

## OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 15 December 1993

The Council met at half-past Two o'clock

### PRESENT

THE PRESIDENT

THE HONOURABLE JOHN JOSEPH SWAINE, C.B.E., LL.D., Q.C., J.P.

THE CHIEF SECRETARY

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.

THE FINANCIAL SECRETARY

THE HONOURABLE NATHANIEL WILLIAM HAMISH MACLEOD, C.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 MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.

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

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

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

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

THE HONOURABLE SZETO WAH

THE HONOURABLE TAM YIU-CHUNG

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

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

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

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

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

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

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

DR THE HONOURABLE LEONG CHE-HUNG, O.B.E., J.P.

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

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

THE HONOURABLE PETER WONG HONG-YUEN, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE VINCENT CHENG HOI-CHUEN, J.P.

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, J.P.

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

REV THE HONOURABLE FUNG CHI-WOOD

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE TIMOTHY HA WING-HO, M.B.E., J.P.

THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA

THE HONOURABLE SIMON IP SIK-ON, O.B.E., J.P.

DR THE HONOURABLE LAM KUI-CHUN

DR THE HONOURABLE CONRAD LAM KUI-SHING, J.P.

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

THE HONOURABLE MAN SAI-CHEONG

THE HONOURABLE STEVEN POON KWOK-LIM

THE HONOURABLE HENRY TANG YING-YEN, J.P.

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

THE HONOURABLE ALFRED TSO SHIU-WAI

**ABSENT**

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

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.

**IN ATTENDANCE**

MR MICHAEL SUEN MING-YEUNG, J.P.  
SECRETARY FOR HOME AFFAIRS

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

MR JAMES SO YIU-CHO, O.B.E., J.P.  
SECRETARY FOR RECREATION AND CULTURE

THE HONOURABLE MICHAEL SZE CHO-CHEUNG, I.S.O., J.P.  
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MR ANTHONY GORDON EASON, J.P.  
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MR HAIDER HATIM TYEBJEE BARMA, I.S.O., J.P.  
SECRETARY FOR TRANSPORT

MR GORDON SIU KWING-CHUE, J.P.  
SECRETARY FOR ECONOMIC SERVICES

MR DONALD TSANG YAM-KUEN, O.B.E., J.P.  
SECRETARY FOR THE TREASURY

DR LEE SHIU-HUNG, I.S.O., J.P.  
SECRETARY FOR HEALTH AND WELFARE

MR STUART WREFORD HARBINSON, J.P.  
SECRETARY FOR THE CIVIL SERVICE

MR LAM WOON-KWONG, J.P.  
SECRETARY FOR EDUCATION AND MANPOWER

MR KENNETH JOSEPH WOODHOUSE, J.P.  
SECRETARY FOR SECURITY

MR TAM WING-PONG  
SECRETARY FOR FINANCIAL SERVICES

THE CLERK TO THE LEGISLATIVE COUNCIL  
MR CLETUS LAU KWOK-HONG

THE DEPUTY CLERK TO THE LEGISLATIVE COUNCIL  
MR PATRICK CHAN NIM-TAK

**Papers**

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

*Subject*

Subsidiary Legislation	<i>L.N. No.</i>
Film Censorship (Amendment)(No. 2) Regulation 1993 .....	465/93
Education (Amendment) Regulation 1993 .....	466/93
Pilotage (Dues) (Amendment) Order 1993.....	467/93
Public Health and Municipal Services (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 7) Order 1993 .....	468/93
Public Order Curfew (Variation) (No. 4) Order 1993.....	469/93
The European Communities Notification.....	470/93
Travel Industry Compensation Fund (Amount of Ex Gratia Payments and Financial Penalty) Rules .....	471/93
Travel Industry Compensation Fund (Procedure for Ex Gratia Payments) Rules.....	472/93

## Sessional Papers 1993-94

- No. 40 — Queen Elizabeth Foundation for the  
Mentally Handicapped Report and Accounts 1992-93
- No. 41 — The Accounts of the Lotteries Fund 1992-93
- No. 42 — Chinese Temples Fund Income and  
Expenditure Account with Balance Sheet and  
Certificate of the Director of Audit  
for the Year Ended 31 March 1993
- No. 43 — Grantham Scholarships Fund Income and  
Expenditure Account with Balance Sheet and  
Certificate of the Director of Audit  
for the Year Ended 31 August 1993

- No. 44 — Social Work Training Fund  
Thirty-Second Annual Report by the Trustee  
for the Year Ending on 31 March 1993
- No. 45 — Emergency Relief Fund Annual Report  
by the Trustee for the Year Ending on 31 March 1993
- No. 46 — Hong Kong Housing Authority Annual Accounts  
for the Year Ended 31 March 1993 and  
Balance Sheet as at that Date

### **Oral answers to questions**

#### **Retirement protection system**

1. MR MICHAEL HO asked (in Cantonese): *A motion was passed at the Legislative Council sitting on 3 February 1993 urging the Government to expedite the establishment of a central provident fund scheme, so that the people of Hong Kong could be provided with a properly designed retirement protection system. But the Governor pointed out in this year's policy address that public views were divided on such a system, and that proposals on the way forward could not be announced before the end of this year. Will the Government inform this Council of the basis on which the public views have been identified as divided, and the research to be carried out on this matter before the end of the year?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, our basis for identifying public views on this subject include the 176 written submissions made in response to the consultation paper *A Community-wide Retirement Protection System*, the views made by commentators through the media, the views made to us through meetings, discussion sessions and seminars, and of course the views made by Members of this Council.

On the basis of these feedbacks, it is obvious to the Government that there is a diversity of views both as to whether a mandatory savings system is the right solution and as to the nature of that system.

Turning to the second part of the question, the Government has examined in detail the implications of the different approaches to retirement protection. We have now come to a conclusion on the way forward. I shall be making a statement in this Council later today to announce that conclusion.

MR MICHAEL HO (in Cantonese): *Mr President, I would like to raise a follow up question. How does the Administration identify from the 176 written submissions and other opinions from elsewhere the pros and cons of different options? And how does the Administration take the almost unanimous views of the Legislative Council on seeking the early establishment of a central provident fund?*

PRESIDENT: Secretary, will you be covering this in your statement?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, on receipt of the 176 written submissions, we had in fact submitted a summary of views to Members early this year. We had also presented to this Council submissions from organizations which did not object to making them public. Although a motion debate on this subject held at the Council sitting on 3 February was passed, the result of 22 for and 17 against the motion indicated that Members' views on the issue were divided.

Mr President, here I would like to add that I will explain in detail in the statement I am going to make later this afternoon as to how the Administration analyses the public views received.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, in the conclusion the Administration is going to make later today, how much weight will be given to the 176 written submissions?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): *Mr President, the statement I am going to make later today is based on a summary of views of not just certain quarters but the community at large, which of course will include Members' views put to the Administration.*

MR HENRY TANG (in Cantonese): *Mr President, when the Executive Council discussed the retirement protection system yesterday, had the Administration put forward its views on the way forward?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, since what have been discussed at the Executive Council meeting is confidential, I consider it inappropriate to disclose the views we put forward.

MR TIK CHI-YUEN (in Cantonese): *Mr President, insofar as the government system is concerned, the Governor has mentioned that the Legislative Council has representativeness and its views should be respected. But on the question of*

*central provident fund, despite the fact that this Council's voice is absolutely clear and a motion has been passed, and that 40 Members have written to the Governor, urging for the early setting up of a central provident fund, the Government still refuses to set up such a fund. Does the Government have double standards in dealing with the Legislative Council?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, a conclusion was reached after taking into full account the views of the Legislative Council.

MR JIMMY MCGREGOR: *Mr President, will the Secretary note that if the Government has come to the conclusion that an old age pension is now to be introduced instead of the Central Provident Fund, a great many aged people will thank the Government for it?*

PRESIDENT: Is that a question there, Mr MCGREGOR?

MR JIMMY MCGREGOR: *Mr President, it is a question: Will the Government note?*

MR TAM YIU-CHUNG (in Cantonese): *Mr President, since the question of retirement protection has been the subject of debate in the past 20 years, will the Administration estimate when a comprehensive retirement protection scheme will be set up at the earliest?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I will make a statement later this afternoon and will address such issues as our way forward and how we are going to achieve this goal.

### **Medical costs**

2. DR CONRAD LAM asked (in Cantonese): *As the rate of increase in medical costs is distinct from the rate of general inflation, will the Government inform this Council:*

- (a) *of the method currently adopted by the Government for calculating medical costs in the public sector;*



- (b) *of the annual rates of increase in the medical costs of various medical facilities such as convalescent hospitals, psychiatric hospitals, general hospitals, government clinics, specialist clinics, and so on in the past five years; and*
- (c) *of the specific measures that are in hand to control medical costs?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, in calculating medical costs of providing hospital and clinic services, the Department of Health and the Hospital Authority adopt the standard government practice of the full-cost approach which comprise staff costs, drugs, consumables, overheads and depreciation on equipment and buildings. The unit costs for individual service types are then derived by dividing the total service cost with the activity level such as the number of bed days, the number of attendances and the number of visits.

The average rates of increase of medical costs over the past five years of various facilities are: 16% per year for general hospital beds and psychiatric hospital beds, 17% per year for general out-patient clinics and 15% per year for specialist out-patient clinics.

Our primary concern is to ensure cost-effectiveness in delivering medical services. That is, to achieve the best quality of healthcare within available resources. To this end, the Department of Health optimizes the use of resources through regular review of the mode of service delivery and streamlining procedures. Cost containment is enhanced through regular monitoring of expenditure patterns, drug management and drug monitoring committees. Furthermore, continuing education and training programmes are organized to provide the responsible staff with the knowledge and skills on financial management and control.

As regards the Hospital Authority, it has in place a resource management framework. As part of its business planning process, resource inputs are linked with service outputs, targets and quality standard. The use of resources at hospital level is then monitored and evaluated by the Head Office through a financial and performance reporting system. Clustering of hospitals and networking of services have also been introduced to rationalize the distribution of services, improve patient access and avoid unnecessary duplication of resources.

DR CONRAD LAM (in Cantonese): *Mr President, according to the official figures given to this Council recently, the cost per attendance at the general out-patient clinic in 1993-94 is \$152, representing a 37% increase when compared with \$111 in 1992-93. As for the specialist out-patient clinics, the cost per attendance is \$337 in 1993-94, representing a 7.7% increase when compared with that in 1992-93. These figures greatly differ from the average rates of*

*increase over the past five years mentioned in the second paragraph of the Secretary's reply, that is 17% for general out-patient clinics and 15% for specialist out-patient clinics. The rate of increase of medical costs in 1993-94 for general out-patient clinic is 37% which is 20% higher than the 17% average rate over the past five years. As for the specialist out-patient clinics, comparison between the Secretary's reply today and the information given to this Council can see a 50% difference in projection (that is compared with an increase of 7.7%). Will the Administration inform this Council of the causes for such a great discrepancy?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, it is rather a reflection of a higher increase in medical costs in the general out-patient clinics. The 37% increase in medical costs per attendance at the general out-patient clinics is due to three factors: first, the price change of 11% in 1993-94 over 1992-93; secondly, a 22% increase in costs due to adoption of a global approach to establish the full and comprehensive costs of operating the 57 government general out-patient clinics including the outlying clinics, whereas in the past, owing to the lack of a computerized cost system, a selection of only five clinics was adopted; and thirdly, a 5% increase in costs due to improvement in quality of service through the introduction of individual medical records which caused an initial reduction in throughput and a consequential increase in unit cost. The increase in costs is thus partly attributable to improved accessibility and quality of patient care and partly due to inflation. The changes other than inflationary adjustment are one off and will not cause further increase in general out-patient charges in future.

PRESIDENT: Not answered, Dr LAM?

DR CONRAD LAM: *My question has not been answered. (In Cantonese) Mr President, I would repeat my question. The rate of increase of cost for specialist out-patient clinics in 1993-94 is 7.7%, whereas the average rate of increase over the past five years given in the Secretary's reply is 15%. That is, there is a 50% difference. Will the Secretary account for this?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the increase in cost of 15% over the five-year period is an average rate of increase. The 7.7% increase in costs is the increase in 1993-94, over 1992-93.

DR LAM KUI-CHUN: *Mr President, in the calculation of increase in medical costs by the Government in the last few years, how much does increase in salary in the Hospital Authority or the Department of Health contribute to the total increase and by what annual percentage has salary inflated in the Hospital Authority in the last two years?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I have the information for the increase in costs of the general out-patient clinics and I will provide the information to Dr LAM with regard to the Hospital Authority. The unit cost components for general out-patient clinics are: staff salary and staff on-costs make up \$111, administrative overheads \$18, operational expenses \$23. All this adds up to \$152. I will provide the separate information with regard to the Hospital Authority service. (Annex I)

DR LAM KUI-CHUN: *Mr President, what I want is the increase expressed as annual inflation, not the absolute cost.*

SECRETARY FOR HEALTH AND WELFARE: *Mr President, as indicated in my main reply, the approach is all the time on a historical basis. It is based on the full cost approach which comprises staff costs, drugs, consumables, overheads and depreciation on equipment and buildings. I do not have the detailed figures to hand. I can supply figures to Dr LAM with regard to the Hospital Authority.*

### ***Control of obscene and indecent articles***

3. MRS PEGGY LAM asked (in Cantonese): *In view of the recent spate of obscene and violence-depicting posters, publications and videotapes in the territory, will the Government inform this Council:*

- (a) *of the number of cases concerning alleged violation of the Control of Obscene and Indecent Articles Ordinance in the past three years; the number of convictions and the penalties imposed;*
- (b) *of the measures adopted by the departments concerned to ensure that persons under the age of 18 do not purchase obscene and indecent articles; and*
- (c) *whether the public would be encouraged to furnish information on alleged violation of the Control of Obscene and Indecent Articles Ordinance; if so, please provide details; if not, the reasons therefor?*

SECRETARY FOR RECREATION AND CULTURE (in Cantonese): Mr President, during the three-year period from January 1991 to October 1993, the police, Customs and Excise Department and Television and Entertainment Licensing Authority (TELA) have taken out 988 prosecutions on contraventions of the Control of Obscene and Indecent Articles Ordinance (COIAO). Of these, a total of 806 convictions have been obtained. The penalties imposed ranged from fines of \$500 to \$60,000 and prison sentences of one to 18 months.

In view of the public's concern in recent months, the Administration has taken a two-prong approach to tackle the problem. First, the police and TELA have stepped up enforcement action. As a result, during the period from 1 October to 8 December, the police and TELA have conducted 17 joint operations. The number of suspected obscene articles seized during these operations included 15 000 videotapes, 100 laser discs and 300 copies of printed matter. Moreover, 10 persons will be prosecuted for publishing indecent articles to underage persons.

Secondly, the Administration has taken the following measures to make the public aware of the ordinance regarding publishing and selling of obscene and indecent articles. In the past few months, we have:

- (a) issued two circular letters to all newspaper stalls reminding them of the provisions of the COIAO and providing them with a list of comic books and magazines which have been classified as indecent or obscene for their reference;
- (b) produced a TV programme entitled *Common Sense*, which was broadcast in October;
- (c) produced an Announcemet of Public Interest which will be broadcast on TV and radio soon;
- (d) given press conferences in most cases after major police operations for publicity purposes; and
- (e) given numerous press interviews to reinforce our enforcement action by publicity in the media.

In addition, a leaflet is being printed for distribution to schools, so that students can make reference to them.

We hope such action will firstly remind the trade to exercise self-discipline and secondly appeal to teachers and parents to guide and educate young persons to stay away from indecent comic books and magazines.

In our publicity efforts, we have repeatedly encouraged the public to report any alleged violation of the COIAO either to the police or to a hotline set up by TELA. I would like to appeal to the public to make use of the TELA hotline. The number is 594 5836. We will continue to publicize this hotline in the TV and radio APIs and I hope the print media will also help to disseminate this information and appeal to the public to make reports either to the police or to TELA.

MRS PEGGY LAM (in Cantonese): *Mr President, many parents have complained to us that there is a proliferation of publications of violent and*

*indecent articles which one can easily get at newspaper stalls and other outlets. These articles are not in wrappers, and the warnings they bear are very small and inconspicuous. As publication of these violent and indecent articles will have adverse effects on our young people, will consideration be given to amending the Ordinance to provide that these articles must be in proper wrappers, that they will be available only in certain outlets, and that the warning must be up to a certain size and printed prominently?*

SECRETARY FOR RECREATION AND CULTURE (in Cantonese): Mr President, at present the Administration has no intention to amend the Ordinance because the law as it stands has already empowered the Obscene Articles Tribunal to require publishers to take specific measures which include wrapping (providing for the use of a tight wrapper if necessary) and appropriate warning on the wrappers. We think that there are already sufficient enabling provisions in the existing Ordinance.

MR ALFRED TSO (in Cantonese): *Mr President, objectionable publications and videotapes, as we see it, have been in wide circulation in Hong Kong. We can also see that the standard set by the Administration in this respect is very low, and that it even takes a passive stance. Many members of the public from different districts have made their views known to the police and the TELA, but the feedback and the actions taken were very little. Will the Administration consider deploying more resources and manpower to step up enforcement efforts in this respect so as to protect the morals of our society?*

SECRETARY FOR RECREATION AND CULTURE (in Cantonese): Mr President, I have already provided some actual figures in my main reply, which show the Administration has, with limited resources and manpower available, already taken out quite a large number of prosecutions. As regards censorship, it is within the jurisdiction of the Obscene Articles Tribunal which is an independent body comprising, among others, members of the public. I hope that through these censors who are members of the public, the standard acceptable to the general public can be reflected.

MR JAMES TO (in Cantonese): *Mr President, I would like to follow up the Secretary's reply to Mrs Peggy LAM's question which says that there is no need for introducing legislative amendments. Does the Secretary know that there is no statutory requirement under the existing legislation for submission of articles for censorship, and that the Obscene Articles Tribunal can require wrapping or removal of undesirable pages only after they have been submitted? Such being the case, the whole process will take two to three months from the date of submission while all such publications may have been sold out in a week or a couple of days. Does the Secretary think that there is a loophole in the existing legislation?*

SECRETARY FOR RECREATION AND CULTURE (in Cantonese): Mr President, I do not think that there is any loophole in the existing legislation because our society which cherish freedom of expression do not want to have pre-censorship which requires all publications to be submitted in advance. Should that be the case, I believe it will have a grave impact on freedom of expression in Hong Kong. At present, if a publication put on sale without being submitted for censorship is found to be obscene and indecent, the police and the TELA will take appropriate prosecution action and confiscate the article.

MR FREDERICK FUNG (in Cantonese): *Mr President, everyday after work, especially after 1 pm on Saturdays, we can find a lot of film posters on doors of banks and hoardings of construction sites which in our view are quite violent and obscene. May I know how many of the 988 prosecutions mentioned in the Secretary's reply are related to posters of violent and indecent films? Is the figure on the low side? If so, will the Administration step up prosecution actions?*

SECRETARY FOR RECREATION AND CULTURE (in Cantonese): Mr President, I do not have the figure at hand. I will give Mr FUNG a written reply in due course. (Annex II)

MR HOWARD YOUNG (in Cantonese): *Mr President, will the Administration inform this Council whether the almost one thousand prosecutions in respect of obscene and indecent articles were mainly taken out against newspaper stalls or other outlets (or the sex shops which have drawn wide public concern recently), so that Members of this Council and the Administration can think of the most effective ways to bring them under control?*

SECRETARY FOR RECREATION AND CULTURE (in Cantonese): Mr president, the figure includes articles seized from newspaper stalls and alleged obscene and indecent articles found in bookstores and other outlets. In other words, the law enforcement officers will take action against any outlets found selling such articles to the public.

DR TANG SIU-TONG (in Cantonese): *Mr President, will the Administration inform this Council of the number of staff in the TELA who are responsible for monitoring and prosecution, and whether it has sufficient manpower?*

SECRETARY FOR RECREATION AND CULTURE (in Cantonese): Mr President, at present there are five inspectors in the TELA responsible for inspection and prosecution. As to whether manpower is enough, I believe that

more manpower for enforcement action is always better, but we also have to take into consideration the constraints of resources faced by the Administration.

### **Hong Kong's future**

4. MISS EMILY LAU asked: *Is the Government aware that the public reactions of the Chinese Government during the disputes over Hong Kong's political arrangements and other issues in recent years have been perceived by the majority of Hong Kong people as revealing an intransigent and autocratic attitude on the part of the Chinese Government towards Hong Kong's best interests, which has dealt a severe blow to public confidence in Hong Kong's future; and has the Government accordingly conveyed to the British Government that it is now both urgent and essential that the British Government publicly explain to the Hong Kong people how it can feel justified in continuing with its intention to hand them over to the new sovereign regime?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the Joint Declaration, under which Hong Kong will on 1 July 1997 become a Special Administrative Region of the People's Republic of China with a high degree of autonomy, with its capitalist system and way of life preserved, and the basic rights and freedoms of its citizens protected, is the best guarantee there is of the continued prosperity and stability of Hong Kong under Chinese sovereignty. It deserves all our support, and our whole-hearted efforts to implement it fully and faithfully.

The Joint Declaration is a binding international agreement, registered with the United Nations. The British Government is fully committed to it; the Chinese Government have repeatedly stated that they are committed to its full implementation.

The British Government and the Hong Kong Government are, of course, fully aware of the anxieties of the community in these last few years. We believe strongly that the best means of ensuring that Hong Kong can have confidence in its future is to ensure that there remain in place after 1997 the institutions that are necessary to safeguard Hong Kong's way of life. They are:

- a vigorous and accountable executive;
- a credible and broadly based legislature; and
- an independent and impartial judiciary.

Our plans for achieving this are, of course, fully described in the Governor's addresses to this Council in October 1992 and 1993. The Bill that I will be introducing into this Council later today is the first part of our proposed legislative programme aimed at achieving representative institutions which are

credible and broadly based. I hope it will receive the support of Honourable Members.

Mr President, the community should work to build their future under the historic principle of "one country, two systems", rather than shy away from it. As the Governor said to this Council on 2 December 1993, the transfer of sovereignty was always going to be a difficult enterprise. There were bound to be disagreements between Britain and China along the way. But we firmly believe that with goodwill and co-operation from both sides even though we might have differences, and of course with the support of the community, we can together overcome those difficulties.

MISS EMILY LAU (in Cantonese): *Mr President, the Secretary has mentioned in his reply that the British Government is fully committed to the Sino-British Joint Declaration and that the Chinese Government has also repeatedly stated its commitment to it. What I would like to ask is: Does the Administration think that the Chinese Government has done or said anything during the talks on constitutional reform package that is contrary to the Joint Declaration? If so, will the Hong Kong Government propose to the British Government to review its commitment to the implementation of the Joint Declaration?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, it would be a rather grave charge to lay at anyone's door that the Joint Declaration has not been adhered to and I certainly have no indisputable proof of that.

MR RONALD ARCULLI: *Mr President, will the Secretary explain to this Council how the Joint Declaration which he has described as a binding international agreement, registered with the United Nations, can be enforced against the two Governments by the people of Hong Kong?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I think I am entering into international law on which I am not competent.

MR RONALD ARCULLI: *Follow-up, Mr President?*

PRESIDENT: Yes, Mr ARCULLI.

MR RONALD ARCULLI: *Will the Secretary give me a written answer, having consulted his lawyers?*



SECRETARY FOR CONSTITUTIONAL AFFAIRS: I will, Mr President. (Annex III)

MR MARTIN LEE: *Mr President, will the Administration inform this Council, in relation to the so-called credible and broadly based legislature mentioned in the Secretary's answer, whether the Administration considers the legislature originally proposed by the Governor in his first policy speech to this Council on 7 October 1992 to be such a credible legislature or rather, in comparison with the legislature proposed by the watered down version of the Governor in his second policy speech delivered to this Council on 6 October this year, which is more credible? And which will be presented to this Council?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, we have always said that the proposals set out in the Governor's speech on October 1992 are proposals and they represent what the Government believes to be the best proposals. Obviously, as proposals, they are open to debate and these have been debated fully in this Council and in the community. We will definitely take account of the views of Members of this Council and that of the community before deciding what we should introduce into this Council.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, the Secretary has mentioned the Joint Declaration and "one country, two systems" in his reply. If the public's confidence in "one country, two systems", the Sino-British Joint Declaration, and the Basic Law has been weakened, and the Administration does not have sufficient credibility, will it be the British or the Chinese Government that should be held responsible for such a situation before 1997?*

PRESIDENT: Do you understand the question, Secretary? It might have suffered in the interpretation.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I think I understand part of it and I shall attempt to answer that part. The Joint Declaration is a solemn agreement entered into by two sovereign powers under their own free will. And the Joint Declaration specifies in one of its provisions that the British shall be responsible for the administration of Hong Kong until 30 June 1997 and the Chinese Government shall give its full co-operation. I think that is a very important provision for us to bear in mind in the years ahead. And, therefore, a direct answer to Mr CHIM's question is that both governments owe the people of Hong Kong a smooth transition from now until 1997.

MR LEE WING-TAT (in Cantonese): *Mr President, the Preliminary Working Committee for the Hong Kong Special Administrative Region appointed by the Chinese Government has speeded up its work recently and the functions of some of the working groups under it are to look into policy matters affecting the local community and people's livelihood which are within the jurisdiction of the Hong Kong Government responsible for administering Hong Kong before 1997. From the viewpoint of the Hong Kong Government, are such actions in violation of the provisions of the Joint Declaration that the local policies of Hong Kong fall within the responsibility of the Hong Kong Government before 1997? I hope the Secretary will not evade this question, but provide a simple yes or no answer.*

PRESIDENT: Which part of the Secretary's answer do you seek to elucidate with that question, Mr LEE?

MR LEE WING-TAT (in Cantonese): *Mr President, the Secretary has mentioned in different parts of his reply that the Chinese Government will fully implement the Joint Declaration. My question is: Judging from the example cited earlier, does the Hong Kong Government consider that the Chinese Government has really implemented the Joint Declaration?*

PRESIDENT: Bearing in mind that questions are directed towards eliciting information or seeking action on the part of the Hong Kong Government on public matters for which it is responsible, bearing in mind that context, Secretary, are you able to answer?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: No, Mr President. *(Laughter)*

DR CONRAD LAM (in Cantonese): *Mr President, the Secretary has mentioned several times in his reply the importance of the Joint Declaration, and the public have read time and again from newspapers that one side is accusing the other side for violating or acting in defiance of the spirit of the Joint Declaration. And the public simply do not know which side to believe. May I ask the Secretary if consideration will be given to arranging a debate between the Governor and Mr ZHOU Nan so that the public will know the truth and can tell which side is right and which side is wrong? If not, why not?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, it is difficult for me to find an appropriate answer to such a difficult question. I think the fact of the matter is that Hong Kong is a free society with a free press and anybody is free to express his or her views. And I think that is why we are

hearing lots of voices on these very difficult issues in relation to the transition arrangements. "One country, two systems" is a very historic concept which has not been tried anywhere before. So I do not personally think that a direct debate between the Governor and Mr ZHOU Nan would necessarily satisfy everybody.

MRS SELINA CHOW: *Mr President, in the third paragraph of his answer, the Secretary said, and I quote, "the best means of ensuring that Hong Kong can have confidence in its future is to ensure that there remain in place after 1997 the institutions that are necessary to safeguard Hong Kong's way of life." Given the British Government's failure so far to secure Chinese agreement to what the former regards as uncontentious issues, how can that objective in the third paragraph be achieved?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, it is our desire that we should achieve agreement with China on all these very difficult issues. And here we have got to balance, on the one hand, the desire for an agreement and, on the other hand, an agreement that is fair, open and acceptable to this community. When it comes to a choice, I know fairly and squarely what this Council wants us to do, namely, that we should introduce into this Council arrangements that are fair, open and acceptable to the people of Hong Kong.

PRESIDENT: Not answered?

MRS SELINA CHOW: *Mr President, I do not think the Secretary has in fact answered my question. I asked him how the objectives spelt out in the third paragraph, that is, to keep the institutions in place after 1997, can be achieved.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, these institutions are already in existence. And I quote, "a vigorous and accountable executive" — I am accounting for the executive at the moment; "a credible and broadly based legislature" — that is what we are trying to achieve and to that end I shall be introducing legislation later on; "an independent and impartial judiciary" — that we have.

MRS SELINA CHOW: *Mr President, may I ask you to direct the Secretary to answer my question please?*

PRESIDENT: I have no powers of direction, Mrs CHOW. I can only give you an opportunity to make sure your question has not been overlooked.

MR JIMMY MCGREGOR: *Mr President, the Secretary has set out the three institutions necessary to safeguard Hong Kong now and in the future. One of these is a credible and broadly based legislature. I have in mind that Mr TSANG Yok-sing recently said that China will change what it does not like. Will the Government give an assurance that despite mounting pressures upon the Government to further reduce the representativeness of this Council, no constitutional changes will be made which will have this effect, thus protecting the integrity and territorial independence of this Council?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I do not understand the last part of the question, that is, "the territorial integrity of this Council".

PRESIDENT: Can you clarify?

MR JIMMY MCGREGOR: *I mean, in regard to the territory of Hong Kong, I understand that we are a territory and not a state.*

PRESIDENT: Are you able to answer that, Secretary?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I will try but I am not 100% sure if I get the real purport behind that question. I think the point, Mr President, is that we have a legislature now which is composed of partly elected and partly appointed Members and what we are moving towards is to have a legislature composed entirely of Members returned by elections in 1995. And what we are debating is what those arrangements should be that will give us a credible and broadly based legislature. It is difficult to imagine that a credible and broadly based legislature is necessarily a threat to anybody and therefore I do not envisage the scenario that Mr MCGREGOR quoted from somebody else.

PRESIDENT: Not answered, Mr MCGREGOR?

MR JIMMY MCGREGOR: *Part of it not answered, Mr President. What I am referring to is the fact that we are all aware that the British Government has already conceded a great deal more than perhaps some of us in this Council would have wished. And what I am concerned about therefore is that in any further negotiations that take place and in response to any further representations made to this Council, there will be further diminution of the representativeness of this Council through the procedures which the British are*

*negotiating with China. I am referring specifically to the nine functional constituencies and the Election Committee.*

PRESIDENT: Yes, and the question?

MR JIMMY MCGREGOR: *Mr President, the question is: Will the Government take into account the concern of some Members of this Council that such arrangements made from now on will not further reduce the representativeness of this Council?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I think I can give an assurance that it is our intention that the representativeness of this Council shall not be reduced. And indeed Members do know that whatever agreement that we may have, we will have to come to this Council to get its blessing, so that the agreement can be implemented in time for the 1994-95 elections. Therefore, whatever agreements that we may have which do not meet the Council's concerns on this particular aspect, there is a recourse for Members.

DR PHILIP WONG (in Cantonese): *Mr President, it was mentioned in the fourth paragraph of the Secretary's reply that there were bound to be disagreements between Britain and China during the transfer of sovereignty. In order to let the people of Hong Kong and the international community have a clearer picture of what has happened, Mr LU Ping has suggested to disclose the contents of the 17 rounds of talks. What is the stance of the Hong Kong or British Government on this?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, this particular question anticipates Question 6. Do you wish me to answer it now or shall I leave it until Question 6?

PRESIDENT: Yes, it is indeed the subject of Question 6. Next question, Question 5.

