

1 HONG KONG LEGISLATIVE COUNCIL \* 22 May 1991

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OFFICIAL REPORT OF PROCEEDINGS

Wednesday, 22 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 MARTIN LEE CHU-MING, Q.C., 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.

THE HONOURABLE SZETO WAH

THE HONOURABLE TAI CHIN-WAH, 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 GRAHAM BARNES, C.B.E., J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

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

THE HONOURABLE RONALD JOSEPH ARCULLI, J.P.

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

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 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 ALISTAIR PETER ASPREY, O.B.E., A.E., 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.

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

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

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

THE HONOURABLE PAUL CHENG MING-FUN

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

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.

Telecommunication (Amendment) (No. 2)  
Regulations

1991..... 189/91

Telecommunication (Cordless Telephone Apparatus)  
(Exemption From Licensing) (Amendment)  
Order

1991.....  
190/91

Frozen Confections (Regional Council)  
(Amendment) (No. 2) By-Laws 1991.....

198/91

Milk (Regional Council) (Amendment) (No. 2)  
Bylaws

1991.....  
199/91

Offensive Trades (Regional Council) (Amendment)  
(No. 2) By-laws 1991.....  
200/91

Sessional Paper 1990-91

No. 72 \* Kowloon-Canton Railway Corporation  
Annual Report 1990

Address by Member

Kowloon-Canton Railway Corporation  
Annual Report 1990

FINANCIAL SECRETARY: Sir, in accordance with section 14(5) of the Kowloon-Canton Railway Corporation Ordinance, the annual report and accounts of the Kowloon-Canton Railway Corporation for the year ending 31 December 1990 are tabled today.

The Corporation continued to maintain a strong financial position in 1990. Operating revenue stood at \$1,591 million, representing a 17% increase over 1989. Net profit for the year, inclusive of income from property development, rose by more than 50% to \$624 million. Operating costs, however, increased by 30% to \$1,392 million, largely as a result of train service improvements which led to increases in staff, energy consumption and maintenance costs.

Total assets stood at \$5 billion at the end of the year. Borrowing was reduced by 37% to less than \$1 billion, with a debt-to-equity ratio of 1:3.9.

The Corporation has transferred \$320 million to a Development Reserve for the purpose of upgrading existing facilities and meeting new infrastructure requirements necessitated by growth in service demand.

The Heavy Rail carried over 179 million passengers, representing an increase of 4% over 1989. Average daily patronage for the year exceeded 491,000. International passengers passing through Lo Wu increased by 8% to 28 million.

Major efforts have been made during the year to improve train services. New train cars ordered in 1989 began to arrive in 1990. A new train timetable to enhance punctuality and a Sunrise Savings Scheme to encourage travel before the morning peak were introduced.

The daily patronage of the Light Rail Transit System rose by 13% to an average 235 000. The growth in patronage coupled with increased productivity resulted in a reduction of the Light Rail Division's operating loss to \$31 million.

In March 1990, the KCRC Board approved the purchase of 30 new light rail vehicles and the construction of an extension to Tin Shui Wai for completion by the end of 1992. Together with the three extensions in Tuen Mun approved in 1989, the Corporation will spend more than \$800 million in capital improvements to the system

over the next three years, demonstrating its firm commitment to the development of the Northwest New Territories.

Freight traffic was slightly curtailed during the year. While in-bound cargo recorded a modest gain of 4.4% to 3.3 million tonnes, out-bound traffic dropped by 18% to 1.1 million tonnes.

Sir, after eight years of existence as a statutory corporation, I am pleased to report that, for the first time, the Kowloon-Canton Railway Corporation has been able to distribute a dividend payment of some \$125 million, or 20% of its profits, to the Government and thus to the community. Future dividend payments will be subject to further reviews between the Government and the Corporation. The distribution of dividends reflects not only the return to the taxpayers on the substantial public investment in the Corporation but also the capability of the Corporation to operate on a prudent commercial basis.

In overall terms, the Corporation performed well in 1990. It has served the community by providing safe, reliable, efficient and economic transport services to the travelling public and by constantly improving its services. I would like to thank the Chairman and the Managing Board, the management and all staff of the Corporation for their hard work and achievements during the past year.

Oral answers to questions

China's Most Favoured Nation status

1. MR DAVID LI asked: Will the Government inform this council what courses of action it will pursue in lobbying the United States Congress on the territory's behalf prior to and during the upcoming debate on the renewal of China's Most Favoured Nation status, and what impact a withdrawal would have on Hong Kong?

Will the Government's lobbying efforts be co-ordinated with the on-going efforts of the organizations such as the Hong Kong Trade Development Council, the Hong Kong General Chamber of Commerce and the American Chamber of Commerce in Hong Kong?

FINANCIAL SECRETARY: Sir, as Members are aware, the United States President has yet

to formally announce his decision to extend the Most Favoured Nation (MFN) status to China for another year. Some draft bills have been introduced in the United States Congress either to terminate MFN status or to impose conditions on its renewal. The Administration is monitoring developments closely. We have drawn attention to the adverse implications for Hong Kong of any decision to revoke or impose conditions on renewal of China's MFN status and will continue to represent Hong Kong's interest in the MFN debate in the United States.

On Hong Kong's part, the Secretary for Trade and Industry and other members of the Hong Kong/United States Economic Co-operation Committee will be calling on the United States Administration officials, Senators and Congressmen before and after a joint meeting between the Committee and its American counterpart to be held in New York on 6 June.

A considerable amount of work has also been done in Washington, and elsewhere in the United States, through the combined efforts of the Hong Kong Economic and Trade Offices, the Hong Kong Trade Development Council and the Hong Kong team of consultants. You, Sir, have been in touch personally with a number of key members of Congress.

The Administration is in close touch with other interested parties in Hong Kong such as the American Chamber of Commerce and other trade or industrial organizations to ensure proper co-ordination of efforts, including possible visits to the United States. The American Chamber of Commerce has sent a delegation to the United States in early May and the Hong Kong General Chamber of Commerce is presently in Washington.

As regards the impact on Hong Kong, we estimate that if the MFN status were withdrawn from China, Hong Kong's re-exports, which amounted to HK\$82 billion in 1990, would probably be reduced by about 33% to 44% or some HK\$27-36 billion. Hong Kong's overall trade might be reduced by about 5% to 7% or some HK\$69-91 billion. Hong Kong could also lose 1.3% to 1.8% in the growth rate of the overall GDP. The loss in employment might be in the region of 32 000 to 43 000 jobs.

MR LI: Sir, in view of the close working relationship between the Governments of the United States and the United Kingdom, what steps has the Hong Kong Government taken to enlist the assistance of Her Majesty's Government in this lobbying effort?

FINANCIAL SECRETARY: Sir, the Administration has been in touch with the United Kingdom

Government to work out necessary plans which are incorporated into our overall strategies. We will, when appropriate, make necessary requests to the United Kingdom to convey Hong Kong's concerns through suitable channels.

MR MCGREGOR: Sir, will the Financial Secretary please confirm that the damage from the loss of MFN status to China will not be measured in one-year but rather in multi-year terms and that therefore the stated damage to Hong Kong will also have to be measured in multi-year terms?

FINANCIAL SECRETARY: Yes, Sir, indeed. I mean if MFN status were not renewed the damage would not be limited to one year and, of course, the damage to Hong Kong also would not be limited to one year.

MR PETER WONG: Sir, since the United States Congress and Senate can upset or confirm the President's announcement as to whether or not to continue granting MFN status to China within 60 days after that announcement, what action will the Hong Kong Government take during that time in order to enhance the chance that the MFN status will continue?

FINANCIAL SECRETARY: Sir, we will continue with the lobbying efforts that we have made, and we will probably increase those efforts.

MR CHEONG: Sir, the Financial Secretary has estimated the impact in terms of re-export earnings lost. But has the Government ever attempted to analyse the impact on our overall economy in view of the fact that most of our manufacturers have investments in Southern China and some production is being done over there, and that our domestic exports would be greatly affected too as a result? Has the Government done any estimates on that score?

FINANCIAL SECRETARY: Sir, we have carried out a great deal of analysis into the effects of a withdrawal of MFN status. I have attempted to give in my principal answer some indication of its effects on Hong Kong's economy. If Mr Stephen CHEONG wants more

detailed information, I would be happy to give it to him if he would care to contact me.

MR ARCULLI: Sir, will the Financial Secretary inform this Council whether, apart from the British Government, governments of other countries like Canada, Australia, Japan and Germany would be solicited for their assistance in our lobbying efforts in Washington?

FINANCIAL SECRETARY: Sir, I think it is probably better that we should do the work ourselves and also make appeals through the United Kingdom Government.

MR MCGREGOR: Sir, has the Hong Kong Government been in touch with the Chinese Government in regard to a co-ordinated approach on this matter and, perhaps, providing advice to the Chinese Government as to actions the Chinese Government might take to assist it in securing the MFN status?

FINANCIAL SECRETARY: Sir, views have been expressed on occasions to the Chinese Government but I cannot say there is a co-ordinated effort.

MR TIEN: Sir, the Financial Secretary said that Hong Kong's overall trade might be affected by 5% to 7% or around \$69 billion to \$91 billion. Could the Financial Secretary estimate the loss in tax revenue due to this loss of trade and whether there is any effect on our current Budget?

FINANCIAL SECRETARY: Yes, Sir, we could carry out an analysis of that nature. I will do so and let Mr TIEN have the result. (Annex I)

MR DAVID LI: Sir, could the Government provide an estimate of the total cost in terms of staff time and actual outlay of efforts in lobbying the United States on the MFN issue?

FINANCIAL SECRETARY: I doubt whether we could provide an accurate estimate of the cost, Sir. A lot of people are involved in this and it forms part of their working day; I do not think a costing would be of particular assistance.

MR PETER WONG: Sir, can the Financial Secretary inform this Council if there are any contingency plans if the MFN status were to be revoked?

FINANCIAL SECRETARY: Sir, if the status were to be revoked, clearly, we would have to consider what could be done. I think the most important thing is that we should look at this problem in terms of trade promotion. Certainly we would discuss with the Hong Kong Trade Development Council the possibility of working out measures to help businessmen to pursue opportunities in new or alternative markets. There is no swift or easy solution if there is a change of this nature but certainly we would pursue the actions that I have described very vigorously.

Promotion of legal knowledge among young people

2. MRS LAU asked: Can the Administration inform this Council what efforts are being made to improve the standard of legal knowledge among our young people?

ATTORNEY GENERAL: Sir, a great deal of work is done by the Administration and non-government agencies to promote legal awareness and enhance the public's understanding of various aspects of the law. Mrs LAU has in her question laid emphasis on young people. Since an understanding of the law and the legal system is beneficial to everyone, it is not surprising to find that apart from many activities targetted specifically at the young, there are also many others which are aimed at the population as a whole. Some of those will also be mentioned in my answer today, since they, too, play an important part in the process through which the legal knowledge of our young people is improved.

Sir, at the secondary level, the current school curriculum fully recognizes the importance of passing on to pupils some basic knowledge about the law and the legal system, through subjects such as Economic and Public Affairs, Government and Public

Affairs and Social Studies. Topics covered include law and order and the legal system in Hong Kong. Topics relating to the judiciary, the legal system and enforcement of the law will also be included in the curriculum of the Government and Public Affairs at the Advanced level and Advanced Supplementary level and of Liberal Studies at the Advanced Supplementary level, in 1992. To help teachers in the teaching of law-related topics, reference materials and resources are made available in Civic Education Resource Centres run by the Education Department. Education television programmes are also available to assist the teaching of some topics.

Pupils not taking the subjects which I have just referred to are provided with opportunities to understand more about the law and the legal system through school civic education programmes as outlined in the "Guidelines on Civic Education in Schools" produced by the Education Department.

The Administration also fully recognizes the value of extra-curricular activities in enabling pupils to widen their experience outside the formal curriculum. Through participation in such activities, pupils find it much easier to comprehend abstract concepts relating to the rule of law and the legal system. Schools therefore organize activities such as visits to courts and talks on subjects relating to law.

Turning now to activities outside the confines of schools, I would like to mention here the pivotal role played in this area by the Committee on the Promotion of Civic Education, under the chairmanship of Dr Daniel TSE. Last year the Committee sponsored five projects organized by different community organizations and student groups to enhance youngsters' legal knowledge. This year, the Committee will sponsor another two projects on the theme of the rule of law and human rights.

With the encouragement of the Committee, civic education bodies established under the district boards or district offices also organized a wide range of activities last year to enhance public legal knowledge. Activities included seminars, visits to the Supreme Court, quizzes and exhibitions. These district civic education bodies are now considering their working plans for 1991-92.

Sir, no account of the efforts made to improve legal knowledge would be complete without mentioning the contributions of the legal profession. In particular, I should like to pay tribute to the Legal Awareness Committee of the Law Society. The Committee comprises members from the Law Society, the Bar Association, the University of Hong Kong, the City Polytechnic, the Legal Aid Department, the Education Department,

the Royal Hong Kong Police Force and Radio Television Hong Kong. Last month, it organized the first Law Week in Hong Kong which aimed at promoting a better understanding by members of the public of the law and its role in society. It was received by the public very enthusiastically indeed. The Law Week covered a wide variety of programmes, some of which were designed for young people only. For example, there was a Poster Design Competition in which 30 schools took part and a total of 419 entries were received. In addition, 31 court visits were arranged for over 900 secondary school children, who were briefed on the legal system and had an opportunity to see the court in action. Judges and lawyers also visited 56 schools throughout Hong Kong and addressed no less than 5 000 students on a variety of legal topics.

Sir, the scope of Mrs LAU's question is wide and I have attempted to describe, as briefly as possible, the considerable efforts that are being made to improve the standard of legal knowledge of Hong Kong people, particularly the young. The Administration is committed to this important goal and is grateful to all those who are contributing towards it.

MRS LAU: Sir, since the Attorney General, in his answer, acknowledges the importance of promoting legal knowledge amongst our young people, can the Administration inform this Council whether topics such as principles of law and the legal system can be made a subject in its own right in the formal school curriculum?

ATTORNEY GENERAL: It is a suggestion I shall be happy to pass on to the Secretary for Education and Manpower, Sir.

MR TAM (in Cantonese): Sir, will the Government consider promoting the Basic Law by including it in the school curriculum so that students can be acquainted with our post-1997 constitutional document?

HIS EXCELLENCY THE PRESIDENT: I suppose that just gets in under the framework of the original question.

ATTORNEY GENERAL: Sir, I understand that the general spirit and purpose of the Basic

Law are included under certain topics in a number of school subjects, such as Government and Public Affairs, and Economic and Public Affairs, in the school curriculum.

MRS LAU: Sir, despite the efforts to promote legal education and legal knowledge as described by the Attorney General in his answer, I am aware of the fact that there are at least two surveys, one in 1986 and one earlier on this year, which show that our people suffer from a gross insufficiency of legal knowledge. This being the case, can the Attorney General inform this Council whether the Administration will cause an official survey to be conducted amongst our people so that a proper assessment may be made as to how serious the problem is so as to provide a suitable remedy?

ATTORNEY GENERAL: Sir, I will certainly give consideration to that. But I should perhaps put down a marker that, given the very breadth of the subject, one would have to be very careful about the way in which such a survey was organized. If I can illustrate it by analogy: if one asks what people think about the knowledge of health in Hong Kong, that is a very broad question indeed. But I will take a note of the suggestion and will follow it up.

MR DAVID CHEUNG: Sir, will the Attorney General inform this Council whether there is any specific evaluation or assessment of the school civic programme and whether it is effective in enhancing the standard of legal knowledge of our young people?

ATTORNEY GENERAL: Sir, I think that is perhaps a question that might more properly fall within the purview of the Secretary for Education and Manpower.

HIS EXCELLENCY THE PRESIDENT: Secretary for Education and Manpower, can you help?

SECRETARY FOR EDUCATION AND MANPOWER: Sir, the inclusion in our various subject disciplines on the importance and the concept of the rule of law certainly will help promote legal awareness and legal knowledge among our young people. What has been included in the syllabus is the importance of law and order to a community, how order

is maintained in Hong Kong and the function and independence of the judiciary. I am sure, including all these in our syllabus will certainly help enhance the knowledge of young people in these fields.

#### Prevention of abuse of postal service

3. MR CHEUNG YAN-LUNG (in Cantonese): Will the Government inform this Council what measures can be adopted to thwart criminal elements using the postal service for the transmission of prohibited articles?

SECRETARY FOR SECURITY: Sir, the Post Office Ordinance permits the Postmaster General to open for inspection postal packets which are suspected of containing prohibited articles. In practice, enforcement is undertaken by customs officers who, under the Import and Export Ordinance, are empowered to open and examine any postal packet in the presence of a postal officer.

Selection of packets to open for inspection or to X-ray is based on intelligence and profiling. In 1990, 81 736 inward and 13 720 outward parcels were closely examined and, as a result, 97 seizures were made. The seizures were mainly of dutiable commodities but also included drugs, Part I poisons, ammunition and animal products such as ivory.

MR CHEUNG YAN-LUNG (in Cantonese): Sir, in what way could the Administration monitor express parcel and courier services operated by local or foreign private companies to guard against the transmission of prohibited articles?

SECRETARY FOR SECURITY: Sir, articles sent overseas by express parcel and courier services operated by private companies are processed by the Customs and Excise Department at the control points in the same manner as other cargo or post.

DR IP: Sir, do the seizures made last year include heroin and other hard drugs? If so, can the Postmaster General improve his detection methods?

SECRETARY FOR SECURITY: Sir, a small amount of drugs has been detected in the mail but we do not believe that dangerous drugs are regularly transmitted by mail. Customs officers who are well experienced in detecting dangerous drugs and who are assisted, where necessary, by trained dogs are stationed at the General Post Office, the International Mail Centre, and the Air Mail Centre to assist in the identification of articles of mail which may contain drugs.

MR MCGREGOR: Sir, does the Postmaster General have access to the latest X-ray equipment and the kind of equipment used at the airport, for example, by which heavy items can be detected in parcels?

SECRETARY FOR SECURITY: Sir, I do not know precisely what kind of equipment the Postmaster General has available but certainly he and the Commissioner for Customs and Excise do have up-to-date X-ray equipment. Additional equipment has in fact recently been purchased last year.

MR CHUNG: Sir, will the Secretary for Security inform this Council whether customs officers are also checking local postal packets with powers under the Import and Export Ordinance?

SECRETARY FOR SECURITY: Sir, the customs officers do not check local mail but the postal staff do look out for prohibited articles in local mail. If they find mail which is suspicious they will call upon the customs officers or the police to assist them.

Written answers to questions

Criminal activities by Vietnamese gangs

4. MR TAI asked: In view of the increasing criminal activities such as extortion, theft and robbery by Vietnamese gangs in northwest New Territories, will the Administration inform this Council whether Government will be taking any security as well as social measures to reduce, if not eradicate, such activities?

SECRETARY FOR SECURITY: Crimes by Vietnamese in the northwest New Territories are a cause of concern to the Government. Most crimes committed by Vietnamese are against their fellow Vietnamese inside the detention centres and refugee camps, but there is also a worrying trend of general crime by Vietnamese.

To reduce such crimes a number of measures have been and are being taken. The security of the detention centres has been greatly improved in the past 12 months. Escapes still occur, but their frequency is now low. In the refugee centres also, security is being improved by the recruitment of additional guards and caretakers. We hope that this will give a greater degree of security coverage and lead to a reduction in the crime figures.

Amongst the social measures introduced in the refugee centres are the formation of camp committees involving the Vietnamese, the camp management and a social work group, the Community and Family Services International (CFSI). The aim of such committees is to involve the Vietnamese in their own camp management and bring about a greater sense of responsibility within their community. One of the main aims of this community development will be to prevent crime. Additionally, moves are afoot to improve recreational activities in the centres, and the International Social Services (ISS) is seeking funds for extra-curricular activities. To tackle the problem of drug-related crimes, there is an ongoing anti-drugs campaign in the centres with regular publicity and activities.

The number of Vietnamese refugees is steadily reducing through resettlement and transfers to the Refugee Transit Centre in the Philippines. It should be possible to close in the near future both the Tuen Mun and Kai Tak refugee centres.

Rent control

5. MR DAVID CHEUNG asked: Will the Administration inform this Council whether a firm decision by Government to relax rent control has been made, and if so, is the decision because:

(a) the present rent level is low and the public can afford to pay more rent; or

(b) Government wishes to collect more rates by elevating the level of rent?

