a measure might encourage contrived insolvencies as a means of passing on to the Fund the responsibility for making severance payments.

To enable the Fund to meet the additional commitment arising from the extended cover, it is necessary to increase the rate of the levy on each business registration certificate and branch certificate from \$100 to \$250. This should generate sufficient income to cover forecast expenditure under normal circumstances.

Two Bills are required to give effect to these proposals. The Protection of Wages on Insolvency (Amendment) Bill 1991 seeks to extend the cover for severance payment as I have described earlier. The Business Registration (Amendment) Bill 1991 seeks to increase the rate of levy from \$100 to \$250.

These proposals, Sir, bear witness to the Government's continuing effort to provide better protection to our workers. Together with the Bill on the prudential supervision of retirement schemes moved by the Financial Secretary last week and the Bill on employees compensation assistance which I have just introduced, these proposals are a significant step forward in achieving the target of a level of labour legislation comparable to the best prevailing in the Asia Pacific Region.

Sir, I move that the debate on this motion be adjourned.

Question on the adjournment proposed, put and agreed to.

#### BUSINESS REGISTRATION (AMENDMENT) BILL 1991

THE SECRETARY FOR EDUCATION AND MANPOWER moved the Second Reading of: "A Bill to amend the Business Registration Ordinance."

She said: Sir, I move that the Business Registration (Amendment) Bill 1991 be read a Second time.

My remarks relating to the Protection of Wages on Insolvency (Amendment) Bill 1991 also apply to this Bill.

I move that the debate on this motion be adjourned.

Question on the adjournment proposed, put and agreed to.

#### CLUBS (SAFETY OF PREMISES) BILL 1991

THE SECRETARY FOR HOME AFFAIRS moved the Second Reading of: "A Bill to provide for the regulation, control and safety of club-houses and for connected purposes."

He said: Sir, I move the Second Reading of the Clubs (Safety of Premises) Bill 1991.

There is at present no systematic or comprehensive control of safety conditions in club premises. Enforcement action under the Fire Services Ordinance (Chapter 95) and the Buildings Ordinance (Chapter 123) is taken on an ad hoc basis or in response to complaints. To enable Government to impose and enforce necessary safety requirements and standards on club premises, the Administration proposes to introduce a statutory scheme whereby club-houses will be required to obtain a certificate of compliance with fire and building regulations.

This Bill before Members seeks to establish that scheme for the regulation and control of club-houses to be administered by the Secretary for Home Affairs. Clubs which have no club-houses will be outside the scope of the Bill. Neither will the Bill be concerned with the formation of clubs, which will remain a task for the Registrar of Societies and the Registrar General.

Owing to resource constraints, it would be impractical to enforce controls on all clubs with club-houses immediately following the enactment of the Bill. The certification scheme will therefore be phased, with the first phase targetted at proprietary or sham clubs which use their club-houses as ordinary business premises. Phasing of control priorities is achieved by the Secretary for Home Affairs issuing certificates of exemption, in pursuance of the power in clause 6, to those club-houses which will be subject to the certification scheme at later stages.

The certification scheme is established under clauses 8 and 9 of the Bill. Applicants for a certificate of compliance have to satisfy the certifying authority that the subject premises have complied with the safety requirements under the Fire Services Ordinance and the Buildings Ordinance.

A certificate of compliance may be endorsed with conditions to which it is subject. It will have to be renewed upon expiration. The premises will be re-inspected to ensure that the safety standards have been maintained before a certificate is renewed.

Clause 13 provides for appeals arising from enforcement of the legislation to be determined by an Appeal Board chaired by a person qualified for appointment as a District Judge. The Governor will appoint the Chairman and a panel of persons whom he considers suitable for appointment under clause 15 as members of the Appeal Board to hear any appeal.

It is, however, the intention of the Administration that the Appeal Board constituted under the Hotel and Guesthouse Accommodation Ordinance will also hear appeals under this Bill.

Fees will be payable for the issue of certificates of exemption or compliance. Clause 22(1)(f) provides for the making of regulations for such fees by the Governor in Council. The total cost of the scheme will be recovered by way of certificate fees.

With the enactment of the Bill, any person who operates a club-house without a valid certificate of compliance or exemption will commit an offence and is liable on conviction to a fine of \$200,000 and to imprisonment for two years and to a fine of \$20,000 for each day during which the offence continues.

The certification scheme, to be administered by the licensing office for hotels and guesthouses, will be implemented immediately following the enactment of the Bill.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

TOWN PLANNING (AMENDMENT) (NO. 2) BILL 1991

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the Second Reading of: "A Bill to amend the Town Planning Ordinance."

He said: I move the Second Reading of the Town Planning (Amendment) (No. 2) Bill 1991.

During public consultation on the Town Planning (Amendment) Bill 1990 in the latter part of last year, a number of professional bodies, as well as Members of this Council, commented that the Town Planning Ordinance needed improvement because it provided for the Board to hear objections to its own plans, and to conduct its own reviews of its refusals of planning applications. While recognizing the importance of an appeals body which could serve as an arbiter between the Board and those whose interests were affected by those decisions, the Administration explained that changes to the existing procedures for objections to town plans under section 6 of the Ordinance would require a radical re-appraisal of the entire plan-making and approval

system and considered that it should best be addressed in the overall review of the Ordinance to be conducted in mid-1991. The Administration, however, agreed that a new independent appeals body for appeals against the Board's decision on planning applications under section 17(7) could be introduced ahead of the overall review. The Bill introduced today sets out the establishment, powers, membership and procedures of that appeals body. In addition, it provides for a further right of review in respect of conditions imposed on planning permission, which is currently not provided for in the existing Ordinance, as an applicant can only ask the Board to review its decision of refusal of planning permission.

The amendments contained in the Bill will make the following changes to the Ordinance. They will:

- (a) provide a right of review in respect of conditions imposed on the planning permission;
- (b) provide for an independent Appeal Board to be substituted for the Governor in Council under section 17(7);
- (c) set out the establishment, membership, powers and procedure of the Appeal Board;
- (d) provide for regulations prescribing the procedures to be followed in making an appeal, and in the hearing and determination of an appeal; and
- (e) provide for the registration of notices served under section 23(1), (2) and (3).

The basic approach is to substitute the Appeal Board for the Governor in Council as the independent channel of appeal against the Board's decision on a review under section 17, extended to include the right of review of an applicant aggrieved by the conditions the Board imposed on a planning permission. A panel of persons, none of whom are members of the Town Planning Board, will be appointed by the Governor to serve on the Appeal Board. The number of members on the panel is not fixed so as to provide adequate numbers to ensure that no member with a vested interest in an appeal case will be appointed to the Appeal Board hearing that case. The Bill provides for the appointment of a chairman who will nominate from the panel an Appeal Board, constituting himself and four other members, for each case. The Appeal Board will be serviced by a secretariat independent of the Town Planning Board.

The Appeal Board will have powers to require the attendance of witnesses, hear

them on oath, call for the production of documents, and authorize inspection and viewing of land or premises which it considers relevant to inspect in the context of an appeal. Non-compliance with the Appeal Board's orders will be liable to a maximum fine of \$50,000.

The Appeal Board may adjourn a hearing, confirm, reverse or vary the decision appealed against. Its decision on any appeal shall be final. To deter frivolous appeals, the Bill provides for the Appeal Board to order, as it thinks fit, the payment of costs to any party of the appeal. Subsequent to the publication of the Bill and in the course of drafting the regulations, I have received legal advice that the clarification on the limitation of costs to expenses reasonably incurred in the preparation or presentation of an appeal should appear in the Ordinance rather than the regulations. I shall be moving at the Committee stage an amendment to this effect. The opportunity has also been taken to clarify that the avenue of appeal is open to the applicant only, rather than any person aggrieved by a decision of the Board on a review as stated in the existing section 17(7). This is in line with the general spirit of section 17 and the existing practice whereby only the applicant is notified of the Board's decision. Further changes to the existing practice will be a subject for consideration in the overall review of the Town Planning Ordinance.