#### **New Year's Eve celebration**

5. DR LAM KUI-CHUN asked (in Cantonese): *In view of the large-scale celebration programme to be held on the coming New Year's Eve at the Victoria Park on Hong Kong Island, will the Government inform this Council:*

- (a) of the estimated number of participants in the celebration programme on that night;*
- (b) whether it is expected that the activities there will help ease the overcrowding at Lan Kwai Fong as experienced on similar occasions in the past;*
- (c) what measures will be taken by the police and other departments concerned for crowd control including contingency measures to cope with emergency cases, if any, at the two locations on that night?*

SECRETARY FOR SECURITY: Mr President, there will be 50 000 tickets on sale for the New Year's Eve celebration at Victoria Park and, therefore, this is the maximum number of participants.

The activities at Victoria Park are expected to divert people from Lan Kwai Fong. There will also be a Countdown Variety Show that evening in Sha Tin Central Park, which will also divert people from Lan Kwai Fong. In addition, arrangements at Lan Kwai Fong on New Year's Eve will also ensure that there will be no overcrowding and public safety can be maintained. These arrangements were successfully deployed at Lan Kwai Fong during Halloween.

During the event, the organizers will employ security guards for crowd control within the Park. The Civil Aid Services will deploy 140 members, dispersed among the crowd, and liaise closely with the police to ensure crowd safety.

Hoardings will also be set up to control the size of the crowd for the event. These hoardings will be high enough to enclose all performing areas, so that people will not be able to watch the performances from outside the park and, consequently, cause congestion. There will be adequate directional signs and illumination. Sufficient entrance and exit points will be provided to ensure that the crowd enters and disperses orderly and gradually. More exits will be opened at the end of the event to allow speedy dispersal of the crowd.

The police will be responsible for overall safety and crowd control. They will liaise closely with the security staff employed by the organizers and with members of the Civil Aid Services on crowd control. Police Tactical Units, uniformed police officers, traffic police and CID officers will be mobilized and stationed at the park for crowd control, directing traffic and for dealing with emergencies. There will be restrictions on car parking in the vicinity and inside Victoria Park to minimize congestion and to avoid obstruction of emergency vehicles.

The Transport Department will co-ordinate with public transport operators regarding the overall transport arrangements, in particular the overnight running of services. The Mass Transit Railway may designate special entrances and exits at the Causeway Bay and Tin Hau MTR Stations for this event. Nearby carpark managements will be forewarned of the event. Early announcements through the media will be made regarding the special traffic and transport arrangements for the event.

The Auxiliary Medical Services will provide first-aid services on the spot. First-aid posts will be provided within the park. First-aid patrol teams will ensure that people in need of first-aid are attended to as quickly as possible. An Auxiliary Medical Services ambulance will be on standby in the Hing Fat Street carpark adjacent to Victoria Park. The Auxiliary Medical Services Headquarters in Ho Man Tin will have an Emergency Response Task Force, with two ambulances and a team of doctors and nurses, on standby. Emergency services from nearby fire stations can also be called upon.

The Hospital Authority has a contingency plan for emergency situations and adequate medical staff can be made available once the contingency plan is activated.

As for Lan Kwai Fong, the police will also deploy adequate staff to ensure public safety, although we are not aware of any organized events there.

DR LAM KUI-CHUN (in Cantonese): *Mr President, the Secretary says in the second paragraph of his reply that the Administration is making use of other activities to reduce overcrowding in Lan Kwai Fong. But has the Administration taken into consideration that people participating in any two activities may be different, for example, those going to Lan Kwai Fong are Westerners while those at Victoria Park are local youngsters, and therefore instead of diverting people from Lan Kwai Fong, the activities at Victoria Park will create another crowded area?*

SECRETARY FOR SECURITY: Mr President, there are two points there. I am not too sure I agree with the premise of the Honourable Member's question. Our experience has shown that there is a mixture in both locations, predominantly young people, and the event at Victoria Park is directed at them. The second point is that, as I mentioned in my main reply, we have already tried, and will implement once again at New Year, arrangements to ensure that there is no overcrowding in Lan Kwai Fong. They were successfully deployed in the past and we have no reason to expect they will not continue to be successful.

MR MARTIN BARROW: *Mr President, does the Government recognize that this type of celebration provides opportunities to promote Hong Kong as an exciting tourism destination and would the Secretary confirm that in ensuring safety standards he will not allow a bureaucratic steepchase of approval procedures to prevent innovative ideas, such as this plan, from being implemented?*

SECRETARY FOR SECURITY: Mr President, yes, I can assure Honourable Members that our licensing procedures are the minimum consistent with public security and safety.

DR LEONG CHE-HUNG: *Mr President, now that there will be at least three areas where crowds will gather, could the Secretary assure this Council that in the event of accidents occurring in all three crowded areas there will be contingency arrangements, as far as both hospital and ambulance services are concerned, to cover these three areas, simultaneously?*

SECRETARY FOR SECURITY: Mr President, yes, I can assure the Council of that. The main question was directed at the arrangements at Victoria Park, but contingency plans exist for emergencies arising at any locations. And at this time of the year, with the inclination of crowds to gather at certain locations, the authorities are aware and are prepared for contingencies arising out of any emergency from those crowds.

MR HOWARD YOUNG: *Mr President, will the Government confirm that some of the more specific recommendations arising out of the lesson learnt from the Lan Kwai Fong incident last year will indeed be implemented at the Victoria Park site, such as one-way traffic flow of pedestrians only, adequate loudhailers for policemen and duty personnel on the spot and also late running of the MTR beyond its normal hours?*

SECRETARY FOR SECURITY: Mr President, yes, I can confirm that. The lesson learnt from the tragedy that occurred last year have been taken into account, not just in the event planned for this New Year, but in events that have taken place earlier this year. Loudhailers are used extensively, and specifically in Victoria Park there is a one-way pedestrian flow arrangement that has been introduced, and for that matter it will also be introduced at Lan Kwai Fong to ensure that there is no buildup of crowds. And therefore no situation will arise that might result in an emergency.



PRESIDENT: Not answered, Mr YOUNG?

MR HOWARD YOUNG: *Mr President, yes, there is one specific point about the late running of the MTR that has not been addressed.*

SECRETARY FOR SECURITY: I am sorry, Mr President. I mentioned that point in my main reply and the answer is yes.

### **A full public account of Sino-British discussions**

6. MR ERIC LI asked: *In view of the public concern over the impasse in discussions between the British and Chinese Governments on future arrangements for Hong Kong, and in order to present a clear and balanced picture to the people of Hong Kong, will the Administration request the British Government to give a full public account of the 17 rounds of discussions held so far behind closed doors between the British and Chinese Governments?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, when the talks on the 1994-95 electoral arrangements started in April, we explained in public the basis for the talks. We also explained that to give the talks the maximum chance to succeed, one of the things we have agreed is that the negotiations would take place in confidence. This is still our position. As Honourable Members know, we remain ready to continue with the talks on the agreed basis, in an attempt to seek agreement on the remaining, more complex issues not covered in the Bill which I shall be introducing into this Council later today. We are waiting for the Chinese side's response to our proposal for dates for the next round. In the circumstances it would not be right to give a public account at this stage of all the discussions.

MR ERIC LI (in Cantonese): *Mr President, notwithstanding the objection of the Chinese side who said they would end all talks should the partial Bill on constitutional reform be tabled, the Government still went ahead despite the risk of a breakdown of talks. This is clear indication that the Government did not believe China meant what they said and that they were not afraid of a breakdown of talks. But now the Chinese side indicated clearly that they could give an open account of the talks and even challenged the Governor to do so, and the Government's response this time was different. They worried about a possible breakdown of talks and refused to give a full public account on the pretext that they had to know the Chinese response in the first place. Since the tone of the Government is so different in these two cases, how can the people of Hong Kong be expected to understand the different stances of the Government? Moreover, if this is not the suitable time for the Legislative Council to scrutinize the Bill, when is the right time?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, this is not an excuse, this is a practical and pragmatic consideration of the situation we are in at the moment. The reason why we are introducing legislation is because there are certain deadlines to meet, and if we were to give discussions of the more complex issues a chance to continue, we would have to legislate on certain simpler straightforward issues for which there is a consensus within this community. To reveal the contents of talks might probably satisfy the curiosity of the citizens of Hong Kong, but it would definitely mean the end of talks. Mr President, our primary responsibility must be to pursue whatever opportunity for talks that may possibly remain, and I think that remains our priority.

MR ERIC LI (in Cantonese): *Mr President, it seems .....*

PRESIDENT: Is your question not answered, Mr LI? We have a lot of Members wanting to ask questions.

MR ERIC LI (in Cantonese): *Mr President, the part concerning "suitable time" has not been answered.*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, we certainly have no problem in giving our account of the talks at a suitable time. When I said "suitable time", I mean that if we were to have an agreement, we would definitely explain that agreement to the people of Hong Kong and the discussions that led to that agreement. And if we were to have no agreement, or if the Chinese side decided to walk away from the negotiating table, then again we would obviously have to explain to the people of Hong Kong exactly what had happened.

DR PHILIP WONG (in Cantonese): *Mr President, I am pleased to hear the Secretary say that if he thinks there is no hope for further talks with the Chinese side, he will be prepared to give a full account of the 17 rounds of talks to the people of Hong Kong. May I ask the Secretary under what circumstances there will be no hope for talks?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I have in reply to a previous question stated that we have proposed to the Chinese side for an 18th round of talks. Although I have heard and seen in the media responses or purported responses to that diplomatic approach, I can confirm to Members of this Council that we have not received a formal diplomatic response to that particular proposal.

MRS ELSIE TU: *Mr President, would the Secretary agree that, if Members of this Council are to discuss the Bill, they would need the information to make it possible to discuss the Bill? And why does he call it curiosity? Is it curiosity to want to know the facts which we have to discuss?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the Governor gave a very full account on 2 December to this Council and answered a number of questions from Members as to why we have to introduce legislation to this Council to enable certain arrangements to be put in place. The Governor has given as much information as necessary without breaching the confidentiality of the talks and I think there is not much I can add at this stage.

MR ALLEN LEE: *Mr President, Director LU Ping has openly challenged the Governor to reveal the contents of the talks. Now that the Bill is going to be presented to this Council, as Mrs TU said, we have got to have some basis on which to scrutinize the Bill. Why is the Government still reluctant and using confidentiality as a shield in not taking up that challenge?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the governing of Hong Kong is a serious business. The Government is not responding to challenges of that nature.

DR YEUNG SUM (in Cantonese): *Mr President, just now the Secretary explained that both sides had agreed that the negotiations would take place in confidence, and that in order to keep the talks going, the Government would not disclose the contents of the talks. But I think the Administration cannot say that any more because the Bill will receive its First and Second Readings later today. And that means the end of talks as China had indicated time and again that it would end all talks if the Bill was introduced to the Legislative Council, be it a partial or a full Bill. As there will be no more talks, does the Government still need to observe the confidentiality rule as this will keep the people of Hong Kong in the dark?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I do not wish to give the impression that we have anything to hide or any reluctance to give our account of the talks. What I am saying is — and I shall repeat what I have said in reply to one supplementary question — that if the talks are irrevocably and formally terminated, then this Government will have to explain to the people of Hong Kong what happened.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, by "termination of talks", does the Secretary mean a joint declaration by both the British and Chinese sides, or just a unilateral announcement that all talks will come to an end? I said that because Chinese officials had said on many occasions that once the Hong Kong Government introduced the Bill to the Legislative Council, even if it was a partial Bill, it would mean the end of talks. At this time, what is the point of "waiting for the next round of talks"? Will the Administration disclose the contents of the 17 rounds of talks after the partial Bill has been tabled today as this not only will satisfy the curiosity of the people of Hong Kong, but also will help to explain the process and the facts of the talks as well as those issues that the two sides disagreed?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, we are not waiting for Godot. We have in fact put to the Chinese side, through diplomatic channels, a proposal for an 18th round of talks. We will await a reply through that channel.

MR STEVEN POON (in Cantonese): *Mr President, the Secretary uses the phrase "our account" (which means the records of our meetings) repeatedly in his reply. Is the Administration suggesting that the records of meetings kept by the two sides are quite different?*

PRESIDENT: Are you able to answer that, Secretary?

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I was not implying anything. What I was saying was no more than a plain statement of fact. In any diplomatic negotiations there are no agreed records. Each side take their own records.

MR ALFRED TSO (in Cantonese): *Mr President, I agree that an agreement reached between the two sides is of vital importance to Hong Kong. And I appreciate the Secretary explained to us that the Sino-British talks were given pragmatic consideration. With regard to the answers given by the Secretary a while ago, does he have a tacit understanding with Mr PATTEN on what he would say so that they would have a uniform stand on this?*

PRESIDENT: Would you rephrase that question?

MR ALFRED TSO (in Cantonese): *Mr President, the question I put to the Secretary is whether his views as we have heard represent the stand and views of our Governor, Mr PATTEN?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, we pride ourselves on being a vigorous executive-led government and an executive-led government has one man in charge and I think the executive works to him.

MR WONG WAI-YIN (in Cantonese): *Mr President, when our Governor Mr PATTEN said he would consider disclosing the details of the 17 rounds of talks, Mr LU Ping indicated that neither would he object to disclosing them. But now the Secretary says that this is not the suitable time to disclose the details of the talks. If Mr LU Ping is willing to disclose their account of the 17 rounds of talks, will the Hong Kong Government have any objection?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I am sure if the Chinese side were to make a formal approach to the British side that would be dealt with through the diplomatic channel.

MR PETER WONG: *Mr President, the Secretary insists that it would not be right to give a public account at this stage of the discussions. Can the Secretary now assure this Council that the British side will not be responsible for any leaks?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, as the Honourable Member will know, an open government which is accountable cannot guarantee that there are no leaks and I think I am stating a fact.

MR FRED LI (in Cantonese): *Mr President, since the Governor's announcement in this Council on 2 December of the tabling of the first part of the Bill, the British and Chinese sides have been bombarding each other with such accusations as "not honouring the agreements", "reneging on one's words" as well as "breaking the talks". As the people of Hong Kong and Members of the Legislative Council, we do not know what has happened. Therefore, should it be possible for the 18th round of talks to take place, will the Government give their account of the talks so that the people of Hong Kong will know what happened during the 15th, 16th and 17th rounds of talks?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I do not think that I can add to what I have said in reply to previous supplementaries, mainly because the Governor has given a full account on 2 December in this Council as to why we are introducing partial legislation to this Council on the 1994-95 electoral arrangements. And I think frankly that is as far as I can go.

**Written answers to questions****Wearing of seat belts**

7. MR SIMON IP asked: *Current regulations require front seat passengers of various classes of motor vehicles to wear seat belts, except for front middle seat passengers. Will the Government advise this Council:*

- (a) whether consideration has been given to prohibiting passengers from occupying the front middle seats of automobiles, particularly taxis;*
- (b) whether there are proposals to increase penalties for failing to wear seat belts; and*
- (c) whether, given the dangers of using lap belts, the Government may consider amending the Road Traffic (Safety Equipment) Regulations to require the use of three-point seat belts in the back seats of automobiles?*

SECRETARY FOR TRANSPORT: Mr President,

- (a) Current legislation does not prohibit any passenger from occupying the middle front seat nor does it require the provision of seat belts for middle front seats in vehicles. However it is an offence under existing law to allow persons under the age of 15 to travel unrestrained in the middle front seat.

We are now taking a fresh look at this issue. Both safety and practical considerations will be taken into account. For example, there are counter arguments as to whether there should be a strict and total ban on passengers occupying the middle front seat or whether such occupancy should be permitted if some form of seat belt is provided.

- (b) The Administration's proposals to raise the levels of fines for all fixed penalty offences were discussed with the Legislative Council's Transport Panel on 9 December 1993. We are seeking to raise the penalty for driving without wearing a seat belt from \$200 to \$320 and that for a front seat passenger not wearing a seat belt from \$140 to \$230. Our aim is that these increases should take effect by the mid-1994.
- (c) The compulsory wearing of seat belts has to be phased for practical reasons given the lead time required for installation and to allow motorists and passengers to adjust to such requirements. This, indeed, has been the worldwide practice.

The next step is to require the fitting and wearing of rear seat belts. To achieve this we plan to introduce legislative amendments by the end of next year. Three point belts will be required for the rear outboard seats but for the middle rear seats, lap belts may well have to be accepted as an alternative where anchor points are not available for three point seat belts. This would follow the practice in other countries which have a statutory requirement for rear seat belts.

### **Triad activities**

8. MR JIMMY MCGREGOR asked: *Will the Government inform this Council:*

- (a) *whether a detailed report will be provided to this Council on the present activity of triad societies, the scale of their operations and their estimated benefits drawn from illegal activities;*
- (b) *whether the scale of their operations is increasing; and*
- (c) *what measures have been or are being taken to combat triad influence and the effectiveness of these measures?*

SECRETARY FOR SECURITY: Mr President, the Police Force is preparing an updated report on triad situation in Hong Kong for consideration by the Fight Crime Committee at its next meeting in February 1994. A copy of the report will be provided to the Council.

The Commissioner of Police has advised that, while the triad situation is contained, the level of sophistication of some triad activities is increasing, as is the scale of some operations.

The Police Force has a dedicated Crime and Triad Group to co-ordinate the strategy, analyse intelligence and plan and mount operations against triads and organized crime groups. The police have also deployed considerable resources at regional and district levels to fight triads: the Intelligence and Antitriad units gather evidence and mount operation; the uniformed police officers on the beat augment such operations; the Police Public Relations Bureau reinforce anti-triad publicity; and the Crime Prevention Bureau liaise with shops and businesses to encourage them to report triad activities. Recently, the police have established a special team to investigate a series of incidents of murder, serious assault, intimidation and criminal damage involving people suspected to be triad members.

**"Unsafe" condoms**

9. DR LEONG CHE-HUNG asked: *In the light of the Consumer Council's recent findings that most of the condoms currently on sale in Hong Kong are of poor quality, will the Government inform this Council:*

- (a) whether it will request the suppliers concerned to recall from the market immediately all the condoms falling below international safety standards, and prohibit the import and sale of such products in the future;*
- (b) whether the quality, labelling and sale of condoms, imported and locally made, are governed by existing laws; and*
- (c) if not, whether and when the Government will introduce legislation to ban the sale of "unsafe" condoms?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President,

- (a) There are no existing laws which empower the Government to ask the suppliers concerned to recall from the market any condom falling below international safety standards, or prohibit the import and sale of such products.
- (b) The quality, labelling and sale of condoms, either imported or locally made, are not governed by existing laws.
- (c) The Government introduced the Consumer Goods Safety Bill into the Legislative Council on 8 December 1993. Condoms fall within the definition of "consumer goods" under the Bill.

Under clauses 8 and 9 of the Bill, the Commissioner of Customs and Excise will be empowered to issue safety control notices to suppliers to prohibit them from supplying unsafe consumer goods and to require immediate withdrawal from the market of unsafe consumer goods which are believed to pose a significant risk of causing serious injury. Also, under clause 30(1)(b), the Secretary for Trade and Industry will be empowered to make regulations to prohibit the supply, manufacture in Hong Kong, or importation into Hong Kong, of specified consumer goods or class of consumer goods. These powers could be invoked to prevent the sale of condoms should they be considered to be unsafe and pose a significant risk of causing serious injury.



**Hong Kong dollars circulating outside the territory**

10. DR DAVID LI asked: *Will the Administration inform this Council of the amount of Hong Kong dollars circulating outside the territory? Will these funds have any impact on the local monetary and banking system?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, while there is a substantial pool of Hong Kong dollar banknotes circulating outside the territory, principally in southern China and Macau, there are no official statistics on the actual size of the pool. Various estimates have been put forward and they range from 15% to 30% of the total amount of currency in circulation, that is, between \$10 billion to \$20 billion out of a total of \$69 billion.

The circulation of Hong Kong dollar banknotes outside Hong Kong does not pose a problem to our monetary system. The issue of banknotes is fully backed by US dollars placed with the Exchange Fund. Even in the highly unlikely event that a large amount of banknotes is returned to Hong Kong, the Exchange Fund would not have any problem in coming up with the US dollars for redeeming the banknotes.

In addition to banknotes, there is a substantial amount of offshore Hong Kong dollar deposits, mainly held by mainland enterprises or individuals and placed with banks in China. These deposits are channelled back to Hong Kong in the form of interbank deposits and shown in the monetary statistics as "liabilities to banks abroad". At end-September 1993, the banking sector's gross Hong Kong dollar liabilities to banks in China amounted to \$81 billion, being 60% of the total Hong Kong dollar liabilities to banks abroad. The net amount of Hong Kong dollar liabilities to banks in China amounted to \$44 billion as at the end of September 1993.

While a sudden and substantial movement of these Hong Kong dollar holdings could have an impact on the Hong Kong dollar exchange rate and the liquidity position of individual banks in Hong Kong, this is unlikely to be significant. The Hong Kong Monetary Authority keeps a close watch on the change in these offshore deposits, including liaising with the People's Bank of China and conducting surveys for this purpose.

**Auto-toll scheme**

11. MR HOWARD YOUNG asked: *Will the Government inform this Council of the number of vehicles equipped with an electronic device for auto-toll use through the Cross Harbour and Aberdeen Tunnels, and whether there are plans to extend the auto-toll scheme to other toll tunnels?*

SECRETARY FOR TRANSPORT: Mr President, the auto-toll system was introduced in the Aberdeen Tunnel on a trial basis in mid-April 1992. The number of vehicles issued with auto-passes during this experimental period was limited to 3 000.

This ceiling was lifted when the auto-toll system was introduced in the Cross Harbour Tunnel on 1 August this year. Auto-passes are now available on application. To date, 22 090 electronic tags have been issued by the Autopass Company Limited (monthly figures annexed). The vehicles so equipped can use the auto-toll lanes at both the Cross Harbour and Aberdeen Tunnels.

The auto-toll system is a private sector initiative. It is for the companies themselves to decide whether to introduce auto-toll systems for their tunnels. They then need to seek the approval of the Commissioner for Transport.

I understand that the Tate's Cairn Tunnel Company Limited is considering the feasibility of adopting auto-toll but has not, as yet, finalized their plans.

Annex

Issue of auto-toll tags for use at  
the Cross Harbour Tunnel and the Aberdeen Tunnel

<i>Date</i>	<i>No. of tags issued</i>
31.8.93	9 611
30.9.93	16 069
31.10.93	17 982
30.11.93	20 770
13.12.93	22 090

**Promotion of public awareness on the growing importance of service trade**

12. DR HUANG CHEN-YA asked (in Chinese): *In view of the growing importance of service trade in our economy, will the Government inform this Council:*

- (a) *whether statistics on service trade will be collected and published in greater detail to promote public awareness in this respect;*
- (b) *if so, what specific plan is in hand; and*
- (c) *if not, what the reasons are?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

- (a) The Census and Statistics Department has been collecting detailed data on the service sectors as part of an on-going programme of annual economic surveys. These surveys cover individual service sectors, including distribution, transport, communication, banking and business services. Detailed results are published in the relevant survey reports.

In addition, monthly and quarterly surveys are conducted to collect short-term data on the retailing and restaurant sectors.

Statistics on trade in services are also collected and compiled in estimating the Gross Domestic Product (GDP). These are published, by type of services, in the GDP reports.

- (b) To provide prompt indicators of the current performance of the various service sectors, the Census and Statistics Department has launched a new quarterly survey of service industries in May 1993. Results of the survey will be published at quarterly intervals starting from mid 1994, when the series of the statistics is sufficiently long to allow inter-period comparisons and the computation of growth rates. The response rate and quality of the data collected so far have been satisfactory.

### **Litigation cases concerning building management disputes**

13. MR FREDERICK FUNG asked (in Chinese): *Will the Government inform this Council whether it is aware of the respective numbers of litigation cases concerning building management disputes in the past three years, in which chairpersons of the owners' corporations were involved as plaintiffs or defendants; the nature of these cases in general and the respective numbers of successful cases with these chairpersons as plaintiffs or defendants?*

SECRETARY FOR HOME AFFAIRS: Mr President, the short answer is no because the Judiciary does not keep statistics down to this detailed level. For Members' information, case statistics in respect of the District Courts by categories of jurisdiction for the year 1992 are provided at Annex A; whilst the statistics in respect of the Small Claims Tribunal are at Annex B. We have been advised by the Judiciary that the majority of the building management litigation cases of the type mentioned in the question probably fall within the "Civil Jurisdiction" category of the District Courts statistics and the Small Claims Tribunal statistics. A total of 34 927 actions and 38 930 cases were instituted respectively in 1992.

The Judiciary has also advised that it is planning to install a computerized case record system, the implementation of which will facilitate the Judiciary in the compilation of more detailed statistics in future.

Annex A

## CASES IN THE DISTRICT COURT

1992

### *Civil Jurisdiction:*

(a) <i>Actions instituted</i>	34 927
(b) <i>Miscellaneous Proceedings</i>	1 428
(c) <i>Tenancy Tribunal Appeals</i>	-
(d) <i>Stamp (Ordinance) Appeals</i>	37
(e) <i>Labour Tribunal Appeals</i>	-
(f) <i>Landlord and Tenant Appeals</i>	-

### *Distress for rent:*

<i>Distraints issued</i>	4 381
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### *Employee's Compensation:*

<i>Application filed</i>	693
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### *Criminal Jurisdiction:*

(a) <i>Cases filed</i>	1 317
(b) <i>Persons indicted</i>	2 193
(c) <i>Persons convicted</i>	1 187
(d) <i>Persons awaiting trial</i>	623
(e) <i>Persons discharged</i>	383

### *Divorce Jurisdiction:*

(a) <i>Cases filed</i>	8 067
(b) <i>Decree Absolute granted</i>	5 650

### *Adoptions:*

(a) <i>Applications filed</i>	319
(b) <i>Adoption orders made</i>	350

## CASES IN THE SMALL CLAIMS TRIBUNAL

1992

No. of cases filed

38 930

**Private organizations with established provident fund schemes**

14. MR TIK CHI-YUEN asked (in Chinese): *According to data published by the Government, there are at present about 13 800 private organizations in Hong Kong with established provident fund schemes. Will the Government provide this Council with a breakdown of the types of business of these organizations, together with the respective numbers of employees covered by the schemes and the accumulated total of the contributions by employees?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, as the Occupational Retirement Schemes Ordinance, which regulates all schemes in Hong Kong, commenced only in October this year, the Registrar of Occupational Retirement Schemes does not yet have a full record of schemes operating here. More information on the operation of retirement schemes is expected in 1995, on expiry of the two-year period, for registration of existing schemes.

The figure of 13 800 schemes quoted by the Honourable TIK Chi-yuen was probably based on the record maintained by the Commissioner of Inland Revenue on schemes approved for tax purposes under the Inland Revenue Ordinance. According to the Commissioner, this number has grown from 13 800 in June to 14 465 as at the end of November this year. Analysis of the types of business operating these schemes is however not possible on the basis of the limited information available to the Commissioner.

A survey by the Census and Statistics Department in 1991 indicated that about 22 000 businesses were providing some form of retirement protection (either a provident fund or pension fund) to their employees. A breakdown of the schemes by industry sector is attached.

The breakdown indicates that the largest number of retirement schemes (10 343) was in the "wholesale/retail, import/export trades, restaurants and hotels" sector. This sector also has the largest number of employees covered by retirement schemes.

The highest proportion of establishments providing some form of retirement scheme to their employees was in "financing, insurance, real estate and business services" sector as indicated in the breakdown.

Our latest estimate is that about 30% or 850 000 members of the working population (excluding the Civil Service) is covered by some form of retirement scheme.

We do not have statistics of accumulated contributions by employees. However, according to private sector research, estimated retirement funds in the market are between HK\$80 billion and \$100 billion, projected to increase at a rate of about HK\$20 billion a year.

## Annex

<i>Sector</i>	<i>(a) Number of establishments with a retirement scheme</i>	<i>(b) (a) as % of establishments with employees</i>	<i>(c) Number of employees covered by a retirement scheme</i>	<i>(d) % of employees covered by a retirement scheme</i>
Wholesale/retail, import/export trades, restaurants and hotels	10 343	12.8	195 781	29.7
Financing, insurance, real estate and business services	3 962	28.2	124 727	60
Community, social and personal services	3 476	22.5	120 261	55.3
Manufacturing	277	8.4	120 009	19.2
Transport, storage and communication	809	17.0	99 462	69.2
Construction	699	9.8	18 529	23.8
Electricity and gas	6	27.3	11 259	96.4
Total:	----- 22 074 =====	----- N.A. =====	----- 690 028 =====	----- N.A. =====

**Notices of recovery of possession issued by private landowners**

15. MR WONG WAI-YIN asked (in Chinese): *Recently, a number of the land users in the New Territories have received notices from persons who claim to be the landowners for recovery of possession of the land concerned. Will the Government inform this Council:*

- (a) whether it is aware of the number of land users who have received such notices and that some of them are holders of Crown Land Licences; if so, the reasons for the Crown Land Licence Holders receiving notices of recovery of possession from private landowners; and*
- (b) what measures are in place to assist those affected?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the Government is aware that the occupiers of some pieces of land in the New Territories have received notices, apparently from those claiming to be the owners, seeking to recover possession of the land. It appears that these notices may have been sent because under the Limitation Ordinance (Cap 347) a person who occupies land without the permission or knowledge of the owner for a period of 20 years (or 12 years if the occupation began after 1 July 1991) may have a claim of "adverse possession" against the owner. In other words, the owner may not be able to recover possession of his land.

These cases may have arisen now because the majority of New Territories leases, originally granted for a standard term of 75 years from 1898 with a right of renewal for 24 years up to 1997, were renewed by the New Territories (Renewable Crown Leases) Ordinance (Cap 152) in 1969 with effect from 1973 and the period of 20 years from that renewal date is now running out. (The leases were renewed by legislation because it would have been administratively impossible to deal with them all individually.) A court case in late 1992 drew attention to the position.

This is essentially a private matter between the landowners and the occupiers. We do not know how many such cases there are or the details of the specific pieces of land except where the people affected have sought assistance.

In a few cases, it transpires that occupiers have been issued Crown Land Licences when they are in fact occupying private land. This has arisen largely because of the inaccuracy of the original land surveys conducted in the early 1900s. Such licences, which were issued in the past to regularize existing occupation of land, are null and void. Whenever such cases come to light, the Government will cancel the licences and refund all fees paid in respect of them.

As regards assistance to those affected, the Government would not normally intervene in private matters between landowners and occupiers,

especially where cases may eventually go before the courts. However, local District Lands Offices will assist occupiers or owners in clarifying the status of land, where this is sought and as far as is possible in the particular circumstances.

### **British National (Overseas) passports**

16. MR HENRY TANG asked: *Since 15% of those who are eligible have not applied for registration for British National (Overseas) passports by the cut-off date for Phase I, will the Government inform this Council:*

- (a) whether the number of eligible residents who have not applied is greater than expected; if so, what are the possible causes;*
- (b) whether the maximum number of potential appeal cases has been assessed against the capacity of the presently constituted BN(O) Late Registration Appeals Advisory Committee to handle such cases; if so, what is the result of the assessment; and*
- (c) whether measures will be taken to encourage eligible residents to apply for registration according to schedule?*

SECRETARY FOR SECURITY: Mr President,

- (a) It is not compulsory for BDTCs to apply for BN(O) passports; application is entirely voluntary. Therefore, we do not have a specific target for the number of applicants;
- (b) The Director of Immigration will consider sympathetically and with flexibility all late applications. We do not think that the number of appeals will be too large for the BN(O) Late Registration Appeals Advisory Committee to handle. Early indications are that the number of late applications is likely to be very small;
- (c) The BN(O) phased registration programme is publicized in various ways locally and overseas to ensure that those who wish to register as BN(O)s will do it in time. We will continue the publicity programme and monitor its effectiveness closely, enhancing its intensity if necessary.