SECRETARY FOR HOME AFFAIRS: Sir, Parts I and II of the Landlord and Tenant (Consolidation) Ordinance provides for the control of rent increases in respect of two categories of private domestic premises. Part I is applicable to the rents of pre-war premises, that is premises built before 17 August 1945. Part II controls are confined to post-war premises, completed before 19 June 1981, tenancies created before 10 June 1983 and tenancies in respect of premises with a rateable value of less than \$30,000 in 1983. Currently, there are some 44 000 premises subject to these controls and their number is diminishing at a rate of about 5 000 per year due to repossession by owners, fresh lettings at market rates and demolition.

In 1981 Government accepted a recommendation by the Committee of Review of the Landlord and Tenant (Consolidation) Ordinance that every effort should be made to accelerate the phasing out of rent controls as soon as circumstances permit and having regard to the need to avoid adverse social consequences. Adjustments are made annually to the control mechanisms in an effort to bring the controlled rents closer to prevailing market rates. Phasing out of controls remains our intention but a decision on the likely timing of such action has yet to be made. I expect to be in position to give a clear indication of a possible timetable later this year and to submit to this Council details of the measures which will achieve the phasing out of controls over the next three to four years.

At present, the average controlled Part I and Part II rents are \$1,652 and \$2,565 respectively. These represent 64.7% and 61.9% of their respective prevailing market rentals. I intend to allow for the adjustment upwards of these controlled rents on a progressive basis provided I am satisfied that such adjustments will not result in unacceptably adverse social consequences. To that extent, affordability will be a factor.

With regard to Mr CHEUNG's query regarding rates and their relationship to rentals, I would like to make it clear that the rateable value of a property is based on an estimate of the reasonable open market rent at which the property might be rented if vacant. The same rateable value would apply whether or not the property is subject to rent control. This ensures uniformity of assessment and thus the fair distribution of the rates burden between different ratepayers. Thus, if rent controls are lifted, this will have no effect on the level of rateable values. The

actual amount of rates collected will anyway depend on the rates percentage charge to be applied to the rateable value. This percentage is determined from time to time by resolution of this Council.

Motion

FATAL ACCIDENTS ORDINANCE

THE ATTORNEY GENERAL moved the following motion:

"That section 4(3) of the Fatal Accidents Ordinance be amended by repealing "\$40,000" and substituting "\$70,000"."

He said: Sir, I move the resolution standing in my name on the Order Paper.

In 1986 the Fatal Accidents Ordinance was enacted to modernize the law enabling close relations of persons killed in an accident, such as a road accident, to bring an action in the courts to recover damages for their loss against the person causing the death. These damages usually include the loss of the deceased's financial support, medical costs and any property damage. Under section 4 of the Ordinance dependants are also able to claim damages for their bereavement. Since 1986 the sum awarded as damages for bereavement has been fixed by the Ordinance at \$40,000. Subsection (5) of section 4 provides that this sum may be altered by a resolution of the Legislative Council.

When the Ordinance was introduced in January 1986, my predecessor said that it should be kept up-to-date to meet the changing perceptions of social and economic needs. Since 1986 inflation has reduced the monetary value of this award for bereavement. It is therefore necessary to increase it so that dependants can be adequately compensated. This is what the resolution intends to accomplish. It will raise the award for damages for bereavement from \$40,000 to \$70,000.

This figure of \$70,000 was arrived at after consultation with the legal profession, the Director of Legal Aid, and the Secretary for Economic Services.

Question on the motion proposed, put and agreed to.

## First Reading of Bills

ARBITRATION (AMENDMENT) BILL 1991

LEGAL PRACTITIONERS (AMENDMENT) BILL 1991

SURVEYORS REGISTRATION BILL 1991

PLANNERS REGISTRATION BILL 1991

QUEEN ELIZABETH FOUNDATION FOR THE MENTALLY HANDICAPPED (AMENDMENT) 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

ARBITRATION (AMENDMENT) BILL 1991

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Arbitration Ordinance."

He said: Sir, I move that the Arbitration (Amendment) Bill 1991 be read a Second time.

In 1989, the Arbitration Ordinance was amended to introduce a separate scheme for international arbitrations under the UNCITRAL, that is the United Nations Commission on International Trade Law Model Law. This helped to establish Hong Kong as a leading regional centre for international arbitrations.

Recently, doubts have arisen as to whether the Ordinance permits the High Court to make orders, in international arbitrations carried out under the UNCITRAL Model Law, as it can for domestic arbitrations.

The Bill seeks to remove any doubt on this point. Under clause 2 of the Bill parties may conduct their international arbitrations in Hong Kong knowing that, if required, they will be able to apply to the High Court for appropriate orders.

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

Question on the adjournment proposed, put and agreed to.

#### LEGAL PRACTITIONERS (AMENDMENT) BILL 1991

THE ATTORNEY GENERAL moved the Second Reading of: "A Bill to amend the Legal Practitioners Ordinance."

He said: Sir, I move that the Legal Practitioners (Amendment) Bill 1991 be read a Second time.

This Bill has three main purposes. First, it seeks to introduce a mandatory continuing legal education scheme to be administered by the Law Society for solicitors and trainee solicitors. Second, it is proposed that the Bar Association be empowered to issue its own practising certificates. And thirdly, the Bill proposes an amendment to facilitate the admission as barristers of practising solicitors.

Turning to the first purpose of the Bill, continuing legal education is a very important method for promoting and maintaining professional competence. A continuing legal education scheme recognizes that a lawyer's education does not cease upon graduation or the completion of the Postgraduate Certificate in Laws course. The law and the practice of law are changing; hence the need for lawyers to keep abreast of changes throughout their professional career.

Mandatory continuing legal education schemes are operating successfully in many other jurisdictions. For Hong Kong, after careful consideration, the Law Society has decided to follow the scheme in place in England and Wales. Initially, continuing legal education courses will be mandatory for recently qualified solicitors and trainee solicitors. Making the scheme mandatory for solicitors with one year experience after admission, and trainee solicitors during their two-year training period, ensures that these lawyers start with good practice skills and are competent in those areas of the law that they will most likely come across in their early years of practice.

Clause 4 of the Bill amends the Ordinance so that the Law Society will be empowered to enforce the mandatory nature of the continuing legal education scheme. It may

refuse to issue a practising certificate, or place conditions upon a certificate, if the applicant has not completed the required courses.

The Government places great importance upon ensuring that the public has access to competent, professional lawyers. Mandatory Continuing Legal Education is an important step in this direction.

Turning now to the second purpose of the Bill, by clause 6, it is proposed that the Bar Association will be empowered to issue practising certificates. The Law Society already has this power in relation to solicitors. However, a barrister's practising certificate is issued by the Registrar of the Supreme Court. By taking over this responsibility and retaining the revenue, the independence of the Bar will be enhanced and it will have an additional revenue source for its administrative affairs.

The third main purpose of the Bill is found in clause 5 which will allow any solicitor who has practised in Hong Kong for at least three years to become a barrister. This amendment was proposed by the Bar Association and has the support of the Bar and the Law Society.

Clause 7 of the Bill removes the barrier preventing those barristers who have been admitted to practise in countries with a fused profession from being qualified as a barrister in Hong Kong.

The Bill also presents an opportunity to make changes to nomenclature: "articled clerk" will be replaced by "trainee solicitor", and my friend, the Financial Secretary, and I will have nostalgic memories of the loss of an ancient and respected title. That change will better reflect the true nature of the profession, and "Bar Committee" will be replaced by "Bar Council".

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

Question on the adjournment proposed, put and agreed to.

SURVEYORS REGISTRATION BILL 1991

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the Second Reading of: "A Bill to provide for the registration of professional surveyors, the recognition of

divisions within the profession and disciplinary control of the professional activities of registered professional surveyors, and for related matters."

He said: Sir, I rise to move the Second Reading of the Surveyors Registration Bill 1991 and will at the same time speak to the Planners Registration Bill 1991, the Second Reading of which I will also be moving.

Members may recall that the need for professional registration has been raised in this Council on several previous occasions and in May 1990 both the Architects and Engineers Registration Ordinances were enacted. The Surveyors Registration Bill 1991, and the Planners Registration Bill 1991 are modelled very closely on those registration Bills and incorporated identical administrative, procedural, and registration requirements.

The primary objective of the Bills is to assure the public that those who claim to be professionally qualified surveyors and planners have indeed received appropriate training and are competent to practise in Hong Kong. The Administration and the professions involved also believe that this legislation will serve to enhance and maintain professional standards.

Registration of those qualified will not be compulsory, but there will be obvious benefits accruing from the use of the title "registered professional surveyor" or "registered professional planner". The Surveyors Registration Bill requires in clause 29 that a registered professional surveyor should specify the discipline in which he or she is qualified, so that there is no doubt as to the actual field of expertise of the individual concerned. Nevertheless, professionals who are not registered will still be permitted to practise in Hong Kong providing that they do not imply that they are registered. The main requirements for registration are that the person is ordinarily resident and has at least one year's relevant professional experience in Hong Kong, in addition to meeting the required academic and professional training standards.

The Administration sees potential benefits in registration being linked to the right to carry out statutory functions under the Buildings Ordinance. This will be considered once the registration system for professional surveyors has become as well established as those for architects and professional engineers.

The introduction of registration does not mean there will be a "close shop", or

that the professional institutes will be able to operate restrictive practices. The Bills provide for registration to be administered by Registration Boards which are appointed by the councils of the institutes but are independent of the professional institutes in their operation. The functions and powers of the Boards are set out in clauses 7, 8 and 9 of the respective Bills. Provision is made for a government appointee to each Board. The Administration is confident that the composition of the Boards will provide the right balance and the necessary degree of self regulation.

If a registered professional loses for whatever reason his qualification for registration, his name may be removed from the register. In the event that a registered professional commits a disciplinary offence the Bill provides for investigation by an inquiry committee which may result in removal of the professional's name from the register, either permanently or for a specified period. Alternatively the committee may order some form of reprimand. As a safeguard, provision is made for appeal to the Court of Appeal against disciplinary orders.

Sir, I move that the debate be now adjourned.

Question on the adjournment proposed, put and agreed to.

#### PLANNERS REGISTRATION BILL 1991

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS moved the Second Reading of: "A Bill to provide for the registration of planners, and disciplinary control of the professional activities of registered professional planners, and for related matters."

He said: Sir, I rise to move the Second Reading of the Planners Registration Bill 1991.

The comments which I made earlier when I moved the Second Reading of the Surveyors Registration Bill 1991 apply to this Bill.

Sir, I move that the debate be now adjourned.

Question on the adjournment proposed, put and agreed to.

QUEEN ELIZABETH FOUNDATION FOR THE MENTALLY HANDICAPPED (AMENDMENT) BILL 1991

THE SECRETARY FOR HEALTH AND WELFARE moved the Second Reading of: "A Bill to amend the Queen Elizabeth Foundation for the Mentally Handicapped Ordinance."

She said: Sir, I move that the Queen Elizabeth Foundation for the Mentally Handicapped (Amendment) Bill 1991 be read a Second time.

The objects of the Bill are to increase the membership of the Council of the Queen Elizabeth Foundation for the Mentally Handicapped and to empower it to appoint persons or institutions to manage the investment of the Foundation's assets in accordance with directions given by the Council.

Clause 2 of the Bill amends section 5 of the principal Ordinance to include the Director of Education and the Director of Social Welfare or their representatives as official members of the Foundation's Council, and to increase the minimum number of non-official members, in addition to the Chairman and the member nominated by the Royal Hong Kong Jockey Club, from five to seven.

At present, the Secretary for Home Affairs and the Commissioner for Rehabilitation are the only two official members of the Council. A recent review of the activities and projects sponsored by the Council since its inception in 1988 has revealed that most of them relate closely to services provided or subvented by the Social Welfare Department or the Education Department. It is useful for these two departments to be represented on the Council to ensure, amongst other things, that the activities or projects sponsored by the Council are compatible with existing and planned services. As the number of official members will be increased to four, the Council considers it desirable for the minimum number of non-official members to be increased proportionally so as to maintain the existing level of non-official participation.

Clause 3 of the Bill amends section 8(b) of the principal Ordinance to empower the Foundation's Council to appoint persons or institutions to manage the investment of the Foundation's assets in accordance with the directions of the Council.

Section 8(b), as it now stands, imposes no restriction on the fund manager's power to manage and administer the Foundation's assets. As a result, the exercise of such power may conflict with the Council's duties under section 6(1) to make decisions

on the application of income and assets. To rectify this, it is proposed that the persons or institutions appointed by the Council to manage the investment of the Foundation assets be required to act in accordance with general or specific directions which the Council may give in writing from time to time.

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

Question on the adjournment proposed, put and agreed to.

#### TRADE MARKS (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 13 March 1991

Question on Second Reading proposed.

MISS TAM: Sir, one of the major reasons for Hong Kong's success as an international city is the high quality services we offer to our overseas investors, visitors and indeed our own local customers in all kinds of trade, business, industrial and consumer related activities. In this city we believe in getting as well as giving "value for money" and this will remain one of the strongest motivating force to keep us abreast of our competitors. The Trade Marks (Amendment) Bill 1991 which was first introduced in this Council on 13 March 1991 is a welcome addition to our statute books in that it gives protection to those (whether local or overseas) who carry on a business of providing services by allowing them to register their service marks in Hong Kong. This will give protection to the "good will" of their business which must be an extremely valuable asset to those who has established their business and maintain a good track record of services in this territory.

In Hong Kong, the Trade Marks Ordinance (Chapter 43) provides for a registration system of trade marks used in relation to goods. The registration of a trade mark gives the owner the exclusive right to use that trade mark in respect of the goods for which it is registered and to protect his mark against infringement. These rights are supported by the Trade Description Ordinance under which it is an offence to forge a trade mark or make a false description in respect of goods.

However, up until today, it is not available for protection of service marks and the owner of a service mark can only take action at common law, namely, an action

against passing-off which is more difficult to prove and very expensive in the process of attaining the aims. It is now only logical and fair that we extend the registration system to give protection to trade marks relating to services.

An ad hoc group was formed by the Legislative Council In-House meeting on 1 March to study the Bill. We met six times including three times with the Administration. We made a general invitation to the public for comments and received a representation from the Hong Kong and Shanghai Banking Corporation. We also considered the written submissions to the Administration from various parties including the Law Society, the Hong Kong Institute of Trade Mark Agents, the Hong Kong Association of Banks, and the Hong Kong Tourist Association and two other individuals.

The ad hoc group agreed that the basic framework and contents of this Bill should follow that of the United Kingdom trade marks legislation. But in some areas, we accepted the suggestions submitted by the abovementioned associations that certain practices in Australia and New Zealand would also be appropriate for application in the Hong Kong situation. We believe that the end product is a comprehensive piece of legislation which takes into consideration the more recent developments on the international scene and case laws since the enactment of the 1938 and 1984 United Kingdom legislation.

There are four points of substance of the Bill I will briefly comment on.

(i) Interpretation of the word "services" in section 2(i)(c).

In this Bill the proposed definition of services is wider than that provided in the United Kingdom trade marks legislation. Here we have included retail business in the scope of registrable service marks. The Administration has explained that the demand for registration of trade marks relating to wholesale and retail services is very considerable in Hong Kong and their views are supported by the Law Society and the Hong Kong Tourist Association. Although the United Kingdom trade marks legislation does not have similar provisions, the laws of many other jurisdictions do. We have therefore accepted that there should be an amendment to the interpretation section of the existing Trade Marks Ordinance to ensure that trade marks relating both to wholesale and retail services are registrable.

(ii) Defensive and certification registration under section 55(1).

This Bill proposes to extend defensive and certification registration to trade marks relating to services. Defensive trade mark is the registration of a mark which has become so well known for certain goods/services that its use on other goods/services will detract from the distinctive character of the mark. Certification trade marks are marks which distinguish goods/services that are certified as to origin, material and so on such as the wool mark.

These registrations are not provided in the United Kingdom trade marks legislation. The Administration has explained that Australia and New Zealand have similar provisions already in their law and the ad hoc group accepts that there is a rising trend in the development of the trade mark registration laws which needs to be covered. We agree to include them in this Bill. The Administration agreed that the Registrar would have to be satisfied that the actual services for which the defensive registration of a mark was sought were clearly specified before such registration was considered.

(iii) Non-use period required for cancellation

If a trade mark has not been used for five years it is possible to apply for it to be deregistered. We have received conflicting submissions on this point. We have received submissions that the non-use period required for cancellation of a registration should be reduced to three years instead of five years. However we have looked at the argument that is now going on in the international fora and no conclusion has been reached on this point. So we share the Administration's view that it will be prudent for Hong Kong to continue the present practice or requirement of having five years of non-use period before a trade mark could be cancelled.

(iv) Trade marks with overseas origins under sections 23 and 53

We have noted from many submissions a number of suggestions to extend sections 23 and 53 of the Trade Marks Ordinance to services. This means that overseas owners of a service mark can contest and establish their own claim to be registered in Hong Kong against a local applicant who wishes to register the same or similar service marks. We agree with the proposed amendment by the Administration at the Committee stage to enable these overseas applicants to prove their case or contest against a claim of a local applicant. Of course, whether they succeed or not depends on the evidence they can produce on the history of their particular service marks.

Now a few points on the implementation of the law if it is enacted. There have been a lot of queries as to how the register could be established and how one deals with contesting claims.

One query is on the classification of services. There have been queries on how to classify the services registrable. We got the answer from the Administration that they will follow the International Classification for Services as provided by the Nice Agreement. Because of the diverse nature of services, the classification is quite brief (at the moment there are only eight classes). But the Administration agreed that they will continue to keep an eye on international development and follow their guidelines, and adequate publicity will be drawn if there should be any guidelines made or alterations made to the guidelines.

How does one process an application for the same mark in the lead-in period?

We have noted that a lead-in period of about four months will be provided, that is, applications for registration may be made four months before the commencement of the legislation. This will avoid an influx of applications on the commencement date. As all applications lodged during the lead-in period will be given the same application date, that is, the commencement date, concerns have been raised on the processing of applications which are in conflict with each other. The Administration has reaffirmed that the current procedures for processing co-pending applications for trade marks of goods will suitably be revised to take note of the unusual circumstances of the lead-in period and applicants and their agents will be informed of the arrangement.

Maintenance and inspection of register

The Administration has informed us that the Registrar is required by law to maintain a register of all trade marks. This Official Register will keep all the original records of registration. It is identical with the Public Search Register which will be made available for inspection by members of the public. A card indexing system is also maintained to assist the public in their search. The Administration is considering making provision for the inspection of pending applications by the public.

In considering the above questions we actually went through the contents of the relevant departmental circulars and found that they do offer a clear explanation of

the basic procedures that the applicant must follow.

Finally one point on penalty. There is going to be an amendment to Chapter 1 of the Laws of Hong Kong which will take away the difference between misdemeanor and felony. In this particular Bill, under section 86, the Administration has anticipated that amendment and taken off the specification of \$50,000 fine in this Bill and instead made a general reference to the pending changes in the Interpretation and General Clauses Ordinance. We think it is a better idea to specify or spell out the penalty in this Bill \* and we suggest that it should now read: seven years' imprisonment, which is the maximum imprisonment, and a fine of \$50,000 \* instead of a mere reference to the Interpretation and General Clauses Ordinance. The Administration has agreed to this.

Sir, I have only dealt with the "dry" aspects of the work of the ad hoc group. It is actually a very interesting subject and we hope that this Bill will stimulate a kind of organic development we hope to ensure in Hong Kong. And we support the Bill.

MR HO SAI-CHU: Sir, over the past decades, the rapid growth in our external trade and the entrepot trade which re-emerged in the late 1970s have provided the underlying conditions for the service sectors to flourish and diversify. Numerous successful examples are now found in our finance and business services sectors, including banking, insurance, securities, shipping, real estate and a wide range of other professional services.

Besides, Hong Kong has also developed efficient wholesale and retail networks to cater for the growing needs of a more affluent population. Supermarkets, large department stores, chain stores and modern shopping centres have become increasingly popular, replacing most of our traditional kai-fong stores and small shops. With increased household incomes, there has been a growing demand for services of a better quality to meet the rising standard of living.

Sir, trade mark has certainly played a significant role in the trading of goods. Many customers buy a particular article simply because it bears a trade mark that is familiar to them and they are confident that the quality will be what they expect. Gradually a brand loyalty is established and the business volume of the owner of that trade mark is assured. In the case of services, the importance of a trade mark is

more obvious. By attaching an easily identified and tangible trade mark to the service being provided, it is easier for the potential service user to associate the mark with the service provider and the quality of service being provided. A customer will be more willing to buy an article in a department store with a well established trade mark that represents an excellent after sales service than in other stores.