The procedure and draft regulations prescribing those procedures have been drawn up with a view to ensuring a fair but efficient hearing, recognizing that time is a vital consideration for development investments. Members may wish to note that by allowing both the appellant and the Town Planning Board each 60 days to prepare their respective case, the Secretary to the Appeal Board should be able to arrange a hearing within 15 weeks of the receipt of a notice of an appeal.

A draft of the Town Planning (Appeals) Regulations 1991 has also been presented for Members' information and to explain to Members how the Appeal Board will operate. Should the Bill be enacted, the draft Regulations will be finalized for submission to the Governor in Council for the Regulations to be made and promulgated.

Finally, the opportunity has been taken to make provision for notices served under sections 23(1) to (3) of the Town Planning (Amendment) Ordinance 1991, for the purpose of section 2 of the Land Registration Ordinance (Cap. 128), to be instruments by which any parcel of land may be affected. This will ensure public access to notices served under section 23(1) to (3).

Sir, the Bill provides for an independent and practicable system of appeal against decisions of the Town Planning Board under section 17 of the existing Ordinance, and in so doing addresses much of the concern on the inadequacies of the present system of appeals. The question of establishing an independent appeal system to consider objections to plans prepared by the Town Planning Board is being actively considered by the Administration as part of the overall review of the Ordinance.

Sir, I move that the debate on this motion be now adjourned.

Question on the adjournment proposed, put and agreed to.

#### URBAN COUNCIL (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 24 April 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### REGIONAL COUNCIL (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 24 April 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### THE HONG KONG ASSOCIATION OF BANKS (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 24 April 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### LIMITATION (AMENDMENT) BILL 1990

Resumption of debate on Second Reading which was moved on 28 February 1990

Question on Second Reading proposed.

MRS LAU: Sir, the Limitation (Amendment) Bill 1990 was introduced into the Legislative Council on 28 February 1990. In view of the complexity of this Bill and the likely concern of professionals, particularly architects, lawyers and accountants in regard to the effect of the proposed amendments on professional negligence claims, an ad hoc group was formed to study the Bill. The ad hoc group has held a total of eight meetings. Representations from the Hong Kong Construction Association Limited, the Joint Council of Engineering, Building and Land Development, and the Hong Kong Society of Accountants have been received. The group has also consulted the Law Society of Hong Kong and through the assistance of the Joint Council of Engineering, Building and Land Development, submissions from a number of insurance consultants who deal in professional indemnity insurance were also received and considered.

The purpose of the Limitation (Amendment) Bill 1990 is to bring the provisions of the Limitation Ordinance (Cap 347) into line with those introduced in the United Kingdom by the Limitation Act 1980 and the Latent Damage Act 1986. It amends the principal Ordinance in relation to:

- (a) certain actions relating to land or mortgage over property;
- (b) claims relating to latent damage; and
- (c) cases involving fraud, concealment or mistake.

As far as latent damage is concerned, the Bill is intended to deal with a situation where a person's negligence results in a hidden damage to property and the limitation



period expires prior to the discovery of that damage. In the case of *Pirelli General Cable Works Limited v. Oscar Faber and Partners* (1983), the House of Lords held that the Plaintiff's action was time-barred six years after the damage occurred even though such damage was not discovered by the plaintiff within that time limit. In the United Kingdom, this legal irregularity was cured by the Latent Damage Act 1986. However, such irregularity still exists in our present Ordinance which is based on the Limitation Act 1939. The new section 31 proposed in the Bill therefore provides that the new limitation period in actions of this nature is to be either six years from the date on which the damage occurred or three years from the date on which the plaintiff acquired the requisite knowledge for bringing an action, whichever period last expires. On the other hand, to ensure that no one is sued many years after the negligent act, the proposed new section 32 provides that no negligence claims may be brought after the expiration of 15 years from the act of negligence. This is in fact a safeguard which our existing legislation does not have. Under our present law, the liability of professionals may continue ad infinitum since time does not start to run for limitation purposes until actual damage resulting from the negligent act occurs.

In the course of studying the Bill, the accounting profession expressed great concern about extension of the limitation period generally for negligence claims involving latent damages. The profession considers that since the legislation was introduced in the United Kingdom specifically to deal with claims relating to defects in buildings, the new period of limitation should not be extended to other professionals such as accountants, lawyers, medical practitioners and so on, but should be restricted only to the building professionals. I understand my honourable colleague, Mr Peter WONG, will elaborate on this point later.

As a member of the legal profession myself, I fully understand the concern of certain professionals in regard to the effect of this Bill on them. However, to exempt certain professional groups from the application of an otherwise general limitation law is unacceptable from a legal policy point of view. The Bill in fact deals with negligence which may occur in various professions and it is not targeted against any profession alone.

As regards the views of other professionals, the Law Society of Hong Kong and the architects have raised no objections to the Bill. The insurance sector would like to reserve their position in that it takes time to assess what effect the new legislation may have on professional indemnity claims. The Hong Kong Construction

Association Limited is concerned about the liability of a main contractor in regard to the fraudulent act of subcontractors. The Joint Council of Engineering, Building and Land Development is concerned about the vagueness of the date of commencement and end of the period during which liability exists and has attempted a definition for the two dates. The Joint Council is also concerned about the joint and several liability of joint tortfeasor vis-a-vis the claimant where one joint tortfeasor who may actually be responsible for a minor percentage of the claim may have to pay up the entire claim if the other joint tortfeasor should disappear or otherwise be unable to satisfy his due share of the claim. The views of the latter two organizations have been referred to the Administration for consideration and comments on these views provided to the ad hoc group are found to be logical and acceptable. In regard to the liability of main contractors for the acts of subcontractors, the ad hoc group is satisfied that this depends on the facts of each case and is a matter to which our agency law applies. In regard to the need for certainty of dates, the ad hoc group is satisfied that the relevant dates referred to in the Bill, namely the date of breach of duty, the date of accrual of cause of action and the date of knowledge, can be determined by reference to existing case law and it is neither possible nor desirable to attempt to define such dates in the legislation. In regard to the question of joint tortfeasors, the ad hoc group is satisfied that to include in this Bill a provision whereby the liability of joint tortfeasors can be apportioned as against the claimant would run contrary to ordinary legal principles concerning contribution among tortfeasors and this is not something which can or ought to be addressed in this Bill.

Towards the end of the scrutiny of the Bill, the Administration proposed to delete section 33 "Accrual of cause of action to successive owners and etc" following a recent decision of the House of Lords in the case of *Murphy v. Brentwood D.C.* (1990). That case decided that economic losses suffered through latent defects are recoverable only if they flow from a breach of a relevant contractual duty or if there is a special relationship of proximity between the claimant and the tortfeasor. In the light of that decision, the proposed section 33 actually serves no practical purpose and should be deleted to avoid confusion. The legal opinion from the Attorney General's Chambers on this point has been fully considered and the ad hoc group supports the proposed deletion.

Sir, with these remarks, I support the Bill.

MR PETER WONG: Sir, the Limitation (Amendment) Bill 1990 was introduced to put right the inequities of the construction industry where hidden defects may not be discovered for a long time resulting in the long tail liability of building contractors and architects/engineers which has given cause for much concern.

The existing cut-off period of six years after cause of action will now be extended to 15 years and is generally welcomed by the construction industry. However, for us accountants, causes arising out of negligent and defective audits should be discovered quite quickly and the benefit of the long stop introduced by this Bill is of very doubtful value. Further, we auditors have to give an opinion on a company's financial position every year and this ensures that a new cause of action will arise based on those new financial statements unless the root cause of the negligent act has been remedied.

The accountants' plea for special consideration has been turned down because the Administration is seeking to lay down a general rule for everyone and impose the onus onto us to justify an exemption. Instead of making justification, we, accountants argue that no case has been made as to why we should be penalized and have our liability extended. We see no benefit to our clients in extending our liability period because, to be convincing, any loss must be discovered fairly quickly and action taken.

If this Bill is passed, we, accountants, will have to consider whether our working papers have to be retained for at least 15 years to make it absolutely certain that we have the paperwork to defend ourselves against the most remote claim. Storage space is at a premium in Hong Kong and this rental cost will inevitably have to be passed on to our hapless clients.