### **The Medium Range Forecast for the upcoming Budget**

17. MR PETER WONG asked: *Will the Administration inform this Council how it will ensure that the Medium Range Forecast for the upcoming Budget will produce realistic forecasts of revenue and that the forecast will be presented*



*in such a manner as to give clear and sufficient information for monitoring purposes?*

SECRETARY FOR THE TREASURY: Mr President, the Medium Range Forecast (MRF) is a forecast of the Government's revenue and expenditure covering a period of five years: the current year, the forthcoming Estimates year and a further three years.

Like most forecasts, it is based on an analysis of what has happened in previous years, current and up-to-date data of the present position and a number of key assumptions as to future events, such as economic growth and inflation trends. In compiling the MRF for the upcoming Budget, therefore, we shall pay full attention to the trends of key indicators to date, the latest revenue and expenditure position and the realism of the assumptions on which the projections are based having regard to current and anticipated circumstances. Despite these efforts, the final out-turn however may still be different from the forecast because of changes in the underlying factors. For example, economic growth and property and stock market activities may be higher or lower than expected and affect the revenue out-turn to a significant degree. Every effort will be made to review and update the basis on which the MRF is made to ensure that the forecast of both revenue and expenditure is as realistic as possible.

The format of the forecast was the subject of a number of comments by Members in the 1993 Budget debate. Following up the undertaking given by the Financial Secretary at that time, we have consulted some Members on how best the format of the MRF could be revised to present a clearer and more informative picture of the Government's finances. Taking into account the helpful advice provided by those Members, we are now finalizing the new format of the MRF. The new format will be used in presenting the MRF in the upcoming Budget.

### **Drug trafficking activities in the Pillar Point Vietnamese Refugee Centre**

18. DR TANG SIU-TONG asked (in Chinese): *In view of the cracking down of drug trafficking activities in the Pillar Point Vietnamese Refugee Centre in Tuen Mun by the police in early November this year, will the Government inform this Council:*

- (a) *whether drug trafficking activities have been detected in any other refugee centres apart from the Pillar Point Vietnamese Centre in Tuen Mun; and*
- (b) *how departments concerned are going to prevent these refugee centres from turning into drug trafficking centres?*

SECRETARY FOR SECURITY: Mr President, apart from the Pillar Point Vietnamese Refugee Centre, the only other refugee centre in Hong Kong is the New Horizons Departure Centre, a short-term facility which temporarily houses refugees being resettled or transferred to the Philippines. There is no evidence of drug trafficking at this centre.

The vast majority of Vietnamese in Hong Kong are in detention centres awaiting status determination or repatriation to Vietnam. It is an offence under the detention centre rules to introduce, supply or possess unauthorized articles, which include drugs. Access to detention centres is restricted and visits to camps are closely monitored; all incoming articles and individuals are subject to checking. In addition, dormitory searches are carried out from time to time to ensure that no unauthorized articles are kept in the camps. Vietnamese migrants suspected to be involved in drug abuse or trafficking will be investigated and referred to the police if there is substantiated evidence. Suspects may also be transferred to other camps for management observation.

Drug trafficking in detention centres is minimal. In 1992, there were only four cases of drug seizure, resulting in four Vietnamese migrants being charged and convicted of simple possession of dangerous drugs. In 1993, there have been no seizures and no Vietnamese migrants charged with drug-related offences.

### **Transfer of duties of the Special Branch to the Independent Commission Against Corruption**

19. MR ERIC LI asked (in Chinese): *The Government is planning to transfer some of the duties of the Special Branch of the Police Force to the Independent Commission Against Corruption (ICAC). Given that ICAC is directly responsible to the Governor only and has a greater power of investigation and enforcement than the police by statute, will the Government inform this Council:*

- (a) whether the transfer implies that the future investigation unit will have a greater power of investigation and enforcement;*
- (b) of the specific scope of the transferred duties, and the manpower of ICAC involved in the work; and*
- (c) how it would ensure that the funds allocated to ICAC to combat corruption will not be used for political investigation through internal transfer in the absence of external monitoring?*

SECRETARY FOR SECURITY: Mr President,

- (a) The new unit will have the same responsibilities as the existing Special Branch unit; neither have investigative nor enforcement powers.
- (b) The duties of the new unit will consist of record checks and interviews to verify information provided by civil servants being checked. It is expected that the new unit will have the same number of staff as the existing Special Branch unit, a total of 10 staff, including clerical support.
- (c) The new unit will not carry out political investigations. The Commissioner of the Independent Commission Against Corruption will ensure that proper funding for the unit is sought by means of the normal process of annual government estimates. He will also ensure that normal budgetary controls on expenditure do not allow funds allocated to other functions of the Commission to be used for the new unit.

**Letters A and B**

20. MR CHIM PUI-CHUNG asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the area of land covered by all unexecuted Letters A and B at present;*
- (b) *whether there is any plan to redeem all the issued Letters A and B before 1997; and*
- (c) *whether the policy on Letters A and B has been regularly reviewed to avoid monopoly by major consortia and unfairness towards the general public?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) On 1 October 1993 the amount of land exchange entitlements yet to be redeemed was 181 552 sq ft of building land and 4 866 739 sq ft of agricultural land. 2.3 million sq ft of this amount were committed to be redeemed in the course of the 1992-93 Land Sales Programme but have yet to be formally surrendered. This is a considerable reduction from the total of 37 million sq ft which were outstanding in 1984.

- (b) Outstanding land exchange entitlements will continue to be redeemed through the Lands Sales Programme and the great majority known to be in the hands of developers should be redeemed by 1997. It is likely that an unknown quantity of land exchange entitlements will not be offered for redemption because the owners have died or emigrated or simply do not realize their value. It may not be possible to achieve total redemption therefore.
- (c) The policy on land exchange entitlements was last reviewed in 1991 and a further review is now underway.

## **Statement**

### **Retirement protection**

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, when I spoke about retirement protection during the motion debate in this Council on 3 February this year, I undertook to give careful consideration to all the views expressed, both within and outside this Council, before we came to a conclusion on the way forward. In his policy address this October, the Governor undertook to give a clear lead on the way forward before the end of this year. This afternoon, I shall honour both commitments.

During the past 10 months, the Government has analysed all the views which have been suggested by Members of this Council and the wider community. There were 176 written submissions made in response to the consultation paper *A Community-wide Retirement Protection System*. All of these have been taken into account in our work. We have been left in no doubt that this community feels deeply about the need to ensure that the retired and the elderly have a secure and adequate income. The only real question for the Administration during the last 10 months has been how to achieve this goal in a way that is most acceptable to the community, while avoiding the pitfalls which so many other developed communities have experienced.

The community's views on the way forward can be broadly categorized into four options:

- first, maintain the present voluntary approach to retirement protection;
- second, adopt the consultation paper's proposal for a decentralized, employment-related mandatory Retirement Protection Scheme (RPS), but with sufficient guarantees against losses;
- third, establish a centralized mandatory scheme, better known as a Central Provident Fund (CPF); and

- fourth, go for an old-age pension scheme (OPS) that would provide for old-age income for the bulk of the population.

Let me start with the current situation. We continue to believe firmly that no one, certainly not the Government, can be a better judge than individuals on the most appropriate form of savings compatible with their own career plans and retirement needs. Advocates of compulsory savings often ignore one important fact: it is not the way of Hong Kong people to be directed on how, when, where or how much to save and invest. The freedom to manage one's own financial and economic affairs is a fundamental part of Hong Kong's way of life. We must not violate this key principle.

We have concluded that, whatever we do by way of additional protection to those who may remain uncovered by voluntary schemes, the voluntary approach must continue to have an important part to play in providing for retirement income for those who choose to save for themselves. The Government shall therefore continue to promote voluntary schemes vigorously, with small establishments as our key target.

Market forces are already working well here. Hong Kong has one of the highest savings rates in the world. The number of voluntary retirement schemes has continued to grow. Already 850 000 employees, some 30% of the workforce, are protected by voluntary schemes. We are confident that the market for retirement schemes is now mature enough to cater for a wide variety of needs, including the special needs of small establishments. There is no reason why market forces should not continue to expand the coverage of voluntary schemes to protect an even bigger share of the workforce.

Let me now turn to the consultation paper and our proposal for an RPS. I think it is fair to say that this did not receive widespread support. There were, broadly speaking, three major criticisms:

- First, without a government guarantee, or some form of insurance or other protection, it would be unfair to force the public to entrust their savings to private investment agencies.
- Second, the proposed system would be very complicated, expensive and difficult to administer.
- Third, for a long time to come, the bulk of the population would not have any meaningful retirement protection. An RPS would not cover those outside the workforce, including those who have already retired. Furthermore, those currently in the latter half of their working life would not have sufficient time to accumulate meaningful benefits.

These were serious criticisms indeed, and they demonstrated the value of our comprehensive consultation exercises. Our own internal review, together

with the technical advice from our consultants, convinced us that these criticisms were valid, and that these problems were indeed more severe than was originally believed:

- First, given the foreseeable market conditions in Hong Kong, an RPS would have to be invested in stocks and shares to yield meaningful benefits. Such investments involve the risk of losses, for which there is no viable insurance cover other than a government guarantee. But it would not be fair to ask taxpayers to underwrite such losses.
- Second, an RPS would impose a heavy administrative burden on employers and employees, without the guarantee of commensurate benefits.
- Third, an RPS would require huge bureaucracies to authorize, vet, regulate, and to settle disputes arising from the large number of private schemes.

We have therefore concluded that an RPS is not an option that we should recommend.

Let me now turn to the CPF. Many critics of the consultation paper have proposed a CPF. This Council has endorsed such a proposal although for more than two decades the Government has consistently advised the community against adopting a CPF. Nevertheless, given the call by so many Members in this Council and so many groups in the community, we have re-examined the CPF option. At the end of this latest review, let me inform this Council in all sincerity that the Government remains convinced that a CPF is not the right way forward for Hong Kong. It simply would not meet the community's requirement. Let me explain why.

It is no coincidence that very few countries operate a CPF as a means of retirement protection. Where a CPF has been set up, the primary purpose has often been to provide a cheap and stable source of finance for social and infrastructural projects, especially at the early stage of economic development. Hong Kong has long since moved beyond that stage of economic development.

A CPF would provide a certain level of retirement benefits. However, it is neither an efficient nor an effective means of retirement protection. It has significant defects.

- First, investment returns are typically far from satisfactory. This is not surprising given that central fund managers inevitably and understandably choose to play safe. Poor investment returns tend to drive up contribution rates elsewhere.

- Second, a CPF needs decades to mature. Its final yield is highly sensitive to even very minor variations in average returns. If an RPS has difficulty in yielding a reasonable rate of return, a CPF must almost certainly do worse.
- Third, if a CPF loses money, taxpayers would be exposed to direct pressure to make up the losses.
- Fourth, as with an RPS, a CPF imposes daunting administrative burdens on the community but does not offer a satisfactory solution to the problem of financial provision for old age.
- Finally, and worst of all, contributors would not have adequate retirement protection for at least 30 to 40 years.

To put it simply, neither an RPS nor a CPF is capable of meeting the immediate, as well as the long-term needs of the retired, the elderly and the low-income earners in our community. In addition, both would impose heavy administrative burdens, produce uncertain returns and require underwriting by the taxpayer. But, worst of all, both would leave the bulk of the community uncovered for another 30 years or more.

The Administration has concluded that since neither an RPS nor a CPF is the right way forward, and since there is a growing community sentiment that we should do more to provide for the financial security of today's and tomorrow's elderly, we have examined the option of a compulsory old-age pension scheme, as proposed by many groups in their response to the public consultation exercise.

Such schemes are common elsewhere, especially in developed economies. The approach to an OPS for Hong Kong is usually put in the following terms: it would be payable to all eligible senior citizens. A commonly suggested level of benefits is 30% of the median wage, which amounts to about \$2,100 at present.

An OPS offers a better way forward than either an RPS or a CPF for the following reasons:

- First, it would protect the bulk of the population. Low-income earners, retirees, housewives, and those outside the workforce would also be covered.
- Second, it would provide immediate benefits once it is implemented, without having to wait 30 or 40 years.
- Third, it would guarantee a minimum financial provision which could be pegged to inflation or to the average wage; and

- Fourth, the rates of contribution for both employers and employees are likely to be lower than the contributions required for an RPS or CPF.

The cost of such a scheme would be about \$13 billion per annum in the first year of operation. Many groups have suggested that the OPS should be funded through contributions, and that these contributions should be compulsory, to be shared between employers and employees, with or without government contributions.

Despite the obvious advantages of an OPS, there are potential problems, and we must learn from experiences of others.

- First, we would have to set levels of contributions and benefits at realistic levels. They would have to take account of the fact that the ratio of our working population to the aged will decline in the foreseeable future.
- Second, a universal contribution for all employers and employees, with no right to opt out for those covered by voluntary schemes, may be a difficult principle for some to accept.

Mr President, it is the Government's intention to pursue a compulsory, contributory OPS as it is the only option that can tackle the problem of financial provision for old age within a reasonably short time. But we have to get it right. We have to proceed with great care and satisfy ourselves on several major issues:

- First, such a scheme would have to provide meaningful benefits financed fully by the contributions. To answer this question, we shall employ expert consultants to advise on financing and administration.
- Second, there would have to be general public acceptance for a compulsory OPS. We shall rely heavily on the advice of Members of this Council in this regard, as well as that of the wider community.
- Third, this is an issue which goes well beyond 1997. Obviously, we shall have to consult the Chinese Government before reaching a decision.

Mr President, the Government is convinced, after extensive study, that continuation with our voluntary approach to retirement protection, together with the affirmation that we intend to pursue the option of a contributory OPS, subject to the above issues being satisfied, is the right way forward. We have reached this conclusion only after prolonged deliberation. The decisions that we take on this issue will affect the well-being not only of today's workforce but



that of employees well into next century. To ensure that we put in place the system which truly meets the needs of this community, we shall continue to keep both this Council and the public at large closely involved in the development of our proposals.

PRESIDENT: Yes, Miss LAU. I would remind Members of Standing Order 22. No debate may arise on a statement but I may in my discretion allow short questions to be put to the public officer making the statement for the purpose of elucidating it.

MISS EMILY LAU (in Cantonese): *Mr President, at the OMELCO In-house meeting on 1 November 1991, Mr Allen LEE informed us on behalf of the Executive Council Members that they had decided to introduce a compulsory retirement protection scheme (there was also a public announcement afterwards). He said he was quoting from the records of that meeting. He added that the Education and Manpower Branch was looking into this and an enabling bill would be introduced to the Legislative Council, pending the completion of the study. Is the Administration admitting now that the Executive Council had made a wrong decision in November 1991 and had misled the Legislative Council and the public?*

PRESIDENT: That does not fall within this very limited right of questions at my discretion. Any other Members? Mr TANG. Please remember it is to be short questions for the purpose of elucidating the statement.

MR HENRY TANG: *Mr President, the Secretary has mentioned that there will be very extensive public consultation. May I ask him to elucidate whether a document will be presented and, if so, when that document will be presented for consultation?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, we aim to publish the key findings of our feasibility study and meanwhile we will listen attentively to public views on this subject. We will work as speedily as possible to make up our mind on the way forward on this matter.

MR FREDERICK FUNG (in Cantonese): *Mr President, referring to the statement of the Secretary, may I have the definition of an elderly person? Similar pension schemes proposed by many other organizations define a person reaching the age of 60 as an elderly person. Does an elderly person referred to by the Secretary mean a person who has reached the age of 60? Moreover, he says 30% of the median wage amounts to \$2,100. But according to the information provided by the Census and Statistics Department, the median wage*

*of Hong Kong people at present is \$7,500. Does that follow that 30% of it will exceed \$2,100?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, as to the question of the retirement age, that will also be the subject of our review. May I remind Members that the earlier the retirement, the smaller the size of the contributions and the heavier the burden on the community. As regards the median wage, what I intend to say in my answer just now is that \$7,000 is a rough figure. Should there be any adjustment to the latest figure, we will also take that into account.

DR YEUNG SUM (in Cantonese): *Mr President, the retirement protection scheme that we have all along been discussing is one which is basically in the form of savings. Does the Administration now decide to replace that by a different type of scheme that is tax-linked? Can the Administration clarify whether it has completely changed its position as to the type of contribution which is so different from the one we have been seeking to introduce?*

PRESIDENT: This really strays beyond elucidation within the meaning of Standing Orders.

MR TIK CHI-YUEN (in Cantonese): *The Secretary has said that the rates of contribution for an old-age pension scheme are low. May I know what is meant by "low rates of contributions" and will that include the Government's contribution?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I have just said that the rates of contribution for an old-age pension scheme are likely to be lower than contributions required for other compulsory schemes. As regards how much lower, it can only be ascertained after a detailed study.

At this point Mr Henry TANG and Mr TIK Chi-yuen indicated their wish to ask follow-ups.

PRESIDENT: No, I am afraid we will have to move on.

MR ERIC LI (in Cantonese): *Mr President, the Administration has mentioned that the number of retirement protection schemes has continued to grow and the market now is mature and that the nature of some is somewhat similar to that of*

*an old age allowance. But before the release of the consultation paper, the Secretary had indicated that there was no intention to change the existing system. Nonetheless, there seems to be considerable overlap between the new system and the existing retirement protection schemes. Can he elaborate on this point which he has not dealt with in his statement?*

PRESIDENT: Mr McGREGOR.

MR JIMMY McGREGOR: *Mr President, is it in order for me to thank once again the Secretary for at last getting the Government on the right track? (Laughter)*

PRESIDENT: I am sure that is noted.

MR FRED LI (in Cantonese): *Mr President, the Administration's reply has mentioned something like 30% of the median wage, if I have not got it wrong. What is the rationale for setting it at 30%?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the rates that are proposed by a lot of organizations vary and by international standards, the range is between 30% and 40%. Of course, we also have to take into account the fact that the higher the median wage, the heavier the burden on the community as a whole. So some organizations have realistically set the level at 30% as a basis for calculation and this forms the basis of our consideration.

MR MARVIN CHEUNG: *Mr President, when referring to the compulsory contributory old-age pension scheme, did the Secretary imply that the contributions will come not from the recipients of the benefits but from other parties?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the principle is that all the working population of Hong Kong, both the employers and employees, will be compelled to contribute part of their earnings into a fund from which the pension for all beneficiaries will be paid out.

MR VINCENT CHENG: *Mr President, will private companies be allowed to keep their old pension schemes in future and, if so, will employees of these companies be allowed to opt out of their pension schemes?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the answer to the first part of the question is : Yes, we will certainly hope that the voluntary private schemes will continue. The answer to the second part of the question is no; this scheme will operate under an entirely different principle and all members of the working population will have to contribute because they will in the end benefit from it.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, the Administration says that this new approach is the right way forward. But if members of the public or this Council do not support it, will there be any other alternative schemes or will we revert to the former position, that is, nothing of the sort will be introduced as before?*

PRESIDENT: Mrs Selina CHOW.

MRS SELINA CHOW: *Mr President, will the Secretary please elucidate whether he just delivered a policy statement or whether it is a proposal to consult?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, it is a policy statement.

MR PETER WONG: *Mr President, could the Secretary please confirm that taken year to year, deductions from the earnings of the working population should equal the pensions paid to the people who have retired?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, as I said earlier on, it certainly is vital that the benefits to be paid out must be fully financed from the contributions received on a year to year basis.

MR STEVEN POON: *Mr President, would the Secretary tell us whether the scheme will be a means tested scheme?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the concept of strict means testing does not go well with the concept of an old age pension. But there are countries which provide different levels of benefits to beneficiaries depending on the state of their wealth. And we shall certainly take this factor into consideration in our feasibility study.

**Motions****CRIMINAL PROCEDURE ORDINANCE**

THE ATTORNEY GENERAL moved the following motion:

"That the Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 1993, made by the Chief Justice on 16 November 1993, be approved."

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

The rates of allowances payable to ordinary, professional and expert witnesses in criminal proceedings are prescribed in the Criminal Procedure (Witnesses' Allowances) Rules, made by the Chief Justice under the Criminal Procedure Ordinance. The Rules provide that the maximum allowance payable to an ordinary witness is \$90 for each day, or \$45 for part of a day. A higher rate, that is a maximum of \$200 for each day, or \$100 for part of a day, is prescribed for a professional or an expert witness. The existing rates were last reviewed in 1983 and are now outdated.

During the Finance Committee meeting on 15 October last, Members approved the proposal that the maximum allowance payable to an ordinary witness be increased to \$240 for each day, or \$120 for part of a day, and that the maximum allowance payable to a professional or to an expert witness be increased to \$1,400 for each day, or \$700 for part of a day. The increases are designed to ensure that payments are made at a realistic level.

The Criminal Procedure (Witnesses' Allowances) (Amendment) Rules 1993 will, upon their commencement, bring into effect the new rates. In accordance with section 9B of the Criminal Procedure Ordinance, they require the approval of this Council by resolution.

At the same Finance Committee meeting, Members also approved the proposal that the allowances payable to ordinary, professional and expert witnesses attending a coroner's inquiry be increased to similar levels. These allowances are set out in the Coroners (Witnesses' Allowances) Rules, made under the Coroners Ordinance. The new rates are reflected in the Coroners (Witnesses' Allowances) (Amendment) Rules 1993 which will be the subject of a separate resolution.

Mr President, I beg to move.

*Question on the motion proposed, put and agreed to.*

**CORONERS ORDINANCE**

THE ATTORNEY GENERAL moved the following motion:

"That the Coroners (Witnesses' Allowances) (Amendment) Rules 1993 made by the Chief Justice on 17 November 1993, be approved."

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

As I explained just a moment ago, the Coroners (Witnesses' Allowances) (Amendment) Rules 1993 made by the Chief Justice will, upon commencement, bring into effect the new rates of allowances approved by the Finance Committee on 15 October 1993. Pursuant to section 22A of the Coroners Ordinance, they require the approval of this Council by resolution.

Mr President, I beg to move.

*Question on the motion proposed, put and agreed to.*

**FIXED PENALTY (CRIMINAL PROCEEDINGS) ORDINANCE**

THE SECRETARY FOR TRANSPORT moved the following motion:

"That, with effect from 1 April 1994, the Schedule to the Fixed Penalty (Criminal Proceedings) Ordinance be amended in item 24 by repealing "54" and "\$450" and substituting "54(1)" and "\$1,000" respectively."

He said: Mr President, I move the motion standing in my name in the Order Paper which seeks to increase the fixed penalty fine for overloading goods vehicles.

Overloaded goods vehicles pose a real safety hazard. They also cause serious damage to road surfaces. The existing fixed penalty of \$450 for driving or using an overloaded goods vehicle was set in July 1989. This no longer has a deterrent effect since it is much cheaper to pay this fine, and also save time, than meet the extra costs arising from additional trips and freight charges that would have otherwise become necessary. Indeed, some drivers and haulage operators now regard the fixed penalty as a mere and minor operational expense.

We propose therefore to increase the fixed penalty for overloading offences to \$1,000. Some may argue that this is still too low a fine but, in perspective, it is part of a two-pronged approach in tackling this problem. Later during the sitting, the Council will resume the Second Reading debate on the

Road Traffic (Amendment) (No. 4) Bill 1992 which includes a provision to make owners of goods vehicles strictly liable for the overloading of their vehicles.

Mr President, I beg to move.

*Question on the motion proposed, put and agreed to.*

## **INLAND REVENUE ORDINANCE**

THE SECRETARY FOR THE TREASURY moved the following motion:

"That Part II of Schedule 6 to the Inland Revenue Ordinance be amended by adding -

- "5. The European Bank for Reconstruction and Development.
6. The Inter-American Development Bank.
7. The Nordic Investment Bank."."

He said: Mr President, I move the first resolution standing in my name in the Order Paper.

To enhance Hong Kong's status as an international financial centre, Members have exempted Hong Kong dollar denominated debt instruments issued by certain credit-worthy multilateral agencies from profits tax and stamp duty. These agencies are specified in Schedule 6 to the Inland Revenue Ordinance. In April last year, exemptions were granted to four agencies, namely, the Asian Development Bank, the International Bank for Reconstruction and Development, the International Finance Corporation and the European Investment Bank. The Ordinance also provides that additions to the list may be made by resolution by this Council.

I now move that three more multilateral agencies be added to the list. They are the European Bank for Reconstruction and Development, the Inter-American Development Bank and the Nordic Investment Bank. Like the four institutions already exempted, the three agencies are multilateral bodies with top credit ratings. They have indicated interest in issuing Hong Kong dollar denominated debt instruments in our market. This would contribute to the expansion of the Hong Kong dollar and capital markets and further promote Hong Kong's development as an international financial centre.

Mr President, I beg to move.

*Question on the motion proposed, put and agreed to.*

**STAMP DUTY ORDINANCE**

THE SECRETARY FOR THE TREASURY moved the following motion:

"That section 29I(1) of the Stamp Duty Ordinance be amended by repealing "31 December 1993" and substituting "31 December 1995"."

He said: Mr President, I move the second resolution standing in my name in the Order Paper.

May I just spend a few moments setting out the background? In January last year, Members approved amendments to the Stamp Duty Ordinance (Cap 117). Among other things, these amendments require stamp duty to be paid on all agreements for sale of residential property. By contrast, stamp duty was previously only payable on the assignment of the property.

These amendments have significantly increased cost of speculation in residential property through the use of long chains of sale and purchase agreements before actual assignment. This is a disincentive to those who speculate in property in the period between the conclusion of a sale agreement and assignment, thus pushing up prices for genuine home-buyers.

In passing these amendments, this Council gave them a limited life. They will expire at midnight on 31 December this year unless this Council extends them by resolution. This procedure was introduced at the suggestion of the ad hoc group of this Council that studied the amendment Bill two years ago. The intention was to allow both the Administration and Members the opportunity to examine all relevant factors before deciding whether the measure should be extended.

The amendment Ordinance enacted in January last year was one of a series of measures to curb speculation in residential property. Genuine home-buyers are not affected by it except insofar as they now have to pay stamp duty slightly earlier. Apart from the additional stamp duty a speculator has to pay for each sale before assignment, there is a further financial disincentive of potential profits tax liability. The information on sale agreements provided to the Commissioner of Inland Revenue under the amendment Ordinance enables him to identify speculative property transactions which are liable to profits tax. This system ensures that speculators in property pay their fair share of profits tax, thereby cutting their profit margin. Between January 1992 and October 1993, the Department has issued profits tax assessments in order of \$100 million in respect of potentially speculative property sales.

*The residential property market today*

Taking the period since the enactment of the amendment Ordinance in January last year as a whole, the property market has remained buoyant. The extent of speculation in residential property has to a certain extent been



contained. This is a combination of a tighter mortgage lending policy of the banks as well as the increased cost of speculation as a result of the stamp duty provisions. It would not be sufficient to rely on the banks' initiatives alone. It is not possible to ascertain with precision what the exact contribution of the stamp duty requirement has been towards containing property speculation. But a decision not to extend such requirement would send completely the wrong signal to the market. There would be a considerable risk that speculation would become rife again to the detriment of genuine home-buyers.

The motion before Members now seeks the extension of this measure, which the general public has welcomed, by a further period of two years beyond 31 December 1993. There has been continuous concern about genuine home-buyers not being able to afford the rising costs of property. This motion will reaffirm this Council's resolve in adopting the necessary measures to reduce speculation in residential property.

Mr President, I beg to move.

*Question on the motion proposed.*

MR RONALD ARCULLI: Mr President, when the amendment was proposed to the Stamp Duty Ordinance in January 1992 to provide for stamp duty on agreements for sale and purchase, I spoke out against it. The primary, if not the sole, purpose was to curb unhealthy property speculation in residential flats. I said at the time that artificial measures will not have the effect then suggested by the Administration. Indeed, I said that it would increase the cost of buying a flat by a genuine end-user.

I have listened with interest to the Secretary for the Treasury and all I hear is that a tight mortgage lending policy together with this measure has contained to a certain extent property speculation. All I can say is that the Secretary for the Treasury has not referred to the increase in property prices between January 1992 and today, nor has he come clean with the stamp duty windfall the Government has received as a result of this measure, nor, more importantly, that genuine home-purchasers including civil servants are unable to pay the downpayment of 30% required today.

Mr President, voting for the motion will not reaffirm this Council's resolve in dealing with the measures to reduce speculation as suggested by the Secretary. As this measure has not and will not have the effect of bringing prices down but indeed the effect of increasing revenue to the Government, in these circumstances I cannot support the motion.

PRESIDENT: Secretary, do you wish to reply?

SECRETARY FOR THE TREASURY: Mr President, I am grateful for the views of the Honourable Ronald ARCULLI. Indeed, many of the observations made by him have been taken into account in proposing the extension of the special measure under the Stamp Duty Ordinance. I would only like to stress that this measure is introduced primarily to tackle excessive speculation in certain sector of the property market and the overall benefits of this measure far outweigh its disbenefits. I thus move that section 29 be amended as proposed in the resolution.

*Question on the motion put.*

*Voice vote taken.*

PRESIDENT: Council will have to proceed to a division.

PRESIDENT: The question before Council is : That section 29I(1) of the Stamp Duty Ordinance be amended by repealing "31 December 1993" and substituting "31 December 1995". Would Members now please proceed to vote?

PRESIDENT: Are there any queries? If not, the results will be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Dr LAM Kui-chun, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr Steven POON, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr Alfred TSO voted for the motion.

Dr David LI and Mr Ronald ARCULLI voted against the motion.

Mr Martin BARROW and Dr Philip WONG abstained.

THE PRESIDENT announced that there were 44 votes in favour of the motion and two votes against it. He therefore declared that the motion was carried.

**First Reading of Bills****ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL 1993****EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1993****SECURITIES (AMENDMENT) BILL 1993****COMMODITIES TRADING (AMENDMENT) BILL 1993**

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

**Second Reading of Bills****ELECTORAL PROVISIONS (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL 1993**

THE SECRETARY FOR CONSTITUTIONAL AFFAIRS moved the Second Reading of: "A Bill to amend the Electoral Provisions Ordinance, the Urban Council Ordinance, the Regional Council Ordinance and the District Boards Ordinance."

He said: Mr President, I move that the Electoral Provisions (Miscellaneous Amendments) (No. 2) Bill 1993 be read the Second time.

On 2 December, the Governor explained to this Council that time for making orderly arrangements for the next round of elections in 1994-95 is running out. We now need to initiate the legislative process to put in place the more straightforward and urgent electoral arrangements for the three tiers of representative bodies. The purpose of this Bill is to achieve just that.