Sir, in a highly competitive market such as Hong Kong, it is necessary to extend the existing trade mark registration system to services in order to provide the same protection to the service providers against infringement. This will help maintain a fair and attractive environment for the service sectors to grow with our economy. I am delighted that the present Bill serve this timely purpose.

Sir, with these remarks, I support the Bill.

FINANCIAL SECRETARY: Sir, I am grateful to Miss Maria TAM and members of the ad hoc group for their meticulous consideration of and support for the Bill. I entirely agree with what Miss TAM and Mr HO Sai-chu have said regarding the importance of trade marks development in Hong Kong. The trade mark is a valuable item of intellectual property and the proper use of it is undoubtedly beneficial to the economy.

To extend the existing system of registration of trade marks to cover service marks, I introduced on 13 March 1991 a Bill which sought to amend the Trade Marks Ordinance so that it applied to trade marks relating to services in the same way as it applied to trade marks relating to goods. Upon further deliberation, the Administration considers that the objective will not be completely achieved without the amendment of another two sections in the Ordinance.

As Miss TAM has already explained the problem, section 23 of the Ordinance gives a discretion to the Registrar of Trade Marks to refuse to register a trade mark that is identical with or nearly resembles one which is already registered in respect of the same goods in a country from which those goods originated. Section 53 allows a court to remove from the register a trade mark under such circumstances. Similar provisions are considered necessary for trade marks for services. In the event, amendments will be introduced in the Committee stage to extend the scope of sections 23 and 53 to cover trade marks for services.

Sir, I beg to move.

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

Resumption of debate on Second Reading which was moved on 8 May 1991

MR CHUNG: Sir, I have to declare that I am the Chairman of the Protection of Wages on Insolvency Fund Board. I welcome the extension of coverage for severance payment which no doubt is Government's effort to provide better protection to our workers. Although the workload of the Fund Board will be increased tremendously, the Fund Board is pleased to be tasked with this additional duty and has made preparation to cope with this worthy cause. The Fund Board has always in mind the objective of providing for quick relief to workers affected by insolvent employers in order to tide them over the difficult time when they lose their jobs. The processing of their application should be as speedy as practicable.

The Fund was established on 1 October, 1984 when an annual levy of \$100 on all Business Registration Certificates was imposed to finance its operation.

When the Fund first came into operation on 19 April 1985, it covered, for each employee, up to \$8,000 in respect of arrears of wages. On 3 July 1987, it was extended to cover also seven days' wages in lieu of notice up to \$2,000. On 14 July 1989, it was further extended to cover severance payment up to \$4,000 for each employee.

The rate of levy has not been adjusted since the Fund was established in 1984. The proposed increase is intended to cover expenditure arising from 643% increase in the maximum coverage of the Fund from the current \$14,000 per applicant employee, comprising \$8,000 in arrears of wages, \$2,000 in wages in lieu of notice and \$4,000 in severance payment, to the proposed coverage of \$104,000, an increase of \$90,000.

The present coverage of severance payment for each worker is \$4,000 whereas under the Bill, the coverage would be up to the maximum of \$8,000 plus 50% of any entitlement in excess of \$8,000. An employee paid \$10,000 per month with 20 years' service behind him gets only \$4,000 under the present situation against his severance payment

entitlement whereas under the proposal in this Bill, the employee would get \$64,000.

The finance of the Fund has so far been very sound. Having said that, a strong reserve would be useful and is necessary in order to prepare for rainy days. With the extended coverage, the Fund Board would be cautious and keeping the situation in review all the time in order to maintain the strength of the Fund.

Sir, with these remarks, I support the Bill.

MR TAM (in Cantonese): I would also like to declare my interest. I am a member of the Protection of Wages on Insolvency Fund. At the same time, I have a better knowledge of the background of Government's proposal to amend the Protection of Wages on Insolvency Ordinance and feel it necessary to give some explanations here. The Government proposed to amend the Ordinance by raising the maximum limit of the severance payment payable under the Ordinance to \$8,000, plus half of the employee's entitlement in excess of \$8,000. On the face of it, the Government has made significant improvement, but in reality this is only a compromise measure after the Government refused the demand from the labour sector that legislation be enacted to require employers to contribute a sum of money, so as to ensure that adequate funds would be available to pay the long service gratuity. Therefore, I have to point out that the present amendment is still limited as far as the scope of protection to employees is concerned. To employees who suffer losses not arising from the insolvency of their employer, but in respect of their severance payment or long service gratuity, there is still no protection for them at all. The Government, therefore, should work in the direction of providing a comprehensive protection to employees. If we look at the scope of protection under the Protection of Wages on Insolvency Fund alone, the amendment still leaves much to be desired. For instance, no amendment of any kind was made to the requirement to make payment of wages in lieu of notice, which is disappointing. According to the existing requirements, the Fund may only advance seven days' wages or \$2,000 in lieu of notice to an employee. However, the relevant data show 40% of the claims for wages in lieu of notice during 1989-90 were those involving amounts with more than seven days' wages in lieu of notice, and it is a common practice among a number of trades in Hong Kong to serve one month's notice. Consequently, according to actual needs, the advance payment of wages in lieu of notice should be increased to one month. Furthermore, the relevant information obtained up to date has it that in 40% of the claims for advance payments, the applicants had to wait for as long as four and a half to five months before they received the payments. This is an indication that there is an acute shortage of staff responsible for the examination and approval of applications. After the present

amendment is enacted, the procedure of examination and approval will become even more complicated, and the shortage of staff will even be more acute. Although the Government intends to employ three more officers, I believe this is still insufficient. We must know that the purpose for the Fund to make advance payments is to enable workers to receive early the compensation due to them to meet their urgent needs when their employers become insolvent and have to wind up their business. The Government should therefore employ more officers to shorten the period of application.

As to the running expenses, after the establishment of the Protection of Wages on Insolvency Fund, the Protection of Wages of Insolvency Fund Board has once and again proposed that the running expenses be borne by the Government. This proposal has won the unanimous support of Members of both Councils. The Government, however, has insisted on its stand and refused to make any commitment. As a result, the Fund has to pay a large amount of running expenses to the Government every year. This attitude of the Government not to make any commitment is contrary to the tripartite spirit that it has all along advocated, and also to the principle that the Fund shall only be used to protect the employees' interests. Therefore I once again appeal to the Government to bear the running expenses of the Fund.

Sir, even though I think the amendment to the Protection of Wages on Insolvency Ordinance leaves much to be desired, yet, in face of the unfavourable situation facing workers at present, including issues such as importation of labour from abroad and transformation of the economy, coupled with the economic depression, such an amendment is undoubtedly valuable and welcome at a time when the job security of workers is seriously threatened.

Sir, with these remarks, I support the motion.

MR TIEN: Sir, my views on this Bill are quite simply expressed. I believe the proposals before us represent an appreciable advance on the present situation. I also believe that they go far enough, that they are fair and that they should well satisfy affected workers.

The position is that workers who retire, or who qualify by redundancy, may be entitled to long service or severance pay. However, that will only be possible where the employer so liable has assets to cover these payments.

However, businesses which fail and become insolvent will not be able, for obvious reasons, to make these payments. It is equally obvious that real hardship will result to workers when they unfortunately fall foul of a severe business failure. At present, many workers who are the victims of business misfortune will be able to obtain only \$4,000. This is all the employee will get even if he has worked, say, for 20 years, although he might have been expected to have away, say, \$120,000 on long service payment on an assumed salary of \$10,000 per month.

Sir, in effect, these proposals make it now possible for the worker in the circumstances set out above to receive more than half of the \$120,000 entitlement. So, this Bill goes a long way in giving workers a far better deal than they had received in the past.

The details are clearly set out in the papers as given to Members. Essentially they call upon the good employer and business community to foot the bill. An additional levy will be imposed on each business registration certificate. This will be increased from the present \$1,000 to \$1,150 for main business and from \$115 to \$265 for branch business.

Firstly, I believe that these proposals do represent an important development. They can, and should, be supported. However, I wish it properly and fully understood that the suggested large increase proposed should remain, without further increases, for a very considerable period. I am opposed to "creeping" or "galloping" increases in the near future. Efficient and good employers should not normally be obliged to pay for their less efficient colleagues. Although there is a proverb which says: "we all have enough strength to bear the misfortunes of others", we must not take this proverb to its extreme. Some of us are indeed being called upon to bear the business failures of others. Hong Kong is a competitive society, and misfortune, in the shape of bankruptcy, is, like good fortune, normally the responsibility of individuals \* both employer and worker. However, having said that, I willingly concede the provisions of this Bill, but, let me repeat my views, that this is by now unquestionably generous. Any future increases should be paid out from general revenue or other sources and not by good employers again and alone.

My second point refers to the realities of bankruptcy. It is as much in the interests of the employer as the worker that businesses should not become bankrupt. Sir, no employer engineers his own bankruptcy. He is, after all, in business, not to fail, but, to succeed. Bankruptcy is, in almost every case, a total tragedy. When

it happens, it falls, like a rain-storm, on everybody. Workers up to now, of course, have had, in conditions of bankruptcy, a very poor deal. This will now be greatly improved. But, employers, who have taken risks, upon bankruptcy, have lost everything. That should not be forgotten.

Sir, my third point is more technical. I discover, from reading the submission of the Education and Manpower Branch, that the cost of administering the scheme will be met by charges to be recovered from the Fund. I find this quite disturbing. It means, as far as I can calculate, that it will take over 7 000 subscriptions from over 7 000 firms contributing to the scheme to meet the estimated annual cost of \$1.1 million.

I am further disturbed because of the stated need for four senior bureaucrats to swell the ranks of people to analyse the bankrupt firm every year. Those who will pay will surely not see it in quite this calm manner. I repeat, there will need to be 7 000 firms compelled to contribute before the scheme can even start. I detect here some evidence of Parkinson's Law in the whole concept advanced in the proposed Bill. That particular law has no light to shed upon the practical problems of bankruptcy, and of workers without redundancy pay.

I would therefore appreciate the question of the cost of the scheme to be fully explained. After all employers, especially the good ones, are paying for it \* not the workers, not the taxpayers and not the Government.

Sir, let me conclude by calling upon Council to ask for this well-intentioned scheme to be strictly limited in accordance with these proposals. It is fair, generous, and appropriate, but, let it not be seen as the thin end of the wedge.

Sir, with these words, I support the motion.

SECRETARY FOR EDUCATION AND MANPOWER: Sir, I should like to thank Members for supporting the Bill. I am glad that the proposal to extend the severance payment cover under the Protection of Wages on Insolvency Fund has been well received. At \$8,000 and 50% of the amount in excess of \$8,000, the Fund will now provide much better protection to workers. The scheme as presently conceived is based on a pooling of risks. The levy is simple to administer and is a practical alternative to the funding of long service payment.

As regards possible future improvements, Mr James TIEN has argued that the present

proposals represent an important development and there should be no further improvements for a very considerable period of time. On the other hand, Mr TAM Yiu-chung has suggested that the present limit of \$2,000 for wages in lieu of notice should be raised. The Government will obviously have to consider these differing views very carefully. Now that we have taken a major step forward, it would seem prudent to allow some time for its implications on the resources of the Fund to be ascertained, before considering further changes. In so doing, we would need of course to consult the Board controlling the Fund and the Labour Advisory Board.

Mr TIEN has also queried the need for an increase in staff to administer the scheme while Mr TAM has made appeal for additional staffing support. Now under the Protection of Wages on Insolvency Ordinance, the Labour Department is responsible for processing applications to the Fund. It verifies the bona fides of the claims in the applications to ensure that the Fund is protected against fraudulent or excessive claims. It recovers from the Official Receiver any moneys due to the Fund by insolvent employers. And it also initiates prosecutions against breaches of the Ordinance. As Mr CHUNG has also pointed out, the workload of the Fund Board has increased considerably over the years. In 1989 when the Fund started to cover severance payments, there were 4 460 applications. In 1990, the number of applications increased by more than 56% to 6 977 cases. In the current year we expect the number to increase by another 4.5% to well over 7 200 cases. To cope with the increase in the workload, the four additional posts are fully justified in our view, bearing in mind that the establishment of the unit has not been increased since 1985 when the Fund was first established.

Mr TAM has also suggested that the Government should bear the cost in administering the scheme. At present, such administrative costs are charged to the Fund. The Board controlling the Fund has been discussing this matter with the Government and I can assure Mr TAM that his suggestion will be considered in that context.

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).  
BUSINESS REGISTRATION (AMENDMENT) BILL 1991

Resumption of debate on Second Reading which was moved on 8 May 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.

TRADE MARKS (AMENDMENT) BILL 1991

Clauses 1 to 55 were agreed to.

New clause 13A Section substituted

New clause 32A Section substituted

Clauses read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(6).

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

Clauses read the Second time.

Proposed additions

New clause 13A

That the Bill be amended, by adding after clause 13 \*

"13A. Section substituted

Section 23 is repealed and the following substituted -

"23. Protection of marks registered in country of origin

(1) Subject to subsection (3), the Registrar may refuse to register any trade mark relating to goods in respect of any goods or description of goods if it is proved to his satisfaction by the person opposing the application for registration that such mark is identical with or nearly resembles a trade mark which is already registered in respect of -

(a) the same goods;

(b) the same description of goods; or

(c) services or a description of services which are associated with those goods or goods of that description,

in a country or place from which such goods originate.

(2) Subject to subsection (3), the Registrar may refuse to register any trade mark relating to services in respect of any services or description of services if it is proved to his satisfaction by the person opposing the application for registration that such mark is identical with or nearly resembles a trade mark which is already registered in respect of -

(a) the same services;

(b) the same description of services; or

(c) goods or a description of goods which are associated with those services or services of that description,

in a country or place from which such services originate.

(3) No application to register shall be refused under this section -

(a) if the applicant proves that he or his predecessors in business have in Hong Kong, in relation to such goods or services, continuously used the trade mark for the registration of which he has made application from a date anterior to the date of

the registration of the other mark in such country or place of origin; or

(b) if the opponent does not give an undertaking to the satisfaction of the Registrar that he will, within 3 months from the giving of the notice of opposition, apply for registration in Hong Kong of the trade mark so registered in the country or place of origin, and will take all necessary steps to complete such registration."."

New clause 32A

That the Bill be amended, by adding after clause 32 \*

"32A. Section substituted

Section 53 is repealed and the following substituted -

"53. Removal of trade mark from register on proof of prior registration in country of origin

(1) Subject to subsection (3), the Court may, on application in writing made within 7 years from the registration in Hong Kong of a trade mark relating to goods by any person aggrieved by such registration, remove such trade mark from the register if it is proved to the satisfaction of the Court that such trade mark is identical with or nearly resembles a trade mark which was, prior to the registration in Hong Kong of the first-mentioned trade mark, registered in respect of -

(a) the same goods;

(b) the same description of goods; or

(c) services or a description of services which are associated with those goods or goods of that description,

in a country or place from which such goods originate.

(2) Subject to subsection (3), the Court may, on application in writing made within 7 years from the registration in Hong Kong of a trade mark relating to services by any person aggrieved by such registration, remove such trade mark from the register if it is proved to the satisfaction of the Court that such trade mark is identical

with or nearly resembles a trade mark which was, prior to the registration in Hong Kong of the first-mentioned trade mark, registered in respect of -

(a) the same services;

(b) the same description of services; or

(c) goods or a description of goods which are associated with those services or services of that description,

in a country or place from which such services originate.

(3) No trade mark shall be removed from the register under this section in the following cases -

(a) if the proprietor of the other trade mark consented to the registration in Hong Kong of the first-mentioned trade mark; or

(b) if the proprietor of the trade mark registered in Hong Kong proves that he or his predecessors in business have continuously used such trade mark in Hong Kong in connection with such goods or services (as the case may be) from a date anterior to the date of the registration of the other trade mark in the country or place of origin; or

(c) if the applicant does not prove -

(i) that within the 5 years immediately preceding the making of the application under this section there has been bona fide user in connection with such goods or services (as the case may be) in Hong Kong of the trade mark registered in the country or place of origin; or

(ii) that the special circumstances of the trade or affecting the provision of such services (as the case may be) account for the non-user of such trade mark in Hong Kong within the same period; or

(iii) that the trade mark so registered in the country or place of origin was first registered there within the like period of 5 years,

and does not give an undertaking to the satisfaction of the Registrar that he will within 3 months from the making of the application under this section apply for registration in Hong Kong or the country or place of origin, and will take all necessary steps to complete the registration."."

Question on the addition of the new clauses proposed, put and agreed to.

PROTECTION OF WAGES ON INSOLVENCY (AMENDMENT) BILL 1991

Clauses 1 to 5 were agreed to.

BUSINESS REGISTRATION (AMENDMENT) BILL 1991

Clauses 1 and 2 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

PROTECTION OF WAGES ON INSOLVENCY (AMENDMENT) BILL 1991 and the

BUSINESS REGISTRATION (AMENDMENT) BILL 1991

had passed through Committee without amendment and the

TRADE MARKS (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.

Member's motion

Speculation of pre-completed flats

MISS LEUNG WAI-TUNG moved the following motion:

"That this Council takes note of the public concern expressed over the speculation of pre-completed domestic units."

MISS LEUNG (in Cantonese): Sir, I would like to move a motion on speculation of pre-completed flats, which is in the following terms:

"That this Council takes note of the public concern expressed over the speculation of pre-completed domestic units".

The emphasis of this motion is obviously on the meaning represented by the words "public concern". A responsible and active government will surely make an appropriate response to matters of public concern and take effective measures. I believe our Government is responsible and active, and will surely make an appropriate response to the speculation in pre-completed flats, which is a matter of public concern, and take effective measures against it.

Sir, I must first of all explain to fellow Members how I finally decided on my motion. The wording of my motion contained in my first draft, which I could not but discard, was "In view of the frenetic speculation in pre-completed flats, which is causing extreme concern to the public, this Council urges the Government to take effective measures as expeditiously as possible, to safeguard the interests of home-buyers." I later felt that I could not but discard this first motion because I wanted to show respect for the opinions expressed in an OMELCO In-House Meeting held on 10 May. Some Members considered that the wording of motion relating to issues like speculation in pre-completed flats should be kept as neutral as possible, so as to avoid any unnecessary misunderstanding. After I made the amendment, Members finally accepted the motion I have just read out.

On the other hand, Members of the OMELCO Housing Panel have been extremely concerned about the speculation in pre-completed flats for a number of years now, and have held many meetings with relevant government departments to discuss measures

against it. In view of the fact that this kind of speculative activities became evidently so frenetic in March and April this year that they aroused great concern of the public, while the Government did not seem to be willing to take any measure to clamp down on these activities, members of the Panel, therefore, consider now they should move a motion for a debate on this issue, and they have no objection to the wording of my motion which I have just read out.

Sir, in deference to the opinions of my colleagues, I have just read out the motion which they have accepted. I beg to move it.

Sir, everyone knows that to live in proper accommodation is one of the basic rights of life that a person enjoys. No matter in what kind of society, including our Hong Kong society which has capitalistic features, this basic right of life shall not be unscrupulously encroached upon by anyone. Therefore, except those upper middle class and luxury residences, ordinary residential flats should not be regarded as an ordinary commodity. Just as general foodstuffs and public transport, ordinary flats should be regarded as a basic necessity of life only, and are not to be used for speculation purposes.

Unfortunately, however, some members of the capitalist class, and even the authorities concerned, seem to have forgotten that to be properly housed is one of the basic rights of life that a person enjoys. They only regard ordinary residential flats as a commodity and believe that the price should be allowed to be decided by the free market. Therefore, they object to intervention in speculation on pre-completed flats and, furthermore, consider that any form of intervention in these speculative activities is against the free market economy which has always been upheld in Hong Kong.

They also seem to have forgotten that although Hong Kong is practising the so-called capitalist social system, yet, with a certain amount of public endorsement, the Government has long been interferring with the commodity market of ordinary residential flats. Through their huge public housing development and control over rentals of private housing and their tenancy rights, the authorities concerned have for long taken up the responsibility of eliminating the irregularities in the development of the free market of the private housing sector. It seems that few people consider this government intervention has constituted a so-called violation of the free market economy which Hong Kong has all along upheld. For the same reason, even if the authorities intervened in the speculation of pre-completed flats, they would not constitute any violation either.