Sir, I know that, taken as a whole, this Bill is beneficial to Hong Kong; so I will not vote against it. However, the provisions are not in the interest of us accountants and so I will abstain.

ATTORNEY GENERAL: Sir, I would first like to thank Mrs LAU and the members of the ad hoc group for the time and effort they have spent considering this Bill. The law relating to the limitation of actions is both technical and complex and I commend members of the group for their fortitude.

I have noted Mr WONG's reservations to the effect that the latent damage

provisions of the Bill would substantially increase the exposure of accountants to negligence claims. He also referred to the accountants' plea for special consideration and the possibility of an exemption from the operation of the new provisions.

I note that the accountants are the only professional group to have sought such an exemption. I share Mrs LAU's views over the unacceptability from the legal policy point of view of exempting certain professional groups from the limitation law of general application. The view that the provisions in the Bill concerning latent damage will substantially increase the potential liability of professionals is, I think, unfounded.

The Bill will only extend the potential liability of professional advisers in the limited situation where a client with a claim in negligence does not know the facts relevant to the cause of action at the date of its accrual, that is, when the damage to his interests occurred. Such a client will have six years from the date on which the damage occurred to bring an action, that is the normal limitation period, or three years from the date of acquiring the requisite knowledge for bringing an action, whichever period ends later.

Without such a provision, persons who have suffered damage through the negligence of their professional advisers but are unaware of it would be denied relief where the damage is not discovered until after a period of six years. This is an unfair result which this Bill will rectify.

However, to eliminate the possibility that someone is sued by virtue of this new provision many years after the alleged negligent act or omission occurred, the Bill provides that no action shall be brought after the expiry of a period of 15 years from the date of that act or omission. This is a benefit that potential defendants do not presently have, as Mrs LAU has explained.

Finally, Mr WONG has said that the Bill was introduced to deal with hidden defects arising from construction work. The Bill is based on English legislation -- The Latent Damage Act 1986 -- which gave effect to recommendations of the English Law Reform Committee. While the Committee, in its report, recognized that the majority of claims for latent damage had arisen out of building and construction work, it expressly rejected a suggestion that the special three-year limitation period should be restricted to claims in respect of buildings.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 23 January 1991

Question on Second Reading proposed.

MRS CHOW: Sir, the first direct election to the Legislative Council to be held in September will mark a new era in the development of representative government in Hong Kong. With the emergence of political organizations and in view of the fact that the election expenses limit for this election has been set at \$200,000, it is envisaged that candidates will increasingly be dependent on funding from individuals or political groups. There is a need to change the existing election practices so as to make provisions for the solicitation and acceptance of election funds. On the other hand, further measures are necessary to ensure the integrity of the electoral process and that the donations are fully and publicly accounted for. The objects of the Corrupt and Illegal Practices (Amendment) Bill 1991 and Prevention of Bribery (Amendment) Bill 1991 are to make provisions for the above situation.

In scrutinizing these two Bills, members of the ad hoc group paid particular attention to areas which had an implication on the transparency of elections and the accountability of the candidates to the donors as well as their electorate regarding the sources and disposal of their election funds.

Given the present state of political development in Hong Kong, some members suggested that consideration should be given to allowing the use of the surplus or unspent donations solicited for election purposes for the running of their offices. The Administration noted the suggestions and agreed to address the matter separately outside the context of the current legislative amendments.

Members were of the view that new section 29(2A) which required incumbent members to make advance disclosure of donations should be applied equally to non-incumbents.

The Administration explained that there was no intention to apply the advance declaration scheme to both incumbents and non-incumbent on a mandatory basis since the primary objective of the scheme was to relieve the incumbents from liability under the Prevention of Bribery Ordinance so that they could solicit or receive donations for the purposes of election expenses. Given the current legislative timetable, the scheme would apply mainly to the Legislative Council elections to be held in September. As some of the non-incumbents intending to stand for the Legislative Council elections might have started soliciting or accepting donations, making the arrangement mandatory after enactment of the Bill would be confusing and difficult to enforce. Members accepted the explanations given by the Administration and agreed not to pursue the proposal.

Members were particularly concerned with the proposed provision in the Corrupt and Illegal Practices (Amendment) Bill 1991 whereby anonymous donations could be accepted by the candidates although they agreed that there was no need to identify the donor if the donation was under \$500. They felt that since the primary objective of the declaration scheme was to increase the transparency of elections by requiring the candidates to disclose their sources of election funds, to allow anonymous donations to be accepted would defeat the purpose. The Administration fully understood the ad hoc group's sentiment on this issue. In response to members' views, the Administration put forward two options, that is, either to remove the reference to anonymous donations in new section 29(2)(b) altogether, or to "disguise" anonymous donations made at a meeting, rally and so on by reference to the event. Members agreed that the former is more clear-cut. I shall therefore move an amendment to delete the reference to anonymous donations during the Committee stage.

As a related issue, members also discussed with the Administration the need for candidates to disclose loans which were made other than on a commercial basis, in their returns of donations. The Administration explained that loans on advantageous terms would be deemed to be an advantage under the Prevention of Bribery Ordinance. Recognizing that the proposed declaration scheme only aimed to achieve a very limited objective of enabling the incumbent members to solicit or receive donations, members agreed not to pursue the proposal of requiring loans to be disclosed in the candidates' returns of donations. However, the Administration should monitor the situation to see if any further measures were necessary should abuse of the system be detected.

Sir, with these remarks, I support the motion.

ATTORNEY GENERAL: Sir, I am grateful to Mrs CHOW and her ad hoc group for their careful scrutiny of the Bill and their thoughtful comments.

The Administration is mindful of the need to keep a vigilant watch over this area, so as to safeguard the integrity and fairness of the electoral and political process. In this connection, this Bill and the Prevention of Bribery (Amendment) Bill 1991 seek to address, among other matters, the existing anomaly between incumbent and non-incumbent members as regards their ability to receive donations for their election expenses. I can also confirm that the Administration is carefully looking into the ad hoc group's concern about a similar anomaly regarding donations for running a political office. Members are of course aware that it is the intention of the Administration to conduct a comprehensive review of the electoral arrangements after the September elections to this Council.

Question on the Second Reading of the Bill put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### PREVENTION OF BRIBERY (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 23 January 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### APPRENTICESHIP (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 24 April 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### VOCATIONAL TRAINING COUNCIL (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 24 April 1991

At this point, the following Members declared their interest:

Mr Stephen CHEONG as chairman of the Vocational Training Council.

Mr Andrew WONG as a member of the Vocational Training Council.

Mr TAM Yiu-chung as a member of the Vocational Training Council.

Mrs Rosanna TAM as a member of the Vocational Training Council.

Mr James TIEN as a member of the Vocational Training Council.

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

#### INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 24 April 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).



INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 24 April 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of Bills

Council went into Committee.

URBAN COUNCIL (AMENDMENT) BILL 1991

Clauses 1 to 3 were agreed to.

REGIONAL COUNCIL (AMENDMENT) BILL 1991

Clauses 1 to 3 were agreed to.

THE HONG KONG ASSOCIATION OF BANKS (AMENDMENT) BILL 1991

Clauses 1 to 9 were agreed to.

Schedule was agreed to.

LIMITATION (AMENDMENT) BILL 1990

Clauses 1, 13 and 14

ATTORNEY GENERAL: Sir, I move that clauses 1, 13 and 14 be amended as set out under my name in the paper circulated to Members.

The proposed amendments to clause 1 and the first two proposed amendments to clause 14 simply change the date references that appear there. The new date of commencement of the Ordinance is 1 July 1991.

The proposed amendment to clause 13 is designed to delete proposed new section 33. As Mrs Miriam LAU explained in her speech a moment ago, the section has been rendered unnecessary following a recent decision of the House of Lords. The last amendment proposed to clause 14 is consequential upon the deletion of new section 33.

Sir, I beg to move.

Proposed amendments

Clause 1

That clause 1 be amended --

(a) in subclause (1), by deleting "1990" and substituting "1991"; and

(b) in subclause (2), by deleting "June 1990" and substituting "July 1991".