First, the Bill provides for the use of the "single seat, single vote" method of voting for all three tiers of geographical constituency elections. It is important that any voting system applying to the entire electorate must be fair, must have the confidence of the community, and must be easy to operate. The "single seat, single vote" method meets these requirements. It is already used in all the municipal council and over two-thirds of the district board elections. There is wide support, both in this Council and in the community, to extend the use of this voting method to the remaining one-third of district board elections in 1994, and to the geographical constituency elections for the Legislative Council in 1995.

Secondly, the Bill provides for the lowering of the voting age for all elections from 21 to 18 years starting from the 1994 district board elections. Again there is broad community support for lowering the voting age to 18,

which is the voting age in many countries including Britain and China. Lowering the voting age to 18 years will broaden the potential electorate from 3.7 million to 3.9 million. Every effort would be made by the Government to encourage potential voters to register themselves on the General Electoral Roll.

Thirdly, the Bill provides for the abolition of appointed seats in both the district boards and municipal councils as from the next round of elections. This will be a logical step in the gradual evolution of the municipal councils and the district boards over many years. The appointed seats in these bodies have stayed at about one-third of their membership since the latter half of the 1980s. As the Legislative Council will become fully elected in 1995, it will be the appropriate time for the municipal councils and district boards to become fully elected bodies as well. With a fully elected membership, they will be able to reflect better the views of the community which they serve.

Fourthly, consequential to the abolition of the appointed seats and to further enhance the representativeness of the Urban Council and the Regional Council, the Bill provides for the number of directly elected seats in these bodies to be increased from 1995. We propose that the constituencies for the 1995 municipal council elections should be drawn on a ratio of 100 000 people per seat. On this basis, the Urban Council would have 32 directly elected seats; together with the nine district board representatives, it would have a total membership of 41. As for the Regional Council, it would on the same basis have 27 directly elected seats; together with the nine district board representatives and the three *ex officio* members, who are the Chairman and Vice-chairmen of the Heung Yee Kuk, the Regional Council would have a total of 39 members.

Fifthly, our law at present prohibits a person who is a member of any parliament, assembly or council, whether central or local, of any place outside Hong Kong (including China) from nomination as a candidate for, and from holding office in the Legislative Council, the municipal councils and the district boards. The Select Committee on Legislative Council Elections recommended in its report in July 1992 that the Administration should consider lifting this restriction in respect of deputies of China's People's Congresses. In the course of the Sino-British talks on the 1994-95 electoral arrangements, the Chinese side have also proposed that this restriction should be removed. Taking into account the special circumstances of Hong Kong's transition to the status of a Special Administrative Region of the People's Republic of China in 1997, we consider that it would not be unreasonable to lift this restriction. The Bill, therefore, provides that Hong Kong residents who are members of China's People's Congresses at various levels, provided that they meet all other qualifications, may be elected to and serve on the Legislative Council, the municipal councils and the district boards.

Mr President, the proposals in this Bill are part of our efforts to establish an open and fair electoral system which we believe to be acceptable to the people of Hong Kong. In order that these urgent election arrangements may be

put in place on time for the 1994 elections to the district boards, and the 1995 elections to the municipal councils and the Legislative Council, I hope Honourable Members will give their early support to this Bill.

Thank you, Mr President.

*Bill referred to the House Committee pursuant to Standing Order 42(3A).*

## **EMPLOYMENT (AMENDMENT) (NO. 2) BILL 1993**

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

He said: Mr President, I move the Second Reading of the Employment (Amendment) (No. 2) Bill 1993.

This Bill seeks to improve the amount of severance payment and long service payment for long serving workers, and to rectify some ambiguities in the provisions of maternity leave and sickness allowance under the Employment Ordinance.

At present, an employee's entitlement to severance payment and long service payment is calculated at the rate of two-thirds of a month's wages for each year of service, but subject to a maximum limit of 12 months' wages or \$180,000, whichever is the less. This arrangement has the effect of limiting the reckonable service of an employee to 18 years.

To alleviate the grievances of long serving workers, we propose to remove the ceiling of 12 months' aggregate wages, but the maximum payment of \$180,000 will remain unchanged. The maximum payment of \$180,000 would be reviewed periodically, taking into account inflation and general wage movement. To cushion the financial impact on employers, we also propose to recognize only half of an employee's service over and above 18 years when calculating severance payment and long service payment. This proposal would increase the total wage bill in all sectors by 0.011% in 1994.

At present, a female employee who has been employed by the same employer under a continuous contract for a period of not less than 26 weeks shall be entitled to maternity leave. However, the law is silent on how to count the 26 weeks when the pregnant employee is about to take maternity leave. We propose to remove this ambiguity by specifying in the law that the 26-week period should be counted backward from the expected date of commencement of maternity leave. To improve protection to pregnant employees, we also propose to make late payment of maternity leave pay as an offence liable to a maximum fine of \$10,000.

Under the existing Employment Ordinance, an employer is not liable to pay sickness allowance to an employee unless the day of sickness is specified in an appropriate medical certificate issued by a medical practitioner. However, a medical certificate issued by a registered dentist is not regarded as an appropriate medical certificate. An employee having encountered a dental injury or received a dental surgical operation requiring a few days' sick leave is at present unable to receive sickness allowance. To improve the situation, we propose to include the medical certificate issued by a registered dentist as a valid document for the purpose of claiming sickness allowance.

Thank you.

*Bill referred to the House Committee pursuant to Standing Order 42(3A).*

### **SECURITIES (AMENDMENT) BILL 1993**

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

He said: Mr President, I move the Second Reading of the Securities (Amendment) Bill 1993.

The Bill introduces a simple and straightforward amendment to put it beyond doubt that the Securities and Futures Commission can take disciplinary action against a person registered under the Securities Ordinance who had committed a breach of rules made by the Commission.

As part of our effort to combat drug money laundering, the Commission will promulgate rules regarding procedures to be followed by intermediaries in the securities market in countering and reporting suspected money laundering transactions. It is noted that under the existing framework, it is unclear whether a breach of such rules constitutes "misconduct" for which actions can be taken under the Ordinance. It is necessary to remove any potential ambiguities in this regard if we are to effectively enforce those rules to be made. The amendment proposed therefore expressly stipulates that "misconduct" includes any failure to comply with rules made by the Commission.

*Bill referred to the House Committee pursuant to Standing Order 42(3A)*

### **COMMODITIES TRADING (AMENDMENT) BILL 1993**

THE SECRETARY FOR FINANCIAL SERVICES moved the Second Reading of: "A Bill to amend the Commodities Trading Ordinance."

He said: Mr President, I move the Second Reading of the Commodities Trading (Amendment) Bill 1993.

The Bill serves a similar purpose as the Securities (Amendment) Bill 1993 which has just been introduced. It seeks to ensure that the Securities and Futures Commission can take disciplinary action against a person registered under the Commodities Trading Ordinance who had committed a breach of rules made by the Commission. This is necessary so that rules to be promulgated regarding procedures to be followed in countering and reporting suspected drug money laundering transactions can be effectively enforced. Again, the amendment is simply to remove a point of doubt in the existing framework.

The Bill also rectifies a disparity between the Securities Ordinance and the Commodities Trading Ordinance. While the former contains an explicit provision for the Securities and Futures Commission to promulgate rules in respect of the conduct of business of intermediaries, this is absent in the latter. Rules in relation to combatting drug money laundering will be made pursuant to this power.

*Bill referred to the House Committee pursuant to Standing Order 42(3A).*

## **INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1992**

### **Resumption of debate on Second Reading which was moved on 16 December 1992**

*Question on Second Reading proposed.*

MR ANDREW WONG: Mr President, this Bill mainly proposes various technical amendments to the Ordinance, such as the repeal of unnecessary definitions and the modernization of some old definitions and interpretation provisions. However, it has also provided Members with an appropriate opportunity to propose improvements to the drafting of section 34 which deals with this Council's procedures for the scrutiny of subsidiary legislation. These will be dealt with in more detail by the Attorney General at Committee stage. But it is relevant to point out that the initiative for the proposed amendments to section 34 has come from Members having been endorsed by the House Committee on the recommendation of the Legal Unit of the Office of Members of the Legislative Council.

When the Bill was introduced early last Session, the Legal Unit, having confirmed with the Administration that it did not have a high timing priority for enactment, reviewed the practical operations of scrutiny of subsidiary legislation, particularly during the weeks towards the end of Annual Sessions. The main practical problem is that towards the end of a Session section 34 as currently worded can operate to deprive the legislature of the full 28-day period for amendments to subsidiary legislation, not to mention disabling it also from moving a further 21-day extension. The Administration has accepted that this is

an unintended effect of the existing drafting and has co-operated with our Legal Unit in formulating the necessary amendments.

With these remarks, Mr President, I support the Bill.

PRESIDENT: Attorney General, do you wish to reply?

ATTORNEY GENERAL: Mr President, I am grateful to Mr Andrew WONG and indeed the Legal Unit for their scrutiny of this technical and somewhat complex Bill. The amendments that I shall be moving later on at Committee stage to section 34, among others, reflect the wish that this Council's very proper power to scrutinize subordinate legislation should be full and untrammelled and that any uncertainties, even in rare cases, should be removed. And I am entirely in agreement with the amendments proposed by my honourable colleague and by the Legal Unit.

*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).*

## **ROAD TRAFFIC (AMENDMENT) (NO. 4) BILL 1992**

### **Resumption of debate on Second Reading which was moved on 13 January 1993**

*Question on Second Reading proposed.*

MR LEE WING-TAT (in Cantonese): Mr President, the Road Traffic (Amendment) (No. 4) Bill 1992 seeks to amend the Road Traffic Ordinance in four areas. One of the two major amendments concerns the owners of goods vehicles and special purpose vehicles, who will be held strictly liable for the overloading of their vehicles. The other provides for the display of identity plates of drivers in public service vehicles.

The Bill was tabled at the Legislative Council on 13 January 1993. It was then examined by a Bills Committee formed by Members. During its scrutiny of the Bill, the Committee received written representations from eight associations of drivers and vehicle owners. The Committee also met representatives of the Hong Kong Dumper Truck Drivers' Association as well as a joint delegation of representatives from five associations of taxi drivers and taxi owners. Their comments on the Bill were listened to.



*Overloading of goods vehicles*

First of all, I would discuss the government proposal for clamping down on overloading of goods vehicles — a problem which has become very serious. Overloading reduces the efficiency of braking systems on vehicles, thus posing a threat to road safety. Overloaded goods vehicles will also cause heavy damage to road surfaces.

Overloading of goods vehicles has been a widespread problem in recent years. According to government statistics, the police prosecuted an average of 27 000 to 33 000 overloading offences in each of the past three years. In 1992, overloaded goods vehicles were responsible for 38 traffic accidents and the cost for repairing road damage caused by overloaded goods vehicles was estimated at \$41 million. The Government has proposed a two-pronged solution for this problem. Firstly, this Council has just passed a resolution to raise the amount of the fixed fine for overloading of goods vehicles from \$450 to a more prohibitive \$1,000. Secondly, clause 3 of the Bill as proposed empowers the Governor in Council to make regulations to provide for the strict liability of owners of goods vehicles and special purpose vehicles regarding the overloading of their vehicles. Where a vehicle is found overloaded, its owner shall be guilty of the offence punishable with a fine, unless he proves that he has not consented to the overloading and has taken reasonable steps to prevent it.

The concerned groups' representations received by the Bills Committee generally did not see much of a problem in the Government's intention to clamp down on overloading of goods vehicles. However, they found the Bill unfair to owners of rental goods vehicles, who, in most cases, had no control over the drivers and could not tell if they intended to commit certain offences. Besides, it would be very unfair to prosecute the driver and the owner but not the consignor. Since the consignor knows the weight of the goods consigned, he therefore should also be held partly responsible. The Hong Kong Dumper Truck Drivers' Association pointed out that contractors in the construction industry, that is, consignors of dumper trucks, sometimes forced drivers to overload their vehicles and even agreed to pay half or the full amount of any eventual fine. The association added that, if a driver refused to overload his vehicle, his service for that particular construction site might be terminated.

The Committee, after detailed discussions, arrived at the following conclusions:

- (1) In view of the severity of the problem of overloading of goods vehicles, all parties should make a commitment to resolving it. The Committee accepted the Government's arguments and thinks that it is not unreasonable that the owner should be strictly liable for overloading of his vehicle, considering that he presumably has some control over the operation of this vehicle. The Bill, besides, will allow the owner to rely on the defence that he "has taken due care to prevent overloading" and to apply the "balance of probabilities"

rule of onus of proof to prove that he is morally not at fault. Still, the Committee thinks that the Government must launch an extensive publicity and education programme to help vehicle owners to learn and recognize their responsibility in respect of overloading and the various ways to prevent it.

- (2) As regards the strict liability of consignors regarding overloading, the Committee asked the Government to make an in-depth study of this suggestion. After studying it and consulting legal advice, the Government thinks that holding consignors strictly liable will violate their right of presumed innocence as defendants, that is, their right under section 11(1) of the Hong Kong Bill of Rights Ordinance. The Government argues that consignors are different from goods vehicle owners in that they have no control over the operations of the vehicles and are not in a position to decide if overloaded vehicles should be allowed onto the roads. Therefore, it is not reasonable to require them to prove they have taken due care to prevent overloading before they could be cleared of any liability. Aside from this legal technicality, the Government also thinks that the Committee's suggestion will be hard to enforce in practice. For example, in a case where there are more than one consignor, it will not be appropriate to prosecute all of them. Secondly, since the Transport Department does not keep a record of consignors, any prosecutive action against consignors will rely on information provided by drivers. But past experience shows that drivers may not be willing to co-operate. If they are co-operative, the Government can then invoke existing law to charge consignors with "aiding and abetting" another person in the commission of the offence of overloading. In view of the above, the Government thinks that the Committee's suggestion should not be adopted. The Committee accepts the Government's explanation.
- (3) Officials of the Transport Branch told the Bills Committee that in order to help all parties concerned to resolve the problem of overloading, the following administrative measures, apart from legislative ones, are being implemented or will be adopted by the Government:
  - (i) To improve communication and promote publicity and education programmes through regular meetings with consignors, cement factories and drivers' associations;
  - (ii) To provide two telephone hotlines so as to facilitate and encourage drivers to report overloading cases;
  - (iii) To focus police action against a few trades within the transportation industry which are regular offenders;

- (iv) To encourage contractors to install weighing facilities at construction sites in order to help resolve the problem of overloading of dumper trucks. In this connection, the Committee suggested that the Government should consider requiring contractors of government projects or government-subsidized projects to take up a greater share of responsibility;
- (v) The Government and the Container Trucks Association are testing an on-vehicle weighing equipment. If the results are satisfactory, the Government will encourage owners to install such equipment on their vehicles;
- (vi) Wherever possible and appropriate, arrangements will be made for goods vehicle drivers to use the weighing facilities at cargo handling areas managed by the Marine Department; and
- (vii) To step up publicity through the media, and to hold discussions with frequent offenders known to the Government.

Mr President, the Committee accepts the Government's responses and action plans. But to monitor the effectiveness of the legislative and administrative actions against overloading, the Committee requests that, after the Bill is passed into law, the Government should review the situation and brief this Council's Transport Panel on its findings from time to time.

*Compulsory display of identity plates of taxi drivers*

Another important provision of the Bill is to empower the Governor in Council to provide for the display of drivers' identity plates on public service vehicles (clause 2). The Government has already taken the first step in accordance with the Transport Advisory Committee's recommendations, by making regulations for compliance by taxi drivers. The purpose is to facilitate a passenger to complain against misconduct by a taxi driver, while at the same time encourage taxi drivers to observe a greater degree of self-discipline. Under the Government's original proposal, taxi drivers will be required, upon the passage of the subsidiary legislation, to prepare these identity plates to particular specifications.

The Committee forwarded to the Transport Branch representations made by the joint delegation of representatives of five associations of taxi drivers and taxi owners. In these representations, the associations said that they would not oppose the requirement. However, they opined that the Government should centralize the issuance of drivers' identity plates, because if taxi drivers were to prepare the plates themselves, the specifications might not be correct and there would be the risk of forgery.

In response to these representations, the Government explained that taxi drivers' identity plates are not to be used as government licences or identity cards. Their purpose is to provide a passenger with more information, namely, information on the driver, in addition to information available at the time, for example, the vehicle licence number. The passenger would need this additional information if he wished to complain against the driver. Given the nature and use of the plates, as well as the extra resources necessary to issue the drivers' identity plates to some 200 000 registered taxi drivers in Hong Kong, the Government thinks that the delegation's suggestion is unnecessary. As to the possibility of forgery, the Government said that intentional offences of this kind could not be prevented even if the plates were issued by the Government. However, to assist taxi operators in complying with the proper specifications, the Government agreed to producing 200 000 blank identity plates for free distribution to taxi drivers through various taxi drivers' associations and at the offices of the Transport Department. The plates will be usable as soon as taxi drivers fill in their personal particulars. The Government would review the situation in six months. The Committee is satisfied with the Government's explanation and arrangements, and is convinced that they may dispel taxi drivers' worries.

Two minor amendments to clauses 4 to 7 of the Bill are also supported by the Committee.

With these remarks, Mr President, I commend the Road Traffic (Amendment) (No. 4) Bill 1992 to Members.

MRS MIRIAM LAU (in Cantonese): Mr President, over \$400 million are spent on road maintenance every year. This is an enormous amount. Of course, roads need maintenance because of normal damage. But the fast rate and great extent at which roads in Hong Kong are damaged can be attributed to the frequent overloading of trucks which causes serious damage to the roads. The fixed penalty of a \$450 fine payable by the driver has proved to be ineffective for dealing with this kind of offence. In fact, many goods vehicles owners regard this fixed penalty as a part of their operating costs. Some goods vehicles owners and consignors even deliberately request drivers to overload, and undertake to pay the fine in case the drivers are "booked". For this reason, the penalty for overloading has failed to achieve any deterrent effect in the past.

In Hong Kong, roads are few but cars are many. We should therefore avoid as far as possible any unnecessary damage to the roads in order to reduce the need for maintenance. In this light, overloading is absolutely intolerable. In fact, overloading also constitutes a threat to road safety. The Transport Panel of this Council is very concerned about this problem and has had many discussions on it. The panel has agreed that the Administration should increase the relevant penalty. On the problem of overloading, I agree that goods vehicles drivers and owners should both be held liable. Furthermore, consignors should in fact also be liable to a certain extent, because very often

they are the culprits behind the scenes. However, as pointed out by Mr LEE Wing-tat just now, to punish consignors by imposing strict liability on them may give rise to cases of injustice and may even infringe upon human rights. There is also a certain degree of difficulty in enforcement. Therefore, we cannot in the meantime include the consignor into the scope of liability. Nevertheless, this does not mean that the consignor can come clean of the offence of overloading. If the overloading is instigated by the consignor and the goods vehicles driver or owner is willing to disclose and testify against him in court, then the consignor is still liable for the offence of abetting. In fact, no one has the right to ask somebody else to breach the law for him. If the drivers and owners are united in opposing overloading, it will be impossible for consignors to make such an unreasonable and illegal request. Of course, the ideal scenario will be for the consignors to initiate measures to prevent overloading in the consignment of goods. The Administration should appeal to and advise the consignors in this regard. For example, it is not impossible for consignors to take measures to prevent overloading by cement delivery mixers and dumper trucks which are the more frequent offenders. Cement companies usually have an apparatus to measure the weight of cement. It is only that in the past they have not strictly abided by the rules of weight limit in loading the cement delivery mixers. Also, many large construction sites have weighing facilities, so it will be easy to control the weight of dumper trucks entering and leaving the sites.

As for the smaller construction sites, the Administration should as far as possible encourage the developers concerned to install weighbridges or use dumper trucks with built-in weighing. In the long run, I hope that all goods vehicles can be installed with a built-in weighing equipment. This together with a heightened alertness of overloading on the part of goods vehicles drivers, owners and consignors will, I believe, be able to solve the problem of overloading. However, before the problem is fully resolved, the Administration should review regularly the situation of overloading, and further tighten up the relevant law when necessary.

Mr President, as regards the identity plates of taxi drivers, I still think it best for the Transport Department to issue these plates. But I also agree that in so doing the Administration will have to incur huge administrative costs, and there may be difficulties in the deployment of manpower. Now the Administration has agreed to produce blank plates for drivers or taxi associations to fill in the required information. Although this method may not be the best one, it is still better than allowing taxi drivers to produce their own plates. Nevertheless, the Administration has to keep the situation under review in order to find out whether there are faked identity plates. To bring the effectiveness of these plates into play in order to improve the taxi service, the public have to report misconduct by taxi drivers so as to weed out the black sheep of the trade. In this regard, the Administration should educate the public on how to properly exercise their rights in order to avoid frivolous litigations.

With these remarks, Mr President, I support the Bill.

SECRETARY FOR TRANSPORT: Mr President, may I first take this opportunity to express the Administration's gratitude to Mr LEE Wing-tat for chairing the Bills Committee and to all Members for their in-depth consideration of the issues involved and for their discussions with the representatives of the trade. I am particularly grateful to Mr LEE Wing-tat and Mrs Miriam LAU for their very constructive comments this afternoon.

The Bills Committee had earlier expressed concern about allegations that some consignors were forcing goods vehicle drivers to overload. Mr LEE's and Mrs LAU's clear expositions have covered the difficulties of imposing strict liability on consignors of goods. I share their views. Indeed, legal advice is that imposing strict liability on this party would probably infringe the presumption of innocence clause in the Bill of Rights. The Administration has therefore proposed that the practical and effective approach is to make owners of goods vehicles strictly liable in law for the overloading offence and also to raise the level of the fixed penalty. I am grateful to the Bills Committee for their support.

Some Members of the Bills Committee have quite rightly suggested that publicity and other administrative measures must also be taken and this includes the need for ongoing dialogue with the trade. This is in hand. For example, the trade has been briefed and lobbied and a hotline has already been set up in the Transport Department in addition to the police hotline to receive complaints of overloading. Any such complaints lodged will be thoroughly investigated.

The Bill also seeks to provide for drivers of public service vehicles to display identity plates. The intention is to impose this requirement on taxi drivers. Mrs Miriam LAU has expressed some concern about allowing the taxi drivers to design their own forms. The Administration accepts this point and the Government will now print serialized blank plates for free distribution through the Transport Department and the taxi associations.

I shall certainly take into account the other points raised by Mrs LAU and Mr LEE. Thank you, Mr President.

*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).*

## **ROAD TRAFFIC (AMENDMENT) BILL 1993**

**Resumption of debate on Second Reading which was moved on 12 May 1993**

*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).*

### **FIXED PENALTY (TRAFFIC CONTRAVENTIONS) (AMENDMENT) BILL 1993**

#### **Resumption of debate on Second Reading which was moved on 12 May 1993**

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

Bill read the Second time.

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

### **INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1993**

#### **Resumption of debate on Second Reading which was moved on 10 November 1993**

*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).*

### **BANKING (AMENDMENT) BILL 1993**

#### **Resumption of debate on Second Reading which was moved on 7 July 1993**

*Question on Second Reading proposed.*

DR DAVID LI: Mr President, the regulatory framework surrounding Hong Kong's banking community serves the territory well. Our regulations have created a credible market that has enabled Hong Kong to become one of the world's most important financial centres.

This success would not have been possible without regulation that meets international standards. Nor would it have been possible without the active support and assistance of the Hong Kong banking community.

The Banking (Amendment) Bill is another example of the productive partnership that Hong Kong's financial industry has and must have with the Hong Kong Monetary Authority and with the Administration. They have both been responsive to comments made following consultation with the members of my Constituency, the Hong Kong Association of Banks, and the Deposit-taking Companies Association.

The comments submitted by these associations were accepted, and the Administration has either amended the Bill, or appended guidelines which meet the approval of the Finance Constituency.

My Constituency appreciates the fact that the Administration and the Hong Kong Monetary Authority have once again been responsive to our concerns, and that this fruitful co-operation has resulted in the Bill before this Council today. This is a good example of the type of co-operation and consultation that can only benefit the people of Hong Kong today, and in the longer term.

With these remarks, Mr President, I support the Banking (Amendment) Bill 1993.

SECRETARY FOR FINANCIAL SERVICES: Mr President, since the Bill was gazetted on 25 June 1993, comments were received from the Hong Kong Association of Banks and the Hong Kong Society of Accountants. The Honourable Marvin CHEUNG has also made some comments on the Bill when it was considered by the House Committee. As one of the principal objectives of the Bill is to clarify certain provisions of the Banking Ordinance, the input from the banking industry and the accounting profession has been most useful. I am very grateful to Mr CHEUNG and the two organizations.

I would also like to thank the Honourable David LI for his very kind remarks which do reflect very aptly the importance we attach to ensuring that the industry's views are taken into consideration wherever possible.

At the Committee stage, I will be moving a number of amendments to the Bill. Some of the amendments will address the specific concern of the two professional organizations; others are relatively minor mainly technical changes. One of the industry's concerns relates to the breadth of information the Monetary Authority may require from institutions under clause 8(b) which is intended to enable the Monetary Authority to require information for the purpose of maintaining the register of institutions under section 27. The amendment to clause 8(b) will make this intention clear.



There has also been a concern over a sudden revocation of an approval to establish an overseas banking subsidiary under clause 13. Apart from an amendment to the clause which I shall explain in more detail during the Committee stage, the Monetary Authority has decided to issue a statutory guideline which will set out the specific criteria to be taken into consideration in exercising his powers under the new section 51A. The guideline will be discussed with the industry associations before issue.

With these remarks, Mr President, I recommend the Bill to Members.

*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).*

### **Committee stage of Bills**

Council went into Committee.

## **INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1992**

Clauses 1 and 25

ATTORNEY GENERAL: Mr Chairman, I move that clauses 1 and 25 be amended as set out in the paper circulated to Members.

Clause 1 is amended by altering the short title of the proposed Ordinance. This has become necessary by reason of the enactment of an Ordinance with a similar short title in May of this year.

Clause 25(1) is amended by deleting the repeal of section 92 of the Interpretation and General Clauses Ordinance and its re-enactment as a new section in the Criminal Procedure Ordinance. I will shortly be proposing that section 92 should be replaced by a completely new provision to resolve an apparent inconsistency with the Bill of Rights Ordinance.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 1**

That clause 1 be amended, by deleting "Ordinance 1992" and substituting "(No. 2) Ordinance 1993".

**Clause 25**

That clause 25 be amended, by deleting subclause (1) and substituting -

"(1) Sections 81, 82, 83, 84, 86, 87, 88 and 90 are repealed and re-enacted as sections 101B to 101I respectively of the Criminal Procedure Ordinance (Cap. 221).".

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 1 and 25, as amended, proposed, put and agreed to.*

Clauses 2 to 24 and 26 to 28 were agreed to.

New clause 16A	Placing of subsidiary legislation before Legislative Council
New clause 24A	Amendment of penalty
New clause 25A	Rectification of errors
New clause 26A	Orders made by Director
New clause 29	Section added
New clause 30	Placing of technical memorandum before Legislative Council
New clause 31	Technical memorandum
New clause 32	Placing of Technical memorandum before Legislative Council
New clause 33	Rectification of errors

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

ATTORNEY GENERAL: Mr Chairman, I move that new clauses 16A, 24A to 26A and 29 to 33 as set out in the paper circulated to Members be read a Second time.

As foreshadowed by the Honourable Andrew WONG, clause 16A resolves potential procedural problems whereby this Council might be deprived of having adequate time to scrutinize subsidiary legislation.

Section 34 of the Interpretation and General Clauses Ordinance gives the Legislative Council 28 days to amend subsidiary legislation laid on the table. Where a Session of the Legislative Council ends before that 28-day period, the period is extended so that it expires on the day after the second sitting of the following Session.

It is possible, however, that the formal end of a Session will occur more than 28 days after the final sitting. In that case, the special provision for extending the time limit would not come into effect and this Council would be denied the opportunity of amending subsidiary legislation tabled during the last sitting.

A similar problem exists in relation to section 34(4). This permits the Legislative Council to extend the normal period of 28 days for the scrutiny of subsidiary legislation by up to 21 days. Such extension, however, may not be sufficient to enable the next sitting to be reached where, for example, the Christmas recess intervenes.

A further problem could also arise in the meaning of "sitting". As Members are aware, this Council has special sittings where ordinary business is not discussed and questions concerning subsidiary legislation cannot be raised.

The proposed new clause 16A deals with these problems by amending section 34. Firstly, there will be an automatic extension of the 28-day period whenever such time limit would expire after the last sitting of a Session. The date of the formal end of the Session will no longer be material. Secondly, the Legislative Council will be permitted to extend the 28-day period to the next sitting, irrespective of when that sitting takes place. Finally, the word "sitting" is defined to mean those occasions where the discussion of subsidiary legislation is on the Order Paper.

New clauses 25A, 26A and 30 to 33 make consequential amendments following the new provisions contained in new clause 16A.

New clause 29 concerns criminal penalties and clarifies an apparent inconsistency between section 92 of the Interpretation and General Clauses Ordinance and Article 12 of the Bill of Rights Ordinance.

Under section 92, where a criminal penalty is varied between the time of commission of an offence and the time of conviction, the offender is liable to the penalty prevailing at the time of commission. The section, however, must be read subject to Article 12 of the Bill of Rights Ordinance. This states that where a penalty is varied between the time of commission and conviction, the offender is only liable to the lesser penalty. Although the legal position is clear, it is desirable that the opportunity presented by this Bill be taken to remove this apparent inconsistency.

The amendment proposed in new clause 29 deals with the matter by importing the effect of Article 12 of the Bill of Rights Ordinance into the Criminal Procedure Ordinance. The consequential repeal of section 92 is made by new clause 24A.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

ATTORNEY GENERAL: Mr Chairman, I move that new clauses 16A, 24A to 26A and 29 to 33 be added to the Bill.

*Proposed additions*

#### **New clause 16A**

That the Bill be amended, by adding —

##### **"16A. Placing of subsidiary legislation before Legislative Council**

(1) Section 34(3) is amended by repealing paragraphs (a) and (b) and substituting -

"(a) after the last sitting before the end of a session or dissolution of the Legislative Council; but

(b) on or before the day of the second sitting of the Legislative Council in the next session,".

(2) Section 34(4) is amended by repealing "by a further period not exceeding 21 days" and substituting "to the next sitting".

(3) Section 34(6) is repealed and the following substituted -

"(6) In this section -

"sitting" (會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper;

"subsidiary legislation" (附屬法例) does not include a resolution of the Legislative Council."."

#### **New clause 24A**

That the Bill be amended, by adding —

##### **"24A. Amendment of penalty**

Section 92 is repealed."

#### **New clause 25A**

That the Bill be amended, by adding —

##### **"25A. Rectification of errors**

Section 98A is amended -

- (a) in the Chinese version, in subsection (2), by adding "的會議" after "提交省覽"; and
- (b) by adding -

"(3) In this section, "sitting" (會議), when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper."."

#### **New clause 26A**

That the Bill be amended, by adding —

##### **"Import and Export Ordinance**

**26A. Orders made by Director**

Section 6B of the Import and Export Ordinance (Cap. 60) is amended -

- (a) in subsection (5) by repealing "by a further period not exceeding 21 days" and substituting "to the next sitting"; and
- (b) by adding -

"(8) In this section, "sitting", when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper."."

**New clause 29**

That the Bill be amended, by adding —

**"29. Section added**

The following is added -

**"101J. Amendment of penalty**

(1) Subject to subsection (2), where an act or omission is an offence and the penalty for the offence is amended between the time a person commits an offence and he is convicted of the offence, the offender is liable to the penalty prescribed at the time of the offence.