Sir, in the past few months, especially in March and April this year, the speculative activities evidently became frenetic again. Thus, prices of ordinary residential flats have shot up dramatically, rising by over 20%, far exceeding the affordability of the general public. This has aroused deep concern of and protests from the public. They are deeply concerned about and protest against the frenetic speculation in pre-completed flats, because these activities have unscrupulously deprived us in a big way of our proper housing which is a basic right of life.

As a responsible and active government, the authorities concerned must make appropriate response to the public's deep concern about and protest against the frenetic speculation in pre-completed flats, and take effective measures against it.

Sir, I would like to put forward some of my views on how the Government should take effective measures to safeguard the interests of home-buyers. These are also the views I have expressed at public functions for many years:

First, the authorities concerned should take measures, as soon as possible, to prohibit the transfer of pre-completed flats and residential units within an unreasonably short period of time.

Secondly, perhaps the Government should introduce, as soon as possible, a speculation tax, which must have a sufficient deterrent effect on the speculation in pre-completed and residential flats. The authorities concerned can, for this purpose, introduce a taxation system whereby the shorter the period within which a transfer takes place, the higher will be the tax, so as to make it unprofitable to transfer pre-completed flats and discourage speculators from engaging in the activity. I would like to tell Members of this Council that New Zealand has introduced a Property Speculation Tax which prescribes that if a house property is transferred within half a year, the vendor must pay 90% of the profit he netted from the transaction, as assessed by the Government, as tax, and 85% for transfer between six and nine months. It is learned that this Property Speculation Tax has effectively curbed the speculative activities. I wish to express my heartfelt thanks to the kind-hearted person who has provided me with such information.

Thirdly, the authorities concerned should make it a hard and fast rule as soon as possible that a ballot method shall be used to replace the traditional queuing up for purchase of pre-completed flats, and a restriction of one unit per applicant

shall be imposed, so as to avoid over-heated speculation and the involvement of triad elements. Although the ballot method is not sufficient to eliminate speculative activities, it can, nevertheless, reduce the chances of monopoly of pre-completed flats by speculators. Of course, the Government should also exercise appropriate control over developers' reservation of pre-completed flats for their staff and business associates.

Fourthly, experience tells us that many so-called property agents or brokers are also taking part in speculation in pre-completed flats. Perhaps the Government should also take some measures of control over property agents or brokers, and prohibit them from taking part in speculative activities.

Sir, one can recall that in the mid-1980s when the residential property market recovered, there was a speedy revival of the rampancy of speculation in pre-completed flats. In or around March 1985, the speculative rampancy caused half of the pre-completed flats offered for sale in July and August to fall into the hands of speculators. Because of a series of disturbances which occurred in the queue for purchase of pre-completed flats at the time, a large number of policemen had to be called to the scenes to maintain order. Speculation finally became a matter of public concern again.

In October that year, I had an opportunity to air my views in the City Forum on the speculation in pre-completed flats. I pointed out that this kind of speculation was unnecessary middleman's exploitation with great destructive effect, and did a lot of damage to our society's prosperity and stability. I said, therefore, the Government should intervene in the speculation of pre-completed flats as soon as possible. I also urged the authorities concerned to look squarely at the issue and set up a working party comprising interested people of various circles to make an in-depth study into how to clamp down on and control speculation in pre-completed flats, including enacting legislation in advance to be applied when it is necessary to protect public interest.

However, so far I have not seen the Government taking any relevant measures while prices of private housing are rising unceasingly. Speculation in pre-completed flats is still active.

In June 1987, I had another opportunity to talk about speculation in pre-completed flats in City Forum. I proposed that the authorities concerned impose a tax at an

appropriate rate on the speculators so as to dampen their speculative activities. I also appealed to the Government to formulate a plan for clamping down on the speculation in pre-completed flats, so that the plan would be carried out as soon as speculative activities became heated up. I pointed out further that if the authorities still adopt a wait-and-see attitude until the problem becomes serious and would then agree to study measures against it, it would be too late.

Anyhow, Sir, I would like to appeal to the Government again to seriously consider the grave social consequences that may be caused by the speculation in pre-completed flats; I would urge the Government to listen to the opinions of various circles and take appropriate measures as soon as possible to clamp down on speculation in the pre-completed flats with a view to safeguarding the basic interests of home-buyers.

Sir, with these remarks, I beg to move.

HIS EXCELLENCY THE PRESIDENT: I have received notice from Mr Kingsley SIT to move an amendment to the motion. His amendment has been printed in the Order Paper and circulated to Members. I will call upon him to move the amendment when it comes to his turn to speak.

Question on the motion proposed.

MR CHAN (in Cantonese): Sir, as to those who purchase property for their own occupation, more and more of them are being robbed of their money by speculators in broad daylight. However, they could only keep quiet and swallow the insult. Our vision might be concentrated on the men wearing white gloves or sporting drinking straws, because they were really too showy. In fact, those who are really shrewd do not wear white gloves or sport drinking straws, and they are not limited to agents but there are many big time speculators. I am therefore very much in favour of controlling speculative activities in pre-completed flats.

Whilst in the Democratic Foundation, I studied in depth the various proposals put forward by the OMELCO Housing Panel, and consulted members of Eastern and Wanchai District Boards for their views. I found that it would be possible only to cool down speculative activities in pre-completed flats but impossible to suppress them, not to say to solve this problem completely. Finally I thought of a most thorough method,

that is to do away with the sale of property in the form of pre-completed flats. Property may be sold in whole blocks, or even three months before occupation. The point is there should be no pre-completed flats. Without them, how could there be speculation in pre-completed flats? What the consumers need is completed flats, not pre-completed flats, just like Home Ownership Scheme (HOS) flats which are sold to the public now, and private developers also are selling completed flats, if their property does not have good transport connections, but not pre-completed flats.

Although I consider that my proposal is a very good one, I understand this affects the developers, because sale of pre-completed flats is the most favourable method for them to raise funds. On considering the problems created by speculation in pre-completed flats and the fact that there is no benefit at all for consumers, I still propose to do away with this system of selling pre-completed flats. If developers have any objection because of their own interests, I do not mind. On the contrary I am worried that if the consumers also do not support it, then my proposal will become fruitless. I have therefore made full preparations in advance to seek public views on this. With the help of my friends and members of the Democratic Foundation, I collected the opinions of 372 households in four private housing estates in the Eastern District: Felicity Gardens, Kornhill, Taikoo Shing and Healthy Gardens. Results of an analysis showed that although I did not obtain 100% support, 60% of the households were in favour. Based on this, I have reason to insist on my proposal.

The reason why I target at speculation in pre-completed flats but not property investment is because pre-completed flats involve low cost and high profit and are readily disposed of. During the recent months, prices of medium and small residential units rose rapidly by 30%, and this is due in no small measure to the activities of speculators.

Some may question what the crime in "speculation" is. Is not speculation in stock, gold and foreign exchange also speculation? However, I consider that speculation in pre-completed flats is absolutely different because it seriously affects people's livelihood. Apart from genuine buyers who are exploited, I think that the rise in property prices would not have been so rapid, had there been no property speculation and the general public would not have been so hard-pressed. High property prices also have adverse effect on the possible return of those who have already emigrated.

Statistics show that the price index of private residential property rose by an average of 2.3 times for units under 99.9 sq m between 1985 and 1990. During the

same period, the Hang Seng Commodity Prices Index rose only by 50%. This reflects that among the rise in price residential property was the greatest among the nine major items of expenditure comprised in the Hang Seng Commodity Prices Index. As this also constituted one quarter of family expenditure, it was also the most important cause of pushing up the index. On the contrary, the rise in prices of tobacco and wines which had attracted so much criticism only took the second place. Also, the increase in transport cost which had been heavily attacked by concerned groups only ranked third. Did not we say unanimously that inflation is enemy No.1 which must be controlled? Cigarettes, after the tax increase, exacerbated inflation. Yet the Financial Secretary was bold enough to reduce the tax. Then how could he sit back and ignore the rise in housing expenditure?

Some people may say that I am interfering with the economy. I am not interfering with the normal functioning of the property market, nor am I trying to control property prices. My proposal to prohibit the sale of pre-completed flats will only eliminate the undesirable effects brought about by speculation in pre-completed flats, but will not affect the functioning of the markets. Speculation in pre-completed flats is simply what it is and has nothing to do with supply and demand. Once speculation in pre-completed flats has been stopped, prices will automatically be adjusted by market forces. This is most consistent with the principle of free economy and minimizes human factors. If one has the means to speculate in property, one can do it, but it is much more difficult for one to influence property prices.

Some might query if the "extreme" measure to prohibit the sale of pre-completed flats is to be adopted. Is it not that tightening of credits by banks has already had a certain effect? Also, are not there proposals to improve the public sale procedure and levy heavy tax? Correct. If these are effective, then there is no need for me to put forward my proposal. However, I am absolutely sure that as long as there are pre-completed flats, there will be speculation. For instance, on the proposal to levy tax, I asked OMELCO to enquire about the feasibility with the Government. The reply I received was "Let the Councillors give us additional staff. The Government would then be able to investigate more thoroughly all people concerned with speculation in pre-completed flats and property, which would certainly increase much more Government's profit tax." On the other hand, I felt that it would be very difficult to deal with "under table transactions".

To eliminate the sale of pre-completed flats is only to return to the situation of the 1960s and before. The Government approved the sale of pre-completed flats

in 1961, mainly to help developers raise funds.

However, after 30 years, developers are now financially much stronger and bank credits are not as conservative as they were 30 years ago. Therefore if the sale of pre-completed flats is to be done away with, developers can still cope with the situation, not to mention that at present many residential units are sold after their completion.

I trust that my proposals are the most effective, but they still need the support of Members for their implementation. I would first take follow-up actions in the OMELCO Housing Panel.

As to which motion I should support, I feel that the Honourable LEUNG Wai-tung's motion is like a pre-completed flat which, after the amendment of the Honourable Kingsley SIT Ho-yin, has become a flat, a completed one. Consequently I support the amendment which Mr SIT is going to move soon.

MR CHUNG (in Cantonese): Sir, many people are now closely watching whether the prices of housing flats will be further driven up by the speculative activities that have seeped in and how to cope with the problem of a possible adverse impact of the wave of speculation in flats on the interests of residents. In my view, the speculation of flats is but a passing, localized phenomenon. Such activities, while definitely unable to drive up the prices of flats to a level above the economic condition of the consumers' market, will still provide opportunities for making profits. Sooner or later, the prices of flats will automatically adjust themselves to a reasonable level because of the actual supply and demand situation and other fundamental factors in the market. Since there is no satisfactory improvement of the inflationary situation, the construction cost of housing flats is on the increase. Government reports have it that the total usable floor area of flats completed in 1990 was 20% less than that in 1989, while the total cost of construction last year was about 5% higher than that for the previous year. This shows that the costs of land, materials, labour and operation have been the cause of the continued increase in the basic cost of flats. In other words, commodity prices may also rise correspondingly. This, coupled with the fact that the inflationary rate is greater than the actual rate of interest on bank deposits, will provide favourable conditions for a further rise in the prices of flats and rents.

The property market has remained active. There were 69 000 property transactions in 1990, involving a total of \$98 billion, which represents a 9.3% increase over the \$89.7 billion of 1989. Generally speaking, a developer putting a new building on the market was able to ask for a price that was almost certainly above the cost of construction. Judging from the price-rise trend and the rush to queue up for purchase of flats, one may be certain that the property market will remain at least basically stable for a long time, given the continuing demand of home buyers.

In Hong Kong, the average annual income per capita is now over \$100,000. The general market for ordinary flats is optimistic. As everybody knows, where there is a free market, there will be speculation. Wherever there is an opportunity to make money without breaking the law, there will come the hot money for speculative activities. The point is that, should speculative activities turn into a wave of speculation that deviates from the normal property transaction, the competent authorities and other responsible parties should adopt appropriate counter-measures to safeguard effectively the due interests of all the residents who buy flats for their own use.

Sir, in my speech given this year during the policy debate in this Council, I pointed out that home buyers were being constantly hit by the rampancy of speculative activities on new flats. It is said that buyers are often treated unfairly in respect of prices or have to tolerate the forms of transactions which they do not voluntarily accept. Unless proper precautionary measures are taken, Hong Kong's property development will become more and more disorderly. What is more, should the property market run out of control, development of the entire housing policy would be suffocated. The present situation is worse than expected. We should not talk lightly of controlling the free market. However, when we must take measures to cope with the speculation on flats, we should adhere closely to one basic principle, which is that, when fighting the wave of speculation, we should support the operation of the property development market and the economic vitality, prevent them from being suffocated, and ensure the fair transactions of flats or pre-completed flats. I would like to put forward for reference my nine-point view as follows:

- (1) Provided that the original schedule of property development and operational efficiency are not affected, a developer or his agent should give out as early as possible application forms for the purchase of pre-completed flats. It should be stipulated at the same time that a cheque for a sum of money equivalent to 5% of the price of the flat must accompany each application form submitted. It may be stipulated on the application form that applicants must use a separate form for each

flat applied for and that any individual or company may freely apply for as many flats as may be needed. In case of over-subscription, lots will be drawn to decide the buyers. Unsuccessful applicants will get a refund, but without any interest.

(2) Banks should impose a special service charge for short-term mortgage, except where there is a reasonable explanation for the request to pay off the mortgage. If the opportunity to make money through speculation is thus governed by the terms and conditions of mortgages, there will be no need for the banks to tighten housing loans on account of the speculative activities on flats.

(3) The Inland Revenue Department may consider imposing a profit tax on transactions of pre-completed flats or an ad valorem tax on transfers of pre-completed flats. However, these taxes must not be listed in parallel with the existing tax on profits derived from property transactions, or there will be double taxation.

(4) Under-the-table transactions involving transfer of flats must be prevented and duly investigated. This may possibly involve the deliberate under-statement of the prices of flats transacted in the mutual benefit of both the buyer and the seller. For instance, the price of a flat, which is really \$1.2 million, may be falsely stated to be \$1 million with a view to withholding the truth and evading payment of income tax or profit tax.

(5) The price-based stamp duty must be paid in full on each sales contract on a pre-completed flat or each sales document to the same effect. The stamp duty should be paid each time when a transfer takes place. The seller should be responsible for paying the stamp duty for the transfer.

(6) Developers should publish their share-holders' interests in the so-called "units for own use" among the flats put up for sale and closely examine the use of the flats pre-sold internally in a bid to prevent a small number of people from manipulating the prices of flats or speculating for gain.

(7) Property agents or real estate brokers are often involved in transactions for over \$1 million each. They should be subject to Government-approved registration and should obtain proper professional qualifications and be capable of complying with laws and regulations. At the same time, a code of conduct for the profession should be drawn up to prevent people from abusing trusts and to avoid conflicts of interest within the profession.

(8) The Government should consider setting up a Property Transaction Advisory Committee to make recommendations to the Government in connexion with ways needed to help improve and develop the property market and the business of property agents.

(9) The best way to eradicate over-heated speculative activities in the property market and the problem of speculation on flats is to build as many new buildings as possible and implement the urban reconstruction programme as soon as possible. If there is a balanced supply and demand situation in the market, speculators who hoard up flats for gain will disappear on their own.

Sir, I have just put forward my nine-point view as above, believing that it will not only solve the problem but also help improve market ethics and raise properly the professional status of members of the profession. Yet it will not impair the basic principles of the free market. Excessive speculation on flats can be but a short-lived phenomenon. In fact, the rampancy of speculation has already subsided. It is said that 60 000 new flats, representing a 25% increase over the normal supply, will become available in the coming 18 months. I believe that buyers will welcome, and speculators will take due warning from, this fact.

Sir, with these remarks, I support the Honourable LEUNG Wai-tung's motion.

MR HO SAI-CHU (in Cantonese): Sir, first of all, I have to declare that I am a board member of several real estate companies in Hong Kong. I would now like to give my views on the spiralling prices of domestic flats in recent months.

Given Hong Kong's free market economy, property prices, like that of other commodities, are made up of a cost factor plus a profit margin. While costs can be calculated with reference to actual expenditure, profit margin is to be determined by market supply and demand rather than the wishes of the individuals. The fluctuation of prices is but a natural phenomenon. Any interference by means of administrative measures can only produce partial and temporary results. After all, we have to rely on the market to adjust itself. It will normally be unnecessary for the Government to try to intervene.

Since the beginning of this year, prices of domestic flats have been rising sharply. Prices have gone up by 20% to 30% within only four months. Are prices

pushed up by the law of supply and demand or by speculative activities? It is the fact that there has been a rising demand for domestic flats as population increases and economy prospers. The relatively clear and stable situation following the end of the Gulf War has also sharpened the desire of the public to purchase their own home. On the other hand, given the popular forecast for an upward trend in property prices, some people have taken the opportunity to buy in a certain number of units or pre-completed flats to be re-sold later for a profit. All these have contributed to the drastic increase in property prices, which will turn away many potential home buyers and fuel inflation. Such an abnormal situation warrants our concern.

Sir, I am aware that the Government has been paying attention to the situation. It has taken steps to ensure public order and prevent the use of violence during the sale of flats, and has also tried to work out fairer methods for selling flats with developers. As for the banking sector, they have also tightened credit in order to curb speculative activities. These measures have produced results. Speculative activities have been dampened down but not eliminated. In fact, it is sometimes hard to draw the line between "investment" and "speculation". Undue intervention by the Government will have negative effects on the economy. A more prudent and effective approach will be to make available more land for residential use and to build more public and private housing flats to satisfy the demand of the community. With a balanced supply and demand, the market will be able to regulate itself and bring property prices down to a reasonable level.

Our economic growth in recent years has brought about prosperity to the community as a whole. Real estate developers, in particular, are gaining handsome profits. Residential flats are large commodities. It is one of the necessities of life which many people aspire to possess and are willing to use the savings of their life to procure. The upsurge in property prices will dash the hope of many potential home purchasers. May I appeal to real estate developers to look after the need of the general public when putting their flats on sale. Efforts should be made to ensure that the flat will go into the hands of the genuine home purchasers. Speculative activities should be discouraged as far as possible so that members of the public will be able to buy their home at a reasonable price. The developers, in so doing, will be fulfilling a moral obligation to the society without sacrificing their business interests.

Sir, with these remarks, I support the motion.

MR HUI (in Cantonese): Sir, Hong Kong is only a tiny territory but has a large population, and therefore land is valuable and has even become people's best investment to hedge against inflation. This has been a hard fact for a long time. However, as the people of Hong Kong like to act like a swarm of bees, and are imbued with the spirit of adventuring enterprise, coupled with the Government's policy on land supply and its adherence to the principle of non-intervention in the free market economy, in addition to the factor of "scarcity of land versus a large number of people", speculation in flats has become an inevitable "by-product" of an economic boom. Therefore, the subject this Council is debating and touching on today is all too familiar to the people of Hong Kong.

However, this does not mean that the Government can dissociate itself from the phenomenon which is the concern of this Council. I am of the view that as there has been more and more evidence to indicate that the current property market cannot properly reflect the situation of supply and demand because of the human intervention in the market, there is ample room for government intervention, so as to eliminate the human factor detrimental to the free operation of the market. In fact, while I examine the problem of speculation in pre-completed flats on the basis of the overall land and housing policy, I firmly believe that unless the Government is determined to confirm its role and function for intervention in the property market with a view to upholding social equity, otherwise even if the Government can draw up a strategy, it cannot be anything better than the bad habit of "symptom treatment", and much less can it rid the Government of its "sunset government" image.

Sir, the scope of speculation in private housing is, in fact, quite wide; but what the Council is most concerned about is the speculation in pre-completed flats of medium and small sizes put up for sale for the first time. Several of my colleagues have pointed out that within the first quarter of the year, the selling prices of such kind of units rocketed by 25-30%. Although we have no way of knowing how much of the increase reflects the actual supply and demand situation of the market, we are certain that a large part of the profits have gone into the hands of those who obtained advantageous position in queuing for chip allocation by means of unfair influence, as well as into the hands of speculators.

According to a report of a financial magazine, a real estate agency once obtained from a developer 70 units of a new development. Two days before the developer put the new development up for sale, the said agency sold out the units by adding to the

price of a unit a "space purchase fee" ranging from \$40,000 to \$60,000 and thus netted a total profit of \$3.5 million by selling all the units so obtained. On the other hand, there are the queuers by profession who usually make a profit of several thousand to over ten thousand dollars for one chip. It is pointed out by people within the circle that as at April about three fourths of all the pre-completed flats were held and traded by speculators and speculators also accounted for 55% of the transactions of spot flats.