Clause 13

That clause 13 be amended --

(a) in the proposed section 31(7), by deleting "and section 33" and "or section 33"; and

(b) by deleting the proposed section 33 and the heading above it.

Clause 14

That clause 14 be amended --

(a) in the proposed section 38A(1), (2) and (3) --

(i) by deleting "June 1990" wherever it occurs and substituting "July 1991"; and

(ii) by deleting "1990" wherever it occurs and substituting "1991"; and

(b) by deleting the proposed section 38A(4) and (5).

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 13 and 14, as amended, proposed, put and agreed to.

Clauses 2 to 12 were agreed to.

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1991

Clauses 1, 3 to 5 and 8 were agreed to.

Clauses 2, 6 and 7

MRS CHOW: Sir, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

The purpose of the amendments to clauses 2(b) and 6 is to clarify that an employee or voluntary worker of a candidate is regarded as a person acting on the candidate's behalf. The amendments follow closely the wording used in the existing section 5 of the principal Ordinance.

As I have mentioned in my speech in the resumption of the Second Reading debate, the amendments proposed to clause 7(b), that is, to remove the reference to anonymous donations, aims to increase the transparency of elections whereby all the donors need to be identified and disclosed in the candidates' returns of donations except in the case of donations under \$500.

With these remarks, Sir, I beg to move.

Proposed amendments

Clause 2

That clause 2(b) be amended, in the definition of "election expenses" by deleting "person employed or engaged by the candidate" and substituting "other person on the candidate's behalf".

Clause 6

That clause 6 be amended, in the definition of "donation" in new section 27 by deleting "person employed or engaged by the candidate" and substituting "other person on the candidate's behalf".

Clause 7

That clause 7(b) be amended, in new section 29(2)(b) by deleting "anonymous donations or".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 6 and 7, as amended, proposed, put and agreed to.

PREVENTION OF BRIBERY (AMENDMENT) BILL 1991

Clauses 1 and 2 were agreed to.

APPRENTICESHIP (AMENDMENT) BILL 1991

Clauses 1 to 9 were agreed to.

VOCATIONAL TRAINING COUNCIL (AMENDMENT) BILL 1991

Clauses 1 to 14 were agreed to.

INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) (AMENDMENT) BILL 1991

Clauses 1 and 2 were agreed to.

INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1991

Clauses 1 and 2 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

URBAN COUNCIL (AMENDMENT) BILL 1991

REGIONAL COUNCIL (AMENDMENT) BILL 1991

THE HONG KONG ASSOCIATION OF BANKS (AMENDMENT) BILL 1991

PREVENTION OF BRIBERY (AMENDMENT) BILL 1991

APPRENTICESHIP (AMENDMENT) BILL 1991

VOCATIONAL TRAINING COUNCIL (AMENDMENT) BILL 1991

INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) (AMENDMENT) BILL 1991 and the

INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1991

had passed through Committee without amendment and the

LIMITATION (AMENDMENT) BILL 1991 the original short title of which was the  
LIMITATION (AMENDMENT) BILL 1990 and

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1991

had passed through Committee with amendments. He moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

Private Bill

Second Reading of Bill

THE HONG KONG INSTITUTE OF PLANNERS INCORPORATION BILL 1991

Resumption of debate on Second Reading which was moved on 24 April 1991

Question on the Second Reading of the Bill proposed, put and agreed to.

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order 43(1).

Committee stage of Bill

Council went into Committee.

THE HONG KONG INSTITUTE OF PLANNERS INCORPORATION BILL 1991

Clauses 1 to 12 were agreed to.

Council then resumed.

Third Reading of Bill

MR CHENG HON-KWAN reported that the

THE HONG KONG INSTITUTE OF PLANNERS INCORPORATION BILL 1991

had passed through Committee without amendment and moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

Adjournment

The Housing Authority's proposed scheme of sale of flats to sitting tenants

CHIEF SECRETARY: Sir, I move that this Council do now adjourn.

HIS EXCELLENCY THE PRESIDENT: I believe a Member wishes to raise a matter for debate on the adjournment. Could I remind Members once again that that allows 45 minutes for Members to speak before I call on an official Member to reply who will have 15 minutes at the maximum.

4.27 pm

MISS LEUNG (in Cantonese): Sir, in accordance with Standing Order 9(5), I now propose that an adjournment debate be held on "The Housing Authority's proposed scheme of sale of flats to sitting tenants". I wish to declare that I am a member of the Housing Authority and the convener of the OMELCO Standing Panel on Housing. I understand that I am speaking in the capacity of a Legislative Councillor.

Sir, one of the major objectives of the Long Term Housing Strategy implemented since 1 April 1988 is to assist eligible households to purchase their own flats. The scheme of sale of flats to sitting tenants under debate today which proposes to sell some relatively new rental units from the Housing Authority's stock to sitting tenants, is one of the various means to achieve such an objective.

An ad hoc committee was set up in mid-1989 by the Housing Authority to examine the scheme. The committee then drafted its report on sale of flats to sitting tenants and amended some of its recommendations after public consultation. In late March this year, the Housing Authority finally gave endorsement to the scheme to be submitted to the Executive Council for final decision.

Sir, the OMELCO Standing Panel on Housing has all along been very concerned about the scheme of sale of flats to sitting tenants and for many times met with officials of the Housing Department to discuss the matter. Apart from being briefed on the progress of the ad hoc committee, we also expressed our views. We made further comments after the Housing Authority had endorsed the scheme so that it could submit its approved scheme together with our views to the Executive Council.

In spite of the fact that the scheme had been approved by the Housing Authority, some concern groups, public housing tenants and district board members still voiced their opinions on this matter. Some of the organizations claimed that the prices proposed were too high and they hoped that this Council would hold an adjournment debate on it. In view of the grave concern of the public over the scheme, the Legislative Councillors have agreed to have an adjournment debate on it today.

Sir, it is a well-known fact that more and more people including public housing tenants would like to have their own flats. The Housing Authority's proposal to sell some relatively new rental units to sitting tenants is obviously aimed at meeting the demand of some of the public housing tenants. Certainly, they can also opt not to buy. In principle, I support the scheme of sale of flats to sitting tenants. I believe that even after the introduction of the scheme, the Housing Authority would continue to provide adequate rental units for the eligible households. It is also important that the existing rights of the sitting tenants should be safeguarded.

Sir, what is most controversial about the scheme of sale of flats to sitting tenants is obviously the selling price of the rental units proposed by the Housing Authority. Some concern groups, public housing tenants and district board members feel that the prices are too high and disagree with the proposed pricing method, that is, determining the price in accordance with the criteria set for fixing the price of Home Ownership Scheme flats.

As this scheme is basically similar to the HOS and can be considered as a kind of HOS, I therefore believe that the proposed pricing method based on the criteria



set for fixing the prices of HOS flats is justifiable. I find the initial proposal of the ad hoc committee acceptable, which recommends to set the selling price of a rental unit at a level equivalent to 70% of the price of a similar HOS flat. However, I disagree with the Housing Authority's subsequent proposal to reduce the selling price by offering a 10% discount for the so-called non-vacant possession.

According to the Housing Authority's latest pricing proposal, the actual price of a five-year old flat with a usable floor area of 35.4 sq m in Pok Hong Estate, Sha Tin is about \$290,000, that is \$8,200 per sq m or \$750 per sq ft. Furthermore, it is equivalent to \$530 per sq ft in terms of gross floor area. The monthly repayment for a bank mortgage of a housing unit costing \$290,000 is less than \$3,000. It will certainly be affordable to many public housing tenants.

Sir, I believe that in determining the price of a rental unit to be sold under the proposed scheme, we not only need to take into consideration the affordability of the sitting tenants so as to make the scheme more appealing, but also have to consider whether the scheme is fair to other members of the public and whether public money put to this use is not wasted. If this scheme is approved by the Executive Council, the Housing Authority, in implementing the scheme, must facilitate the sitting tenants concerned to deliberate their decisions carefully by providing them with information on the minimum monthly expenditure required for the purchase of a rental unit.