(2) If the amended penalty is a lighter penalty, the offender is liable to the lighter penalty."

**New clause 30**

That the Bill be amended, by adding —

**Air Pollution Control Ordinance****30. Placing of technical memorandum  
before Legislative Council**

Section 37B of the Air Pollution Control Ordinance (Cap. 311) is amended -

- (a) in subsection (4) by repealing "for a further period not exceeding 21 days" and substituting "to the next sitting"; and
- (b) by adding -

"(7) In this section, "sitting", when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper."

### **New clause 31**

That the Bill be amended, by adding —

#### **Water Pollution Control Ordinance**

#### **31. Technical memorandum**

Section 21 of the Water Pollution Control Ordinance (Cap. 358) is amended -

- (a) in subsection (7) by repealing "by a further period not exceeding 21 days" and substituting "to the next sitting"; and
- (b) by adding -

"(10) In this section, "sitting", when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper."

### **New clause 32**

That the Bill be amended, by adding —

#### **Noise Control Ordinance**

**31.       Placing of Technical Memorandum before  
Legislative Council**

Section 11 of the Noise Control Ordinance (Cap. 400) is amended -

- (a) in subsection (4) by repealing "by a further period not exceeding 21 days" and substituting "to the next sitting"; and
- (b) by adding -

"(6) In this section, "sitting", when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper."

**New clause 33**

That the Bill be amended, by adding —

**Revised Edition of the Laws  
Ordinance 1965**

**33.       Rectification of errors**

Section 18 of the Revised Edition of the Laws Ordinance 1965 (53 of 1965) is amended by adding -

"(3) In this section, "sitting", when used to calculate time, means the day on which the sitting commences and only includes a sitting at which subsidiary legislation is included on the order paper."."

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

**ROAD TRAFFIC (AMENDMENT) (NO. 4) BILL 1992**

**Clause 1**

SECRETARY FOR TRANSPORT: Mr Chairman, I move that clause 1(1) and (2) be amended as set out in the paper circulated to Members.

These are minor amendments which simply change the date of the Ordinance and the implementation date.



*Proposed amendment***Clause 1**

That clause 1(1) be amended, by deleting "(No. 4) Ordinance 1992" and substituting "Ordinance 1993".

That clause 1(2) be amended, by deleting "1 April 1993" and substituting "1 January 1994".

*Question on the amendment proposed, put and agreed to.*

*Question on clause 1, as amended, proposed, put and agreed to.*

Clauses 2 to 7 were agreed to.

**ROAD TRAFFIC (AMENDMENT) BILL 1993****Clause 1**

SECRETARY FOR TRANSPORT: Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members.

This is a minor technical amendment which does not affect the substance of the Bill.

*Proposed amendment***Clause 1**

That clause 1 be amended, by adding "(No. 2)" after "(Amendment)".

*Question on the amendment proposed, put and agreed to.*

*Question on clause 1, as amended, proposed, put and agreed to.*

Clauses 2 to 4 were agreed to.

**FIXED PENALTY (TRAFFIC CONTRAVENTIONS) (AMENDMENT) BILL 1993**

Clauses 1 and 2 were agreed to.

**INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1993**

Clauses 1 to 7 were agreed to.

**BANKING (AMENDMENT) BILL 1993**

Clauses 1, 3 to 7, 9, 10, 12, 14, 15 and 17 to 43 were agreed to.

Clauses 2, 8, 11, 13 and 16

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

Clause 8(b) specifies that only information required for the purposes of section 27(1) may be requested from the banks to enable the Monetary Authority to maintain the register of authorized institutions.

Clause 13 is amended to allay the concern over the possibility of a sudden revocation of an approval to establish an overseas banking subsidiary. It expressly provides that the revocation would take effect from such a time that is reasonable taking account of the circumstances of each case. It also clarifies that on revocation of an approval, the act of maintaining interest in the subsidiary would be an offence. As I have stated during the Second Reading debate, the Monetary Authority intends to issue a guideline to set out how his power under the new section 51A will be exercised.

Clause 16 extends the requirement to exhibit the annual accounts at the principal place of business in Hong Kong to overseas incorporated banks. It also clarifies that the information should be submitted to the Monetary Authority under the proposed section 60(3).

Clauses 2(a) and 11 deal with minor typographical and consequential amendments.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 2**

That clause 2(a) be amended —

- (a) in subparagraph (v), by deleting "and" at the end.
- (b) by adding -

- "(va) in the definition of "manager", by repealing "in relation to an authorized institution" and substituting ", in relation to an authorized institution,"; and".

#### **Clause 8**

That clause 8(b) be amended, in the proposed section 27(2A), by adding "for the purposes of subsection (1)" after "submit such information".

#### **Clause 11**

That clause 11 be amended, by deleting the clause and substituting -

**"11. Fees in respect of local  
representative offices**

Section 48 is amended -

- (a) in subsection (1), by repealing "incorporated outside Hong Kong"; and
- (b) in subsections (2) and (3), by repealing "incorporated outside Hong Kong that is maintaining, at the commencement of this Ordinance" and substituting "that is maintaining, at the commencement of the Banking (Amendment) Ordinance 1993 ( of 1993)".

#### **Clause 13**

That clause 13 be amended, in the proposed section 51A -

- (a) by deleting subsection (2) and substituting -

"(2) An authorized institution incorporated in Hong Kong, and any holding company incorporated in Hong Kong of such an institution, shall each be subject to a condition that it shall not -

- (a) establish or acquire, by whatever means, an overseas banking corporation such that that corporation becomes the subsidiary of the institution or of the holding company, as the case may be, without the approval of the Monetary Authority;

- (b) if any such approval granted in respect of that corporation is revoked under subsection (5), maintain that corporation as a subsidiary on or after the time such revocation comes into effect.";

(b) in subsection (4), by adding "to become or is" after "is";

(c) by deleting subsection (5) and substituting -

"(5) The Monetary Authority may revoke -

(a) in such case as he thinks fit; and

(b) with effect from such time as is specified by him, being a time reasonable in all the circumstances of such case,

an approval granted under subsection (2), or deemed to have been granted under subsection (3), in respect of any overseas banking corporation."

## **Clause 16**

That clause 16 be amended —

(a) by deleting paragraph (a) and substituting -

"(a) by repealing subsection (1) and substituting -

"(1) Every authorized institution incorporated in Hong Kong shall, not later than 4 months after the close of each financial year, or within such further period as the Monetary Authority approves in writing, publish in one English language daily newspaper (and in the English language unless otherwise approved by the Monetary Authority) and one Chinese language daily newspaper (and in the Chinese language unless otherwise approved by the Monetary Authority), each of which shall be a newspaper circulating in Hong Kong -

(a) a copy of its audited annual balance sheet for that year, and any notes thereon, a copy of the profit and loss account and

a copy of the report of the auditor made pursuant to section 141 of the Companies Ordinance (Cap. 32);

- (b) the full and correct names of all persons who are directors or managers for the time being of the institution; and
- (c) the names of all subsidiaries, for the time being, of the institution.

(1A) Where an authorized institution has complied with subsection (1) in respect of a financial year, it shall, as soon as is practicable thereafter exhibit, subject to subsection (5), a copy of each of the documents referred to in that subsection -

- (a) in a conspicuous position in the principal place of business of the institution in Hong Kong and in each local branch; and
- (b) in the case of any such document, until the next time a document of the same kind is so exhibited in compliance with this subsection, together with, where the institution is a company limited by shares or limited by guarantee and having a share capital, a copy of the report of the directors laid or to be laid before the company in general meeting in accordance with section 129D(1) of the Companies Ordinance (Cap. 32).";

(aa) in subsection (2) -

- (i) by repealing "in subsection (1)" and substituting "in subsection (1A) (including,

where applicable, the report of the directors)"; and

- (ii) by repealing "under subsection (1)" and substituting "under that subsection";.

(b) in paragraph (b) -

(i) in the proposed section 60(3) -

- (A) in paragraph (a), by deleting "and accounts" and substituting "(including any notes thereon), and a copy of the profit and loss account";
- (B) in paragraph (b), by deleting "and those accounts" and substituting "(including any notes thereon) and profit and loss account";
- (C) in paragraph (c), by adding "in the case of an institution which is a company limited by shares or limited by guarantee and having a share capital," before "a copy";

(ii) in the proposed section 60(3A), by deleting "thereto." and substituting "thereto.";

(iii) by adding -

"(3B) Where an authorized institution has complied with subsection (3) in respect of a financial year, it shall, unless otherwise permitted by the Monetary Authority, as soon as is practicable thereafter exhibit a copy of each document lodged with the Monetary Authority under that subsection -

- (a) in a conspicuous position in the principal place of business of the institution in Hong Kong and in each local branch; and
- (b) in the case of any such document, until the next time a document of the same kind is so exhibited

in compliance with this subsection.";

(c) by adding -

"(c) in subsection (4), by adding "or (3)" after "subsection (2)";

(d) in subsection (5), by repealing "subsection (1)" and substituting "subsection (1A)"; and

(e) in subsection (6), by repealing "(2), (3)" and substituting "(1A), (2), (3), (3B)".

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 2, 8, 11, 13 and 16, as amended, proposed, put and agreed to.*

New clause 3A     Banking Advisory Committee

New clause 3B     Deposit-taking Companies Advisory Committee

New clause 14A    Powers of Governor in Council

New clause 25A    Indemnity

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

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clauses 3A, 3B, 14A and 25A be read a Second time.

Clauses 3A and 3B delete the reference to the practice of the Banking Advisory Committee and Deposit-taking Companies Advisory Committee in considering the report of the Monetary Authority prior to its submission to the Governor in Council, consequent upon repeal of the provision for presentation of the report to the Governor in Council in clause 4.

Clause 14A only seeks to make good a minor omission when the Ordinance was last amended in 1992.

Clause 25A updates an obsolete reference following the enactment of the Exchange Fund (Amendment) Ordinance 1992.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that the new clauses 3A, 3B, 14A and 25A be added to the Bill.

*Proposed additions*

**New clause 3A and 3B**

That the Bill be amended, by adding —

**"3A. Banking Advisory Committee**

Section 4(1) is amended by repealing "on each annual report submitted under section 9(1) and".

**3B. Deposit-taking Companies Advisory Committee**

Section 5(1) is amended by repealing "on each annual report submitted under section 9(1) and".

**New clause 14A**

That the Bill be amended, by adding —

**"14A. Powers of Governor in Council**

Section 53(1) is amended by repealing "29(b)" and substituting "29(1)(b)".

**New clause 25A**

That the Bill be amended, by adding —

**"25A. Indemnity**

Section 127(b) is repealed and the following substituted -

"(b) any person appointed under section 5A(3) of the Exchange Fund Ordinance (Cap. 66) to assist the Monetary Authority;".



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

Council then resumed.

### **Third Reading of Bills**

THE ATTORNEY GENERAL reported that the

**INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) BILL 1992**

**ROAD TRAFFIC (AMENDMENT) (NO. 4) BILL 1992**

**ROAD TRAFFIC (AMENDMENT) BILL 1993** and

**BANKING (AMENDMENT) BILL 1993**

had passed through Committee with amendments and the

**FIXED PENALTY (TRAFFIC CONTRAVENTIONS) (AMENDMENT) BILL 1993**  
and

**INDUSTRIAL TRAINING (CLOTHING INDUSTRY) (AMENDMENT) BILL 1993**

had passed through Committee without amendment. 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.

### **Members' motions**

PRESIDENT: I have accepted the recommendations of the House Committee as to time limits on speeches for the motion debates and Members were informed by circular on 9 December. The mover of the motion under the Interpretation and General Clauses Ordinance will have five minutes for his speech including his reply; other Members will have three minutes for their speeches. Movers of the next two motions, that is the motions on the "Territorial Development Strategy Review" and "Consumer Protection" will have 15 minutes for their speeches including their replies and other Members will have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

**INTERPRETATION AND GENERAL CLAUSES ORDINANCE**

MR JAMES TO moved the following motion:

"That the Civil Aviation (Aircraft Noise) (Limitation on Landing or Taking Off of Aircraft) (Amendment) Notice 1993 published as Legal Notice No. 421 of 1993 and laid on the table of the Legislative Council on 3 November 1993, be amended -

(a) by repealing section 1 and substituting -

**"1. Limitation on landing or  
taking off in Hong Kong  
between the hours of  
11.30 pm and 6.30 am**

Paragraph 3(2) of the Civil Aviation (Aircraft Noise) (Limitation on Landing or Taking Off of Aircraft) Notice (Cap. 312 sub. leg.) is amended by repealing "or (d)' and substituting "or 5".";

(b) by adding -

**"3. Paragraph added**

The following is added -

**"5. Overall limitation on  
landing in Hong Kong  
at Runway 13 between  
the hours of 9 pm  
and 12 midnight**

(1) Subject to subparagraph (2), no more than 22 aircraft may land at Runway 13 between the hours of 9 pm and 12 midnight.

(2) The Director may allow the number of aircraft permitted to land at Runway 13 between the hours of 9 pm and 12 midnight to exceed 22 if

-

(a) in relation to aircraft landing between those hours there is or has been -

(i) a delay in leaving the port of departure;

- (ii) an adverse weather condition or other technical difficulty on route;
  - (iii) congestion in Hong Kong controlled airspace which has prevented landing; or
  - (iv) an unforeseen circumstance which requires the aircraft to divert to Hong Kong from its intended port of call; or
- (b) there are, in the opinion of the Director, humanitarian reasons for doing so, adverse weather conditions or technical difficulties affecting Hong Kong International Airport or circumstances which would prejudice public safety.

(3) For the purpose of this paragraph, "Hong Kong controlled airspace" means the airspace over which air traffic control is exercised from Hong Kong."."

MR JAMES TO (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

The Administration's amendment of the Civil Aviation (Aircraft Noise) Ordinance by way of subsidiary legislation seeks to reopen the west Kowloon flight path between 9 pm and 12 midnight which has been defunct for 20 years. According to the figures provided by the Administration, the number of aircraft scheduled to land from west Kowloon will not exceed 22 in the evening. In the past, the west Kowloon flight path was only used in case of bad weather and so on. Now, an extra of 16 aircraft will use this flight path every night.

My amendment has only one objective, that is, to set a limit on the number of landings by way of legislation to the existing flight schedule which is considered satisfactory by the Administration, so that it cannot make any decision to increase the number of evening landings for economic reasons in the absence of any statutory supervision from this Council. It is because such a decision will affect the peace and tranquillity of hundreds of thousands of people living under the flight path. As a representative of the people's opinion, this Council is the appropriate body to make such a painful but fair decision. This is also the spirit of the Civil Aviation (Aircraft Noise) Ordinance when it was enacted in 1986.

My amendment will give much discretion to the Director of Civil Aviation. He may allow more than 22 aircraft to land from the west Kowloon flight path on grounds of bad weather, flight delay or for humanitarian, safety

or technical reasons. I would also like to take this opportunity to thank the Economic Services Branch, the Civil Aviation Department, the Legal Department and the Legislative Council Legal Adviser and his team for their assistance in finalizing the details of my amendment.

I understand that the Administration is under great economic pressure to consider whether more than 22 regular flights be allowed to land in the evening. The arrival of more visitors and goods will of course bring greater development to our economy and create more trade and employment opportunities. But on the other hand, we have to take the noise nuisance and the residents' interest into account. In fact, the Administration had resorted to administrative measures before 1986 to restrict the number of take-offs and landings in the evening. The Civil Aviation (Aircraft Noise) Ordinance was enacted as a result in 1986 because the Administration considered that it was appropriate to control noise production by way of legislation. And the legislature is the appropriate body to make decisions in this respect in order to balance the conflicting interests of various sectors. My present amendment to this piece of subsidiary legislation is nothing more than reviving the spirit of the Civil Aviation (Aircraft Noise) Ordinance.

With these remarks, I beg to move.

*Question on the motion proposed.*

MR MARTIN BARROW: Mr President, all of us can be sympathetic to the thinking behind the Honourable Member's motion.

However, this approach is not realistic, consistent or conducive to Hong Kong's broader economic interests, and is thus not in the overall interest of the people of Hong Kong. From the perspective of the tourism industry, any measure to curtail further the landing and taking off of aircraft from our already newly-fully-utilized international airport would be restrictive on the growth of the industry which is Hong Kong's second largest earner of foreign exchange.

The suggested measure of limiting flights between particular hours to a certain number has some obvious deficiencies. First, the number of flights would seem to bear little correlation to the level of noise borne by the residents. If a noise problem is to be dealt with, we would do better to urge the Government and the aircraft industry to consider the source of the problem — which is a noise made by aircraft. The frequency itself is not the root cause.

Secondly, we should consider the adverse effects that such a limitation on frequency would have on the operation of Kai Tak. The airport is already running at virtual full capacity throughout most of the day and to limit flights during certain hours would place undue pressure on staff trying to keep to schedules already extremely tight.

Mr President, I wish to emphasize particularly my concerns about increasing pressure on the staff.

The reality of the situation is that residents on all sides of Kai Tak, both on Kowloon and Hong Kong side, have lived with aircraft noise, because we have had no alternative and because the airport has been a vital artery for us in developing our economy to the benefit of all our people.

We should remember that tourism is Hong Kong's second largest industry in terms of foreign currency earnings — tourism and travel is also the world's largest industry, and is set to grow further here. Last year, we welcomed 7 million "international" arrivals and tourism accounted for an equivalent of 6.5% of GDP. We would obviously be depriving our community of the benefits of tourism, both financial and related to employment, remembering that 200 000 people work directly in this industry and tens of thousands more indirectly, if we took any step detrimental to the free flow of people in and out of Hong Kong.

For these reasons, Mr President, I feel this Council should reject the motion.

Thank you.

MR FREDERICK FUNG (in Cantonese): Mr President, I support Mr James TO's motion. The motion basically seeks to limit the number of flights during night time in the form of legislation. Since the Government has stated that it would not lift the upper limit of the number of flights beyond 22 for sheer economic reasons, I cannot see why the Government will have any problems in handling aircraft landing if an upper limit is set. In the absence of such a limit, the Government can change its policy at whim. It may be due to public opposition or it may be a stopgap measure that this time the Government decides to keep its current policy intact. Yet no one knows whether the number of flights will be increased in future on account of economic reasons or under economic pressure.

The suspension of the "opposite runway" mode of operation would facilitate more aircraft landings at night and the maximum number of flights could be as high as 28. How will these additional six flights be handled in future? I believe it would not be difficult for the Government to find some reasons to justify the increase in the number of aircraft landings. I think the greatest problem stemmed from these six flights is noise pollution. In the past, there was basically no landing via the flight path over Kowloon City and Sham Shui Po after 9:30 pm but now the curfew may be in force after midnight. Apart from setting an upper limit on the present number of flights, I think there should be an upper time limit as well.

I think Mr TO's motion is rather conservative as it fails to assure the public that there will be no aircraft landings via the path over the residential area after 9:30 pm as it was the case in the past. At a meeting with us, the Civil Aviation Department put forward three options and told us that it would be feasible to have no landings via the path over Kowloon City and Sham Shui Po after 10 pm. However, now the department informs us that the time limit will be 10:30 pm. This clearly demonstrates the Administration's zigzag policies. I think it is hardly convincing in the eyes of the public that the suspension of the "opposite runway" mode of operation will not cause noise nuisance.

I think the Government should introduce legislation to require aircraft to be installed with quieter machines or assist the affected residents by installing for them soundproof glass or air conditioners and so forth. Please do not think that I am advocating free lunch again. At present the Environmental Protection Department would indeed install soundproof facilities and air conditioners for residents affected by highway-traffic induced noises. I do not see why we cannot do likewise for residents affected by aircraft noise.

Recently I heard Mr Howard YOUNG express the view that the number of flights at present is inadequate and he would propose to increase the flights. I think he made such remarks simply for canvassing or in the interests of his company rather than in the wider public interest. Mr YOUNG often alleges that we merely have canvassing uppermost in our mind. Mr YOUNG is canvassing for himself this time, is he not?

Thank you, Mr President.

PRESIDENT: You should not impute motives to another Member, Mr FUNG. That is contrary to Standing Orders.

MR HOWARD YOUNG (in Cantonese): Mr President, the proposal of restricting the number of evening landings is out of touch with reality and fails to take Hong Kong's economic needs into account. I feel that it bears little relation to the original purpose of amending this piece of subsidiary legislation. The amendment seeks to change a landing mode which poses a threat to aviation safety. It is somewhat far-fetched to obstinately interpret it as a conspiracy to increase the number of flights.

In fact, the cancellation of the "opposite runway" mode of operation is based on strong arguments. International aviation specialists have pointed out in a study report that given Hong Kong's tight schedule of flights, opposite runway landing poses a potential hazard. This change may cause a nuisance to residents of certain areas, but it is compelled by the circumstances. We must be patient before the opening of the new airport — I mean every resident in Hong Kong, be he living near the airport or not, and travellers waiting for long hours in the over-crowded airport.

Recently, the Chairman of the Travel Industry Council of Hong Kong, on behalf of the whole industry, wrote to the Secretary for Economic Services, to express their extreme discontent with, and grave concern about, the proposal of restricting the number of flights. It was also pointed out in the letter that the proposal is very much a vote of no confidence on the highly professional and dedicated air traffic controllers. Experienced as I am for the many years working in the aviation and travel industry, I dare not teach one's grandmother to such eggs, so to speak, by raising doubt about flight scheduling. It is because that involves some technical expertise that requires a high degree of flexibility and precise calculation. I hold the Civil Aviation Department in high esteem for the performance it delivered in a recent accident in which an aircraft skidded off the runway. I am afraid that too many restrictions might kill this kind of professional spirit.

Just now Rev FUNG Chi-wood said, and also according to some press reports today, that the Honourable James TO had said Howard YOUNG had an ulterior motive in opposing this motion. If that "ulterior motive" means I am speaking on behalf of the travel industry, I will wear that label with pleasure. Certainly, the travel industry hopes that the Administration will try to expand the capacity of the airport. International airline operators have suggested that 1 000 more flights be added during the coming Chinese New Year and 300 more flights per week during the summer holidays. But the Civil Aviation Department has approved so far only one third of the number. But I think that the increase in flights is entirely another question. The Administration may wish to conduct a full consultation exercise separately to examine the effects of such an increase on Hong Kong as a whole (including our economy, tourism and environment) before coming to a decision. I deem it inappropriate to hasten any restriction before a full consultation. I should like to thank, on behalf of the travel industry, the many Members who spoke today in support of the industry and the overall interest of Hong Kong.

*The buzzer sounded a continuous beep.*

PRESIDENT: I have to ask you to discontinue, Mr YOUNG.

MISS CHRISTINE LOH: Mr President, I have sympathy with both the Honourable James TO's amendment, and with the Administration's objection to it.

Mr TO wants to use legislative means to minimize additional noise pollution to north Kowloon residents, brought about by the suspension of the "opposite runway" mode of operation. Mr TO seeks to limit the number of landings to 22 between 9 pm and midnight.

By limiting the amendment to only landings, Mr TO's amendment will have limited effect. According to a Legislative Council briefing paper, wind

conditions are such that normal flight operations have to be reversed on approximately 40% of the nights, so that landings come in from Lei Yue Mun and take-offs go out over Kowloon. This means that in four nights out of 10, Mr TO's amendment on landings over Kowloon will have little effect on noise pollution. What will cause more discomfort is that a greater number of take-offs are re-routed over Kowloon on those nights. However, if Mr TO were to seek to restrict take-offs as well, then the entire daily flight schedule could well be affected.

The Administration objects to a legislative limit on the number of flights which could land at night. It prefers to have the flexibility to take on a greater number of flights if necessary. They have, however, given a public undertaking to keep the number of flights down at night.

Whilst I appreciate Mr TO's desire to keep a strict check on the executive to ensure that north Kowloon residents will not be unduly disturbed at night for the sake of administrative convenience, on balance, I cannot support the amendment. I do not believe that this Council is the best supervisor of flight operations management.

But I would like the Administration to give two further undertakings: firstly, to brief this Council whenever it is considering changing the number of flight landings and take-offs; and secondly, to include in the working group, set up to consider mitigating measures, not only civil servants but also legislators and relevant district board members. This will give the Administration the flexibility it needs but there will also be a forum to check the exercise of administrative power.

Mr President, I will not support the motion.

MR ALBERT CHAN (in Cantonese): Mr President, Mr James TO's motion seeks to, through legislation, limit the number of flight landings with administrative means so as to minimize the impact on Kowloon Central and Kowloon West residents. I think this is a balanced and concessionary proposal because it actually allows sufficient flight landings to satisfy the demand from both the airline companies and the tourism industry. However, just now Mr Martin BARROW and Mr Howard YOUNG regarded Mr James TO's proposal as a contentious point between the tourism industry and the Kowloon residents. They said that to look after the interests of residents in Kowloon Central and Kowloon West would do a great disservice to the tourism industry. I fail to see any grounds or data to support their remarks. If Mr James TO's proposal is accepted, how many flights will be affected? Is the number of aircraft landings between 9 pm and 12 midnight as proposed by the Government now unable to meet the present demand from the tourism industry? Do the residents in Kowloon Central and Kowloon West still have to put up with aircraft noise disturbance at around 11 pm or even be awakened from their



dreams because of the tourism industry's own faults or some poor flight arrangements?

I think we should not look at this issue merely from such a narrow perspective as the tourism industry's interests. There are 300 000 residents living in Kowloon Central and Kowloon West. I hope that Members could take a more objective and balanced view to uphold the tourism industry's interests whilst the impacts on the 300 000 residents would not be overlooked or discounted.

I urge and hope that Mr Howard YOUNG and Mr Martin BARROW could, in the next three years, spare some time and spend a few nights under the flight path and feel for themselves the noise disturbance they are subject to. It is also hoped that this can change their mind and thus ensure that the 300 000 residents would have peaceful sleep.

REV FUNG CHI-WOOD (in Cantonese): Mr President, economic development and environmental protection are conflicting interests where a balance needs to be struck. The motion moved by Mr James TO merely seeks to urge the Civil Aviation Department to set an upper-cap on the permissible number of flights. As a matter of fact, the Civil Aviation Department has already got an upper-cap. The intention of the proposed amendment is to urge the Administration not to increase the number of evening flights arbitrarily on economic grounds. We worry very much that the Administration may, during holidays (Christmas and Chinese New Year), increase the number of evening flights to an unreasonable level simply out of economic considerations.

It is essential and important to maintain the serenity of the residents' living environment. The sudden change in the mode of runway operation has already had a bearing on 300 000 residents. Some affected residents brought their complaints to Members' offices. It came to light that they are compelled to endure a very high level of noise disturbance which usually exceeds 100 decibels. Mr President, one would have one's hearing impaired if one is exposed to a noise level of 100 decibels continuously for a few minutes. How can one tolerate such a serious noise pollution? After all, the affected residents are only asking for a peaceful environment where they can have some sleep at night. They are already subject to noise pollution at a level higher than that in other districts. Now they simply ask for some quiet hours. They hope that they may be relieved of such serious noise disturbances as early as possible. The most ideal time is certainly as early as 10 pm. Many residents work hard to earn a living in the day time and they really deserve to have a good sleep at night. Under such a noisy environment, it is difficult for them to have sufficient sleep.

By moving this motion, Mr James TO does not have the slightest intention to query the professional ethnics of the Civil Aviation Department, nor do we who support the motion. We only hope that the number of flights will not

exceed 22 unless in the event of emergencies when, for example, there are safety problems or circumstances warrant. In other words, the proposed amendment will not affect the actual operation of the Civil Aviation Department.

PRESIDENT: Mr Howard YOUNG?

MR HOWARD YOUNG: Mr President, I would like to clarify one point made by Mr Albert CHAN in his speech. He might have mistaken me for another Member.

PRESIDENT: Yes. It is a little late for elucidation, but what is the point you want to elucidate, Mr YOUNG?

MR HOWARD YOUNG: I would like to ask Mr Albert CHAN.... (in Cantonese) I would switch to Chinese. Regarding the person Mr Albert CHAN referred to a while ago, I wonder if he has made a mistake in identifying the person or the party concerned. I have not, as Mr CHAN said, mentioned anything about the conflict of interests between the residents of Kowloon and the tourism industry in my speech. But I remember that Mr Frederick FUNG had said something about this. I do not know if Mr CHAN has pointed the finger at the wrong person.

PRESIDENT: Do you wish to respond to that by way of elucidation, Mr CHAN?

MR ALBERT CHAN (in Cantonese): Mr President, in his speech, Mr Howard YOUNG mentioned something to the effect that the interests of the tourism industry would be affected if Mr James TO's proposal to limit the number of landings is accepted. My interpretation of that is: if purely for the benefit of tourism, no restrictions are placed on the number of flights and the number of landings, it will be at the expense of the interests of 300 000 residents of Kowloon.

MR LEE WING-TAT (in Cantonese): Mr President, thank you for allowing me to speak without prior notification. As a matter of fact, the focal point of this motion debate should be the Ordinance itself. I do not consider it meaningful to make many accusations against certain parties or individuals in terms such as "teaching one's grandmother how to suck eggs" or "one would think that you have no faith in the Civil Aviation Department". The United Democrats merely want to strike a balance among the views expressed on this issue. The Civil

Aviation (Aircraft Noise) Ordinance indeed contains certain restrictions on the landing and taking off of aircraft and the types of aircraft whereas the Civil Aviation Department has certainly prepared flight schedule. It is not true if one claims that the Civil Aviation Department's operations are not subject to any legal restrictions. Indeed they are. But the question is how to strike a balance. We do not query the professional ethnics and high performance of the Civil Aviation Department. However, the fact remains that the department has to serve the interests of the general public within the bounds imposed by various relevant Ordinances. The department is not under no control at the moment because it is governed by certain ordinances and regulations. Professionalism and technology could be a blessing to the people only if they are guided by some right objectives. It would be improper to cover up the impact brought about by flights at night on residents behind the camouflage of the so-called "expertise".

Does the amendment really pose such a large obstacle to the Civil Aviation Department's operations? The amendment actually seeks to vest in the Director of Civil Aviation full discretionary power to allow the number of aircraft permitted to land between the 9 pm and 12 midnight to exceed 22 under special circumstances. To conclude, I wish to reiterate that firstly we have not tried to teach our grandmother how to suck eggs, as it were and secondly, we have full confidence in the Civil Aviation Department.

Thank you, Mr President.

SECRETARY FOR ECONOMICS SERVICES: Mr President, may I start by saying that the Administration shares fully Mr TO's concern that disturbance to residents of Kowloon and Hong Kong Island arising from the movement of aircraft after 9 pm should be reduced to the absolute minimum.

What we cannot support is the proposal to place in the Civil Aviation (Aircraft Noise) (Limitation on Landing or Taking Off of Aircraft) (Amendment) Notice 1993 a specific limit on the number of landings which may take place over Kowloon after 9 pm.