From the above figures one can see that the human intervention factor in the property market has reached a startling level and one can even refute as total lies the claims of some developers that there is support for the market, because the market is only supported by confirmors and not genuine buyers, and the hidden crisis can well be imagined. Furthermore, there are at least two undesirable phenomena on the market. First, many real estate agencies obtain units of new developments through some connections, but no one knows whether the transactions involve some "under-the-table" deals. In fact, developers have already included reasonable amounts of profits in their prices and do not need to rely on queues to create an atmosphere to stimulate sales. I sincerely hope the leading developers in Hong Kong will, as a matter of conscience, let the genuine home buyers who have repeatedly failed to obtain their homes fulfill their wish, since these developers have made a lot of money in Hong Kong. Secondly, some people are in the habit of acting like a swarm of bees and blindly enter the market. This not only creates the false phenomenon of support for the market, but also encourages the participation of triad elements in the activities, thus making the problem of speculation more complicated and putting an extra load to the burden on the genuine home-buyers.

Although both the Government and investors have all along been stressing the importance of free market operation to economic growth, I wish to emphasize that this system must be based on the principle of fair and open competition, and any attempt to take an undue share of benefit from the market by a handful of influential groups and individuals shall not be allowed. The current multifarious speculative activities in the property market are carried out by those who have expert knowledge of the market trend and behaviour under the cover of "upholding free market operation" in an unfair competition with the small investors who follow the buying spree blindly. The attitude adopted by the Government is disappointingly ambiguous. The Government has already noticed the current unhealthy situation, but it is unwilling to intervene in its own name; instead, it only appeals to developers to exercise self-discipline after the Consumer Council proposed seven measures relating to the sale of flats.

As these proposals are not binding on the parties concerned, people are doubtful about their effectiveness and how long they will last.

Sir, as a responsible government, the Government of Hong Kong should try to eradicate all unfair competitions in society, and I really find no reason at all for the Government to stand by with folded arms, because human intervention in the free market has made prices become out of line with the actual supply and demand situation. I think that although Government's intervention may be taken at a no small price, yet, if the matter is disregarded now, the price we will have to pay in the future may be much greater.

In view of the fact that trading in pre-completed flats can help developers get cash quickly and enable them to go on developing other housing projects, and that the second hand market can also increase the turnover of the spot flats, I do not think the Government should throw away the apple because of the core and strangle these two operation systems which are beneficial to the market. Everyone knows that the main inducement causing the speculation in medium and small sized flats to be more and more rampant is that syndicated speculators consider it a profitable undertaking operated on a small capital. This process is minimal compared with the time needed for transfer and the difference in prices between these two kinds of transaction. Therefore, since the banking sector tightened up its home mortgage policy in April with such measures as strictly examining the background of applicants and their repayment ability, raising the service charge for home mortgages cancelled at an early date and reducing the percentage value of property to advance loans on, trading contracts on pre-completed flats have fallen significantly by 30% to 40% and prices of flats have been able to stabilize. It can be seen that the Government only has to obtain the whole-hearted co-operation of the banking sector before it can attain the effect of intervention in the market without being involved directly.

Another method of increasing speculators' cost of purchase is to make it compulsory for developers to collect an interim deposit equivalent to 6% of the price of the flat, and the remaining 4% to be collected upon signing the official sale and purchase contract. As the genuine home-buyers expect to pay the 10% deposit sooner or later, this measure, I believe, will not bring them any additional burden. In addition, when necessary, the Government may require that when a developer puts up new flats for sale, he must disclose the number of units sold in advance and their locations, and it can even require that developers must sell all their units by ballot. These are all within the scope of intervention which I consider acceptable.

On the other hand, I am concerned about the quality of the real estate brokers who are active in the real estate market. Because of their accessibility to the market and the inducement of profits, I believe many of them have been directly engaged in speculation in pre-completed flats, and one can even say their activities have the effect of adding fuel to the flames of speculation. According to the information provided by the Consumer Council, some brokers have even committed the fraudulent act of "cheating in price" on the second-hand market of spot flats. As real estate brokers do have an influence on the operation of the market, I agree to the arrangement that the authorities concerned control, through a licensing system, their professional behaviour and the quality of services they provide.

Undoubtedly, the above-mentioned practicable ways are only expedient measures for clamping down on speculation in pre-completed flats, and cannot thoroughly solve various housing problems brought about by the faults of Hong Kong's policies on land and housing. According to the Government's consistent land policy, there should be an approximately balanced development between private and public housing, which means each shall take half of the land resources. This will allow people to choose the accommodation within their means on the one hand, and allow the Government to cater for the low income group on the other hand. This policy is well-intended, especially when the two sectors do not come under one another. However, once there is the policy to link the rents and selling prices of the public housing (that is rents of public housing estates and selling prices of the home ownership scheme) to those of the private sector, the demand of people in the middle and lower income groups for better living conditions is turned into a huge underlying support for the private sector market. On the other hand, however, the rise in prices of private housing will subject rents and selling prices of the public housing to pressure for upward adjustments, and subsequently increases the burden of housing on the middle and lower income groups to a very large extent. It can be seen that the Government has not only all along been protecting the interests of private developers, but has also been trying to make land more valuable through these ingenious arrangements. Therefore, one can hardly see the end to the speculation in pre-completed flats.

All in all, the speculation in pre-completed flats has developed to such an extent that the Government cannot but intervene, because free operation of the market can no longer be left to the spirit of self-discipline of developers, real estate brokers and investors. In view of the sensitiveness of the problem, I think the Government should act cautiously, so as to avoid arousing the unnecessary drastic reactions of

the public. In order to solve this problem thoroughly. I consider the Government must make a fresh overall review of the current policies on land and housing, to ensure fair distribution of the community's resources and, more importantly, to undertake the responsibility of providing low-priced accommodation for families of the low-income group.

Sir, with these remarks, I support the motion.

MR MARTIN LEE (in Cantonese): Sir, I believe that the majority of the residents of Hong Kong would like to see continued prosperity in Hong Kong's property market and that nobody can totally deny that speculation plays a certain positive role, such as relieving the market pressure, causing risks to be shared and speeding up returns on property developers' investments. The problem is that not only are the current over-heated speculative activities seriously affecting people's livelihood, but certain irregularities within the profession are also violating the principles of fair trade. Genuine end-users of housing flats are deprived of their basic right. The Government really must devise effective measures promptly to solve the various problems caused by excessive speculation.

We may seek solutions in two directions. The first is to use the approach of fighting speculative activities. My colleague, the Honourable Ronald CHOW Mei-tak of the United Democrats of Hong Kong, will talk about this issue in detail later. The second is that we may, by improving the existing procedure for the sale of flats, ensure that both buyers and sellers will do the transactions under a fair and reasonable system. On behalf of the Consumer Council, I will focus my discussion on the latter approach.

The Consumer Council always maintains that it will support and respect the arrangements of property developers as long as the developers, when putting up flats for sale, can assure genuine home-buyers of a fair opportunity to acquire property and maintain good order in compliance with the requirements of the Registrar General's Department. However, up to now, the property developers have not yet been able to suggest effective measures. The line-up method for selling flats they have all along advocated provides speculators with opportunities to touch off a chain reaction on speculation. Speculators can speculate on a position in a line-up, on a chip and on a flat. By "speculating on a position", it means that a person sells his good position in a line-up. By "speculating on a chip", it means that a person who has

obtained a chip in the line-up sells his chip for tens of thousands of dollars. By "speculating on a flat", it means that a person who has selected a flat re-sells his flat for monetary gain. In fact, if one is backed by influential people, one needs to put down only a few ten-thousand dollars as downpayment before one can gamble in a big way, while the genuine end-users must helplessly pay the expensive extra amounts for positions in a line-up, chips or re-sold flats. This is very unfair to the genuine home-buyers. Recently, the number of line-ups has increased from one to two, with one group of people lining up for chips and another group lining up for selection of flats and making downpayments. This has greatly increased both the time needed and the opportunities for speculation, without improving the law and order situation. Since last year's "white-glove party" and "drinking-straw party" incidents, there has been no improvement in the situation of triad members fighting for good positions in a line-up to buy flats. What is more, the "towel party" and the "barbecue fork party" have recently made their appearances one after the other. Worse still, the "beach mat party", which made its appearance only a few days ago, directly threatened the safety of home-buyers. Although I am always in favour of free competition among different parties, I think that measures must be taken quickly to stop the system of two line-ups, three speculations and multi-party struggles.

Now that the law and order situation in Hong Kong is not too good, the police have yet to spend a lot of manpower on maintaining order at construction sites; this is very unhealthy. It is a waste of the community's public resources and is unfair to the public either. Regrettably, the developers seem to be content with their dependence on the support provided by the police, and one does not see them take active steps to prevent the long line-ups and disturbances from arising. In view of this, the Consumer Council has no other alternative but proposing the introduction of a lot-drawing system. The developers are opposed to this, mainly on the ground that they fear the sale of flats on lower floors and with poor bearings will become sluggish. The Consumer Council, however, does not consider this as a sufficient ground. The reason is that the less popular flats should not have been so highly priced and that their prices should be lowered if they cannot be sold. In this way, they definitely can be sold. As to the developers' concern that lot-drawing may bring about corruption, I feel that this problem will not be difficult to deal with. It can be solved if the lot-drawing process is overseen by independent persons. The Independent Commission Against Corruption may provide valuable suggestions in this regard.

In addition, the developers' reservation system also directly encourages

speculative activities and reduces the number of units that are sold directly to the public. I think that there is nothing wrong with developers reserving units for the occupation of their own staff. However, if this is done deliberately or, still worse, if the developers undertake to take back the reserved units which cannot be sold, one cannot help suspecting them of "fabricating the market." After a reserved unit is sold, what normally happens is that its price is marked up by several ten-thousand dollars at the second-hand market shortly before, or simultaneously with, the public sale of the other flats by the same developers. This practice is aimed at creating the phenomenon of a rise in property prices. With an insufficient number of publicly sold units to choose from, those who need to buy flats for their own occupation have no other alternative but to make up their minds to risk their own life to line up or to buy from brokers at inflated prices. I do not understand why certain interested parties are always given priority to buy the pre-completed flats before they are put up for sale. This practice, which deprives the public of an equal opportunity to acquire property, must indeed be reviewed and improved.

Sir, I would like finally to discuss the question of legislating to control property agents. Some real estate brokers are of very poor quality. To earn commissions, they encourage frequent transfers of flats. Worse still, they quote false prices or make money from the differences between true and false prices, thus profiteering at the expense of both the buyer and the seller. The Consumer Council thinks that relying on the profession's self-discipline alone may not be able to solve the problem effectively. The Consumer Council thinks that the Government must legislate to control property agents. The day before yesterday, the Consumer Council called a press conference, during which it recommended that a licensing system be implemented and that legislation on property agents be drafted. I believe that Members have all heard of the press conference. I want to stress here that whatever form of control the Government finally wishes to adopt, it must be supported by legislation. The purpose of implementing a licensing system by legislation is to eradicate malpractices by property agent and to ensure that all property agents, big and small, can do their businesses in a healthy and competitive environment. This licensing system should not be too strict, or it will drive the smaller agencies out of their business, thus letting the bigger ones have the opportunity to monopolize the market, to the detriment of public interests.

Because it takes time to implement the licensing system, the Government must expedite the legislation for control and urge property agents to abide by certain basic rules and discharge their professional responsibilities. Through legislation,

consumers will be able to seek compensation or claim a refund of their commission paid to agents who have violated the professional rules of conduct. The recommendations put forward by the Consumer Council, for example, the requirements that the interim sales contract must contain basic information, that no person shall give a false statement that flats are available for sale, that no misleading information shall be given or true facts withheld and that the agent's interests in a property transaction must be disclosed, are all for the protection of the most basic interests of both the buyer and the seller. I hope that the Government will look squarely at the question of insufficient control over property agents and expeditiously restore a fair trade environment, thus enabling the property market to operate normally and healthily.

Sir, I received a telephone call after lunch today. I was told on the phone that a major property development company had indicated to the Consumer Council that they would take the lead in adopting the lot-drawing method when putting up flats for sale in the near future. This shows that Hong Kong's property developers, too, are willing to adopt a rather fair and reasonable system for the sale of flats. I am therefore confident that the Consumer Council's recommendations, provided that they are supported by the Government and by my colleagues in this Council, are feasible, and will be accepted by both the property developers and the broad masses of residents.

Sir, I support the motion.

4.46 pm

HIS EXCELLENCY THE PRESIDENT: There are still a considerable number of Members who wish to speak in this debate. Members might appreciate a short break at this point.

5.13 pm

HIS EXCELLENCY THE PRESIDENT: Council will now resume.

MR POON CHI-FAI (in Cantonese): Sir, with the rapid growth in economic development, the living standard of Hong Kong people has been improved accordingly. There is therefore a greater demand for better living environment and the desire for owning

a tenement flat has become much stronger. As a result, the need for residential premises is rising fast. However, there has been growing concern amongst the public over the upsurge in property prices and the rampant speculation for the last six months. Whenever there were new flats offered for sale, there were hundreds of speculators as well as undesirable elements lining up over the night for the purchase. Citizens have expressed worries over the behaviour of these undesirable elements jumping the queue and taking possession of advantageous positions to pre-empt the buying.

Sir, indeed, the property price has recently been pushed up to an unrealistically high level and is completely out of line with the purchasing power of users. The hope of owning a tenement flat of many people has crumbled to nothing as the property price soars up. Sir, the sudden rise in property price has not only made it hard for those who want to improve their living environment to own a flat but given rise to a chain of price spirals as well, thus aggravating the inflation problem. This has seriously affected the livelihood of Hong Kong people, hampered the economic development of the territory and weakened the competitive power of the export trade of Hong Kong.

Sir, our economic development has all along been subject to the influence of the property market. If we depend too much on the adjustment mechanism of the free market economy to regulate the situation, the price will continue to surge and economic problem will thus emerge and the value of properties will become so excessively high that the general public can no longer afford. This may lead to a collapse of the property market, fluctuation of the local economy, economic recession and plummeting of the stock market which will be a severe blow to the overall economy of Hong Kong. The collapse of the property market in 1974 and 1983 are still within living memory. How can the Administration neglect such a lesson and not think about it carefully?

Sir, it can be detrimental to the economic development if there is too much intervention in our economy. However, the blind faith in the "non-control" policy will lead to an overheated property market which has frustrating effects on local economy and the livelihood of Hong Kong people. Housing is considered by the community at large as a necessity. As a responsible administration, the Hong Kong Government should cool down the speculation zeal before it becomes out of control and introduce sensible and desirable control in order to help establish a sound property market, so that citizens may live and work here with peace and contentment and economic growth may continue. This is what a responsible government should do.

However, the Administration goes on using the "non-intervention policy" as an excuse for shirking its responsibilities and allows the speculators to manipulate the value of properties. It has even encouraged the speculative activities by stating clear that it had no intention to take any action under its non-intervention policy. Since the Hong Kong Government remains indifferent to the malpractice of the property market, once the market collapses and economic problems such as economic recession, stock market crash and closedown of banks emerge, the Government will hardly stay out of the situation at that time. It may have to use the public fund again to stabilize local economy just as what it has done once before. Sir, the claim of strict adherence to the "non-intervention" policy is only an excuse. In fact, while the Government can monitor the operation of banks, financial companies and the stock market, as well as regulate the supply of foodstuff and the profit margin and pricing policy of public transport and electricity companies and impose rent control over pre-war and post-war domestic premises, why is it unable to introduce proper control over the property market which has direct relevance to the livelihood of people and the economic development?

Sir, although the escalation of property price has been slowed down, reasonable control on a limited basis is conducive to establishing a sound property market and to certain extent has desirable effect on the livelihood of Hong Kong people and can stabilize the economic growth. In this connection, I would like to put forward the following proposals:

(1) More public housing and Home Ownership Scheme flats should be provided so as to balance the supply and demand of residential premises.

(2) The Administration should carefully monitor the situation of speculation before such activities have become out of control and warn the public not to follow suit insensibly so as to cool down the speculation zeal. When property price is rocketing up, the Administration should not add fuel to the flame by stating that it has no intention to take action against the situation as such a statement may encourage speculative activities.

(3) Registration and verification of buyers of flats should be reinforced to discourage the practice of resale of premises within short period.

(4) Profits obtained in the resale of pre-completed flats or any flats within short period are taxable so as to deter speculative activities.

(5) The value of HOS flats should be assessed according to the affordability of the public. A strict adherence to the value of private premises will only encourage the upsurge of property price.

(6) The Administration should strengthen liaison with developers and join forces with them to work out some effective procedure for buyers to purchase flats.

(7) The Administration should also assist in setting up the association for real estate agents so as to improve the quality of the profession and its self-regulatory system in this respect as well. It may introduce further control on the real estate agents by licensing whenever need arises so as to prevent acts of exploitation and fraud by the agents in the course of the purchase of flats and protect the interests of consumers.

Since the motion to be moved by the Honourable Kingsley SIT later unequivocally urges the Administration to devise a policy to improve the situation, as had been similarly suggested by some colleagues and me in our speeches, with these remarks, Sir, I support Mr SIT's motion. Thank you.

MR ARCULLI: Sir, firstly I would like to declare my interest as a partner in a firm of solicitors that act in conveyancing matters, secondly as an honorary legal adviser to the Real Estates Developers Association and lastly as a director in a number of property companies.

That having been said, Sir, I endorse the comments made by my colleague, the Honourable LEUNG Wai-tung, regarding the alteration of the wording of her motion. Indeed I believe I was partly responsible for persuading her to do so and therefore in this circumstance I will not support the amendment put forward by the Honourable Kingsley SIT.

Sir, it should therefore come as no surprise to my honourable colleagues that the views I will put forward this afternoon may at first sight appear to favour the developers and others involved in that side of the industry including the banking and financial sectors. I say "at first sight" because I believe we must look beyond the limits which some of my honourable colleagues would wish to put in the debate here this afternoon. What we must do is to look at the bigger picture of Hong Kong

as a whole. Some weeks ago there was indeed public concern over the involvement of some of the less desirable elements in Hong Kong in the purchase of uncompleted flats. The concern, as I understood it, was primarily and quite rightly an issue of law and order. It was right that the public expressed concern and even indignation at such events. Another concern, though much less widespread and certainly not from that section of the community that own flats, was what appears to be a sudden surge in property prices. That unfortunately was neither true nor accurate. From available information it would seem that during the first quarter of 1991 the increase of prices was somewhere between 5% and 9%. If we look at the statistics available from the Property Review 1991 published by the Rating and Valuation Department for the period from 1981 to 1990, we would see that, based on an index of 100 in 1989 (and, as we all remember, that was not a particularly good year), the index as at 1981 stood at 59 to 78 for four categories of flats varying in sizes from those not exceeding 40 sq m to those of at least 160 sq m, and by 1990 the index for the same flats ranged from 111 to 103. In other words over a period of 10 years the index for the smaller flats rose from 59 to 111 whilst at the other end it rose from 78 to 103. In none of these four categories did the index double. When taking all categories into account the index rose from 61 in 1981 to 110 in 1990. Sir, the purpose of my referring to these statistics is to ask my honourable colleagues to bear all this information in mind and whether they have made out a cogent case for intervention and whether intervention should only move in one direction. We all know that other countries have experienced temporary and perhaps even much bigger increases in property prices. Not so many years ago the property market was so overheated in London and New York that the practice of gazumping was prevalent. Some of it was even blamed on foreigners buying properties there. Were foreigners stopped from buying properties? Of course not. What then happened? The market corrected itself as it is doing in Hong Kong right now.

Sir, I cannot believe that property developers would want to sell their product in such a way as to destabilize the property market. The reason is plain: it is in no one's interest for this to happen. Property developers are important to Hong Kong's economic well-being as they provide housing for our community apart from employment for many. They take on economic risks when they buy land for redevelopment into homes, offices and industrial premises. Despite what has been said here today it is not always risk free. What do we say to a property developer who asks the Government to rent or to buy empty offices or factories or bring in legislation to protect their interest? Clearly we cannot do that.

Sir, there is another aspect we need to look at which is of direct relevance to the property market and that is the role played by our banking and financial services sectors. Developers not only need capital for investment into property developments, they also need financing for development. The faster they can turn their capital, the faster flats can be produced. And therefore the sale of pre-completed flats allows this to happen to allow them to keep up the production of more flats. Likewise purchasers also require financing for buying flats and indeed long-term mortgages with repayment periods ranging from 10 years to 25 years are available. It has happened before when the property market, due to a variety of factors, collapsed. Speculators died along the wayside, investors saw little return on their investment and owner-occupiers found it well nigh impossible to carry on with their monthly payments. What did our banks do? On that occasion our banks did not increase the monthly payments despite an increase of interest rate from 10% when a flat was purchased to some 20%. Our banking system has matured from the early days of the mid-1960s to its present position of strength. Has anyone felt it necessary to suggest that our banks ballot for loans or be restricted in the amount it may lend to the buyer of a flat or that controls be introduced in terms of interest rate that it may charge? Of course not. Any controls brought in by the Government in the banking sector has been to ensure the financial strength and integrity of our banking system and not in terms of pricing control.