MR CHEUNG YAN-LUNG (in Cantonese): Sir, after reading the report on "Sale of Flats to Sitting Tenants", I am of the opinion that this proposed policy is indeed worth supporting. I am always ready to support any policy which encourages home ownership. I can see that a great deal of effort has been made in formulating details of implementing the proposed scheme which have already been fully discussed by parties concerned, and I believe this should be an acceptable report.

The Hong Kong Government has all along attached great importance to the provision of public housing. The public housing programme is one of Hong Kong's proud achievements. It has served to offer consolation and a sense of security to members of the public who are in need of a shelter but cannot afford to buy or rent private property. It looks after the basic housing needs of the general public, fulfilling the cherished hope of traditional Chinese families to live and work happily. After more than 20 years of continual developments, about half of our population is now

living in public rental flats. Sir, the growing prosperity of our economy has resulted in an increasing desire for a better living environment. The housing policy of building larger housing estates with better facilities to be offered for home purchasing can cater to public demands. This will be the right direction to take in the long run.

The Home Ownership Scheme, Private Sector Participation Scheme and Home Purchase Loan Scheme introduced by the Housing Authority are aimed at encouraging home ownership. The Authority's effort in caring for the housing needs of the sandwiched class is certainly commendable. However, one cannot deny that for "the sandwiched class within the sandwiched class", the present property prices still exceed their affordability. Under the scheme proposed in the report, sitting tenants will be able to buy a flat at an affordable price that is between \$250,000 and \$300,000, get a 95% mortgage loan repayable over 20 years with a guarantee by the Hospital Authority, and continue to live in their present flats. I consider these terms attractive to sitting tenants.

After reading the report, I note that there are two areas which warrant government attention. Firstly, the frantic speculative activities in the private property market have already prompted our banks to tighten credit so as to minimize risk. Under these circumstances, will the financing arrangements proposed in the report be able to implement smoothly? Can preferential loan rate be easily obtained? In order to attract 50% of sitting tenants to endorse the scheme, these issues are of great significance. As inflation can be triggered by the drastic increase of indirect tax, will the implementation of this sale scheme affect the consumer market and fuel inflation? I hope the Government will take preventive measures and handle the situation with prudence.

Secondly, in considering which types of flats are suitable for sale, the Government must be very patient in consulting and explaining to the public, so that sitting tenants, whether they join the sale scheme or not, will not feel being unfairly treated. The Government should also make the public fully understand the main idea and objective of the scheme.

Once the public rental flats are sold, owners and tenants will unavoidably co-exist in the same block. Mixed tenure situation will very likely give rise to conflicts of interest in the management and maintenance of the block. I thus urge the Housing Department to closely monitor this likely situation and make reasonable

arrangements for tenants who have financial difficulties in paying the management and maintenance expenses.

Lastly, I would like to raise some practical problems that have to be further deliberated by the parties concerned. Some of these problems are: can sitting tenants own another property after buying the rental flat? If the restriction on the number of occupants of a unit is lifted after the conversion of public rental flats into private properties, will this lead to overcrowdedness? Will electricity supply be able to meet the needs of the privatized public rental flats? With some units being permanently owned in future, will the sales proceeds of the sale scheme be required to finance the building of more public rental flats so as to make up the decreasing supply of housing units?

Sir, the successful implementation of the sale scheme lies on striking a balance between attracting sitting tenants to participate actively in the scheme and at the same time, giving due consideration to the overall economic situation of Hong Kong and the principle of equality.

Sir, with these remarks, I support the motion.

MRS CHOW: Sir, today's debate is in response to OMELCO complaints and public views which have focused attention on the sale of public housing flats to sitting tenants. I was among the duty roster Members who met with a representation on the issue. There were three main points. The first was that the prices set by the Housing Authority were too high. The second was that some recently built rental housing blocks of four or five years old to be sold in the scheme were defective, and we were shown photographs of walls where concrete had fallen off, exposing steel bars inside. The third point was that these complainants had difficulty communicating directly with members of the Housing Authority.

I consider the pricing policy to be entirely the business of the Housing Authority, and I understand the Housing Panel of OMELCO was kept informed of the basis of this policy and was generally satisfied with it.

The condition of the blocks of five years old shown in the pictures were unacceptable regardless of whether the premises are to be rented or sold and the Housing Authority has a case to answer.

But I consider the third issue an important one that requires urgent action. The Housing Authority is in every respect autonomous and therefore should be directly accountable to the public. In other words, the Authority should have its own avenue to handle all complaints and appeals, and should establish direct lines of communication with the public. I understand the Authority does have a Complaints Committee, but it only handles complaints after the relevant policy committee has resolved that it is appropriate to do so. In addition, it automatically refers all complaints addressed to it to the Department for handling in the first instance. As a result, not one single case has been brought before the Complaints Committee of the Housing Authority since the re-organization of the Authority in April 1988. OMELCO, on the other hand, has received more than 1 200 complaints on housing matters since that date.

I appeal to the Housing Authority to review its own system and procedure to handle complaints, so that future complaints about public housing will be handled where it should be handled, that is, by the Housing Authority which is the rightful authority to be held responsible and accountable for its decisions. Further, and more importantly, I am sure the Authority will find it in its interest to examine how complaints can be avoided by way of strengthening its communication with the public.

MR CHAN (in Cantonese): Sir, I was one of the members of the Housing Authority when it made the final decision on the scheme of sale of rental units two months ago. There were two options for price fixing: 70% or 60% of the price of a Home Ownership Scheme (HOS) flat. For example, for a HOS flat which is worth \$500,000, 70% amounts to \$350,000 while 60% is equal to \$300,000. I agreed to the option of 60% which was also the method subsequently adopted by the Housing Authority.

Which is more economical to a sitting tenant, to pay rent for his flat or to buy the flat? For the sake of comparison, I now calculate the total expenditure of buying and renting a flat over a period of 20 years. I refer only to the round sum. The detailed calculation is included in the annex and I hope to have it recorded in the Hansard.

I would like to take a flat of 350 sq ft in area in a Trident II block in Sha Tin as an example. The sale price is not known yet, but I assume it to be \$330,000. The down-payment is at least 5% and the remaining 95% has to be paid in instalments

in 20 years. The increase in management fee and rate is included. At present, the rental for the same unit is \$860 and it is subject to a biennial increase of 15%.

After a lapse of 20 years, the total expenditure of instalments will be \$915,000 and the rental expenditure will be \$419,000. The rental for 30 years will be \$982,000. It makes little difference between buying and renting a flat.

This is what the situation will be if it is not necessary to pay double rent in the 30 years period. If double rent is needed after a lapse of 10 years, the rental for 22 years will be equal to the total expenditure of instalments for 20 years. In this case, buying is certainly more economical.

Though my calculation is purely based on the money factor and tenants have to consider their ability to afford and the advantages of owning a flat, it can prove that the Housing Authority is not intended to make any generous offer. The sale of rental units is but a limited scheme. The 3 000 to 4 000 units to be sold each year are aimed at attracting those sitting tenants who have savings or are required to pay double rent. It is hoped that they will no longer be covered by the subsidy of the Housing Authority. The objective is to continue the renting practice rather than making everybody own their homes and that conforms with the prevailing opinion of the public.

Recently, I received a number of submissions suggesting that the price of a flat should be set at \$200,000. That price was not a subject of discussion at the said Housing Authority meeting. When compared with the \$330,000 which I mentioned earlier on, it is definitely more economical to pay \$200,000 in any case. If the price is set at \$200,000, the allocation will be greatly different. I am of the view that all sitting tenants should have equal opportunity to benefit from such a generous offer. The fortune should not be exclusively for those tenants who are living in rental units to be on sale. If 4 000 units only are to be sold each year, the allocation method should be modelled on the Mark Six Draw so that all public housing tenants will have equal opportunity.

The problem of allocation shows that when the sale price is lowered to a level that everybody can afford, the original aim of the sale scheme has to be reviewed. The objective will have to change from rental base to making everybody own their homes. This is a major change in the direction of the housing policy. Do we have sufficient units for sale? How should we handle the needs of those on the Waiting List? Though

I also hope that everybody will own their houses, it is too early to do this now.