On 26 November I wrote to Mr TO in his capacity as Chairman of the Subcommittee which studied the Notice and in that letter I listed the reasons for our objection to the proposal to put a limit on landings. As some Members present today may not be members of the Subcommittee, I shall explain why the Administration is concerned about the implications of Mr TO's amendment. First, as Members will appreciate, it is impossible to ensure that, on any particular evening, the number of flights scheduled for arrival within a certain time period and the number of flights which actually touch down at Kai Tak during that period are one and the same. The time of arrival of an incoming aircraft is affected by a wide range of circumstances — delay of the aircraft leaving the port of departure, bad weather *en route*, congestion in the air or on the ground at Kai Tak and so on. I acknowledge that Mr TO's proposed amendment provides the Director of Civil Aviation with discretionary powers

to deal with such circumstances, but I do not believe Mr TO has given sufficient consideration to the practical implications of making it a legal requirement that certain conditions be satisfied before the specified limit of 22 flights during a three-hour period may be exceeded.

Let us assume that Mr TO's proposed amendment is passed into law today. Then I would like to take Members now to the Air Traffic Control Tower at Kai Tak and let us also imagine a situation in which an aircraft which is not programmed to land after 9 pm seeks, for valid reasons, permission to land between 9 pm and midnight. The first task faced by the air traffic controller at Kai Tak handling that flight would be to ascertain whether permission given would lead to the legal limit of 22 being exceeded. If the limit will be exceeded the controller will be obliged to go to his supervisor and give the reasons why the unprogrammed landing would fall into one or another of the categories where discretion may be exercised. Not difficult, some may say. That depends. First, the situation may not be clear cut. Even if it is, the process of ascertaining the necessary information from the pilot and seeking permission from the supervisor will take time. It will also add to the workload on the controller and the supervisor. More importantly, it will divert the controller's attention away from the more important tasks of directing that aircraft as well as other aircraft within his area of control. It is this sort of additional pressure and workload which we do not want to bring on the already hard-pressed staff for whom the maintenance of concentration is vital. Some Members may say that an air traffic controller has to exercise discretion to allow the occasional aircraft to land after midnight as provided for under the law. I would just like to point out that because there are no scheduled flights after midnight, the controller would not be under the same condition of work pressure as he would between 9 pm and midnight. And it is this pressure on the staff that I am concerned about, for pressure may affect performance and judgement.

Secondly, the Administration is concerned that the proposal to specify a maximum limit on the number of landings over Kowloon sets an unfortunate precedent for intervention to aircraft movements at Kai Tak. This point has been referred to by Miss LOH just now. It is not only the residents of Sham Shui Po who are adversely affected, in terms of noise nuisance. Residents of Wong Tai Sin, Kowloon City, Kwun Tong and Hong Kong Island East are also affected by evening aircraft movements. When an aircraft takes off towards Lei Yue Mun, the residents of Kwun Tong and Hong Kong Island East are exposed to serious noise disturbance. Any move on behalf of, say, Hong Kong Island East's residents to place another statutory limit on take-offs would have at least the same degree of logic as that of Mr TO's. If the Administration agrees today to Mr TO's amendment, on what ground can it refuse an amendment proposed in the interest of another district?

For these reasons, Mr President, the Administration cannot support Mr TO's proposed amendment. I know that Mr TO has attempted to amend his motion to try and give the Director of Civil Aviation as much discretion as possible. Unfortunately, the amended version still falls short on both logic and

practical implications, and I cannot recommend to Members that the amended motion be passed.

Nevertheless, the Administration recognizes the need to do all we can to reduce to the absolute minimum the additional disturbance which may be caused as a result of cancellation of the "opposite runway" mode. We have been working energetically to that end. An inter-governmental task force has been set up to consider and implement measures to reduce the level of noise to those living under or adjacent to the flight path. A number of mitigating measures are being explored and considerable progress has already been made. We have, for example, as a result of efforts between the task force and airlines, secured arrangements to bring forward the landing times for 42 late evening flights per week. Of these, the schedules for 32 flights have already or will soon be adjusted so as to arrive before rather than after 10:30 pm.

Work will continue to try and bring forward landings still further for the 1994 summer operating season. I have to advise Members, however, that I do not envisage that it will be possible to reinstate the "opposite runway" mode in the foreseeable future, certainly not until we can be absolutely sure that this mode will pose no risks to aircraft safety whatsoever.

On the issue of reducing the noise level from aircraft, it is the Administration's intention to introduce legislation this Session which will progressively tighten controls on the emission of noise by requiring aircraft using Kai Tak to comply with more stringent standards.

Mr President, both the Director of Civil Aviation and myself have given two public undertakings. First, the cancellation of the "opposite runway" mode will not be a means of increasing, surreptitiously, the number of landings and take-offs at Kai Tak between 9 pm and midnight. Secondly, before any consideration is given to increasing the number of scheduled flights after 9 pm there will be full public consultation, including consultation with Members of this Council. We stand by both undertakings.

Today, I do have a simple request to put to Members. In the few remaining years, when our airport will still be at Kai Tak, please do not put more pressure on the Director of Civil Aviation and his team of hard-working and conscientious air traffic controllers. Rather, let us work together constructively to keep to a minimum the disturbance to Hong Kong residents which will sadly remain a fact of life until the opening of our new airport at Chek Lap Kok. Thank you, Mr President.

PRESIDENT: Mr James TO, you have 3 minutes 16 seconds left.

MR JAMES TO (in Cantonese): Mr President, I would like to request the Secretary for Economic Services not to mislead the public by saying that my

proposal of specifying a limit on the number of landings is unprecedented. Let me quote the remarks made by a government official when introducing the Civil Aviation (Aircraft Noise) Bill 1986. He said, "the provisions of the Bill seek to regulate the time and number of aircraft landings on our airport." Then why did he say that my proposal is "unprecedented"? I think it is because of the dereliction of duty on the part of the officials concerned, for they have not come up with a reasonable figure on the basis of aircraft noise to limit the landings of aircraft. I hope that Honourable Members can see clearly that the amendment that we are discussing today is in fact a constitutional issue of separation of power. It is a problem of who should make the decisions which have a bearing on the general public, and not a technical or safety problem. My proposed amendment has already given the Director of Civil Aviation discretionary power over technical and safety matters. So I urge Members not to be affected by the arguments that are deceptively true and shift attention from the crux of the matter.

The Civil Aviation (Aircraft Noise) Bill 1986 seeks to impose a limit on the level of aircraft noise. Its original spirit is to apply the concept of separation of power on the issue of noise limitation. Any change that will expose the public to greater and more frequent disturbance of aircraft noise should be limited by law. The relevant decisions should be taken by the legislature after having considered all the factors including the economy, the people's livelihood and so on. This is a matter of value orientation as well as a political decision which should finally be taken by a body elected by the public.

If our Government had the mandate of the public and was elected by means of a one man, one vote system, then I would be willing to reconsider the matter of separation of power. But our existing Government is subject to Her Majesty's Government. It is authorized by Her Majesty and not the people. I would like to ask my honourable colleagues: On what basis do you accept this kind of separation of power? Is it because our Administration has not behaved "too badly" in the past and still has a little bit of conscience?

The Administration may not have any plan to increase immediately the number of regular flights in the evening. After this debate, the Administration may be more cautious in balancing different social interests before making a final decision. But should the final decision of this matter rest on a body without any political mandate?

Mr Howard YOUNG has pointed out just now that the amendment by the Administration this time is made purely out of safety reasons. He has also criticized my amendment as being deliberately complicating the issue. I would like to request Members to read my amendment carefully. I have not asked the Administration to reduce the current number of evening flights. The figure of "22" is provided by the Civil Aviation Department. That is to say, my amendment has retained the existing arrangement. The Administration's deletion of paragraph (6)(1)(d) of the Notice without fixing the maximum number of flights is an act that disrespects the original spirit of the legislation.

and has created a variable that is not existent in the original legislation. This variable can enable the Administration to increase in the future the number of evening flights without amending the legislation. This is an exploitation of the loophole in the legislation, using the pretext of safety to amend something that is outside the scope that requires amendments. Conclusively speaking, my amendment is to retain the spirit of the original legislation, to give back to the law the dignity that it deserves and to give back to this Council the monitoring power that it has under the original legislation.

I so make my submission.

*Question on the motion put.*

*Voice vote taken.*

The President said he thought the "Noes" had it.

MR JAMES TO: Mr President, I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members now please proceed to vote?

PRESIDENT: Are there any queries? If not, the results will be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr MAN Sai-cheong, Mr James TO, Dr YEUNG Sum and Mr Alfred TSO voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy MCGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Miss Emily LAU, Mr Eric LI, Mr Fred LI, Mr Henry TANG, Mr TIK Chi-yuen, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH and Ms Anna WU voted against the motion.

THE PRESIDENT announced that there were 13 votes in favour of the motion and 36 votes against it. He therefore declared that the motion was negatived.

## **TERRITORIAL DEVELOPMENT STRATEGY REVIEW**

MR EDWARD HO moved the following motion:

"That this Council takes note of the Consultation Digest of the Territorial Development Strategy Review and urges the Government to adopt a strategy that would promote the Territory's prosperity and improve the quality of life of its people up to and beyond 1997 when it will be a Special Administrative Region of China."

MR EDWARD HO: Mr President, I move the motion standing in my name on the Order Paper. It is no exaggeration to say that Hong Kong is a city of dramatic changes. Its rate and dimensions of changes, especially in its physical environment, are unrivalled amongst the cities of the world. The first Territorial Development Strategy (TDS I) was formulated in 1984, the year when the Sino-British Joint Declaration was signed, and at a time when the future political and economic conditions of Hong Kong were clouded in uncertainties. It is therefore all the more amazing that Hong Kong has grown from strength to strength and at an unprecedented rate in the intervening years.

In the years just preceding TDS I, China had embarked upon its "open door policy" and in the late 1980s started its way towards a "socialist market economy". That policy was a major thrust for China's accelerated development — development especially intensive in the special economic zones and coastal cities. China's development and growth have been crucial in maintaining and generating the dramatic growth of Hong Kong's economy in the last decade.

As Hong Kong has enjoyed the fruit of such a change, it also tasted its bitterness. The growth in prosperity brought about taxing burden on our infrastructure and our environment.

Whilst it is understandable that TDS I was not able to anticipate the dramatic changes that have occurred in China, both China and Hong Kong are entering an historic phase, a phase which would have more profound changes in many ways than what had happened in the last few decades. The planning period of TDS II, 2001 to 2011, will be when Hong Kong would become a Special Administrative Region (SAR) of China. I fully support the six objectives stated in TDS II. Perhaps I would only amend Objective One to include not only the role of Hong Kong as an international city and a regional centre but also an important and unique city in southern China for business, finance, information, tourism, entrepot activities and manufacturing.



*Flexibility for change*

I do not think it is necessary to postulate which of the TDS scenarios will happen in the future, for two reasons. The first reason is that Hong Kong people are already trading, investing and providing services to not only the Pearl River Delta areas but also to other provinces in China. The second reason is that the role and importance of HKSAR in relation to other parts of China will be determined by how successful and useful it would be to the rest of China, and that usefulness will be determined by how well its infrastructure would be in place at a given time.

In other words, our target should be to plan for Scenario B but the strategy should be such that it would have a maximum degree of flexibility in implementation to cater for rapid changes and rapid growth. Implementation requires forward planning: infrastructure such as roads and railways take years to plan and build. It is vital that there would be effective trigger mechanisms to anticipate projected demand and that there would be firm commitment to initiate studies and planning at the right time.

Mr President, as mover of the motion, I shall be presenting my broad views on a range of subjects that affect TDS II. My colleagues in the Liberal Party will deal with those subjects in more detail.

*Population*

Accuracy in projecting future growth of Hong Kong's population is vital to the success of the strategy. The projected population in the year 2011 is 6.5 million or an increase of 600 000 from today. This seems insignificant.

Population projections and statistics in the past have of course been based upon Hong Kong as an insular region. When Hong Kong becomes a part of China as a Special Administrative Region, When Hong Kong becomes a part of there would be much more open flow of people between Hong Kong SAR and the rest of China. It is only to be expected that the rate of urbanization in Hong Kong will increase much more intensively, bringing with it a much higher growth of population than in the past. Thus, it is important that population projections would have taken all likely factors into consideration.

*Intensity of land use*

A question has been asked on how land use and infrastructure might be planned in order to facilitate economic growth while respecting environmental objectives. The first answer to that would be that we should re-examine the Hong Kong planning standards and guidelines. Already a large portion of our land areas has been designated as protected areas of one kind or another. The country parks and other green belts and designated open spaces take up more than 50% of our land areas. In order to conserve the natural environment and to fully utilize the potential of the remaining land areas, it is necessary to revise

densities judiciously upwards in, especially, new town areas where basic infrastructure and open spaces have been adequately provided.

*Hong Kong SAR's future role as the port of China and as a manufacturing centre*

It is certain that Hong Kong SAR shall remain an important financial and service centre for China. I shall now deal with two future roles of Hong Kong SAR, that of its being a premier port of China and a manufacturing centre.

*Port*

The growth of Hong Kong's economy in the last decade has to a large extent been due to the entrepot activities arising from its being an important port for southern China. The Kwai Chung Terminal is now the busiest container port in the world in terms of throughput, but there are threats on the horizon. Kwai Chung is nearing saturation, and Container Terminal No. 9 has been programmed to have its first berth in 1995 in order to cater for the continuing growth of container traffic through Hong Kong. That deadline is now under threat because of political wrangling between the British and the Chinese Governments. There will be substantial loss to Hong Kong if container business were to be diverted to other Chinese ports; such diverted business will promote growth of the other ports to the detriment of Hong Kong.

A fundamental problem which has affected Kwai Chung Terminal and will affect Container Terminal No. 10 and future container terminals is the lack of direct rail link to the container port. This has produced problems of immense congestions on our roads where container traffic competes with domestic traffic. Without such a rail link, our container port will not be able to cope with the projected growth of container traffic in the future, especially when China has completed its major railway projects. If that happens, then China will more fully utilize its other ports which are either in operation or under construction.

Other current problems affecting our port also require focussed attention: problems of empty containers storage, back-up areas in the container terminal, cargo working areas and landing points for mid-stream operations.

River trade in the Pearl River Delta is an important element of marine activities, and a River Trade Terminal will release congestions at Ma Wan Channel.

*The manufacturing industry*

I now turn to Hong Kong's other future role, that as a manufacturing centre. Despite the fact that many industrial undertakings have already moved over the border, manufacturing is still a major economic activity in Hong Kong, and is projected to remain as such.

The nature of the manufacturing industry has undergone a fundamental change in recent years. Owing to the relocation of labour intensive operations to various parts of the Pearl River Delta where land and labour costs are significantly lower, there has been a shift towards more capital intensive, high value added activities in the local manufacturing sector. There is thus a new kind of demand for industrial space. Most of the new types of industries will not be efficiently accommodated in multi-storey flatted factory buildings. It would not be sufficient that the Hong Kong Government auction off industrial land at regular plot ratios to the highest bidders. The Government should designate industrial land for low density single tenant industrial users. Given that our manufacturing industry is entering a new era, I suggest that an Industrial Authority made up of government and private sector business and expert members be set up to oversee development of industries and to formulate an industrial land policy for Hong Kong.

#### *Population/employment mismatch*

Tuen Mun and other new towns have been designed as self-contained communities with the objective that job opportunities be made available to those who live in the same town. Reality is that most of the people living in the new towns actually work in the urban areas. This was partially due to the recent transformation of our industries and most of our residents in the new towns are white-collar workers rather than blue-collar workers as originally envisaged. This one way direction of workers to the urban areas have placed an immense strain on our already stretched transport systems.

Thus, we have to fundamentally examine where our future commercial-business centres should be located. Undoubtedly, opportunities exist in further provision of commercial-business centres around the Victoria Harbour and along the route of the Mass Transit Railway, but we should consider very seriously the creation of major secondary nodes of commercial-business area outside the urban areas. Ideal locations would be in the north of the New Territories, near the border with Mainland China. These new business centres should be sufficiently large in scale to attract relocation of businesses from the more dense urban area. They should be complemented by residential areas for various income groups so that the right type of people would be attracted to work in those areas.

#### *Environment*

The need for conserving our natural environment is unquestioned, but conserving environment requires positive planning and encouragement. Conservation is not leaving things alone. There are 4 000 hectares of agricultural land lying fallow. Agricultural land lying fallow is not an attractive environmental asset. A lot of these areas have been used as storage of open containers and car dumps and so on with adverse effect on the environment. We know the problem of controlling and removing these blights from our rural landscape. The Government should offer positive incentives to

owners of agricultural land which is no longer farmed. One of the ways would be to up-zone lands where are potentials for provision of infrastructure.

Mr President, the TDS II has been on the whole professionally prepared. I would only urge that it should be a strategy with a far-sighted vision for Hong Kong. Also, in order for the strategy to be successful, it should have an innate flexibility and it should be continuously reviewed to cater for changing scenarios. Above all, it requires a strong commitment from the Government to allocate adequate resources in forward planning and in implementation to match demand at the right time and in the right sequence.

With these remarks, Mr President, I move the motion.

*Question on the motion proposed.*

MRS SELINA CHOW (in Cantonese): Mr President, in view of the rapid economic and infrastructural development of the Pearl River Delta area in recent years and the increasingly close economic relationship between this area and Hong Kong, the Administration has compiled a consultation document entitled *Territorial Development Strategy Review* the proposals of which are deemed to be able to meet the internal demands of Hong Kong and dovetail with the development of the Pearl River Delta. We welcome and support this document which serves as the blueprint for the future development of Hong Kong. However, the document has mentioned too little about the overall housing planning and development in the future.

There are now over 3 million people living in public housing estates. Hong Kong's public housing programme has all along been highly regarded as one of its major achievements. Nevertheless, housing is still a big problem that urgently requires a solution by the Administration. The consultation document mentioned that according to the estimates done in the Long Term Housing Strategy, the overall supply of land in Hong Kong is sufficient. But in terms of the number of completed flats, we will still be short of 11 400 flats from now to 2001 due to a mismatch in infrastructural development. The shortfall is mainly due to works slippage caused by, for example, study of technical and engineering requirements, plans on distribution of estates, demarcation of district boundaries, land resumption procedures, rehousing arrangements in redevelopments and so on. I urge the Administration to expedite its land disposal and resumption processes in order to provide more land that can immediately be used for building construction, and to actively redevelop the temporary housing areas or squatter areas to increase the number of completed flats. Another compromise that can be considered is to increase the density of the public housing estates. This is an expedient measure which can prevent supply from lagging too far behind demand.

Furthermore, the demands for housing are also constantly changing, subject to influence by a number of factors. For example, the number of

nuclear families has greatly increased in recent years, thus increasing the demand for public housing. Besides, new immigrants from the mainland who come to work and stay here and emigrants who come back with the intention of settling down will make Hong Kong their second home, and therefore have a need for public housing. I urge that the Administration and the departments concerned must flexibly handle the changes in housing demands in implementing the proposed development strategy.

The Administration should also actively encourage private developers to participate in infrastructural projects in the new towns and the Urban Renewal Scheme.

In recent years, rife speculation in the property market has pushed up property prices to such a high level that many a home buyer intent on buying his own home is scared off. Also, the persistently high property prices have undermined the public's power of buying or renting flats. As a result, a large number of flats are vacant, laying existing resources to waste. The Administration must curb the speculation trend in order to safeguard the interests of the public.

The Administration should also endeavour to supply, through proper planning, different types of housing in the new towns in order to develop a healthy and balanced community. In this connection, efforts should be made as far as possible, to put in place in these new communities a combination of public housing, Home Ownership Scheme (HOS) buildings and other different types of private housing, so that each community will have people coming from different backgrounds and occupations, and with different financial capabilities.

During the last decade, there have been many large-scale developments of public housing, HOS housing and private housing in new towns like Tuen Mun, Tin Shui Wai, Tseung Kwan O and so on. In implementing the proposals of the Territorial Development Strategy, the Administration must be cautious in assessing the inter-relationship between housing, transportation and environment and infrastructural development. The construction of housing in new towns must make best use of the development potential of the land in the district in order to avoid wastage. Besides, the development of transport facilities and road networks should also co-ordinate with the construction of housing. For example, the public generally want to live near their working places in order to save time and travelling expenses. According to the Territorial Development Strategy, the pre-2001 development of northwest New Territories depends on the completion of Route 3. Therefore, the choice of districts for development has to match with the available transport links, otherwise it will give rise to a mismatch between the living and working places, which will indirectly lead to the problem of traffic congestion.

I remember that in the initial development of Tuen Mun, it was intended that co-ordination be achieved between living and working places so that Tuen Mun residents could work in their own district. However, due to

mismatched timing of the various completion dates, the residential buildings were completed before the factory buildings. As a result, many people, after moving into Tuen Mun, had to endure the hardship of spending a lot of time in travelling out to the urban areas to work. When the factory buildings were completed, some people living in the urban areas had to go to Tuen Mun to work. We can therefore see the importance of co-ordination among housing developments, transportation network and infrastructural facilities. So in developing new towns like Tin Shui Wai and Tseung Kwan O, the Administration should learn from the lesson of Tuen Mun's past development and zone as far as possible more industrial areas within the district under development so that residents can work in their own districts. It should also build more large shopping arcades and recreational facilities, so that the residents need not go to the urban areas for these facilities. Furthermore, the development of large commercial buildings can help attract management executives in urban areas to invest in the new towns. Most important of all, in planning housing development, attention must be paid to its co-ordination with the construction of the external transportation network in order to strengthen the new town's links with the other areas.

In conclusion, the Administration has to take account of the many different factors in considering housing development plans and must not be rash in this regard. Moreover the Administration has to actively discuss with the departments concerned on the different land uses and practical requirements of individual districts, and set up an inter-departmental mechanism to monitor carefully the implementation of the Territorial Development Strategy. It should not allow the commencement of the works concerned to be delayed as a result of unnecessarily long assessment time.

With these remarks, Mr President, I support Mr Edward HO's motion.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

MR LAU WONG-FAT (in Cantonese): Madam deputy, the timing could not be better for the Administration to review the territorial development strategy now. The Pearl River Delta area has experienced rapid development in recent years and assumed a mutual complementary role with Hong Kong's economy. Our co-operative relationship has been increasingly close. With this in mind, Hong Kong does need a well thought out development strategy for the formulation of appropriate infrastructural development programmes that can, on the one hand, meet Hong Kong's own demands in various fields of development in the future while on the other, dovetail with the economic developments in the Pearl River Delta area and indeed those of provinces in the hinterland, so that Hong Kong's overseas transport links could be exploited to achieve the best mutual benefits as soon as possible.

With Hong Kong becoming a busier *entrepot*, the capacities of the existing border crossings have reached saturation point. Co-ordination and co-operation is therefore needed between the Chinese and Hong Kong Governments to jointly explore traffic mitigation measures and traffic control systems on both sides of the crossings. Moreover, both sides should hold discussions as quickly as possible over projects such as the Beijing-Hong Kong railway and expressway, and alignment with the Zhuhai bridge, and examine their impact on traffic and transport throughput on both sides after they came into operation and work out the ensuing compatible measures.

Madam deputy, infrastructural and new town development programmes require large quantities of land. With the promotion of Hong Kong's economic development in mind, I think now is the time to seriously review our planning standards for land use, in particular the policy of zoning a great part of the New Territories as "compulsory" green belts.

Heung Yee Kuk does not oppose environmental protection. But the government policy of arbitrarily outlining private lands for country park or environmental protection area on the one hand, while developing large pieces of Crown land adjacent to green belts on the other, ignoring environmental protection considerations, betrays the principle of equity. Heung Yee Kuk opines that the Administration should not designate private lands as the green belts, thus freezing the landowners' development opportunities on a long-term basis. If green belts should inevitably encompass private lands, the affected landowners must then be given reasonable compensation.

As a result of the new airport project and the westward movement of Hong Kong's centre of development, northwest New Territories will become an important hub of land and marine transport. This development will bring to the area tremendous development potential, particularly so given Tuen Mun's close proximity to the economic development zones in Guangdong, and the advantage of having large pieces of undeveloped land and conditions ideal for development of a deep-water port. The Administration really needs to devise anew more economically rewarding planning and development for this area.

Over the last decade or so, the Government has treated Tuen Mun as a rubbish bin, installing all sorts of obnoxious and polluting facilities in it, especially along the coastal area. They include a coal ash lake, a thermal power station, a cement plant and some landfills. Despite the change of times and the developments in Tuen Mun which have given it some competitive edges and great development potential, the Government appears to have no intention of altering its policy. Yet, to add insult to injury, the Government has not only approved the construction of a second power plant in the area, but also plans for other obnoxious facilities such as the setting up of a zone for special industries and the installation of a central incinerator. These have made Tuen Mun residents feel aggrieved and frustrated.

In fact, Tuen Mun residents have been subject to tortures of inconvenient transport and inadequate provision of facilities for over 10 years. The various polluting programmes mentioned above will not only affect the health and living of residents in the area, but also stifle Tuen Mun's development and indeed that of Hong Kong. Yesterday, the Tuen Mun District Board passed a resolution on this matter, urging the Government to review the planning strategy for the coastal area at Tuen Mun West, so as to make good use of the valuable land resources. I think that the Government should take note of public opinion. It should identify a reasonable role to be played by Tuen Mun in the economic development of Hong Kong when it formulates a new Territorial Development Strategy.

With these remarks, Madam deputy, I support the motion.

MR RONALD ARCULLI: Madam deputy, there is much substance in the speech of my Liberal Party colleague, the mover of the motion, the Honourable Edward HO. And he has quite rightly highlighted a shortcoming of an objective nature for insufficient emphasis on Hong Kong's importance and unique role and geographical location vis a vis southern China. I am however concerned with the presence of the words "having regard to resource availability" in the statement setting out the primary goal of the TDS Review. My complaint *per se* is not the presence of the words I have quoted. My concern is that I sense that their presence might provide to those charged with the ultimate implementation of the strategy with an escape hatch. Put bluntly, my concern is not so much the lack of means during the implementation stage but the lack of a firm commitment or will on the part of the Administration. I would welcome clarification on this point.

Madam deputy, whilst the six objectives are broadly acceptable, I believe that since one of the key factors underlying the review is the development in China in general, and the Pearl River Delta in particular, there is but passing reference to the greater co-operation between Hong Kong and the Pearl River authorities. Being the perpetual optimist that I am, I cannot emphasize strongly enough that such co-operation is virtually indispensable despite the current political climate. I imagine those charged with the conduct of the present review would be the first to agree. Hong Kong and southern China are inextricably linked. Let us not have a situation where the left hand does not know what the right hand is doing. Worst still, let us not go it alone without full information on the planning and development of Pearl River Delta centres. It is therefore necessary for Hong Kong to develop a database about planning and development there. With goodwill and co-operation, there will be no need to secondguess each other. Madam deputy, it is ironic that on a day which could prove to be one of our darkest we are debating about Hong Kong's future development with specific emphasis on the Pearl River Delta.

Madam deputy, it has been said many, many times that Hong Kong's scarcest resource is land. Indeed, there can be little dispute that Hong Kong's



development over the past several decades could have been better planned and co-ordinated. Broadly speaking, our infrastructure and transport development on the one hand and our land production and development on the other have been somewhat out of sequence. I wonder whether this might have been brought about by the Administration's having regard to the resources available. Another problem we have experienced is what appears to be an underestimating of the dynamic growth we have experienced over the past several decades, and in this regard the Administration may not be solely responsible but surely at least a fair share of the blame goes to them. What we need to be assured this time is that the strategy will be sufficiently flexible to cater for such circumstances.

The Honourable Edward HO has mentioned that over 50% of our land is designated country parks, green belts and open spaces. Development opportunities within such areas are extremely limited. This means that developable areas that we have left is far less than 50% because much of it has been developed. I do not believe that anyone in Hong Kong will subscribe to any suggestion that we abandon our environment. For these and the reasons given by Mr Edward HO, those involved in planning must recognize that the demand for land and the demand for improving our environment must strike an appropriate balance. It is therefore with regret and concern that we see piecemeal action, and indeed sometimes the lack of action, by the Administration. An example of lack of action is the time it has taken over the production of the White Bill on town planning.

Madam deputy, I will now deal with the past projections of demand for land. These have been shown to be less than the actual demand; yet the Administration still refuses to face the fact that the shortfall is material. Over the past decade new household formations, lack of real interest rate on deposits, influx of overseas investment and the increased use by many as a working base for their businesses in the region and China are but some of the more obvious factors that have led to increasing demand for residential and office accommodation. Taking these factors into account, I would venture to suggest that these, plus the extremely conservative population growth projections, cause me some concern about the projected residential and office accommodation needs for Hong Kong. The second concern is whether the forecast of land for the period between the year 2001 and the year 2011 can be met and, if so, whether it is adequate. To some extent, demand for housing land goes in tandem with economic activities.

Madam deputy, land does not grow on trees, so to speak, but has to be produced. In this respect, there must be a strong case for private sector participation in this process. If we look at infrastructure projects, private sector participation is a proven method and indeed is useful to relieve public sector constraints. I feel confident that the Administration will recognize this and hope that the private sector will be used more extensively than has been in the past.

Madam deputy, I will conclude with two observations. First, a review of Hong Kong's territorial development strategy is timely; and second, I hope we do not underestimate the rapid growth and development of the Pearl River Delta in the decade under review. We have made this mistake once; let us not make it again.

MR MARTIN BARROW: Madam deputy, I am pleased that the Consultation Digest takes note of the tourism industry's growth and its increasing contribution to Hong Kong's economic well-being. Reference has been made to the industry's need for additional facilities and a clean environment, which is encouraging.

It does not, however, take full account of tourism's recent rapid expansion nor its projected growth for the next decade, both of which indicate significantly a higher demand for hotels and other tourist facilities than is assumed in the Digest.

May I remind the Council that the number of international visitors rose to 7 million in 1992. Hong Kong also welcomed 1.1 million People's Republic of China nationals visiting the territory last year. The upward trend is expected to continue.

If Hong Kong is to gain the maximum economic benefit from tourism, it is clearly critical that the territory's tourist attractions and its environment be protected and enhanced as part of our overall development strategy.

With this in mind I should like to draw the Council's attention to a few salient points related to the review concerning the tourism industry.

First, urgent government action is required to ensure sufficient hotel development takes place to meet projected demand. Tourism has grown at 9.7% per annum for the past five years and hotel occupancy is expected to be in the high 80s in percentage terms this year. Annual future growth of 10%, combined with the current absence of new projects and redevelopment of old hotels into commercial blocks, will mean full capacity by 1995.

In view of this coming hotel shortage, the Government should be actively encouraging further investment. Measures can include land zoning for hotel development and relaxing the plot ratio for hotels to match that of commercial buildings. The alternative is a severe limitation on our ability to meet demand for rooms and a halt to further expansion. This will mean revenue loss for Hong Kong.

Second, the conservation of areas of historical, ecological or recreational value must be strictly enforced, if tourism is to continue to prosper. I am thinking of such areas as the Mai Po Marshes, the Pat Sin Range and Plover Cove, the Sai Kung Peninsula and islands of Rocky Harbour, South Lantau and

several marine areas. These must all be properly protected and managed, with adequate support facilities, such as parking, if Hong Kong's attraction as a prime travel destination is to be retained. Environmental considerations are increasingly important in tourists' choice of destination throughout the world, and the industry is keenly aware of this trend.

Further to the environmental question, the Hong Kong Tourist Association also strongly supports the idea that recreational development should be restricted to uses that will not degrade the surroundings. We also back the concept of statutory protection being extended to inshore water recreation areas and potential good quality beaches. Similarly, the association encourages the earliest possible implementation of the proposed new sewerage system, which will improve the water quality in Victoria Harbour.