Some of my colleagues, Sir, have spoken of the evils of speculation. In fairness they have limited their comments to speculation of pre-completed domestic flats. May I gently remind them that Hong Kong's success is due in no small measure to the policy of positive non-intervention and despite attempts by some of my colleagues to draw a distinction between their desire to control the sale of pre-completed flats and other sale and purchase transactions it is not as simple as they would like to believe.

Sir, my colleague, the Honourable Martin LEE, has suggested balloting as the panacea to controlling speculation. What he has to sell, as a leading member of our legal profession, is his time and I am quite sure there is a great demand for his professional services. Would he, for instance, accept a balloting system for the work he would otherwise be free to undertake as he wishes? I suspect that even if he were to agree I doubt if he could persuade his fellow barristers to do so.

Sir, my honourable colleague, Miss LEUNG Wai-tung, referred to New Zealand and to their apparent success in controlling property speculation. All I can say is that it must really be the classic example of "operation successful, patient died". If

I were to ask our community whether they would want the economy to be like that of New Zealand or Hong Kong, I have no doubt that the answer would be a resounding "Hong Kong". Sir, as a famous saying goes, "If it works, do not fix it."

Sir, in conclusion, nothing I have heard so far tells me that there should be governmental intervention in respect of the sale of pre-completed flats. But that does not mean that we are not concerned with malpractices that happened in the sale of flats generally as opposed to just pre-completed flats. And it may well be in that direction that some actions need to be taken.

Sir, with these remarks, I support Miss LEUNG Wai-tung's motion.

MR BARROW: Sir, I open by declaring an interest as I have connections in the property sector.

I was originally unclear from the Honourable LEUNG Wai-tung's motion as to what she had in mind. But now that she has explained her proposals, there are one or two points that I would like to make. The concerns of Miss LEUNG and other colleagues are understood as rampant property speculation can be destructive, particularly if it forces housing prices beyond the reach of the ordinary citizen. The long-term cure for this is of course an adequate supply of land for development and I understand that the supply of flats in this category is going to greatly increase in the coming year or so. But it should also be remembered that speculation is a normal feature of many markets and can be helpful to both buyers and sellers alike by providing liquidity and stimulating supply. Hong Kong therefore should take great care before it legislates to intervene in the working of a particular market. The cure could turn out to be worse than the disease, and Mr Ronald ARCULLI has made the point I was to have covered on New Zealand.

Having said this, Sir, I believe that in some free market jurisdictions there are limited powers to dampen speculative property bubbles which could include guidelines on financing. I recommend that the Administration should study carefully how this will work in practice. Of perhaps greater relevance to this problem is upgrading standards of practice in our property market. I suspect that the root cause of the concerns we are addressing today is not in fact speculation as such but rather the unethical practices, and possibly worse, of some operators in the market, as referred to earlier by the Honourable Martin LEE. My second recommendation therefore

is that the Government should consult the responsible and experienced element in the industry (with which Hong Kong is fortunately well endowed) with a view to upgrading professionalism and eliminating unethical practices. I have little doubt that such an initiative would be warmly welcomed in the property industry as well as in the community at large. With these words, Sir, I support the motion.

MR MICHAEL CHENG (in Cantonese): Sir, once I saw a cartoon, in which a man asked with amazement his friend who slept under a staircase, "Hei, did you not win \$1 million from Mark Six? How come you are still sleeping under a staircase?" His friend replied with dropped head, "Alas! So what with the \$1 million! It is not enough to buy a flat!" Although this is a caricature, possibly a bit exaggerating, yet it is a reflection of truth. The term "millionaire" which was once so envied is now out of fashion. Under the present over-heated property speculation, \$1 million is not sufficient to buy a unit under the Home Ownership Scheme, not to mention the ordinary private housing.

Now Hong Kong is in a period of high inflation and low interest rates. With the end of the Middle East conflict, the general expectation is that the economy of the United States will gradually recover, and with it Hong Kong's economy will also change for the better. People therefore hope to purchase property as a hedge against inflation. Many speculators, realizing this mentality of the people, have added fuel to the fire and engaged in speculation on a large scale. Such practices have upset the normal fluctuation of property prices. When property prices rise too fast and too much, this would threaten the stability of the whole economic system. The red-hot speculation has pushed property prices to an unreasonably high level, completely out of the consumers' purchasing power. Some who want to buy property for their own occupation could only heave a sigh at the flats. In respect of social order, since property speculation needs little cost but gains high profit, thus offering the triad elements the opportunity to break in, and that is why the "Drinking Straw Party", "White Glove Party", "Barbecue Fork Party" appeared in succession, which threatened peace and order. If the Government still disregards the seriousness of the question, the men in the street will continue to fall a prey to them, and undesirable elements will take advantage of the chance to reap quick profits, which is really inconsistent with public interest.

Property prices have risen by more than 30% since the beginning of the year up to now. Flats are snapped up on the very day when they are put up for sale, and

immediately some people are selling the flats at inflated prices near the sales office. This has resulted in frequent transfers of second-hand pre-completed flats and property prices have risen to a height which residents can hardly afford. The present ratio between pre-completed flats speculators and users has risen from 1:1 in the past to 9:1 now, from which one can see clearly the heat generated by speculation in pre-completed flats. Recently, local banks have noticed the seriousness of this problem and enforced a series of measures, in the hope of cooling down somewhat the present heat wave of speculation in pre-completed flats. On the contrary, the Government still clings stubbornly to the economic principle of non-interventionism in dealing with this very urgent problem, and still places hope on the developers to exercise self-monitoring through self-discipline. However, facts speak louder, the so-called self-discipline has no binding force, and can do nothing. Had the developers been able to exercise self-discipline, property prices would not have risen to its present unreasonably high level. The Government would be too irresponsible if it evades solving the problem on the pretext of non-interventionism. I think there are a few points which are worth Government's attention and which require the Government to take concrete action.

First, Government should consider making legislation to restrict the number of units which developers reserve for internal sales, and let those with genuine needs to buy property for their own occupation have more opportunities and choices. These measures would help suppress property speculation, because some developers, by abnormal sale and purchase methods through withholding the flats, pushed up property prices in phases to the detriment of public interest. The genuine buyers who intend to purchase property for their own occupation are mostly people with medium income. By exercising thrift in all manners, they have saved up after great hardship enough to pay the initial payment. They are dreaming of starting to pay by instalments, but quite unexpectedly, property prices are suddenly forced up by speculation far above their estimates, thus shattering their beautiful dream of becoming a small property owner. Of course, it is humane for developers to reserve units as living quarters for their own or other organizations' staff. However, it must be assured that these units are used for their intended purpose, in order to prevent them from being used for speculation.

Secondly, the property registration information published by some developers do not conform with the actual number of units put up for sale, in order to stimulate the rising of property prices. To prevent the recurrence of such false offers, the Government should frequently send officers to sales offices to make spot checks and

supervise the selling, so as to suppress property speculative activities.

Furthermore real estate agents are to be controlled. At present there are about 2 760 registered real estate companies. Their standards vary greatly, and manipulation of prices, price jacking and price depression we hear so often are the deeds of some of the real estate agents who lack professional integrity. By pushing up property prices through improper means, they indirectly stimulate property speculative activities. I propose that the measures taken in Australia or Canada be followed, whereby a licensing system on real estates agents is implemented, in order to ensure that those in the business have the minimum qualification, and to provide channels through which consumers can air their grievances, and to protect the clients' interests. Even if a licensing system cannot be implemented immediately, the Government should legislate at once to control them, so as to prevent them from continuing to resort to crafty means in running their business which is harmful to public interest.

Sir, whilst Hong Kong is a society which adopts free economy, yet when property speculation has reached a white-hot degree, the residents are being exploited unfairly and unreasonably. As they cannot buy property and live in peace, it is natural that they have no confidence in Hong Kong and lack a sense of belonging, which will directly affect Hong Kong's prosperity and stability. Now is the time for the Government to take immediate measures to suppress the over-heated property speculation. Therefore, I feel that the motion moved by the Honourable LEUNG Wai-tung only shows concern on property speculative activities, which is a bit too soft as it does not mention that the problem must be solved. With development of the situation up to the present stage, I think the Government should speedily legislate to control property speculative activities. The amendment moved by the Honourable Kingsley SIT Ho-yin pushes Miss LEUNG Wai-tung's motion a step further by urging the Government to adopt a policy on curbing property speculative activities, which is close to my view of legislating against property speculative activities. Consequently I support the amendment which Mr SIT will soon move.

MR DAVID CHEUNG: Sir, the real estate market in Hong Kong is rather unusual. From the behaviour of the people lining up for the sale of pre-completed flats, it seems to reflect that it will be doom's day if one fails to secure a flat. The abnormally high price of the flat does not deter the buying zeal. Are they that desperate for flats, I wonder?

From the business point of view, people would say "bravo" \* the market is really booming. I, too, Sir, want to see a booming market but not one which is booming as a result of buzzing activities of speculation. A speculatively booming market is, in my view, unhealthy.

Several questions evolve around the issue. First, the question of control. It has been forcefully argued that there should be no control in a free market economy. While I subscribe to that in principle, I do not agree that the need for no-control is absolute in practice. A suitable amount of control, imposed when needed, does not necessarily point to a controlled economy. It can be an adjustment mechanism to regulate a "free-for-all" situation. Is the Hong Kong stock market absolutely free of control? In his speech on The Hong Kong Association of Banks (Amendment) Bill 1991, the Financial Secretary said and I quote, "The main purpose of the Bill is to amend The Hong Kong Association of Banks Ordinance to provide clear statutory backing to the rules on negative interest rates made by the Hong Kong Association of Banks. These rules were made with the intention to deter currency speculation which could disrupt the proper conducts of banking business in Hong Kong. The speculation became severe enough to exert pressure on our currency and disrupt the proper conduct of banking business and genuine commercial activity". Is not this a form of control? Now that the speculation of flats has reached such an unbalanced proportion affecting the livelihood of many citizens, particularly those who want to buy their own flat, it is only proper for the Government to take whatever steps proper and feasible to keep the situation under control.

To quote today's editorial of the South China Morning Post entitled "Taking the sting out of property buying", it says "good government protects the weak and unwary from the rip-off, so the claim of strict adherence to laissez-faire policies is no excuse for inaction. Pocketing a proportion of the proceeds from a property sale is as much a matter of theft, misrepresentation or fraud as any other criminal activities".

The second question is how the Government can ensure a booming yet fair market \* orderly, efficient, beneficial to all. So many malpractices have been going on in our system, resulting in many consumers having to suffer or pay unnecessarily extra amount of money in the purchase of property that the Government should, in one way or another, do something. It is unbecoming of Government, Sir, to stand by with folded arms or turn a deaf ear to the outcry of its people. It must be Government's responsibility to ensure that the market is fair, orderly, efficient and beneficial

to all. A properly regulated market operating with decency, fairness and efficiency will not only serve to protect the rights of the consumers but will also enhance the public's confidence in the Government.

Thirdly, with a booming market, the quality of real estate agents becomes a point of focus. Government should see to it that a licensing system be in operation. It will have the effect of having only qualified agents to serve the public and to turn real estate agency into a respected profession. Licensing is beyond dispute. Prompt action must be taken.

Finally, a quota should be set if employees of real estate developers want to buy flats ahead of the public. It is simply not fair that the buying public are left with very limited and often second-class choices.

Sir, housing is expensive in Hong Kong. Many middle class fixed income earners like to have their own flats. Many have expressed that they are now priced out of a flat. My prime concern is this group of people who are also not eligible for public housing. I am sure that the Government wants to be a caring government.

While I am not too strongly in favour of legislation, I advocate proper measures of control where and when necessary to ensure that the market is booming yet fair, orderly, efficient, decent and to the benefit of all.

With these words, Sir, I support Miss LEUNG Wai-tung's motion.

MR CHOW (in Cantonese): Sir, the rampant property speculation has led to a general rise in prices and high inflation, causing a continued fall in people's quality of life. This in fact has reached a stage hardly tolerable.

According to data published by the Land Office, both the number of contracts and the value of real estate transactions in April exceeded those in March considerably; there were in total 20 600 transactions, representing an increase of 87.1% and notching a value of \$32.478 billion, a rise in value of 104.2% over that of March, showing the heated-up degree in speculation in pre-completed flats.

Even though Hong Kong adopts the principles of free market economy, residential housing is an essential commodity in daily life. To let the market adjust prices by

itself would only help facilitate speculative activities for large developers and lawless elements which is really unfair to ordinary residents who purchase property for their own occupation.

So far, supply falls short of demand in Hong Kong's property market. This is a fact of life. Therefore the Government has all the more reason not to tolerate unscrupulous speculators taking up a 90% share in the pre-completed flats market. To suppress property speculation activities is Government's first important task, which also helps fight inflation. Indeed this is killing two birds with one stone.

Sir, I am very much in favour of legislating against property speculative activities in Hong Kong, because it is difficult to rely on the self-discipline of the trade to solve the problems. I therefore strongly support the drafting of a Real Estate Agents Ordinance, in order to control by legislative means some improper conduct of real estate agents, such as requiring developers to publish the number and bearings of units for sale and other relevant information before they start selling the property; stipulating the maximum number of units which they reserve for their staff, in order to prevent developers from stocking up the units to jack up price.

Furthermore, the time allowed for delivery of pre-completed flats must not be too long in order to limit the developers from putting in too many units into the market to stimulate speculation. Legislation requiring that real estate agents must have attended courses on legal knowledge and property transactions before they are granted practice licences will also be the best way to protect consumers. Illegal practices involved in the process of transactions must also be stopped. Also, real estate agents shall not be allowed to supply their clients with misleading information or conceal material facts. Legislation requiring real estate agents to reveal clearly the commission they will charge and to prohibit appointing specific solicitors and banks as terms of sale and purchase, and so on in the whole process of the transaction will also help end deceptions by real estate agents. As to the methods of allotting "one person, one chip", and raising the amount of deposit forfeitable by developers to 1.5% of the property price, I think they are nothing but an attempt to put out a burning cart-load of firewood with a cup of water, and will not be very effective in curbing property speculative activities.

Sir, freedom can be both positive and negative. When positive freedom is abused to the extent that it causes great harm to other people's freedom, the Government

will then have to restrict the activities of some organizations and individuals in the form of negative freedom to protect the individual's interests from being encroached upon. We must not make free economy a mere cover to prevent reasonable intervention by the Government. As to implementation, the following proposals are offered for reference:

#### Imposition of capital gains tax

Sir, I have time and again proposed in this Council to impose a capital gains tax, but regrettably the Government has never replied to this positively. In fact, to impose a capital gains tax on transfer of property effected within a short period of time in order to reduce the chances of speculators in making profit and raising property prices is an effective measure to hit at property speculative activities, because this would lower the profit from property speculation and consequently make speculators feel less interested in speculation. However, we must not exclude the possibility that individual users, for reasons of their own, have to dispose of their property within a short period of time. Also, to some users who wish to improve their living environment by the method of swapping flats, the Government should also consider exempting them from paying capital gains tax. As long as such people can produce legal documents or means-proof documents to show the cause of such a swap, they may be exempted.

The rate of capital gains tax should be based on the profit gained when pre-completed flats are resold, less the cost of the transaction, up to the maximum of 50%. This rate may be reduced to 20% if the resale takes place between six and 12 months after purchase, and tax may be totally exempted after a full year's occupation. In other words, the shorter the period before resale, the higher the tax rate is imposed.

#### Reviewing the Home Ownership Scheme (HOS), intervening directly in the private market

Another measure to suppress speculation in pre-completed flats is none better than the direct participation in the private market by the Government to compete with others. The method is for the Government to inject fund into the Housing Authority, and to increase the output of HOS flats but with the principle that this would not affect the building programme of public housing for renting. Part of the funds may be allocated from the income derived from the capital gains tax. The provision that selling prices of HOS flats are linked to market prices should be either relaxed or

revoked totally, so as to avoid encouraging speculation. When supplies in the market are ample, people will not be forced to buy private housing, and property prices naturally will not deviate widely from the actual situation as they are now. This again will relieve the pressure of over-subscriptions for housing flats.

At the same time, in order to avoid the same group of people applying for purchase of both HOS and private flats, consideration could be given to restricting the sale of future HOS flats only to the sandwiched class, that is the so-called "HOS for other categories", so that the sandwiched class may enjoy their right to live in their own property.

Secondly, beginning from Phase 12 April 1990, not more than one third of the total number of HOS flats in each phase were allocated to "white-form" applicants, and two thirds to "green-form" applicants. There is a real need to adjust this ratio to, say, two fifths to be allocated to "white-form" applicants and three fifths to "green-form" applicants so that more "white-form" applicants may be benefited.

In proposing that the Government competes with the private property market by providing more HOS flats in a bid to "lower the temperature", it does not follow that the Government intentionally interferes with the private sector, but on the contrary to supplement it. This will further help social integration, reduce stratification and encourage more people to purchase property at reasonable prices, which will play a positive role in stabilizing Hong Kong people's confidence.

Also, when the Government determines the selling prices of public housing, consideration must also be given to the ability of the people to pay. Here, the view of the United Democrats of Hong Kong (UDHK) is that since the policy to sell public housing is mainly aimed at the "rich households", it has the support of the UDHK, but we consider that to be reasonable the selling price of public housing should not exceed 50% of the selling prices of HOS flats. This means that a public housing unit of 40 sq m should be sold at about \$200,000, for which the household needs to make a repayment of about \$2,000 per month.

The UDHK believes that if the sale of public housing scheme is implemented with selling prices computed in the manner mentioned above, it will attract the majority of public housing residents to buy back the units in which they live, thus reducing the demand for HOS flats by these people. This would help slow down the excessive demands over supplies of HOS flats, and subsequently help adjust the level of demand

for and prices of private property, so that property prices would be adjusted to a reasonable level in an attack on speculative activities of lawless elements.

#### Advance payment of stamp duty

At present stamp duty is mainly paid at the time when possession of a flat is delivered. However, to inflate the cost of speculators, the Government might change this payment to the time when provisional sale and purchase contract is signed, thus to discourage property speculation. Such advance payment of stamp duty will have little impact on the users, because it is only a question of paying earlier or later. At present, stamp duty amounts to about \$30,000 on the average, and such advance payment would certainly exert a deterrent effect on unorganized small speculators.

#### Prohibition of purchase of residential property in name of company

As the Inland Revenue Department does not keep record of provisional sale and purchase contracts signed in respect of pre-completed flats, and speculators do not have to apply for Business Registration Certificates, the Department is, therefore, unable to charge any tax on these speculators. Consequently to prevent "market entry" of speculating groups in names of their companies to engage in speculation, it is necessary to reject all applications for the purchase of residential pre-completed flats in names of companies.

#### Association of banks to assist in improving mortgage policies

Earlier this month, the Hong Kong Bank proposed a series of measures to suppress the over-heating of the property market by imposing an extra 1% handling fee where mortgages are repaid within three months, and the borrower has to provide taxation documents as proof of financial capability. At the same time, the Bank also raised the computation of repayment ability from 40% on \$10,000 to 40% on \$20,000. This and all other measures would help suppress property speculation. The government departments concerned should consult the Association of Banks to draw up a package of effective property mortgage policy for the observance by all banks in a bid to strike together at the speculative activities of lawless elements.

#### Completing legislation soonest possible against triads

As is well known, infiltration by triads into property speculation is an

indisputable fact; "White Glove Party", "Mafia Party" and others appeared every time when pre-completed flats of large housing estates were put up for sale. To the ordinary "unaffiliated" people, I do not know if they have to enlist the help of "political parties" such as the UDHK to solve this problem. When can the legislation against triads being drafted by Government be enacted in this Council? I have urged the Government more than once in this Council to legislate against the activities of the triads, but unfortunately the Government so far has not given a clear response. Although I know that the police would deploy additional manpower to maintain order before new pre-completed flats are put up for sale every time, this is in fact a wastage of social resources. If the Government does not look at the crux of the matter squarely, this will inevitably trigger off many more problems of law and order.