While I endorse the calculation of fixing the prices at 60% of HOS flats, I think that there are problems in linking the prices of HOS flats with private housing. We have to look for solutions to the high prices of private housing caused by speculation in order to eradicate the problem. The prices of private housing must be normal to make it reasonable to link it with HOS flats. But this issue has to be left to the next debate.

## Annex

### Rent

	Normal rent	Double rent	Purchase
1 & 2 years	20,640	20,640*	
	(\$860 p.m.)	Initial payment	=\$16,500(5%)
3 & 4 years	23,735	23,735*	
	Loan	=	\$313,500 (95%)
5 & 6 years	27,295	54,590	
	Instalments	=	20 years (240 months)
7 & 8 years	31,390	62,780	
	Interest rate	=	10%
9 & 10 years	36,100	72,200	
	Monthly		
11 & 12 years	41,515	83,030	instalment = \$3,025
13 & 14 years	47,740	95,480	Monthly rate = \$200 )
		)Assumed	
15 & 16 years	54,900	109,800	Monthly )annual
	management	)increase =	
17 & 18 years	63,140	126,280	charge = \$250 )10%
19 & 20 years	72,605	145,210	Total management
	fee and rates		
21 & 22 years	83,500	167,000	payment in
	20 years	=	\$172,680
23 & 24 years	96,025	192,050	

	Total mortgage		
25 & 26 years	110,430	220,860	payment in = \$3,025x240 + \$16,500
	20 years		= \$742,500
27 & 28 years	126,995	253,990	=====
	Total mortgage		
29 & 30 years	146,040	292,080	payment plus
	management fee		= \$742,500 + \$172,680
Total	982,050	1,919,725	and rates in 20 years = \$915,180
	=====	=====	=====

\*Only normal rent paid

MR HUI (in Cantonese): Sir, in my opinion, the commendable fundamental principles behind Housing Authority's proposal of the "Sale of Flats to Sitting Tenants Scheme" is beyond question and worthy of our support because the scheme, apart from boosting Hong Kong citizens' confidence and reinforcing their determination to stay in Hong Kong, also directly increases Housing Authority's accumulated capital, thereby expediting the construction pace of public housing estates to shorten the waiting time for families in the queue for public housing units.

Yet, Housing Authority's goodwill alone is not enough to make the scheme a success. Indeed, the response of the relevant tenants is also very important. The information I have gathered shows that most of the tenants are interested in buying the household units they are presently renting. Their main considerations are: whether the price is low enough and who is going to undertake the responsibilities for future management and maintenance of the flats. However, from Housing Authority's point of view, if the price is too low, then not only will it bring about financial loss and criticisms from non-sitting tenants, but will also adversely affect the future demand and supply for the units of the Home Ownership Scheme and Home Purchase Loan Scheme.

Being a member of the Housing Authority, I thoroughly understand how difficult it is to balance the interests of the two parties and to get the job done as well. In my opinion, in fixing the price of those housing units, two fundamental principles must be observed: the price must be reasonable and can be afforded by the tenants. In other words, the price not only has to reflect the construction cost, land cost, capital cost as well as the number of floor level and orientation of the household unit, it should also be within the affordable level of the tenants after all these

factors have been reflected and a certain percentage of depreciation has been deducted to ensure that the tenants' standard of living will not be lowered after buying these units.

I believe that if Housing Authority promises to undertake the maintenance and environmental improvement works before these public housing units are put on sale and takes up the future management responsibility, the pricing problem should not be difficult to solve. Yet, since tenants can choose whether to join the scheme, I hope that the Housing Authority will take steps to ensure that the rights now enjoyed by those who do not intend to opt for the scheme will not be hampered because of the introduction of this scheme.

Sir, this issue has been discussed for some time. An adequate amount of public views has been solicited and we have already had a good knowledge of these views. Therefore, we are now only awaiting the Housing Authority and the Executive Council to make a final decision basing on the two major principles. I hope that decision can be made as soon as possible to avoid price fluctuation as a result of the further delay of the scheme.

MR TAM (in Cantonese): Sir, as pointed out in the report of the Housing Authority's respective committee, the scheme of sale of flats to sitting tenants is introduced in response to the growing desire for home ownership among the people and for the reason that home ownership can promote a sense of commitment to the community which in turn helps to achieve social stability. However, I wish to point out that if the Government is really sincere in resolving the problem of home ownership by the public, a more positive means, I believe, should be curbing the present property speculation activities and reducing the prices of HOS flats. For those public housing tenants who are financially unable to buy a HOS flat, I believe that if the Government can guarantee the stability of future rentals and enhance the management quality, they may not have strong desire for buying the rental flats which they now occupy.

Nevertheless, the scheme would not be unacceptable provided that it is purely for reason of satisfying public desire that people are offered an alternative. What I worry is the Government's inclination regarding the housing policy as reflected in the introduction of the scheme, and the negative implications of the scheme.

However, there is already much room for deliberation as far as the current scheme of sale of flats to sitting tenants is concerned:



(1) The pricing of the public housing units on offer: The current proposal of adopting the pricing criteria of HOS in calculating the price of public housing units by the Ad Hoc Committee is out of line with the affordability of the sitting tenants in general on the one hand, and runs counter to the objective of the scheme on the other. The objective of the scheme is to provide tenants with the opportunity of home ownership rather than to make profits. It is therefore most reasonable that the price of public housing units be determined on the basis of costs (including the cost of land development). Meanwhile, the Government can tighten the restriction on the resale of public housing units in order to eliminate the inequity of reaping huge profits through resale. But the Government must bear in mind that the objective of providing public housing is to allow those low income earners to have their own homes rather than to make profits or increase their burden.

(2) The maintenance and management of the public housing units sold: According to the proposals of the Ad Hoc Committee, sitting tenants who do not wish to buy their units will also have to bear the costs incurred by any improvements and repairs of the public housing units sold, as well as the increased management fees after the privatization of management. This is extremely unfair to the tenants who are virtually forced to join the queue for home purchase or move out of their home. Thus, the onus is indeed on the Housing Authority to bear the additional expenditure incurred by the sale of public housing units, or to give compensation to those sitting tenants who are forced to move out in addition to removal allowances.

(3) The sale returns of public housing units: In order that the present scheme of sale of flats to sitting tenants will not prolong the waiting time of public housing applicants, the Government must use all the returns from the sale of public housing units in the production of public housing. Accordingly, the overall resources for producing public housing should be increased to prevent from diminishing the rental public housing stock in existence or under planning due to the sale of public housing units.

Thank you, Sir.

MR ANDREW WONG (in Cantonese): Sir, with regard to the pricing of public rental housing flats, I had expressed my views at the meeting of the Housing Panel of OMELCO on 12 April 1991 and asked for consideration by the Housing Department and the Housing

Authority. But no reply has been given so far. I reassert here my views in the hope that the Housing Authority would give it serious consideration. But in case the Housing Authority does not take my suggestions into account, it is hoped that the Executive Council would consider and accept them during its final deliberation of the issue. My views are mainly as follows:

In my opinion, it is generally fair and correct for the Housing Authority to adopt Option I from among the five options available, that is to fix the price of the PRH flats at 60% of HOS flats which are priced at 70% of the market value of the private sector. As such, PRH flats are set at a price level equivalent to 42% of the market value of the private sector. If market price is not used as a yardstick, we would not know which course to take when dealing with pricing and the result may be unfair to the tenants, or to the Housing Authority and in other words, to the public funds.

Yet, Option I does not fully conform to the principle of fairness as the market price therein is the current market value. I propose that instead of the current price, the price of the PRH flats should be based on the prevailing price of the HOS flats sold at the time when the PRH blocks were completed, that is 70% of the market value of private flats, with a discount of say 60% allowed in consideration of the lesser facilities and qualities and lastly a percentage of say 10% to 20% be added to compensate for the depreciation of the value in money.

The proposal is made on the principle of fairness. Let us imagine that there were five years ago two families of which one took up an HOS flat and the other a rental flat. With this decision to sell the rental flats to the sitting tenants, would it not be fairer to the two families to adopt my pricing method. I further propose that the Housing Department and the Housing Authority should work out the price by applying my method for the reference of the public and the Executive Council.