Third, and finally, I also ask the Council to take note of the development of tourism in the wider region. Hong Kong will be increasingly important as a major centre for visitors to and from the Pearl River Delta in the coming years. For the full potential of the region as a major tourist destination to be realized, it will be essential to develop efficient, high-capacity transport links — road, rail, air and sea — between Hong Kong and other parts of the Delta.

With these points in mind, Madam deputy, I am pleased to support the motion. This is because the underlying principle of controlled development contained in the review is fundamental to the concept of sustainable tourism — and the industry's success is in turn vital to Hong Kong's future economic prosperity.

Thank you.

MRS MIRIAM LAU (in Cantonese): Madam deputy, the main purpose of the *Territorial Development Strategy Review* is to lay down the framework of a comprehensive long-term plan for land use, transport and the environment. Transport constitutes a particularly important element, given that a transport development strategy will have a direct impact on the scope, direction and pace of development in every part of Hong Kong. The Government so far has never had a comprehensive and long-term transport policy for the entire territory. This is why Hong Kong has so many transport problems now. And such problems are inflicting economic losses on Hong Kong and indirectly hampering the development of new towns. Below, I will offer, for the Government's serious consideration, suggestions in two areas: Sino-Hong Kong freight transport and matching infrastructural projects for new town developments.

#### *Sino-Hong Kong freight transport*

China and Hong Kong have maintained close ties. Cross-border economic activities are very busy. As China adheres to its open-door policy the Pearl River Delta and all the southern provinces are expected to take off in terms of

economic development. Sino-Hong Kong freight transport business is, in turn, bound to flourish. Therefore, the Hong Kong Government must make forward-looking plans. Its transport strategy should not be based solely on Hong Kong's own development needs. It should also address the needs of Sino-Hong Kong freight transport.

Let us review the history of Sino-Hong Kong freight transport. According to the Kowloon-Canton Railway Corporation's statistics: In 1983, 2 million tons of freight entered Hong Kong from China by rail, while 180 000 tons of freight left Hong Kong for China by rail. In 1987, the corresponding figures were 3.5 million tons and 1.1 million tons, up respectively by 75% and nearly 600%. But then, from 1987 until now, there have been no marked increases in rail freight on account of Kowloon-Canton Railway's limited capacity as well as the competition of other modes of transport. In contrast, the number of heavy-duty and medium-duty trucks in Hong Kong has increased by 70% over the past five years. Over the same period, the number of vehicles entering Hong Kong from Guangdong has increased by 90%. The volume of land traffic coming into Hong Kong is expected to grow by another 16% from now until 1997.

While the cross-border truck traffic makes a significant contribution to Hong Kong's economy, it also causes widespread serious traffic problems in Hong Kong, for example, road congestion and parking space shortage. Perennial traffic congestion drastically undermines the efficiency of freight transport and causes slow-downs in economic activities resulting in inestimable losses to Hong Kong year by year. The number of trucks in Hong Kong has risen sharply in recent years, but the Government does not have a policy on truck parking. Many trucks have to be parked haphazardly, causing nuisance to the public and obstructing traffic to a certain extent. In order to ease the strains on Hong Kong's road systems due to the cross-border freight transport, the Government should expeditiously build a railway from the border to the Kwai Chung container terminals. China is now striving to develop rail transport. To match this, Hong Kong must make corresponding efforts and expand its own railway system. In addition, in land planning use, the Government should take care to forestall any recurrence of past mistakes by reserving sufficient land for parking purposes.

We have no proper co-ordination with China in terms of the development of cross-border transport network. Some time ago, the Zhuhai Municipal Government announced a plan to build a sea bridge connecting Zhuhai and Tuen Mun. This project, if materialized, will be an important traffic link between China and Hong Kong. But the Hong Kong Government does not seem to know a great deal about the project. It has not actively sought talks with China about the project. This shows that the Chinese and Hong Kong Governments do not maintain effective communication channel to discuss long-term transport projects which affect both sides of the border. The border liaison group concerns itself primarily with the handling of technicalities of operational problems. It cannot play any important policy role. In this

connection, I think that the Hong Kong Government should take the initiative to approach China and set up a special group to compare notes from time to time on cross-border transport problems and long-term transport projects.

*New town development and matching transport infrastructure*

The Government always fails to make any matching transport infrastructure plan when it develops a new town, thus bringing about many traffic problems. A case in point is the severe traffic problems in Tuen Mun new town. The Government should learn from this lesson and see that, in developing a new town, serious consideration must be given to the provision of an adequate transport infrastructure or a road system to serve the new town.

To untangle the present traffic woes of New Territories North, the Government should quickly complete the Country Park Section of Route 3 and build a suburban railway to Tuen Mun. New towns now under development, such as Ma On Shan and Tseung Kwan O have great development potential. Yet they are not linked up with mass transit systems. In the absence of mass transit systems, one doubts that these new towns can be further developed.

Island South has long been neglected. The people there warrant the support of a mass transit system. Consideration should also be given to the significant role such a system could play in support of the development of areas like Lantau Island East which are yet to be developed.

In fact, efficient mass transit systems, encompassing trains, buses and other modes of public transport, can not only promote the development of new towns but also effectively discourage the public to own private cars and ease the strains on our roads. The Government's White Paper on transport policy announces various incentives to passengers who use public transport services. But the increase in the number of private cars shows no sign of ebbing. Therefore, the Government should act expeditiously and develop mass transit systems by way of expanding the railway system which, in turn, should tie in with other public transport services. Only then can we hope to stop the number of private cars from growing.

Madam deputy, with these remarks, I support the motion.

THE PRESIDENT resumed the Chair.

MR PETER WONG: Mr President, looking at the Territorial Development Strategy (TDS) Review from the environmental point of view, I am disappointed with this primary planning strategy for Hong Kong. Not only do the proposed strategy options fail to provide solutions to anticipated environmental problems, but they also offer no concrete development guidelines for achieving the set environmental objectives. These objectives are minimizing

environmental impacts on the community and enhancing Hong Kong's landscape and ecological attributes.

### *Land use*

The TDS predicts that the continued growth in the Pearl River Delta will exacerbate existing environmental pollution problems due to increases in industrial effluents and emissions from industry and traffic as well as wastes produced by an increasingly larger and more affluent population. However, there is no discussion in the TDS as to how these problems will be dealt with. This is clearly a case for cross-border co-operation in planning infrastructure and environmental management strategies.

When the PADS Study was completed in 1989, there had been little environmental assessment of the impacts of the proposals or cost-benefit analysis. The subsequent environmental impact assessments (EIA) carried out are merely exercises in damage limitation. Even at this late stage, the EIA has not been completed for the North Lantau Reclamation, the impacts of which are likely to be significant and possibly irreversible. I strongly urge that for all future PADS projects, cost-benefit analyses are conducted prior to the decision to gazette a project.

In the absence of an overall regional strategy, sub-regional plans, many of which have already been completed, could conflict with the overall strategy to be mapped out. It is therefore important to provide a uniform and consistent policy which planners and developers can use as the reference point. Whilst northeast New Territories has been identified as a landscape and conservation area, there are no clear guidelines on how conservation will be carried out. Large tracts of the northeast New Territories and the outlying islands are still grey areas in a planning vacuum. To achieve the conservation objective, specific criteria for developments in the vicinity of ecologically sensitive areas must be developed in the long term.

### *Environmental conservation*

More importantly, the TDS has not even attempted to demonstrate how the high growth scenario in northwest New Territories can be reconciled with the need to conserve this area. There are no statutory buffer zones that are surely needed to maintain the carrying capacity of Mai Po, while there are a number of development proposals which would further reduce the total wetland areas. The Government needs to make a clear statement on how much development is permissible in northwest New Territories and to incorporate the findings of the RAMSAR Committee. Consideration should be given to the setting up of "restricted" areas if we really value some of our heritage. While the TDS recognizes the importance of areas with potential for recreation, it falls short of indicating how this principle can be implemented. There needs to be much tighter definition of the types of recreation which are permissible in certain areas, and also guidelines to the planners on the sorts of environmental

problems which may be associated with different types of recreation. We also need to think of the consequences of encouraging development of land hungry recreational sports such as golf. Do we want thousands of frustrated would be golfers, who, after they have been expensively kitted out and professionally taught, find themselves caught up in the golf club waiting list?

Apart from land use requirements, the transport and infrastructure components of TDS also fail to take the environmental factor into consideration. There is still an emphasis on the provision of road rather than rail transport, and paradoxically developers have the role of mitigating the effects of transport noise on the environment. We need to do some lateral thinking to solve the commuter problem which requires massive transport infrastructure which is insidious to the environment in the light of the morning and evening rush. Thought should be given to decentralize jobs to the dormitory towns thereby avoiding major movements of the population. It is hoped that in the review of the Second Comprehensive Transport Study, environmental considerations will be fully incorporated in the planning stage.

As for other infrastructure strategies, planning for future provision of the major utilities tends to blindly extrapolate historical demand patterns to estimate future demand. Utility companies are simply meeting demand, rather than managing demand through investment in energy and water conservation. Similarly, in sewage treatment and waste disposal, no mention is made of waste minimization.

To sum up, let me reiterate the need for greater environmental input at the planning stage and clearer development guidelines for the implementation of strategy options. Reading the motion of the Honourable Edward HO, I think the TDS in its present form does not point out the way forward as to how exactly Hong Kong can promote prosperity and improve the quality of life at the same time. While the two are not mutually incompatible, there is a need to recognize the growing importance of non-monetary aspects, such as the environment, that contribute to the quality of life. I wish to conclude by asking this question: "What elements of economic prosperity is the Hong Kong community willing to trade off for a better quality of life?" Thank you.

MR ALBERT CHAN (in Cantonese): Mr President, TU Fu, the Tang poet, once wrote a poem lamenting the troubles of his time. Two lines in that poem sounded an alarm: "Wine and meat are left to rot in the mansions of the rich. In the streets, people die from starvation and cold." These lines have become immortal. Regrettably, public policy makers in Chinese societies have failed to learn the lesson. They turn a blind eye to such social injustices and allow the situation to gain ground and indeed get worse. This is particularly true in Hong Kong. Disparity of wealth is now a very serious problem in Hong Kong and it can be summed up in these words: "The rich live in huge mansions; the poor sleep in the streets." To say that our social welfare is not good enough does not touch the heart of the problem. Inadequate social welfare is not the main

issue; it is a side issue. Social injustices are deeply rooted in Hong Kong's socioeconomic system. However, instead of rectifying the situation, the Government, as reflected in its policies and plans, creates unequal opportunities and thus fuels social injustices. The Government's land policy and land planning strategy have always played the villain's role in Hong Kong. As we can see, over the years, Hong Kong's big land owners have always held sway. The *Territorial Development Strategy Review* has done nothing to set the wrong direction right. Judging from the consultation paper's recommendations, the entire review is predicated on economic development. It is undeniable that economic development is very important to Hong Kong. But social needs, such as a better quality of life and a more equitable distribution of resources, are also important. The review overlooked these needs. The Government shows that it has no intention to change its inequitable policies. Worse still, this means that it is letting the situation get worse on purpose. Social conflicts are bound to be aggravated. Today, when civic awareness is running high, social conflicts will certainly pose a threat to the Government's credibility. After all, Hong Kong's affluence is as indisputable as its toleration of worsening social injustices is disgraceful.

Look at the consultation paper. Where land planning is concerned, the forecast in its most conservative scenario is that between 760 and 770 hectares of land will be needed for housing purposes from year 2001 to year 2011. The annual average demand will thus be in excess of 70 hectares. This is much more than the annual average made available during the recent three years, which was just over 20 hectares. I find the land demand forecast to be rather realistic and I welcome it. However, an increase in land supply by itself will not make housing available to those who need it or improve their quality of life. Land plans may show that there is enough land in reserve. But if land prices and housing prices are sustained at high levels, we will still have a situation where "there are people without homes, and homes without occupants".

Land planning has a bearing on people's quality of life and certainly economic development as well.

The review plays up the importance of our developments to match the growing economic ties between Hong Kong and southern China. Accordingly, the scenarios it proposed are based on the assumption that there will be interregional division of labour and that the fast-paced economic development will be maintained. These scenarios, in terms of planning, merely address Hong Kong's need to cope with developments in our neighbouring countries and areas. They say nothing about Hong Kong's internal development needs or about inter-district co-ordination. Therefore, whichever scenario the Government may adopt, it will not rectify the poor inter-district co-ordination within Hong Kong.

The consultation paper says clearly that the purpose of the *Territorial Development Strategy Review* is "to provide a long-term planning framework for the provision of land and infrastructure in the territory in such a way that



acknowledges developments in the Pearl River Delta and other parts of south China". But neither the consultation paper nor the relevant study gives a detailed description of the economic development trend in southern China, infrastructure there and its reliance on the infrastructure of its neighbouring areas. As everybody knows, ports and airports are planned to be constructed in many parts of Guangdong Province. Will the relationship between such facilities and those in Hong Kong be one of mutual benefit or one of vicious competition? The Government fails to give any details in the paper. Legislative Councillors and members of the public have no way of judging whether the Government's scenarios will really match southern China's developments and indeed enhance Hong Kong's own economic development potential. I believe that government officials have not done enough home work or are simply not serious about consulting the public. This is why they have refrained from disclosing the information that they have acquired at the expense of taxpayers' money. They do not want members of the public to know too much and ask too many questions — questions that they may not be able to answer.

As far as I know, the Planning Department has failed to publish at least two studies that were completed. They are *Economic Evaluation of Hybrid Option* and *Financial Evaluation of Hybrid Option*. I urge the Government to publish these studies so that members of the public may put forward more constructive comments with the aid of the more information made available.

Meanwhile, Hong Kong's economy is undergoing structural transformation. The transformation will have a bearing on land use planning and land use conversion. Let me illustrate. Until 1985, out of every dollar invested in Hong Kong, 35 cents were invested in manufacturing. Then, from 1986 to 1990, only seven cents out of every invested dollar were invested in manufacturing. On the other hand, the number of workers employed by manufacturers declined from 1.03 million in 1980 to about 800 000 in recent years. In contrast, import and export trade's workforce rose from 120 000 in 1980 to over 300 000 in recent years. Evidently, Hong Kong's economy is undergoing structural changes. But the study published by the Government fails to give a clear picture of Hong Kong's economy in terms of what development mode it is in now and what the trend is like. On top of this failure, the Government has never had a long-term economic policy. The community therefore simply has no way of making a judgment as to whether the plans contained in the *Territorial Development Strategy Review* are suited to Hong Kong's economic development needs.

More ironically, the "options" offered by the consultation paper are nothing more than scenarios predicated on different possible economic developments and investment mode. Are we to understand that the people of Hong Kong can control economic development in southern China? The Government should offer options based on factors that are within the control of the people of Hong Kong.

In short, neither the *Territorial Development Strategy Review* nor the consultation paper shows that the Government is serious enough about listening to the public. I hope that, by year 2001, when the *Territorial Development Strategy* comes to fruition, Hong Kong will no longer present a scene where: "Wine and meat are left to rot in the mansions of the rich. In the streets, people die from starvation and cold."

With these remarks, I support the motion.

REV FUNG CHI-WOOD (in Cantonese): Mr President, the *Territorial Development Strategy Review*, a consultation paper prepared by the Planning Department, provides a blueprint for Hong Kong's development in the next 20 years. The paper, towards its end, raises 10 questions. One of these questions is: In what ways do you think land use and infrastructure might be planned in order to facilitate economic growth while respecting environmental objectives? This has always been a controversial question. And the question is self-contradictory as well. In Hong Kong, be it the decision to build a new airport or to introduce the 10 infrastructure projects, the Government never deviated from its longstanding practice of putting the economy first. I would like to remind the Government that, before we partake of the economic fruit of any grand project, the community will have in fact paid a high price. To bear the brunt of this is always the environment, followed by the residents of the affected districts. When it comes to economic development, we must give serious thoughts to this question: What is "sustainable growth"? I am much worried that Hong Kong's territorial development strategy will again do huge and irreparable damage to the environment.

The United Democrats of Hong Kong think that, in the absence of a sound planning system and a land policy and a housing policy attentive to the interests of all social classes, not every person in Hong Kong will be able to partake of the fruit of our economic development. Meanwhile, economic development, land development and the construction of transport networks will invariably have adverse effects on the environment. The Government should send a clear message to the public: The community has to pay a price for economic development.

We have undoubtedly made progress since the 1984 territorial development strategy report. This time a report on the basic conditions of the environment is also provided. This report describes the basic conditions of the environment in four districts that are now under development.

After reading the whole report, I smell a rat as it is brought to light that the Government has reached the last line of defence for the natural environment in the territory. Only three areas are left where further development is banned: Deep Bay, Mai Po Marshes Nature Reserve and Mirs Bay. The only areas with scientific research value will be Double Haven, Hoi Ha Wan, Ping Chau, Shelter Island and Sham Wan Bay in southern Lamma Island.

Secondly, one point in the report's conclusions is questionable. The report says that, in the next 20 years, Hong Kong's main pollutants will be liquid and solid wastes. I am very surprised to read this. It is quite different from what the Governor said in his policy address in October. The Governor then said that air pollution would be a worrying problem and would be twice as bad in year 2001 as it is now. I wonder if the consultant company's findings are consistent with the predictions of the Environmental Protection Department. I also wonder if the Environmental Protection Department has expressed disagreement with the consultant company's findings. For this reason, I have great doubts about the reliability of the paper.

Thirdly, the paper reports on the present conditions of the environment. Yet, it does not offer any solutions, such as the relocation of potentially dangerous installations in residential areas, for the existing environmental problems stemmed from improper co-ordination in the development of the urban areas. It only says a few words about the redevelopment of old factories.

Fourthly, the report fails to assess the overall environmental impact on the individual scenarios from an environmental protection point of view. It only provides a list of restrictive conditions. Still, we have no idea when these conditions should be in force and when they may be waived.

Fifthly, there was extensive flooding in the New Territories in the wake of recent rainstorms. There is a close correlation between flooding and land development planning. The Governor, too, blamed the flooding on unauthorized conversion of farmland. But the report says not a single word about this cause-effect relationship. It also fails to assess how land development would cause flooding in the New Territories under the individual scenarios.

Lastly, I would like to ask officials of the Planning Department to explain something about information disclosure. As far as I know, there are more environmental studies than the two basic reports released by the Planning Department. One of the unpublished studies is a comparative environmental impact study of the various scenarios. There are several other studies on specific environmental subjects, for instance, a study on the quality of water. The Government does not want to release these studies. I have tried to obtain copies of these studies to no avail. I want to ask: Why can members of the public not have access to studies paid for with taxpayers' money? I want the Government to show sincerity. I want the Government to stop pretending to consult the public while it tries to keep Legislative Councillors and members of the public in the dark.

I really do not want to see a recurrence of the incident involving Greenfield Garden on Tsing Yi Island. That housing project, with the Government's approval, was built near a cement factory. The Government also approved other huge housing projects on Tsing Yi Island despite the dangerous installations there. The Government approved private housing projects near the smoke-belching and odour-emitting incinerator at Kennedy Town. The

Government also approved huge housing projects along railway lines where noise levels were above normal. Very regrettably, this *Territorial Development Strategy Review* fails to review the Government's policies in these areas. I hope that the Government will learn from its past planning mistakes.

Mr President, with these remarks, I support the motion.

MR FREDERICK FUNG (in Cantonese): Mr President, first of all, I am quite concerned about whether a discussion of the present study will be useful in view of the poor Sino-British relations. The study makes recommendations about very long-range plans, covering the period from year 2001 to year 2011. Any plans straddling 1997 must be discussed with the Chinese side. We learned from the Planning Department that the paper has already been sent to the Chinese side through the Sino-British Joint Liaison Group (JLG). The Planning Department itself has sent copies to its counterparts in Zhuhai and Shenzhen and now awaits their responses. However, the Planning Department acknowledges that since the Sino-British row began many months ago, while officials of China and Hong Kong, through unofficial contacts, did manage to exchange views on some planning problems (as in the case of the Tuen Mun-Zhuhai Bridge project), the two sides have rarely been in contact to discuss practical matters at hand. In the absence of regular meetings, each side has been minding its own business. A very clear case in point is the proposed Tuen Mun-Zhuhai Bridge.

The paper offers many scenarios and recommendations. They have more far-reaching repercussions than any single project, such as Container Terminal 9 (CT9). Therefore, I hope that JLG will discuss them and exchange views on the planning for the development of southern China as soon as possible. We can then proceed to make long-term plans that, besides being responsive to our own social needs, will enable Hong Kong to continue playing an important role in the economic development of southern China.

The development scenarios offered in the paper deal with long-term planning. There are many variables (including southern China's economic outlook, population movement and housing and transport needs). What can be sketched now are just rough outlines. Yet all the development scenarios have one point in common. It is that the Tsuen Wan and Kwai Chung area are going to play a pivotal role. It will be home for container terminals, ordinary industrial operations and second-liner shops and office buildings. It will also serve as a freight redistribution centre in the "high growth" and "super high growth" scenarios. To consolidate and further such a planning, this area should be made converging point and a stop for several major transport systems including the northern Lantau expressway, the airport railway, Route 3 and the northwestern railway. The completion of Sino-Hong Kong transport systems including the Tuen Mun-Zhuhai bridge, the Guangzhou-Shenzhen expressway and the Shekou-Tuen Mun route will further turn the Tsuen Wan, Kwai Chung and Tsing Yi area into a hub for the entire region including Hong Kong and

southern China, the region's central point along both the east-west transport link and the north-south transport link.

While the Tsuen Wan and Kwai Chung area enjoys the spotlight in the study, I am not optimistic that the area can be further developed. What new role will the area assume if all the plans are put into operation? What additional transport facilities and social service facilities will the area need for coping with the developments? The study gives no details. One therefore worries that, when it begins to play the important role envisaged in the plans, the Tsuen Wan and Kwai Chung area will be inflicted with additional traffic problems. And the victims would be the residents of the area. The Tsuen Wan and Kwai Chung area has been under development for 20 years. There is little development room left. To support its new role as recommended in the paper, large-scale redevelopment and reclamation projects must be undertaken. In this, the public sector must take the lead. But the following difficulties are envisaged: (1) The Government does not have the vast resources needed for the redevelopment projects. (2) The study reports that the Rambler Channel will be an important development site in public sector-led projects. This means that the channel between Tsuen Wan and Tsing Yi will be filled and levelled. But this will bring about adverse effects on the movement of water in the Victoria Harbour. Serious environmental pollution will probably result. The Association for Democracy and People's Livelihood (ADPL) is opposed to the filling of Rambler Channel. I believe that, if and when the channel is filled and levelled, some of the land thus formed will be set aside for use by container terminals. This will bring no relief to the area's traffic problems.

In this connection, ADPL suggests that the Government should consider the following courses of development:

- (a) The development strategy may pay too much attention to the Kwai Chung and Tsing Yi area as a freight handling area. To forestall this, other major development areas should also be identified, and we suggest that they should include Tuen Mun and Lantau Island North. The Tsuen Wan and Kwai Chung area should be developed primarily as a commercial and residential area. Container Terminals 1 to 5 now in the area should be relocated to Lantau Island North as soon as possible. To cope with this, the Government should proceed quickly to build the container terminals at Lantau Island North. This will prevent container handling from being affected in the meantime. Another thing is that the dangerous goods godowns now on Tsing Yi should be relocated to some outlying islands (such as Tai A Chau, Siu A Chau and Kwai Shan Island). This will support the Tsuen Wan and Kwai Chung area's transformation into a commercial and residential area.
- (b) The solution of the traffic problems of Tuen Mun lies in local job creation. Therefore, the Government must develop Tuen Mun into a site for a hub of second-liner shops and office buildings. (This

point is not considered in any scenario in the study.) Another thing is that, if and when Lantau Island is developed with great vigour, people from Tuen Mun will be attracted to seek jobs there. With fewer commuters from Tuen Mun to Kowloon and Hong Kong Island North, there will be less traffic congestion. Of course, when planning along such a line, the Government must be prepared to build a route connecting Tuen Mun and Lantau Island.

Should the Tuen Mun-Zhuhai bridge and the Shekou-Tuen Mun Route be given the green light and subsequently completed but without a long-term government plan to support them, the container trucks using these routes will have no other alternative but to get on Route 3 or the Tolo Harbour Highway or drive into Tuen Mun, from which they will then use Tuen Mun Road and proceed to Kowloon West via Tsuen Wan and Kwai Chung. No matter what traffic improvement measures the Government may take now, traffic problems will again become Gordian knots when the Tuen Mun-Zhuhai bridge and the Shekou-Tuen Mun route become operational.

Therefore, the Government must build a route between the new airport and Tuen Mun so that container trucks from Zhuhai and Shekou may use the north Lantau expressway to proceed directly to Lantau Island North or to the container terminals at Kwai Chung and Tsing Yi. If the Government does not wish to consider the Airport-Tuen Mun route but favours the Tuen Mun-Yam O Route instead, then it must build a supplemental corridor along Tuen Mun's water-front, like the Eastern Corridor on Hong Kong Island. This will divert massive container truck traffic from Castle Peak Road and Tuen Mun Highway.

Mr President, with these remarks, I support the motion.

MR MICHAEL HO (in Cantonese): Mr President, as a member of the New Territories West branch of the United Democrats, I am going to focus my speech on matters concerning New Territories West.

It is worth noting how the Government, in the course of its formulation of the Territorial Development Strategy, planned to link up the northwest New Territories (NWNT) with the territory's overall developments. Tuen Mun and Yuen Long adjoin Shenzhen in the north and face Zhuhai in the west. They possess unique development potential in the context of the economic boom in southern China.

As a matter of fact, Hong Kong has been caught out by China's rapid economic growth over the past few years. The growth in Sino-Hong Kong trade has exerted enormous pressure on the road network in NWNT.

It is mentioned in paragraph 23 of the Territorial Development Strategy that "With the increasing interaction between Hong Kong and its economic hinterland, additional strategic transport links between Hong Kong and China

will be essential ..... The timing for the provision of these depends on the pace of development of our economic hinterland." This bears witness to the fact that the Government did examine the transport issue.

However, we do not wish to see that the relevant strategy will not be put into practice until the existing roads are over-congested and the Government will wait till then to build new ones. Should that be the case, by the time the new ones are completed, the existing roads have already become saturated just like the case of today's Tuen Mun Highway.

We warmly welcome that everyone in Hong Kong can enjoy the economic benefits brought about by the growth in trade. But we do not want to see that residents in NWNT alone have to deal with the ensuing traffic congestion as a result of poor planning. It is hoped that the Government will make up its mind as early as possible with regard to the construction of the northwest railway and will realize the merits of extending the railway to Tuen Mun Town.

At the same time, the Government should work out a more systematic planning to put the land in NWNT to better use so as to forestall any disorderly and patchy developments of farmlands and unnecessary occupation of road space by container trucks.

However, we learn that in the course of its planning of the development of the New Territories, the Government has often encountered resistance from the landlords there. We appreciate that they want to protect their own rights but the guiding principle should be that land use be subjected to certain restrictions as it must tie in with territory-wide planning.

We welcome that the Government is serious about preserving the unique ambience of the Mai Po Marshes in its NWNT planning. We should not give up preserving this important marshes at Mai Po in spite of the fact that pollution in the Shenzhen River and the Deep Bay has become very serious or that the mangrove swamp at Futien, Shenzhen, is gradually retreating. Instead, we should treasure this paradise of birds all the more. For this reason, we support the setting aside of a largest possible green belt as a buffer area surrounding the Mai Po Marshes to avoid causing further damages to the marshes as a result of massive construction developments in the vicinity.

As a matter of fact, we know that the birds at the Mai Po Marshes, both in terms of type and number, are on the rise in recent years, despite the serious pollution problem in Hong Kong. It is evident that what we have done to the Mai Po Marshes over the past years have indeed achieved certain positive results.

Mr President, these are my remarks.

DR HUANG CHEN-YA (in Cantonese): Mr President, Hong Kong's strength and prosperity come from our perpetual motion and forward momentum. Some people want 1997 to become a watershed to mark the healthy development of democracy axed in the middle, so to speak. However, as the underlying belief in the *Territorial Development Strategy Review* we are discussing today evinces, I am convinced that, the through train of Hong Kong's economic development will safely and smoothly enter into a brighter 21st century that lies beyond 1997, and the march of democracy in Hong Kong will proudly continue, sweeping all man-made obstacles aside.

I am not diverging from today's topic when I voice our faith in a democratic future. I am trying to make one point, which is that democracy and the rule of law constitute the cornerstone for Hong Kong's prosperity. If the idea of "Hong Kong people ruling Hong Kong" should die a premature death and only a submissive administration and legislature should survive in Hong Kong, then Hong Kong's economic development would become just a chapter in the annual report of China's Hong Kong and Macau Affairs Office and Hong Kong's prosperity would vanish into thin air. Today's discussion would then be totally pointless.

Mr President, Hong Kong's development strategy should not be totally reactive to changes in our neighbouring countries or areas. Hong Kong should take the initiative in formulating and carrying out its own development strategy. Hong Kong must be fully democratic if it is to be the master of its own destiny and play a role in promoting its own prosperity.

Geographical distances have been shortened by modern communications and efficient transit technologies. Meanwhile, the ever-more sophisticated financial services require an economy of scale. Economic activities all over the world are heading in the direction of borderless regional operations.

Therefore, we should not focus our attention only on China's fast economic growth. We must look further at the vigorous economic growth of East Asia in its entirety. Hong Kong can and must evolve over the next decades into a hub of air-borne transport and sea-borne transport and services centre not only for the Pearl River Delta or southern China but also for East Asia.

The gradually emerging mode of sea-borne transport is one in which regional freight ships load cargo at scattered ports and carry it to central trans-shipment ports where it is redistributed to international ships. A similar mode is emerging in air-borne transport. The Government must ensure that our port has adequate back-up facilities when Hong Kong becomes the hub for the numerous ports of the Pearl River Delta, or when these well-placed ports collectively become the hub for Southeast Asia. Similarly, as many airports are now under construction in southern China, Hong Kong could be developed into the hub of air-borne transport for southern China and East Asia. When this happens, will Hong Kong's airport and its back-up facilities be adequate? Will



there be connecting transport systems in place? Will there be land in reserve for meeting future development needs?

The merger of Hong Kong and southern China in terms of economic development is certain to create a demand for faster transport systems. Businessmen now tend to make one-day trip across the border to inspect plants and hold business talks. This means Hong Kong will need express highway, rail transport and sea-borne transport and short-distance air transport to bypass local traffic jams. Furthermore, it is envisaged that more Hong Kong people will be going to work in China. They will move their home to the New Territories. The demand for land in the New Territories will then become greater. Therefore, the Government must look far ahead. It must make plans well in advance for transport systems in the New Territories and their links with those in other districts. There plans must leave room for further development. We will then avoid a repetition of the mistakes that are responsible for the present traffic disorder and congestion in the New Territories.