Implementing the system of drawing lots in allocation of flats

Sir, implementation of the system of drawing lots in the allocation of flats is one of the effective measures to suppress property speculation. There were successful cases in the past. I remember at the time when flats of Heng Fa Chuen were put up for sale through drawing of lots, arrangements were made for successful drawers to select the flats. As a result all units were sold at the end without difficulty.

6.00 pm

HIS EXCELLENCY THE PRESIDENT: Mr CHOW, I am afraid I must interrupt you. It is now six o'clock and under Standing Order 8(2) the Council should now adjourn.

ATTORNEY GENERAL: Sir, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this afternoon to be concluded.

Question proposed, put and agreed to.

MR CHOW (in Cantonese): My colleague the Honourable Martin LEE, has already spoken in full detail on this subject. Therefore I have no intention to repeat Mr LEE's proposal, but only hope that the Government would consider adopting Mr LEE's proposal.

Conclusion

Sir, in a society of free economy, commercial activities are easily manipulated by lawless elements into speculation. If the Government does not contain such kind of speculation, the results would be alarming with the ordinary people falling a prey to them. Housing is a basic need of the people, and therefore it should give no cause for criticism if the Government intervenes with legislation, or competes with the lawless elements by providing more Government-built flats. I appeal to the Government to consider the various proposals I have made to control speculative activities in pre-completed flats.

However, one point to be noted is that the above proposals are only measures with immediate effects. To solve the excessive demand over supply in the property market in the long run, there is a need to revise Government's long-term housing policy. At present, the Government is limited to build only about 40 000 public-owned housing units each year whilst the private sector supplies about 30 000 units for the same period. Adding both together may not be able to really satisfy the housing needs of the people. Since the present supply of housing is determined entirely by the reactions of the private sector to market prices, the supply of housing by the private sector is, therefore, unstable, and the Government should play a positive role by expanding its own commitment towards the quantity of housing units to be supplied. To stabilize property prices and to avoid housing supply deviating from the needs of users are the best methods for the Government to solve the supply and demand problem of Hong Kong's housing needs and reduce speculative activities.

Sir, I feel that there is a clear request made in the amendment moved by the Honourable Kingsley SIT Ho-yin in that he hopes the Government will take a serious view and take substantive actions. As this coincides with my expectations, I shall support Mr SIT's motion later on.

MRS LAM (in Cantonese): Sir, there was a conflagration at the site of the Sceneway Gardens this month, and like any big fire, if it were to be extinguished, the temperature at the scene must first be lowered. On the contrary, if the temperature is to rise unchecked, the fire would spread quickly until control is lost completely and it becomes a disaster.

The speculation in the property market is at present red hot, and property prices have been pushed up to a level beyond the purchasing power of the ordinary people.

If this is left without appropriate control, there is no guarantee that this would not lead to an economic disaster.

With the booming of Hong Kong's economy over the last decade or so, the quality of life of the people has been rising correspondingly. Their demand to improve the living environment had become ever greater, and the desire to acquire their own housing had been stronger in general. With greater demand, it should be a matter of certainty that property prices will go up. However, due to extensive speculative activities on property, an artificial demand has been created, far exceeding the actual wants, and the genuine end-users of property, without their own fault, have to shoulder high property prices which are hardly bearable in this wave of speculation.

People in the property sector have pointed out that recently the ratio between pre-completed flats speculators and end-users has risen from 1:1 in the past to 9:1 now and in the spot property market, 30% are dealt with by speculators. Just because of such speculative activities, the present annual repayment amount paid by those buying on instalments has reached 1.85 times the average individual income. Presuming the average family income is \$12,000 to \$14,000, the instalment repayment has taken up 80% of the family income. It is obvious that property speculation has reached a considerably serious stage, rendering those with a genuine desire to buy and live in their own homes completely helpless.

Property speculation is originally part of speculative activities, which would appear in any free economic system. In fact, whilst speculation by itself serves a certain purpose, for instance, sharing the risk of the producer and the user, adjusting supply and demand, and stabilizing market prices, it helps developers recoup their funds quickly. The question is that property speculation in recent months has become so rampant, and the market is so full of speculators, that market functions have become topsy-turvy, just like the Index Futures Market before the October stock market crash some years back. This is really worrisome. Furthermore, clothing, food, living quarters and transport are the four basic factors of life. The drastic rise in property prices would certainly exacerbate inflation, seriously affecting the quality of life of the people.

Based on the above views, I consider that property speculation has arrived at such a stage that it must be suppressed with more effective measures.

Undoubtedly, both the Government and the Consumer Council have done a lot in suppressing speculation and protecting the genuine users. For instance, in December last year, they proposed, after the incidents of "White Glove Party" and the "Drinking Straw Gang" who jumped the queues to purchase pre-completed flats, many measures in the pre-completed flats sales for the observance by developers, which included:

(1) One untransferable chip for each person, and to register the names and numbers of the identify cards of those in the queue;

(2) Deposit to be paid on initial signing of the contract should be 1.5% to 5% of the property price, and in case the buyer fails to sign the formal contract, deposit at not more than 1.5% of the property price should be forfeited;

(3) The developer must publish the property prices three days before public sales start, and so on.

For property falling within the scope of sale of pre-completed flats approved by the Land Office, developers must observe these measures before they can obtain the "certificate of consent". Whilst developers are already following these proposals, yet the measure of "one untransferable chip for each person" could not prevent speculators from buying flats in the names of limited companies and then transferring the flats together with the shell companies to others.

It is apparent that other measures have to be adopted by developers and the Government in order to effectively suppress speculation.

As I see it, to fight speculation effectively, the target must be the cost of speculation.

The present procedure of sale and purchase of property leaves too much room for speculators to manoeuvre. After the speculator has bought a unit and signed the first sale and purchase contract, he has only to pay an agent's commission and the solicitor's fees if he could sell the unit before completion of the transaction, which in total amount to no more than 2% of the property price. However, if he has to sell the unit only after the completion of the transaction, the cost of the transaction would rise to 7% or 8%, which includes an agent's commission, the cost of assignment, the cost of mortgage, stamp duty and interest. Sale and purchase of spot property usually must be completed within one to two months, but pre-completed flats are

delivered within one year. Therefore speculators tend to speculate in pre-completed flats.

In order to solve this problem, the cost of speculating in property must be made heavier, so as to achieve the result of suppressing speculation, and I wish to make the following two proposals:

(1) To advance the step of paying stamp duty to the stage of signing the formal sale and purchase contract. This would not increase the expenditure of genuine users, but adds heavily to the cost of speculating on property.

(2) To raise the rate of profit tax on transfer of property effected within a short time, and to increase the manpower in the Inland Revenue Department to demand such profit tax. In fact, according to the present revenue legislation, profit earned from speculating in property is taxable. The question is, first, the standard rate of tax is far from sufficient to offset the fat profit reaped from property speculation, and secondly, it is doubtful if the Inland Revenue Department has adequate staff to pursue this matter.

Furthermore, the public have put forward many proposals to suppress property speculation, which should also be considered. These include: (1) to limit those queuing for flats by requiring that each person may not buy more than one unit, thus reducing the chances of speculators monopolizing the greater part of the units; (2) to restrict the number of units which the developers can reserve when pre-completed flats are put up for sale, and to stipulate that this number must be published, so as to allow those queuing up to know what their chances of buying the units are; (3) if there are too many people wishing to buy pre-completed flats, buyers can be determined by drawing lots.

On the other hand, in order to protect the interests of consumers, and that property transactions may proceed healthily, I am in favour of enforcing a licensing system to supervise real estate agents.

At present the integrity of real estate agents in Hong Kong varies greatly. Many agents have no sufficient training with non-uniform standards. What is more serious is that some unscrupulous agents, realizing that the trade lacks effective supervision, take advantage through various crafty means, even by "price jacking" in contravention of the Trustee Ordinance. A press report has it that a real estate

agent made profits of \$660,000 from eight cases of suspected cheating, and the total value of the property involved rose by more than 30%. From this it could be seen that the behaviour of unscrupulous agents is not only harmful to the interests of individual residents, but also hinders the healthy development of the property market.

Even though suppressing property speculation is of the utmost urgency, yet without comprehensive planning and going at excessive speed, thus affecting the normal property transaction activities, could be counter-productive. Consequently I think that the Government, developers, real estate agents, and those of the public who feel concerned with property speculation, should carefully consider and study measures which are most effective and yet would not affect the normal property transactions and normal investment in property as a hedge against inflation, so as to safeguard Hong Kong's spirit of free and equal economic functioning.

Sir, with these remarks I support the motion moved by the Honourable LEUNG Wai-tung.

MR TAI: Sir, inflation, I would say, is the number one domestic problem confronting Hong Kong. It deserves the Administration's priority attention to devise ways and means to tackle this problem.

The recent upsurge in property value has, to some extent, fueled inflation, because it directly affects the rental value, costs of keeping a roof over our heads and the chargeable rates.

In a stable society, we should not be surprised by the gain over the capital value of property over a period of time. Instead, it is considered in many countries as well as in Hong Kong that it is a good hedge against inflation.

In Hong Kong, measurement of confidence on a daily basis comes from the Hang Seng Index, and a longer-term indicator, from property value. This can be verified from historical events in the 1960s and 1980s.

But we, as a society, are alarmed by the sudden upsurge of property value arising largely out of pure speculation and by the disorderly manner associated with the sale of pre-completed flats, involving criminal elements.

Personally, I am against legislative or regulatory approach to directly curtail this sort of activities because:

- (a) Against the background of a free market society based mainly on supply and demand, I do not think the legislature should intervene on how people conduct their business as long as they are legitimate. If, say, Hong Kong dollar deposit is low, are we going to legislate against people making deposits in the form of foreign currencies?
- (b) By self-regulating and market attitude, financial institutions have already taken a stern and cautious approach in financing purchase of flats to the effect that many banks are unwilling to lend money for a property bought by an intended purchaser from a sub-sale. Banks do not like to get involved in a property purchased under a false market situation or to finance borrowers to speculate.
- (c) There is no shortage of supply of residential units now or in the years to come.
- (d) Any form of regulatory or statutory measures entails questions of principles, existing policies, questions of fairness, supervision and implementation.
- (e) The higher the property value, the more a speculator is putting his money at risk.

I would take this opportunity to put forward one suggestion for the Administration to consider if speculative activities do not abate. I suggest that stamp duty be charged at the current rate on agreement for sale and purchase of real property and that stamp duty on assignment of that particular property be offset against that sale and purchase agreement concerned.

My suggestion has several merits:

- (a) It will not hurt the end users.
- (b) Speculators (if profit is derived from property speculation) in any event are subject to income tax or corporation tax. Hence, to them it is a form of out-goings, deductible against assessable profits.
- (c) Heavier financial outlay by speculators for an immediate, say, 2.75% charge on the capital value of the property is immediately attracted. I am sure the Financial

Secretary is well aware of the fact that stamp duty charge is mostly a voluntary form of tax, much easier to collect than chasing after income tax by staff of the Inland Revenue Department.

I am also worried about the fiduciary duty of estate agents towards their principal clients. As I see it, within the trade itself, there are too many malpractices. I concur with my honourable colleagues that there should be some consumer-oriented regulations or legislation towards this end. Sir, during the drift of this debate, there has been repeated calls for the introduction of a capital gains tax. I would like to caution this Council on the approach to alter our tax system; for the introduction of a capital gains tax would mean that we need to have more tax collectors or inspectors and the end would not justify the means. During my student days in the United Kingdom, I noticed the United Kingdom Government in the 1970s had an Inland Revenue Department with staff members more numerous than that of the Royal Navy. To complicate our tax system on short-term problems and to make haste to change, we may see one day that our Inland Revenue Department may grow larger than the Royal Hong Kong Police Force.

HIS EXCELLENCY THE PRESIDENT: Mr Kingsley SIT, you now have the opportunity to speak to the question or move your amendment.

MR SIT (in Cantonese): Sir, in accordance with Standing Order 24(3), I move an amendment to the motion as set out under my name in the paper circulated to Members.

In other words, if the motion for amendment is passed, the amended motion will read as follows:

"That this Council takes note of the public concern over the significant adverse effects on the community and on people's livelihood arising from speculation in pre-completed domestic units, and urges the Government to take prompt action to formulate policies to curb such speculative selling and buying"

Sir, and Honourable Members, as to the purpose and motive for my moving to amend the Honourable LEUNG Wai-tung's motion, I do not mean to show any disrespect for the Honourable LEUNG Wai-tung. My primary purpose is to express my hope that the spirit of the original motion will be made more specific and that the public will know clearly

that this Council not only shows concern over speculative activities, but also urges the Government to do its best to fulfil as a responsible government its various duties towards the relevant issue.

Thus, the major difference between the Honourable LEUNG Wai-tung's motion and my motion for amendment is that, if her motion is passed, this Council will only have to take note of the public's concern, and that is all. The general public cannot help asking what message the Legislative Council will bring to the public? Official Members of this Council sitting here, as well as the Administration, may ask a similar question, "My dear respectable Members, what really do you want me or the Government to do about the activities of speculation in pre-completed flats?" Therefore, I think that this Council must clearly indicate that it wants the Government to make a substantive response towards the issue. Failing this, the Government may say, just as the Honourable LEUNG Wai-tung's motion does, "We will act accordingly." In other words, the Government or the Official Members will only have to take note of this Council's concern, and that is all. There is no positive significance in this. As the saying goes, "All mothers are women. Even an idiot knows this!"

Sir, not long ago, this Council held a heated debate to discuss whether or not the personal allowance on income tax should be raised. As a matter of fact we failed to realize that the most distressed people in Hong Kong are not high-ranking officials or wealthy businessmen, nor are they the low-income group. Who, then, are they? Actually, they are those generally known as the "sandwiched class" and moderately high salary earners. This is because Government's housing policy to them is not even a visible tantalizing prospect; it is a mirage at best. These people may account for the lion's share of the income tax. They only have the duty to pay tax. They are hardly looked at with favour under the existing housing policy. This, however, does not mean that they do not need housing. Thus, to seek a sheltering place, they can only buy or rent one from the private sector. It is these same people who are apt to fall prey to major property developers. Of course, to the developers, business is business. One really cannot fault them for making a profit after taking an investment risk. However, the speculation in pre-completed flats has of late become excessively rampant. Riding on the trend, the speculators are constantly raising the prices of flats. As a result, those people who really want to buy their own homes are often reduced to the situation where they can only look at the flats and sigh. Many people who despair of public housing or housing under the Home Ownership Scheme have spent all their money saved during half of their life to buy a living place. I believe that, at the current prices of flats sold by speculative sellers, they can

probably afford to buy only a bed space or to move into a "cage" apartment.

Of course, in the free economic system of a capitalist society, mandatory legislation to restrain "freedom" in the property market, to limit transfers or to impose price limits will be in violation of so-called free market laws. And inflation is an important cause of the high prices of flats. Even so, it is worth the Government's while to find out how to deal with the problems of unreasonable middle man exploitation in the process of speculation in pre-completed flats, how to provide a fair chance to enable the petty residents or the sandwiched class (who of course do not expect any free lunch) to buy flats at more reasonable prices, and how to improve the situation where an excessive burden and middle man exploitation are caused purely by speculation.

As a recent commentary in a local Chinese-language newspaper points out, unreasonable middle man exploitation, as well as the actions of certain people to make things worse, is really contrary to the intent of reasonable transactions in a free market. The Government must of course not attribute all these to the "freedom of trade" while sitting idly by. Thus, legislation for restraints is necessary.

Some think that legislation to restrain the activities of speculation in pre-completed flats may strike a blow at the principle of free economy. This practice, they think, is just like what the Hakka people describe as "When a rat catches a carp, it is a life for a life" and is not worth implementing. In fact, these people merely entertain groundless fears. Legislation for restraint is intended to provide an environment where both the buyer and the seller can engage in fairer and more reasonable transactions, thus causing property transactions to develop more healthily. Here, one cannot help recalling that at the time when the Securities Commission was first set up, concern was caused among people of the financial and securities professions, who feared that supervision by the Securities Commission would affect the activities of the securities market. However, time and facts have shown that, as a result of the establishment of the Securities Commission, the local stock market is growing gradually and more healthily. This fact has thus shown that appropriate supervision, instead of suffocating market activities, will safeguard the interests of medium-scale and small investors and of the broad masses of people who really want to buy homes for their own occupation, and will also raise the status of Hong Kong as an international financial centre.

Sir, I have heard some of my colleagues suggesting ways to make relevant policies

and legislation, or effective measures to deal with the problem. The solution to the problem is in fact quite simple. It is not the responsibility of this Council to draft the relevant legislation and policies; it is the job of the Government to do the work. If Government is sincere and determined in presenting to this Council the drafts of the legislation and policies, and if this Council fails to examine the drafts carefully, this Council, then, can be blamed for irresponsibility. At the present stage, Honourable Members, you may set your mind at ease.

Finally, I hope that you will consider the points I have just mentioned. Sir, with these remarks, I beg to move.

Question on the amendment proposed.

HIS EXCELLENCY THE PRESIDENT: Members are, I think, now used to the rules dealing with these amendments; they had a certain amount of practice. Let me just repeat the rules. Those who have already spoken on the main motion can again speak on the amendment. But their remarks should be directed solely to the amendment. Those who have not spoken before can also speak, but if they do so, it would be taken that they are speaking both to the original motion and to the amendment; in other words they will not get a chance to speak again after the amendment is disposed of. Now could I ask who wishes to speak at this stage? Please keep your hands up for a moment while the Clerk takes down the names. Thank you.

MR CHEONG: Sir, I rise to speak in opposition to Mr SIT's amendment to the motion.

While I fully respect a Member's right to move amendments to any Bill or motion, I feel it only right to ask my colleagues to recollect some facts leading to this afternoon's debate. The Honourable LEUNG Wai-tung raised the issue at the In-House meeting a few weeks ago and Members generally supported the spirit of having a debate on the issue. On 10 May at the In-House meeting, the wording of the motion as proposed by Miss LEUNG was thoroughly discussed and debated amongst ourselves. The original motion wording, as recalled earlier by her, was more or less the same as Mr SIT's amendment. In fact, save for the first sentence of the amendment, the motion wording was more or less verbatim. At the end of the discussion, and in her own gracious manner, Miss LEUNG took into account her colleagues' views and put forward the wording of the motion before us today. I applaud her spirit of working with colleagues as

a team. Sir, it is this spirit of co-operation and mutual respect that I urge my colleagues to uphold when they cast their vote on Mr SIT's amendment.

Sir, in our evolution to a more democratic society, we need to demonstrate mutual respect in a spirit of working together with give and take. Individual brilliance is unlikely to bring one success if one is not prepared to work with anybody else. This co-operative spirit needs to be encouraged and cultivated in this or future sessions of our legislature. I strongly believe that I will be extremely irresponsible as well as being very disrespectful to my colleagues if I should vote "Aye" to Mr SIT's amendment.

Insofar as the subject matter is concerned, Sir, I can well understand the concerns and the interests of consumers being endangered by some unfair and unruly practice of some unscrupulous operators in society. Nevertheless, whatever progress we have made in Hong Kong, we can never claim to be a perfect society. We have to recognize that the success of any market economy entity depends on as little bureaucratic interference as possible in the free marketplace. I agree totally we should explore ways and means to curb any excessive activities that may endanger the stability of our society. Yet I must caution against developing any rash or ill considered measures, such as introduction of a capital gains tax. Here I should like to echo Mr TAI Chin-wah's sentiment on that particular subject.

Sir, Government should consider all relevant factors, macro as well as micro, carefully before jumping to conclusion on any particular measures to be adopted.

Sir, I oppose Mr SIT's amendment.

HIS EXCELLENCY THE PRESIDENT: I have the names of the following Members who wish to speak: Mr Andrew WONG, Miss LEUNG Wai-tung, Mr James TIEN and the Secretary for Planning, Environment and Lands. Have I got all the names?

MR ANDREW WONG (in Cantonese): Sir, I have noticed two points of consensus in the debate so far. The first is that the sale of pre-completed flats has given rise to a problem. What, then, is the problem? Members have not reached a consensus about the nature of the problem. The Honourable Ronald ARCULLI thinks that it is a problem of law and order, but the majority of Members seem to think that the problem is of

a multiple nature.