Sir, these are my remarks.

MR ARCULLI: Sir, the report of the ad hoc committee on the sale of flats to sitting tenants has dealt with the matter quite thoroughly. However, I would like to draw the attention of Honourable Members to two points which may warrant further examination and consideration.

The first is whether the grant of a lease to the Authority by the Government in respect of flats to be sold would be included in the 50 hectares of land that the Government can sell annually. If the answer is in the affirmative, it may well be that a somewhat more flexible approach on the number of units to be sold needs to be taken so as not to put an unnecessary strain or squeeze on the land supply to the other needs of Hong Kong.

My second point is that since it is the declared policy of the Housing Authority to sell some 3 000 to 4 000 units per annum as well as continuing its policy of producing rental units, would a situation arise where a prospective buyer who applies for a rental unit be given one and then waits and takes his chance on being offered or being given an opportunity to buy his flat? He will then in the meantime have been subsidized in his rental for at least five years and then buys his flat at a hefty discount to those buying flats under the HOS or the PSPS.

I will conclude by asking a question: Is this fair to the other members of our community?

MR MICHAEL CHENG (in Cantonese): Sir, it is the common aspiration of the general public to have a permanent and secure home of their own where they and their family can live together at peace.

The Home Ownership Scheme initiated by the Government in 1978 was originally intended to help solve the housing problem of the people of the lower middle income group who, being unable to afford a flat of their own, are not poor enough to be qualified for any public housing benefit. The scheme was well received by the public. However, with the passing of time, the price of HOS flats has now sharply risen from several ten thousand dollars to over a million dollars. For a family with a total income of \$14,000, buying a HOS flat which costs more than a million dollars is simply out of the question. As the price of HOS flats is now pegged to the price of comparable units in the private sector and becomes far beyond the affordability of the lower middle income group, the Home Ownership Scheme has departed widely from its original purpose of providing this particular group of people with inexpensive housing. It is really disappointing that the Government has not yet conducted any review on this matter.

Like the Home Ownership Scheme, the Government's proposed scheme of sale of public

housing units is purposely introduced to enable sitting tenants to become owners of their flats. Yet, by linking the price of public housing units with the market value of comparable flats as in the case of the Home Ownership Scheme, it will mean to repeat the same mistake of pitching the selling price of these flats at a level above the affordability of the local residents in general. In the face of soaring property price at the moment, the public housing units are bound to be sold at prices far beyond the means of the sitting tenants. I have conducted an opinion survey on the proposed scheme in eight housing estates of various types by issuing 40 000 questionnaires. As indicated by the findings of the survey, it is the general request of the sitting tenants that the Government should take into account the average financial capacity of the sitting tenants when fixing the price of the public housing units. Life has become more and more difficult to live recently as a result of high inflation and a general rise in prices. The sitting tenants will certainly find it hard to buy these public housing units at such high prices.

The structural condition of these public housing units is another factor which may have a great bearing on their sales. I have held several consultative meetings with the sitting tenants and learnt that cases of water seeping through window sills and toilet ceilings and discoveries of spillings are not unfrequent in recently constructed public housing units. The tenants concerned are constantly beset by such defects which keep on recurring soon after repairs by the Housing Department. In fact, there is simply no way to bring about a permanent restoration to these structurally defective flats. It will be unfair to a sitting tenant if he eventually finds that he cannot make a secure and durable nest of the public housing unit he has bought with all the money he has saved through the practice of frugality and austerity in family spending.

As regards the maintenance and management of public housing units, the cost is to be shared between the owners and the tenants in future. This will mean an extra financial burden to the tenants. However, there is no mention of this additional expenditure in the agreements signed between the tenants and the Government when the former first moved into their public housing units. Under the new arrangement, these tenants are liable to be transferred out of their flats if they refuse to pay their share of the maintenance and management expenses. It is not fair to the sitting tenants.

Sir, the foregoing are my remarks on the motion.

MR DAVID CHEUNG: Sir, it is a known fact that housing is expensive in Hong Kong. Other than those who enjoy housing allowances or have their quarters provided, it is not easy at all to rent or to buy. On the other hand, it is rather fortunate for those who are eligible for public housing. Again, it is a benevolent measure to sell public housing flats to sitting tenants. The scheme involves two important aspects in my view. The first is the price of the flat. I accept the Option One Formula. But in view of the disproportionately high price of flats in the market, I do not support using the current price level as the criteria. Simultaneously, as sitting tenants have already enjoyed low rental for so long, I do not believe that the selling price should be unreasonably low. Views on price are rather polarized. I do hope that something could be worked out or some compromise could be worked out regarding the criteria.

The second issue is the long-term management problem. If within the same block, there are less owners than tenants, the management problem may be very complicated. It may be more advisable to designate one or two blocks for sale so that all occupants are owners who can form their own association to manage their own block. Finally, Sir, before the sale of flats, the Housing Authority should see to it that the physical conditions of flats for sale are satisfactory.

Sir, I support the scheme to sell flats to sitting tenants.

MR CHOW (in Cantonese): Sir, in Hong Kong where a large number of people are accommodated in limited space, housing constantly poses a problem to the general public. The Housing Authority's proposed scheme of sale of flats to sitting tenants undoubtedly offers low-income citizens a chance to live and work happily in Hong Kong.

However, is the Housing Authority's proposal in line with the fundamental principle of the long-term housing strategy, which is: "To ensure the provision of public housing for all tenants at prices or rents they can afford"? It depends on individual views.

The Housing Authority proposes that the price of public housing flats should be set at 60% of the price of Home Ownership Scheme flats. This leads one to think whether the Housing Authority is deliberately committing a mistake. As we all know, Home Ownership Scheme flats are fixed at 70% prices of market value and related to

flat prices of the same district. This method of calculation has long attracted criticism and should have been reviewed. Now the Housing Authority even extended this unreasonable pricing method to the sale of public housing flats. This does not only go against the principle of the long-term housing strategy, it will also turn the scheme into another of the Housing Authority's techniques of using its powers to further its own interests.

Sir, public housing estates are built with public money. To secure private gains with public money is absolutely not permissible. In fact, prices of public housing flats should be based on cost and not indirectly pegged to market prices. As far as the calculation of cost is concerned, it can be based on replacement cost, land formation cost and all relevant administrative costs. On the other hand, to ensure that the purpose of the sale of flats scheme would not be twisted, when the flats can be put out to the market for sale, the owner should be required to pay back to the Housing Authority the difference between the original sales price at 60% of Home Ownership Scheme rates and the market rate. This would reduce the chance of public housing flats being used for speculation and private gains.

In addition, the scheme should provide for the owners' right to sell the flats back to the Housing Authority in the event of financial difficulties. As regards the question of management and maintenance, the Housing Authority should exercise its discretion on when to pull out, with reference to the degree of maturity of individual owners' corporation, and be prepared to shoulder the ultimate responsibility.

Lastly, even if the sales programme would affect only 1% of the people on the waiting list, the Housing Authority must monitor closely whether this percentage would rise undesirably if the scheme is expanded. It should also consider revising the scheme by building more rental flats in order to minimize the effect on the above-mentioned category of persons.

MR SIT (in Cantonese): Sir, I am opposed to the Housing Authority's proposal to sell public housing flats to sitting tenants. As all in this Council are aware, Hong Kong's public housing policy came into being following a catastrophic fire on the Christmas eve of 1953 which made 53 000 people homeless. From then on, Hong Kong's housing policy came through germination to the full-blown development of today. The principal objective of the housing policy is to provide domestic accommodation at

low rent to lower-income families. The Housing Department should continue to carry out this policy. If the Housing Department thinks that some of the public housing tenants are becoming affluent, it should, through the HOS and PSPS, lure them into buying their own homes. It should not, on seeing that the tenants are getting well-off, attempt by a variety of means to force them to buy their own homes. I personally feel that the Housing Department is not doing a good job in this respect. Nor are members of the public satisfied with it.