The second point of consensus is that the Government must take some measures to solve or alleviate the problem. Members, however, have not reached a consensus about the measures to be adopted. For instance, the Honourable CHAN Ying-lun has recommended a ban on the sale of pre-completed flats, while the Honourable Martin LEE has recommended the adoption of a lot-drawing method. These are all recommendations which hit the nail right on the head. In addition, the Honourable CHUNG Pui-lam, the Honourable HUI Yin-fat and other Members have presented a variety of views. The various views expressed, I hope, are not like flowers that are strewn by angels, but are a basket of views, from which some with constructive suggestions may be picked.

Sir, I think that the debate today has provided the Government with many angles from which it can look at the problem and with a number of options for its solution. The Government should take a look at them squarely, study them expeditiously and then resolutely decide on a policy.

Sir, though a consensus has been reached, the views expressed are still varied. This is why I think that the real meaning of the debate today has gone beyond the argument over the wording of the motion. The Honourable Kingsley SIT Ho-yin's motion for amendment urges Government to make a policy expeditiously for the suppression of..... The wording seems to be more positive. With this everybody seems to have agreed. The motion that the Honourable LEUNG Wai-tung originally intended to move which she read out contained in part the words "the Government is urged to take effective measures as expeditiously as possible." When the motion was formally put forward, she dropped the words "the Government is urged.....". Sir, and Members of this Council, if we close our eyes and think for a minute, we will find out whether the substance of today's debate would have been different if today's motion had been any one of the three? If there is ever a difference, it must be the point raised by Mr SIT himself and in the speeches delivered by other Members as regards the positive meaning of Mr SIT's motion for amendment. The same may, of course, be said of the speech that I am now presenting, for now I think that his motion for amendment is probably meaningless with neither positive meaning nor negative meaning. If there was a meaning to it, it was probably one of striking a pose to attract attention. So I cannot support it. I even oppose Mr SIT's motion for amendment.

Sir, I think that today's debate may best be conducted by way of an adjournment

debate. The Honourable LEUNG Wai-tung and other Members may think that the 45 minutes for an adjournment debate is far too short. If Members think that the time is really too short, Members could, through an in-house meeting, ask the Government to apply Standing Order 9(2) and (3) but not 9(4), (5), (6), (7) and (8) that are now being applied. This is because, under 9(2) and (3), there shall be no time limit for an urgent and important adjournment debate.

Sir, the motion for amendment before us reminds me of the motion debate held by this Council on 27 February. Both debates involved the Honourable LEUNG Wai-tung, with only the roles reversed. On 27 February, the Honourable LEUNG Wai-tung moved to amend the motion moved by the Honourable Maria TAM. Today, it is Mr SIT who moved to amend the motion moved by the Honourable LEUNG Wai-tung. Indeed, as the saying goes, "Today, I wage a war on others. Tomorrow, others will wage a war on me." This is something which calls for our deep thought.

Sir, I oppose Mr SIT's motion.

HIS EXCELLENCY THE PRESIDENT: I will revise my list of speakers. Secretary for Planning, Environment and Lands, I understand that you would prefer to reserve your opportunity to speak until after the amendment has been disposed of. Is that correct?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: No, Sir, I thought I would wind up just before the amendment is put to the vote.

HIS EXCELLENCY THE PRESIDENT: Fine. You have a choice but only one choice.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I have taken it, Sir.

HIS EXCELLENCY THE PRESIDENT: I will keep you on this present list to speak after Miss LEUNG Wai-tung and Mr James TIEN.

MISS LEUNG (in Cantonese): Sir, contrary to what the Honourable Michael CHENG Tak-kin has just said, my motion is not simply that this Council is concerned over the

speculation in pre-completed flats but that this Council has taken note of the public's concern over the speculation in pre-completed flats. As I have just pointed out in the debate on my motion, taking up responsibility for matters of concern to the public is the appropriate response of an effective government, which should adopt effective counter-measures. The Government surely will respond appropriately to the activities of speculation in pre-completed flats which are causing concern to the public. The analogy used by the Honourable Kingsley SIT Ho-yin is wrong. Briefly speaking, there is no contradiction between Mr SIT's motion for amendment and my motion. Moreover, the motion for amendment may be regarded as a detailed form of interpretation of the original motion, that is, by expressing concern over the major adverse impact of the activities of speculation in pre-completed flats on the community and on people's livelihood, and urging the Government to take measures to restrain the speculative activities.

Sir, Mr SIT's motion for amendment is, in fact, almost the same in substance as the original draft of my motion, which I had to abandon later, except in the wording and phraseology used. In this regard, I want to point out in particular that the Honourable CHAN Ying-lun has just said that my motion is directed against speculation in pre-completed flats, whereas following the amendment by Mr SIT, it has become one directed against speculation in flats. I really do not understand why the Honourable CHAN Yin-lun has such a notion. I want to point out again that both motions are directed against speculation in pre-completed flats. This is why I hope that Mr CHAN will find another excuse if he wants to support Mr SIT's motion. What is regrettable, however, is that Mr SIT's motion for amendment gives no consideration to how the interests of home-buyers are to be protected. I wish to reiterate that the wording of my originally drafted motion was, "In view of the frenetic speculation in pre-completed flats, which is causing extreme concern to the public, this Council urges the Government to take effective measures as expeditiously as possible, to safeguard the interests of home-buyers." In fact, I really wanted very much to have today's motion worded like that. Regrettably, as I told you just now, I had to abandon the original wording, the reason being that I respected the views expressed by colleagues in an In-House meeting of this Council on the 10th of the month. The Honourable Stephen CHEONG Kam-chuen also has pointed out the other options on my behalf, so I am not going to repeat them here. I merely wish to point out that I have known all along that the topic for discussion today is highly controversial. My colleagues in this Council may have different views. In the co-operative spirit of seeking common ground on major issues while reserving differences on minor ones, I am very glad to listen to views expressed by Members. I am even more than willing

to keep the wording of my motion as neutral as possible, so that Members with different views may freely speak their minds. Thus, having amended the wording, I am very glad to see Members accept the motion that I have just read. In fact, I have already explained that speculation in pre-completed flats has for many years been a subject of concern to the OMELCO Housing Panel. So, just to be prudent, after I obtained the support of the In-House meeting for the motion that I would be moving today, I asked the OMELCO Secretariat to issue papers once again to all the members of the OMELCO Housing Panel, notifying them of the wording of the motion that I would be moving and asking them, should they have any comments, to let me know before I formally move the motion, so that I may consider once again to have it amended.

Sir, I do not want to speak too much on this. I just want to repeat that, as a gesture of respect for the views of my colleagues, I cannot support Mr SIT's motion for amendment.

HIS EXCELLENCY THE PRESIDENT: Mr CHAN, are you rising on a point of order?

MR CHAN (in Cantonese): Sir, the Honourable LEUNG Wai-tung mentioned just now the reason that I had given for my supporting the Honourable Kingsley SIT's amendment motion. Could I be allowed to clarify a point?

HIS EXCELLENCY THE PRESIDENT: Mr CHAN, to give an explanation after Mr TIEN has spoken, you can do so only to crack a misunderstanding of what another Member has said. That is all you are able to do when you intervene. I will call you after Mr TIEN.

MR CHAN (in Cantonese): Thank you, Sir.

MR TIEN: Sir, I would like firstly to declare my interest as a director of a property development company. Sir, many people have pointed out the change in attitude to owning property in Hong Kong in recent years. Most people have refused to be intimidated by the worry of 1997. After all, people always have to have somewhere to live. Those lucky ones accommodated in public housing \* some half of the population \* are excluded from the rigours of the property market. The rest of the population

must find their own housing. Of course, it is a jungle. Housing is of course essential for everybody, but housing is also a commodity.

It follows that housing is subject to market forces. Over the past few months there has been evidence of substantial rises in the housing market. The demand for certain types of residential property has exceeded supply. When that happens, of course, there is one inevitable result. Prices rise.

In a period of relatively high inflation, as we are presently experiencing, the situation becomes even worse. Owning property protects one's wealth against inflation, if I may put it that way. Indeed, one distinguished property investor with vast experience in the local market for many years put it this way: "If you deposited \$1 million in the bank in 1955 \* which is indeed a long time ago \* it would be worth \$13 million today. But if you bought a block of flats instead, the investment would be worth about \$250 million."

#### Property as an investment

People recognize property as one of the best investments available, producing an annual cash return from rental of about 10% plus the potential of long-term capital gains over the years.

It is therefore normal and natural for investors to choose property before everything else.

#### The question of speculation

Sir, I strongly urge the Council to be clear on the much-abused term of speculation. Where investment stops and speculation begins is impossible to distinguish. Speculation is, in reality, no more than a swear-word. A speculator is an investor who, exactly like an investor, takes risks. If the market so chooses, both the investor and speculator can be swept away as so much "lap sap" as evident in the October stock market crash in 1987.

Some commentators deplore speculation in property, and one has stated that 80% of new flat buyers are presumed to be speculating on a large profit. But equally, those speculators could end up with a large loss. Within days, those investor/speculators could burn their fingers. Nobody will shed any tears for them

and, Sir, what is more, the Honourable LEUNG Wai-tung will not bring a motion nor will the Honourable Kingsley SIT move an amendment motion before this Council, asking for support and sympathy for those fingers burnt investors! If people stop buying from spectators, then there will be only one end result for them, and that is, to lose money. If they lose money often enough, they will stop speculating.

The question of rigged markets

Sir, however, a free market is not a rigged market. This point should be made crystal clear both to the proposers of the motion, as well as to the public generally. Markets should be free for everybody, to enter and leave as they see fit. A rigged market is a fraudulent market, and such a market should not be allowed. It currently exists in the property market where fraudulent and illegal practices develop so that property never goes on to the market.

Under these conditions, the laws of supply and demand are wholly distorted. We are in the realm of corruption, and it is significant that a senior ICAC official recently drew attention to the more unsavory aspects of certain property dealers, whom he described as cowboys. The ICAC received 51 complaints about estate agents last year while the Consumer Council had 115 complaints over property purchases.

What should be done?

I fully accept the ICAC suggestion that unlicensed and unqualified agents should be legally forbidden to buy and sell property. Ideally, property traders should make their own code of conduct which they themselves carefully policed. For example, it should be illegal for agents to use family or friends to purchase a flat, which is immediately transferred to a true buyer at a high price. In this context, one agent was reported to have made \$600,000 from eight such transaction, at the same time, inflating the total price of the property by 31%.

I also do not agree that property developers should retain, say, 5% or 10% of flats for internal distribution to members of the staff. A free market demands that all new flats must be available to everybody. Internal dealings all too often constitute insider trading. We should not give our blessings to such practices and abuses.

A number of police measures should also be firmed up and regularized to prevent

triads and other criminal elements from taking physical control of market sales of new property.

What I am arguing is that the free market should be really free. A controlled or rigged market is, in my view, a criminal activity. At the very least it is cheating, and all too often, it is corruption. It is certainly rigged.

Sir, Hong Kong is founded on business, at times robust, business. It is not founded on guaranteed profit.

Recent reforms requiring substantial deposits have helped to make undesirable practices less common. We still have some way to go but let us not attempt to curb undesirable practices and strangle free enterprise.

Finally as far as the original motion and the amended motion are concerned, Miss LEUNG's motion simply states "that this Council takes note of the public concern expressed over the speculation of pre-completed domestic units" while Mr SIT urges the Government to take prompt action to formulate policies to curb such speculative selling and buying. Sir, I do not share the view that sales of pre-completed domestic units are to speculators only. I do not share the view that genuine speculators, not rigged speculators in comparison, are necessarily bad for free market economy. For example, speculators can and often step in to support any market \* property, stock or commodity \* when it is falling too rapidly. They might be buying from the general public who wants to be out when no investors are interested. They might make or lose money in the process. I therefore do not share the view that Government should promptly formulate policies to regulate sale of pre-completed flats to curb speculation, and again I repeat, in a free market economy.

Sir, with these remarks, I support Miss LEUNG's original motion, regardless of her intention in her motion, and not Mr SIT's amendment motion.

HIS EXCELLENCY THE PRESIDENT: Mr CHAN, would you please speak only to crack a misunderstanding if you think another Member has misunderstood what you said in your original speech. It is not an opportunity for a second speech and you should not introduce new matters. Thank you.

MR CHAN (in Cantonese): Sir, I had earlier cut short my speech in order not to take up too much of my learned colleagues' time. The shortened speech failed in some respects to adequately explain my position and this led to misunderstanding. In fact, I had meant to state, through my otherwise unabridged speech, my held opinion that, given the choice, I would buy a completed flat rather than an uncompleted one. In a joking vein, I likened, by way of analogy, Mr SIT's motion to a completed flat and Miss LEUNG's motion to an uncompleted flat. The misunderstanding thus given rise to was entirely unexpected. This is what I wanted to clarify.

Further, I wonder if I could raise a point of order. I support Mr SIT's motion...

HIS EXCELLENCY THE PRESIDENT: Mr CHAN, the point is that all you can do is to crack a misunderstanding if another Member has misunderstood a point you made. Would you do it briefly, please?

MR CHAN (in Cantonese): In that case, Sir, I have nothing further to raise. Thank you.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Sir, after this wide-ranging debate it is very difficult to think of anything new to say on this subject. So may I confine myself to simply underlining a few utterly unoriginal points.

First, uncompleted flats are only a relatively small part of the housing market, and there is no evidence of substantial speculation in completed flats. There are a very large number of flats out for sale in the market, and, as Mr CHUNG Pui-lam said, there are some 60 000 on the way this year, which certainly should help to stabilize the market.

Second, we are no longer dealing with a market in which buyers are desperate to find a home to purchase. Most flats are being bought by people who are seeking to improve their housing or are forming new households or are looking for an investment.

Third, there is a considerable degree of competition between developers, which should increase during the next year with an even greater supply of flats.

Fourth, Government has not generally interfered with free markets unless there are very strong reasons for doing so and it has done so when there have been very strong reasons for doing so. This is not laziness; it is because it is very difficult to intervene effectively in a market without causing effects which are not intended.

Fifth, Government did, however, intervene recently when it was shown that sale practices were giving rise to disturbances and tying up large numbers of policemen in crowd control. It reached agreement with the Real Estate Developers Association on sales procedures which would be more conducive to orderly behaviour. Some of the measures agreed were specifically aimed at reducing the activities of excessive speculators, such as the increase of the initial deposit payable for the potential purchase to 50% of the average price of the units, and of the amount forfeited in the case of non-completion by the buyer to 1.5%.

Sir, many of us will remember very different times in which it seemed that there was a very much stronger case to bring in stricter control on speculation than there is now.

But such may happen again when the present flush of new properties is sold and I agree with Members specially in view of the very wide public concern at the matter at present that it would be worthwhile to coolly and calmly review the suggested solutions and take a fresh view on their suitability, practicability and overall benefit. As I mentioned above, we have already \* perhaps for the wrong reasons in some Members' view \* introduced measures which are anti-speculative in nature. Members both today and on previous occasions, when this issue has been discussed, have raised very real issues and have also suggested other means for curbing excessively speculative and unethical practices, including the introduction of balloting, limitations of the number of units allowed to be registered in the name of each person, and restricting resales between the final sale and purchase agreement. All these ideas have their advantages and disadvantages for developers, home buyers, banks and above all the economy. They do need looking at, as I said, very coolly and carefully from every angle before considering adoption. They also require extensive discussion with interested parties, including again the Consumer Council, banks, developers and others before adoption. But I accept that the Administration should review all these issues and no doubt Members will wish to keep track of our progress.

One further related matter, which I know also concerns the public and which has

been mentioned by Mr Martin LEE today and one or two other Members, is the irregular practices of some estate agents. Real estate agent, like speculation, is a broad term covering both fly-by-night and also major international operators.

With the buoyancy of the property market and better awareness of consumer rights, there has been an increasing number of complaints against real estate agents received by the Independent Commission Against Corruption and the Consumer Council. In 1990, a total of 181 such complaints were received, compared with 140 only in 1989. The total number of complaints is still relatively small, given the total number of property transactions each year, which amounts to over 74 000 in 1990-91. Nevertheless, the total amount of money involved in these complaints is substantial and it seems probable that many more would have complained, if they had not been so successfully cheated. The malpractices reported include misrepresentation, non-disclosure of key information about the property, illegal alterations, exaggeration of size, stamp duty fraud and deception.

Because I was aware that the Consumer Council was looking into the subject and had available to it an excellent report on the matter prepared by the Independent Commission Against Corruption, I told this Council some time ago that I intended to await the Consumer Council's study before taking any further steps. I understand that this study has just been completed or is very nearly completed, and, like the Independent Commission Against Corruption's report, it recommends the licensing of real estate agents. I cannot now pre-judge this issue as it is obviously also very complex. But I would wish to confirm that recommendations of the Consumer Council will be considered very carefully as soon as they are received. In the light of both the evidence available and of the public concern in this issue, we will try to reach a conclusion on whether any further action should be taken as soon as we possibly can.

Sir, I propose to support Miss LEUNG's motion. My problem with Mr SIT's amendment is that speculation is an issue which is more fraught with myths and moralizations than almost any other. And any steps proposed would require great care and a considerable amount of discussion before they are taken in order to avoid harm. Whereas the Administration fully recognizes the very wide public concern about the issue and that this concern certainly justifies a close and systematic examination of existing practices and the various proposals for their solutions, Mr SIT's amendment appears to presuppose that the conclusion of such a review would lead to further restrictive action. After listening to the views expressed in this debate

this afternoon, I doubt whether this would be wise. So I support Miss LEUNG's motion.

MR MCGREGOR: Sir, could I rise on a point of advice, or order possibly? The Secretary for Planning, Environment and Lands seems to be supporting Mr Kingsley SIT's motion. In regard to the various proposals he is undertaking, the examination he is carrying out and the actions he is proposing possibly to take \* not simply expressing concern \* I wonder whether in fact the Secretary for Planning, Environment and Lands is supporting Mr Kingsley SIT's motion.

HIS EXCELLENCY THE PRESIDENT: There is no point of order in that, Mr MCGREGOR. It is up to a Member to explain himself as best he can. It is up to other Members to understand as best they can what the Member says. Those two do not always go together. But there is no point of order.

Question on Mr SIT's amendment put and negatived.

HIS EXCELLENCY THE PRESIDENT: As the amendment has been negatived, we will continue with the debate on Miss LEUNG's original motion. Miss LEUNG, as the mover of the original motion, has an opportunity to speak again should she wish to use it.

MISS LEUNG (in Cantonese): Sir, first I should like to say that I misunderstood Mr CHAN Ying-lun's interpretation of the two motions before us. That said, I should like to thank Members for having spoken on the motion and the amendment and for the valuable views they have put forward. I hope the authorities and the real estate developers will seriously consider these views. I am also glad to learn from the Secretary for Planning, Environment and Lands that the Government will conduct a review on this matter as soon as possible and keep Members informed of the progress. I should like also to tell Members that the OMELCO Housing Panel will assiduously follow up on this matter.

To sum up the views of Members who have spoken, the majority view is that the present speculative activities in uncompleted flats have reached unhealthy proportions and have given rise to an imperative need for intervention by the Government. Many Members are of the view that some of the real estate agents are

engaging in irregular activities and that the speculation in uncompleted flats is an unfair activity which puts real users at a disadvantage. As regards remedial measures, the views put forward appear to be, as the Honourable Andrew WONG has pointed out, amorphous and unorganized. Nevertheless, I shall attempt to collate them.

First, I find that basically Members are asking the Government to put in place a set of measures that will ensure that genuine home buyers will be able to buy a flat at a fair price and in a fair manner. However, views vary as to whether this should be accomplished through self-regulation by the real estate industry or intervention by the banking sector or legislative action by the Government. I find that many of the Members who have spoken favour intervention by the Government to combat speculation in uncompleted flats. Moreover, I have also perceived a sort of consensus among the Members who have spoken. It is to the effect that there are irregularities surrounding the modus operandi of real estates agents or brokers and that the Government must exercise some form of control over their activities. Members are of the view, however, that the Government must be cautious in exercising control. No matter what sort of control will be exercised on speculative activities in uncompleted flats, it will at best be only a stopgap measure. The radical solution will be for the Government to devise an appropriate land and housing supply policy. I should like here to urge the Government to thoroughly implement its long-term housing strategy so that by the year 2001 every family will have suitable domestic accommodation at an affordable price or rental.

Question on the motion put and agreed to.

Adjournment and next sitting

HIS EXCELLENCY THE PRESIDENT: In accordance with Standing Orders I now adjourn the council until 2.30 pm on Wednesday 29 May.

Adjourned accordingly at eleven minutes past Seven o'clock.

Note: The short titles of the motions/Bills listed in the Hansard, with the exception of the Surveyors Registration Bill 1991 and Planners Registration Bill 1991, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