What mode to effect sale will the Housing Department be adopting? As some Members before me have said, if tenants do not buy, the Housing Department will increase rent every two years and resort to the "better-off tenant rent charging" policy to force them to buy. This way of doing it will be reprehensible, not to mention that it will also artificially push up prices. Therefore, I find that in the pamphlet entitled "Sale of Public Housing Units to Sitting Tenants" there are many areas that need clarification, one area being maintenance. This was also mentioned by a number of Members moments ago.

Is it necessary that our policy should cater to the housing needs of lower-income people? This is an important point. The Honourable HUI Yin-fat said a moment ago that if people can buy public housing units at a low price this will booster their confidence in staying. There are words for the gullible only. Most people living in public housing units simply have no alternative but to stay no matter whether they can buy a domestic unit as low priced as \$100,000-\$200,000. Therefore I hope that the Housing Department, in drawing up the policy, will not only have regard to money and thus add to the burden of those affected in this time of high inflation. If the Government resorts to the "better-off tenant rent charging" policy, increases rent every two years or employs the "median figure method" so that those affected are forced to buy their own homes even to the extent of raising loans, this will be a doomed policy. Especially during the transition period, this sunset Government must do whatever it can to benefit the public if it is to impart confidence to people. It must not attempt to force sitting tenants to buy their public housing units (if not to evict them). Is this something a good government should do? I hope members of the Housing Authority will do some soul-searching and strive for the welfare of Hong Kong people.

Thank you, Sir.

5.06 pm

SECRETARY FOR HOME AFFAIRS: Sir, this has been an interesting debate, reflecting the considerable public interest in the new opportunities being given to public housing tenants to buy their rental flats.

It is a matter that has been subject to much consultation at all levels and we do realize, as does the Housing Authority, that this is a major change in policy. This is the reason why the final step before going any further would be to seek the approval of the Executive Council.

Sir, in the course of consultation, I think most tenants supported the scheme, most people on the side supported the scheme, although they differ on the details of the scheme in one way or another. But I would like to take the opportunity to correct one misconception which has crept into the debate, which is Mr Kingsley SIT's assertion that some tenants will be forced or compelled to purchase flats. That is patent nonsense because nowhere in the consultation paper have we ever referred to compulsion; it is a matter of choice, not compulsion. As to his objection to the scheme, I leave that to be judged at the bar of public opinion. Sir, after the Executive Council has considered the matter, and if the Executive Council approves the scheme, we will subject this to the Housing Authority's further scrutiny. The Housing Authority would then apply to be granted legal title to the land. On this particular point, I would assume that the answer to Mr ARCULLI's question on land is an affirmative one. It is the intention that, after that step, offer letters to the affected tenants should be issued towards the end of July this year. This should enable the first phase of the sales programme to be completed by the end of the current financial year. I might mention that the ownership of private property would not be a bar to participation in the scheme as it is not a bar to participation in the application for rental flats. Sir, on the question of complaints, the Housing Authority is aware of this problem and will be reviewing its procedure.

On pricing formula, Sir, the issue was most keenly debated during the consultation exercise, and a number of Members have given their views on it today. The recommendation in the report that was issued for public consultation was that the pricing method adopted should be similar to the Home Ownership Scheme. This would mean that a market price would be determined, with due allowance made for the less attractive design of the rental block compared with a purpose-built sale block, the lack of upgrading of the plastering, wiring, security system and other facilities, and also the age of the block, and a similar discount to that given under HOS sales



would be applied to produce the selling price. The level of discount from a comparable flat in the private sector has been at 30% in most recent HOS sales, though it has at times varied in order to have more flats within the affordability range of less well-off families.

The Authority has now concluded that there is a case for allowing a greater discount to the market price when rented flats are sold to sitting tenants. It suggested that a discount of 40% would take account of the special nature of these sales and produce more affordable prices.

Some Members have suggested that it would be unfair for sitting tenants to be given a greater discount than would normally apply under HOS sales. The Authority feels, however, that the two schemes are different in nature and in the target group which they aim to reach. The present scheme aims to reach a broader range of public housing tenants than HOS, including those on average or below-average incomes. Moreover, as each flat can only be sold to the tenant living there, who is already enjoying a highly-subsidized rent, and as it is a condition of the scheme that more than 50% of the tenants in a block must accept the offer before the sale of any flat can proceed, reasonably attractive prices are needed if the scheme is to succeed.

Some Members have questioned why the price of flats sold to sitting tenants and flats sold under the HOS should be fixed in relation to market prices, rather than simply reflect construction and other costs. The Authority believes that an appropriate relationship to market prices needs to be established, so that too great a division is not created between the section of the community that is eligible to buy flats under these schemes and those who have no choice other than to buy in the private sector. If the Housing Authority were to sell its flats at prices that were too far below market prices, this would impact adversely on the strength of the private property market, and the policy of the Government and the Housing Authority as laid down in the Long Term Housing Strategy has been to encourage the private sector to expand its own production of small flats.

Sir, I understand the concerns that Members have expressed about the spiralling cost of private sector flats. Much of this appears to have been fuelled by speculation, and I can assure Members that when determining the market value of its own flats, the Housing Authority has regard to final transaction prices, not preliminary offers in the market. On the question of mortgage, the Housing Authority will guarantee the bank against default and therefore purchasers should have no

particular problem in obtaining them.

While it is true that the Authority will derive a substantial net income from the sale of flats to sitting tenants, as it does from the Home Ownership Scheme, this income will form part of its resources for the development of new public housing and the better management of its existing estates.

I should mention also that the Housing Authority will be reviewing the various issues relating to the Home Ownership Scheme later this year.

It has been suggested, Sir, that the scheme is inequitable in providing only a small proportion of public housing tenants with an opportunity to buy their flat. This is inevitable considering the land implications, the need to preserve an adequate stock of rental housing, and the desirability of selling only the more modern design of blocks where maintenance costs will be lower. The stipulation that a block will only be sold when more than 50% of the rental tenants in it have indicated a firm intention to buy will ensure that there are a sufficient number of owners to assume their responsibilities for the block, and that the resources required to effect a sale are deployed where their impact is greatest. The scope of the scheme will however be reviewed in a year's time.

Regarding the condition of the blocks to be sold, I can assure Members that the Authority will only sell blocks that are in sound structural condition. Tenants will be able to report defects found inside their flats and those which are confirmed to be genuine and not caused by the tenants' fault will be repaired at the Housing Authority's expense.

While the blocks will be sold in good condition, they will from time to time require maintenance and repair, as do other buildings. It is clearly right that those who buy these flats should accept responsibility for their share of future maintenance costs, as do all owners.

On management of the blocks sold to tenants, the Authority would not wish to continue management indefinitely. It has been the aim in recent years for the Authority to divest itself of day-to-day management responsibility for HOS flats by appointing management agents. The Authority has decided that, following the initial two-year period when it will manage the blocks directly, the owners should have a choice between having an Authority-appointed management agent or forming owners'

corporations to take over the management of the block.

Under these various arrangements, the Housing Authority will ensure that the interests of the remaining tenants in the sale block are protected. It will consult them on major issues and reflect their views at meetings of the owners' committee or owners' corporation. While the mixed tenure situation will inevitably pose some difficulties, they should not be insurmountable.

There has been concern, Sir, that, if the owners choose to make major improvements to the block, the tenants will have to bear their share of the cost through increases in rent. Since a decision to make major improvements will require a two-thirds majority, with the Authority reflecting the views of tenants, there will be a reasonable consensus among the residents of the block that such improvements are worthwhile. Since the tenants will benefit from the improved living environment, it would be wrong to exempt them from their share of the cost. Those who are genuinely unable to afford to pay the increased rent will be exempted but those who are able but unwilling to pay will be transferred to another block in the same estate or district if possible, and be given a removal allowance.

Sir, home ownership is of great benefit in fostering a sense of belonging and engendering social stability and shared prosperity. This scheme will provide many families with an opportunity they would not otherwise have to own their home. I believe that the Housing Authority should be commended for having the vision to create it.

Question on the adjournment proposed, put and agreed to.

Next sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 15 May.

Adjourned accordingly at eighteen minutes past Five o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the

exception of the Employees Compensation Assistance Bill 1991, Clubs (Safety of Premises) Bill 1991 and The Hong Kong Institute of Planners Incorporation Bill 1991, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.