Labour intensive industry, which depends on the supply of cheap labour and cheap land, will of course be relocated to China. Industry that causes pollution will also be relocated to suitable sites in China that are far away from residential areas. However, although Hong Kong's factory buildings will be relocated to China or some other nearby countries, their management, as well as related work including product designing, research and development, packaging, financing and business communication, will continue to be done in Hong Kong, probably on an even larger scale. In response, when making plans for industrial or commercial land, the Government should bear in mind that Hong Kong's economy is in the middle of a gradual structural transformation process. Government policy should not be set in concrete. Rigid rules should not be made to restrict the conversion of industrial land to other use. Hong Kong's tourism industry is undergoing a structural transformation. More and more tourists are coming to Hong Kong from China and neighbouring countries or areas. Their accommodation needs are different. After 1997, the number of visitors from China to Hong Kong will increase significantly. If the experience of Shanghai and Guangzhou is anything to go by, Hong Kong will probably have a non-resident population of several million. This will create heavy strains on Hong Kong's traffic and housing capacities. If Hong Kong is to become the leading conference and exhibition centre of East Asia, it must have additional back-up communication and accommodation capacities on top of conference and exhibition facilities. It clearly does not have enough of these capacities now. Financial and other services have grown rapidly in Hong Kong. But the Government has never conducted any studies on the service industry along the line of those on manufacturing. It does not have in-depth information on the development needs of these trades. We think that the Government must avoid planning mistakes that will create bottle-necks hampering the industry's development by expeditiously carrying out such a study.

Lastly, I must note that Hong Kong's high property prices are making it difficult for members of the public to buy and own homes. Excessively high property prices and rentals for residential and office space are seriously undermining Hong Kong's commercial competitiveness. International companies are now less interested in setting up their Asian regional headquarters in Hong Kong. The Government must make more land available for housing. This will help to improve the quality of life and promote economic growth. The Government must also pay attention to the impact of industrial plans and transport plans on people's living environment. In making long-term plans, the Government must forestall a recurrence of the mistakes that it made in Tsing Yi, Tsuen Wan, New Territories West and Kowloon.

Mr President, with these remarks, I support the motion.

MR LEE WING-TAT (in Cantonese): Mr President, bearing in mind the Government's messy and flawed plans for new town development over the past 20 years, its *Territorial Development Strategy Review* now under discussion is, one should say, an improvement. The review is still flawed in many ways. It is hoped, however, that the Government, after extensive consultation among the public and the local communities, will come up with long-term development plans more in line with the interests of the general public. It is hoped that, through these plans, the mistakes of territorial development planning of the past 20 to 30 years, which led to problems such as over-crowded living conditions, mixed industrial and residential zoning, transport systems soon reaching their capacities and the over-concentration of work places in certain areas, will then not be repeated. I will focus my attention on the review's objectives 2 and 5, that is, its objectives in the housing and traffic areas.

The review's objective 5 is "to provide a framework within which to develop a multi-choice, high capacity transport system that is financially and economically viable and makes provision for the safe and convenient movement of people and goods." This is a flawless and very attractive objective. However, the review fails to incorporate the findings and recommendations of the Second Comprehensive Transport Study or the territory-wide railway development strategy study. Nor does it say how this particular objective can be attained in practical terms. This is one flaw of the review. The United Democrats of Hong Kong (UDHK), including myself, urge the Government to pay attention, in particular, to transport plans matching the development plans mentioned in the review: plans for the development of new towns in undeveloped Green Island, Tung Chung, Kam Tin and Lok Ma Chau and plans for the further development of the existing new towns of Tin Shui Wai and Tseung Kwan O. If one is not forgetful, one should recall that many new towns developed pursuant to government plans during the past 20 years are now generally plagued by traffic jams, traffic bottlenecks and inadequate transport links with urban areas. This is the case in Tsuen Wan, Kwai Chung, Tsing Yi, Sha Tin, and Tuen Mun. The UDHK urge the Government not to repeat its past mistakes and never to underestimate again the future transport needs of such new towns. The

Government must take early steps to plan and build the necessary transport infrastructure and to assess whether a mass transit system will be needed in the future. The Government must not wait until problems have surfaced and then start looking for remedies. Elevated road systems should be built obviate any possible bottlenecks and subsequent traffic jams. The development of out-lying towns to relieve over-crowding in the urban areas is a good idea. But serious consideration must be first given to the provision of matching transport links.

Paragraph 11 of the review says that an Office Land Development Strategy will be formulated. This will be very good from the point of view of transport planning. Too many office buildings are now concentrated in Central, Wan Chai and Tsim Sha Tsui. The result is that, every day, hordes of commuters arrive at these areas at the same hours and leave at the same hours, creating huge strains on the transport systems. Commercial buildings must be decentralized. If this is done successfully, it will surely help to ease the strains on the heavily loaded traffic facilities. To succeed in developing new commercial districts, the Government should begin by providing supporting transport systems and facilities. The Government should then set an example by moving its own offices into the districts. New commercial districts may be developed at locations such as the Kowloon Bay reclamation site, Tsuen Wan and Kwai Chung.

In most of the review's scenarios, it is generally expected that the volume of cross-border freight transport between China and Hong Kong will go up dramatically. However, the review says nothing about what measures can be taken to improve cross-border traffic flow. This is a serious flaw. The UDHK are in favour of a principle which will keep freight transport separate from other kinds of transport wherever possible. This will obviate the need for container trucks and buses to jostle for space on Tuen Mun Highway. Therefore, now we make our request again that the Government must quickly start to build a second cross-border railway, that is, the western corridor, and bring the construction of the country park section of Route 3 to an early completion. The Government should give consideration, with a sense of urgency, to a Route Y leading from Lantau Island directly to Shekou to serve as an expressway for container trucks exclusively. Freight transport will then cause less traffic congestion elsewhere.

The review's objective 2 is "to ensure that adequate provision is made to satisfy land use and infrastructure needs arising from sectoral policies on industry, housing, commercial, rural, recreation and other major socioeconomic activities." In fact, however, there is an inadequate supply of land under the long-term housing strategy in which the private sector plays the dominant role.

Under the existing housing strategy, the Housing Authority produces a very limited supply of public housing and Home Ownership Scheme housing. Many people, unable to obtain help from the public sector, have to buy private sector housing. This strategy is obviously good for private developers. The

hardest-hit victims are the vast multitudes of people in the middle and low-income groups. In the absence of adequate supply of public housing, members of low-income groups have to wait years for public housing units. Meanwhile, they live in temporary housing areas, squatter huts or old private tenements, under declining living conditions.

A drawback of the review is its failure to provide specific details concerning the availability of land for housing. It briefly mentions development plans for Tin Shui Wai, Lantau Island North and Tseung Kwan O. Yet, there is no guarantee at all that the supply of new housing will be adequate. This is so particularly because the private sector is chosen to play the dominant role. In areas now under development, only about 30% of all housing will be public housing or HOS housing; the other 70% will be private sector housing. From now until the year 2001, the public sector's share of the housing market will not be more than 50%, no matter in terms of land supply, occupants or number of units. Therefore, the housing problem will remain a potential social crisis, a very big headache of our community, in the next 10 to 20 years.

Now we envisage the problems to surface in the future. Why then does the Government not make more land available for meeting demands? We hope that the Government will put its resources to more efficient use and play a guiding role in the housing market. The Government should put a cap on the supply-led housing strategy and pursue a housing strategy that is really demanded. In putting the *Territorial Development Strategy Review* into operation, efforts should be made to meet people's demand for housing. This should be given higher priority. Active steps should be taken to develop the identified areas and to supply more land for housing purposes.

Mr President, with these remarks, I support Mr Edward HO's motion.

MR HENRY TANG (in Cantonese): Mr President, the consultation paper *Territorial Development Strategy Review Development Options (TDS)* published earlier by the Administration has drawn up development blueprints for Hong Kong for assessment up to 2011. Of the three scenarios postulated in the document, I think scenario B which assumes both the Pearl River Delta (PRD) and some inner provinces of China as our economic hinterland and that Hong Kong would experience extra high economic growth is a down-to-earth assessment. Nevertheless, there is an inadequacy. The Administration has failed to grasp a full picture of China's economic development. Hence, in working out the possible scenarios, the close tie between the whole of China and Hong Kong in terms of economic development has been somewhat underestimated. In between 10 and 20 years' time, our economic tie with China would not be confined to just "some" inner provinces. It is envisaged that a development network straddling the whole country should have been established.

Mr President, Hong Kong's economy has enjoyed sustained growth over the last 10 odd years, not affected at all by the recession experienced by the United States and Europe. We must admit that this is mainly and directly due to China's open policy. As a matter of fact, PRD has long been our major economic hinterland. As such, the Administration's assessment that the scenario A's assumption will be valid for 14 years after 1997 is indeed outdated. For those who have their fingers on the pulse of the development of southern China's economic zones, they should notice that signs of saturation are actually beginning to surface in PRD. In recent years, quite a number of manufacturers have been relocating their operations to other inner provinces in search of a better investment environment. In other words, in the next few years, Hong Kong would steadily move into the stage under scenario B which is advanced by the Administration. In planning the development 10 odd years away from now, the Administration has to demonstrate greater foresight. It should take a broader view in considering possible ways of co-operation with China in future and take concerted actions in making, among others, local facilities, capital works, land and transportation available. Under its socialist market-oriented economic system and driven by its macroeconomic control policy, China's open economy is bound to move ahead and there is no turning back. That is why I am confident that as long as Hong Kong keeps on strengthening its own strong points and continues to render assistance to China in respect of technical know-how, information, human resources and management experience, the co-operation between the two economies could enable Hong Kong to become China's economic and financial centre. If this long-term and broad target can be achieved, our future would be extremely bright and magnificent.

Mr President, I support this TDS Review. It has great bearing on the future long-term economic development of Hong Kong. However, I have a big worry. In the present depressing political climate as a result of the Sino-British row, many development projects of an urgent nature may, unfortunately, suffer serious setbacks. Given that works as outlined in the TDS Review, which straddle 1997 and involve China's national economic developments as well as local development at county and province levels, if Hong Kong is to formulate a development blueprint accurately and thoroughly, China's co-operation by way of providing necessary information is certainly indispensable. Otherwise, just like making a cart behind closed doors, as a Chinese saying goes, it would be difficult for us to make any meaningful assessment.

Mr President, Hong Kong will be returned to China three and a half years from now. Against this backdrop, it would only be rational if the present Administration in Hong Kong takes positive measures to co-operate with our future sovereign power, so as to make transitional arrangements in a practical manner and jointly implement long-term development plans. I would like to reiterate my wish that both China and British Governments return to the path of

co-operation promptly and discuss arrangements in the interests of the 6 million people in Hong Kong.

Mr President, with these remarks, I support the motion.

MR WONG WAI-YIN (in Cantonese): Mr President, I am very glad that we have an opportunity today to have a motion debate on the *Territorial Development strategy Review* in this Council. The Government has taken an unprecedented move to conduct a public consultation on the territorial development strategy. Very regrettably, however, a consultation of this kind should have carried out at least 30 years ago. During the past 30 years, while enjoying the fruit of economic growth, the people of Hong Kong also were subject to the bitter consequences brought about by the long absence of an overall development strategy: serious environmental pollution including water pollution, air pollution and noise pollution, crowded living conditions and traffic jams. Perhaps I am a bit too harsh to say that an overall development strategy has been missing over the past 30 years. Still, I will venture to say that whatever plans were made during the past 30 years economic growth was emphasized at the expense of improvements in the quality of life for the people. I believe that many will agree with my saying so.

In any case, it can be said that this debate heralds a new stage today. Meeting Point fully approves of the planning framework set out in the consultation paper. It is a "land use-transport-environment planning framework". We should note that the term "environment" (or "environmental protection" or "conservation") did not occur in *Planning for Growth*, a first booklet on Territorial Development Strategy, published by the Government in 1984. And no public comments were invited at that time on the territorial development strategy in which economic development came first. Mr President, I would like to draw attention once more to the primary goal of the *Territorial Development Strategy Review* as described by the present consultation paper: "To enable Hong Kong to continue to grow as a regional and an international city and become a place in which to live and work." Planning should not have dual goals, rather it should have only one goal, which is to improve the quality of life for the population. Economic growth is a means to this end. It is not an end in itself.

However, it takes more than a framework and a goal to succeed. What is more important is to have the political will to achieve the goal. As a Legislative Councillor living in, and representing, New Territories West (Tuen Mun and Yuen Long), I am more aware of this than anybody else. Vast tracts of agricultural land in the New Territories have been converted haphazardly to unauthorized use as container depots, junk yards for abandoned vehicles or storage areas, resulting in a deteriorating environment and frequent flooding. Where traffic congestion is concerned, it is caused by the Government's lack of political will and nothing else. Without the will, the Government certainly does not bother to solve the problems by introducing legislative or enforcement

mechanism. I know, of course, that the Government has recently set up a working group headed by the Secretary for Planning, Environment and Land. It is still too early to tell how effective this working group will be. A similar situation arose a few years ago with the publication of the *Metropolitan Plan*. That plan sought to keep the urban population to 4.2 million. It was hoped that a less dense urban population and more parks would improve the quality of life for people living in the urban areas. Such an objective was certainly worth pursuing. But we have seen no active attempt made by the Government to set up mechanisms to pursue it. There is another case from which the Government should draw a lesson. It is the case of Sha Lo Tung, in which a golf course was proposed to be built in the Pat Sin Leng Country Park. The Government, to our surprise, supported private developers' proposed project to take up country park land. In the end, a civic group, Friends of the Earth, applied for judicial review, and the court ruled that the Government did not have the authority to do so. The present consultation paper recommends that many areas should be designated "unique areas" or "areas of significance" on account of ecological and environmental consideration or landscape conservation. Meeting Point fully approves of this. But what is more important is that the Government must set up an enforcement mechanism, supported by legislative measures and an executive arm, to enable the recommendations to be implemented. This is my first suggestion.

My second point has to do with the "regional planning" concept put forward in the consultation paper. Meeting Point fully agrees that Hong Kong and southern China should be regarded as one region for planning purposes. Plans should be made for the good of the region as a whole. Hong Kong and the Pearl River Delta, as a matter of fact, now form an inseparable economic entity. If Hong Kong's economic growth is to be "sustainable" in the words of the consultation paper, then some of our infrastructure projects must be located outside of Hong Kong. Yet we do not want to see a repetition of the "growth and pollution" cycle in the Pearl River Delta. Meeting Point thinks that official communication channels at the working level or the professional level should be established between corresponding government departments of Hong Kong and Guangdong Province. For instance, joint working groups may be set up to enable the two sides to exchange information and to discuss matters in respect of planning concepts, views or guidelines during the initial phases of planning. This will help the region as a whole to achieve reasonable, balanced and sustainable growth.

Mr President, in fact, many important planning decisions had already been made before public comments were invited on the consultation paper. For instance, it had already been decided that the development of new towns would be suspended, the sites of the new airport and port facilities had already been chosen, and the metropolitan plan had already been made. Land available for further development only comes from New Territories North and West, Lantau Island North, Tseung Kwan O and the urban areas. Options are only options as to priority and scale. For practical reasons, New Territories North and West will certainly be the centre of future development. This is the area with which I

am closely concerned. The development of Tuen Mun new town has shown us clearly the consequences of the Government's planning mistakes, including severe traffic congestion and the shortage of primary school and secondary school places, which is a headache to many parents. I hope that, in the further development of New Territories North and West, the past mistakes made in the development of Tuen Mun new town will not be repeated, such as the mismatching between area development and traffic and community development. Many colleagues already talked about this problem a moment ago. I do not want to be redundant. I hope that the Government will learn from past mistakes and give thought to overall planning in its new development projects.

Thank you, Mr President.

DR TANG SIU-TONG (in Cantonese): Mr President, Sino-Hong Kong economic ties are stronger than ever. It is envisaged that Hong Kong is definitely going to become China's "most important door in the south". Hong Kong will be assuming a pivotal role in promoting economic development in southern China and indeed the rest of China as well. Therefore, it is hopelessly stupid to ignore the development needs of China, in particular those of southern China, and not to take them into consideration when formulating our future overall development strategy. The Government published the Consultation Digest of the *Territorial Development Strategy Review* in October this year. The consultation digest adopts an objective approach in its study of a number of possible development models and comes up with different development proposals in the context of the need to promote Sino-Hong Kong economic development. This is a right direction in our study and I am pleased that the Government is so far-sighted.

I have no objection at all to today's motion which urges the Government to adopt a strategy that would "promote the territory's prosperity and improve the quality of life of its people". Here I would like to draw the Government's attention to a few points concerning the consultation digest.

The consultation digest puts forward three scenarios with a total of six development area options. Apart from Lantau Island, strategic areas for development in the New Territories West include Tin Shui Wai, Kam Tin, Lok Ma Chau, Deep Bay, Black Point and areas along the proposed northwest railway. As the elected Member of New Territories West in this Council and one of the 700 000 residents in New Territories West, in this Council and about the proposals. However, in view of its bad record in the development of Tuen Mun new town in the past, I have misgivings about the Government's current plan to carry out massive construction projects in New Territories West to accommodate an additional 200 000 to 300 000 people. This would be another nightmare to the residents in New Territories West.



Development of the Tuen Mun new town started 10-odd years ago. In an absence of any comprehensive planning, problems ensued such as inadequate community supporting services, lack of employment opportunities, insufficient secondary and primary school places, under-provision of medical services, inadequate external transport services and persistent traffic congestion along Tuen Mun Highway and Castle Peak Road. These problems are yet to be resolved. The 700 000 residents in the New Territories West are still subject to the painful sequelae of the Government's past planning errors.

It is proposed in the development scenarios that the remaining undeveloped land in Tin Shui Wai be developed into a comprehensive development area for commercial and residential use with a design population ranging between 60 000 and 120 000. I think that the proposal is appropriate. Still, I have to point out that the Government must ascertain if there will be adequate employment opportunities and community facilities in the development area. The projected population of Tin Shui Wai Phase I and II developments is 300 000. That is to say, together with the proposed new development area, the population will reach 400 000, which is more or less the same as that of today's Tuen Mun. In terms of development potential, Tin Shui Wai could be developed into a self-contained community. Therefore, it is imperative that sufficient community facilities and employment opportunities be made available.

I welcome the Government's initiative to develop New Territories West. But I would like to remind the Government to let another's shipwreck be its seamark, as it were. The poor planning as in the case of Tuen Mun in the past should never recur. Territorial development should improve the quality of life of the residents, provide more employment opportunities, improve their living environment, and offer them ample community services and better transport links. Territorial development should not create headaches to the residents in the form of community problems and traffic congestion.

Four of the development options in the consultation digest have touched on several important transport projects, including the trunk route in Black Point, Tuen Mun, linking up Zhuhai and Shekou, an expressway from Yuen Long to the new airport via Tuen Mun and a railway network serving the northwest New Territories, Lok Ma Chau, Yuen Long town centre, Tin Shui Wai, Tuen Mun town centre and Lantau North. I am sure that residents in New Territories West are interested in knowing more about the details of the above-mentioned projects. I earnestly hope that these projects could end the problems stemming from inadequate external transport links in New Territories West.

Lastly, I would like to point out that apart from acquiring land through the leveling of mountains and reclamation, the Government should also consider easing our land shortage by opening the restricted areas at the border for development purposes. With 1997 drawing near, it is expected that the restricted areas at the border will play a less significant role.

The Territorial Development Strategy Review formulates Hong Kong's development direction in the next two decades and has a bearing on our economic development after 1997. I hope that the Government will make a far-sighted commitment so that Hong Kong may enjoy continual stability and prosperity and maintain its status as an international economic and financial centre.

Mr President, with these remarks, I support the motion.

MISS CHRISTINE LOH: Mr President, the Territorial Development Strategy Review (TDS) aims to "establish a ..... long-term land use-transport-environmental planning framework", taking into account the projected economic developments in the Pearl River Delta till the year 2011.

What can Hong Kong offer to booming southern China? Which investments in Hong Kong will best maximize our competitiveness and profitability in the future? And, how should we do that, in the words of the TDS, "having regard to resource availability, to enable Hong Kong to continue to grow ..... and become a better place in which to live and work"?

The Government's answer is a massive infrastructure programme. But, is this the best use of Hong Kong's limited physical and financial resources? There are factors which argue against the automatic adoption of the "definitions" used in section 6 of the TDS.

Firstly, will Hong Kong be the prime container hub port in the year 2011? Phrased another way: Should we proceed with the seven further container terminals on Lantau which should keep Hong Kong as the world's number one container port in the year 2011? We might be tempted to answer "Yes" to this question but before we do so, I suggest that we first pose another question: Is the trans-shipping of millions more tons of freight the best possible use of our very limited resources?

We might well conclude that it would be desirable for some of the relentless pressure to be taken off Hong Kong by developing nearby ports such as Yantian, and maybe even Gaolan.

It also does not take a mathematical genius to work out that the cost of infrastructure development in Hong Kong far exceeds the cost that is needed in southern China. Developing CT10 to CT17 on Lantau will cost very much more than what Hong Kong has spent, and will spend, on developing CT1 to CT9. And, in reality, Hong Kong capital and expertise are already helping to develop ports in China.

There is another factor which we must consider in order to decide whether Hong Kong should move full steam ahead to develop the Lantau terminals. The environmental devastation will be immense. We must ask what

seven more container terminals and the related infrastructure will do to the levels of noise and water pollution, and construction wastes in Hong Kong. Will we end up turning our already over-built city into a transport wasteland?

The TDS sets out laudable goals and objectives but how are they going to be realized? Section 6 of the TDS already assumes that developments, such as the Airport Core Programme and the Metroplan, will be implemented. How can the stated objectives be reconciled with these developments without the objectives being severely compromised? How can Hong Kong spend over HK\$44 billion on roads over the next 10 years and accommodate 150 million more tons of container traffic each year, and not adversely affect the quality of life of its people? Have we no vision of ourselves more noble than that of becoming China's dockyard and landing strip?

And, if Hong Kong needs to triple its office space and provide adequate housing under the Long Term Housing Strategy, then the TDS should first outline a water and energy efficiency programme. But where is that programme?

I would like the Government, in examining the various development options, to consider developing human resources and communication resources to a much greater extent than it is doing.

Mr President, the Government might say that Hong Kong is already planning to spend a lot more money on education. But even after having done what the Government plans to do, there are a lot more that should be done. We can do with more training in product design, for example, in research and development, in secondary education, in improving teaching skills and in language skills, just to name a few.

I am continually referring to the environmental costs of Hong Kong's land-based territorial development because the environment is an excellent indicator of the way in which the benefits of development are distributed.

For example, which option creates "a better place to live and work"? Investments in education and training, or in container terminals? Both generate wealth and use limited natural and financial resources. But which better distributes the higher quality of life? The answer is even more obvious when we take into account who will ultimately bear the long-term environmental effects of degradation.

If we choose to limit our land use-transport development, Hong Kong will not stop growing. There were those in the early 1970s who could not envision Hong Kong as a thriving economy without also being a place with the cheapest labour. Yet Hong Kong tripled its GDP over the last 15 years.

We grew because worker productivity increased, we added value to our products, moved into higher value markets and developed the service sector

substantially. In other words, Hong Kong invested in people at the same time that it improved basic infrastructure.

We are now at a development crossroad. The TDS is right to include the environment in its planning framework but, in assessing what options Hong Kong has, the Government must not assume that existing plans cannot be altered, and where necessary altered drastically.

Our greatest asset to China is not our limited land, but the Hong Kong people — it is our expertise, our creativity, our international contacts, our ability to gather and access information and our ability to raise capital that makes us useful. A "land use-transport-environmental planning framework" is insufficient to achieve the TDS's stated objective and I quote "to enhance the role of Hong Kong as an international city and a regional centre of business, finance, information, tourism, entrepot activities and manufacturing." A total "planning framework" must also include the value of our rule of law, independent judiciary and free and open society.

Hong Kong can either continue to "build and be damned" or it can shift gears and divert our creativity into planning human resources development and improving our quality of life. Our prosperity allows us to address the issue from a position of relative strength.

Mr President, I support the motion.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, Hong Kong's recent economic development has been caused largely by economic growth in the Pacific region and in particular that of southern China. Economic development in turn has a bearing on our standard of living and quality of life, the demand for various types of land use and the provision of infrastructure. The formulation of a territorial development strategy (TDS) to provide a broad framework to guide planning and development is therefore of great importance.

#### *TDS review*

The TDS, the highest tier in the planning hierarchy of Hong Kong, provides the framework for preparing sub-regional and district plans. It also provides the link between government policies and programmes on the one hand and land uses and major infrastructural development on the other. It is formulated on the basis of past trends and our views as well as visions of the future directions of growth in Hong Kong. The first TDS formulated in 1984 was very much housing-led since housing was then a prime concern of the community. We could not at that time have predicted all the momentous events which have occurred since then. This is the in-built weakness of long-term planning. Hindsight always helps sharpen up the view no end.

Hong Kong today is substantially different from Hong Kong in 1984. We are faced with different as well as more complicated issues which need to be taken into account when deciding how we should develop. For example, there is much wider concern about the environment. With our success in the New Town Development Programme and our commitment to the implementation of Metroplan, the community looks forward to a better quality in terms of its living and working environment in the years to come. The growth in the Pearl River Delta has been impressive and the region has become the primary economic hinterland and major outward processing area for Hong Kong. In return, Hong Kong serves as a major entrepot, business centre and source of foreign investment for the region. Hence, the TDS review is timely and essential.

The key issues to be addressed in the TDS are wide-ranging. Our primary goal is "to establish a broad, long-term planning framework within which the necessary land and infrastructure can be provided, having regard to resource availability, to enable Hong Kong to continue to grow as a regional and an international city and become a better place in which to live and work". The two key issues which are the subjects of this motion debate, namely, how to promote the long-term prosperity and improve the quality of life of the people of Hong Kong, are among the most important and fundamental aims of the current TDS review.

#### *Long-term prosperity*

I cannot agree with Members more that the continuing success of Hong Kong depends heavily on the extent to which it is able to attract and sustain investment and development. The Government is committed to ensuring that the necessary land resources and infrastructure are provided in support of the territory's primary roles as an entrepot for southern China and a hub port, and as an international business, commercial, financial, services, communications, tourist, convention and exhibition centre. It is difficult not to envisage — having the best port almost anywhere on the coast of southern China and facing the fact that no competitor is likely to develop within the foreseeable future, certainly within the period of the first part of the TDS — at the same time developing the potential of that natural facility to its fullest possible extent whilst observing the new mood for environmental compatibility.

It is important that we enhance the growth and development of key economic, social and cultural activities by the timely provision of the right kind of land and infrastructure. The TDS review, upon completion, will recommend developments required to facilitate economic growth. Let me quote a few examples:

- The progressive development of the port and the timely provision of cross-border transport links are essential to strengthen our position as an entrepot.

- The further expansion of the central business district and the development of secondary office centres are required to help ensure that adequate amounts of land will be available at suitable locations for both multinational and Hong Kong based business enterprises and incidentally there are no signs that major international corporations are dissuaded from coming to Hong Kong because of problems of supply of accommodation and land.
- Structural changes in the industrial sector appear to call for new types of industrial development and special facilities such as science parks and business parks.
- As a tourist, convention and exhibition centre, adequate provision needs to be made for hotels, conference and exhibition facilities, modern shopping centres and other special attractions, as many Members have pointed out today. Inevitably the TDS must take account of resource availability. This has nothing to do with the lack of will to implement. It merely reflects Hong Kong's well-trying prudent approach.

Some Members have mentioned the development potential of the NWNT and the need for complementary infrastructural development. The TDS has already identified several potential new growth areas, including Tseung Kwan O, Kowloon Bay, Tin Shui Wai, Kam Tin and Tung Chung. It will now evaluate these areas to establish which are the most suitable to develop from broad land use, transport and environmental points of view, taking account of financial, economic and other related factors.

### *Quality of life*

I now turn to "the quality of life" aspects. The TDS, upon completion, will make broad proposals which directly and indirectly affect our quality of life. I can mention just a few examples:

- The TDS will identify sufficient land to accommodate the needs arising from newly formed households, inadequately housed families and those affected through redevelopment. It has been projected that, between 2001 and 2011, about 516 000 households will require new accommodation in public and private housing of various kinds. I note today that the well-trying themes of shortages of land for public housing and private sector-led housing programme have been gone over again despite their clearly and frequently demonstrated invalidity.
- To ensure a better living environment, new town standards will apply wherever practical in the planning of new urban areas and major redevelopment schemes.

- To achieve a better working environment, the TDS will examine the need for new standards for industrial land development, taking into consideration the need for economic diversification, especially with regard to activities associated with the new airport and expansion of port facilities.

Conservation is another important qualitative element of the strategy. Areas of high landscape value and ecologically sensitive areas will be conserved. For example, a total of about 7 000 hectares of land has been identified as possible country park extension areas.

The TDS review has also taken account of environmental considerations at all stages of strategy formulation to ensure that the strategy respects qualitative attributes while we continue to strive for economic growth. Report on the environmental baseline conditions has been prepared to ensure that future development in Hong Kong can be environmentally sustainable. Some Members have rightly pointed out that development in Shenzhen and the Guangdong Province will impact on our environment. While it is difficult to assess the extent of this, we are confident that environmental issues of common concern will continue to be addressed at the Hong Kong and Guangdong Environmental Protection Liaison Group at regular intervals. And at our most recent meeting last week in Guangzhou we agreed to exchange ideas on future agenda items.

As indicated in the TDS Consultation Digest, one of the principal considerations is the complementarity of development with our economic hinterland, especially the Pearl River Delta region. Members have emphasized the importance as well as the need for dialogue between officials of the two sides. I agree entirely. To that end, I visited Guangzhou, Guangxi and Zhuhai in June this year to learn more about their plans for port, airport, road and rail infrastructure. We have also passed the TDS Consultation Digest to the Chinese side for reference and staff of the Planning Department plan to visit and exchange views with their counterparts in Guangzhou, Shenzhen and Zhuhai.

#### *Public consultation*

Members have also emphasized the importance of public consultation. The present public consultation exercise has been going on since September. 12 000 copies of the Consultation Digest have been distributed to the public. Some 70 main boards, committees and organizations including the Land and Works Panel of this Council, district boards, the Heung Yee Kuk, the municipal councils, the Port Development Board, the Environmental Pollution Advisory Committee, the Town Planning Board, the Country Parks Board, and the Land and Building Advisory Committee, have all been consulted.

The response received so far has been positive. There are however some points and misconceptions on which I would like to comment:

- (a) While there is support for the conservation strategy in the TDS, there are also views that the current legislation may not be entirely sufficient to conserve environmentally and ecologically sensitive areas. Since 1991, the coverage of the Town Planning Ordinance has been extended to the New Territories and new zonings for conservation have been introduced. With the conversion of a number of Development Permission Area Plans into Outline Zoning Plans by the middle of next year, the many locations that require statutory protection on conservation ground will be covered by the appropriate conservation zoning. Going through this planning process, we should be able to protect the environment and pursue our conservation objectives better.
- (b) The lack of port back-up facilities and the sprawling development of open storage areas in the New Territories have been a major concern. Our current port planning will ensure that sufficient port back-up land is provided in the development of new container terminals. Also, the Planning Department is conducting a study on port back-up land and will make recommendations as to how to remedy the shortage of such land and facilities to serve the existing terminals at Kwai Chung.
- (c) The need for improved transport links for cross-border and the northwest New Territories traffic is fully recognized by the Government. These transport issues are being addressed in the comprehensive transport and railway development studies. The TDS has, in particular, taken note of the need for a new north-south highway in the longer term, and has identified a conceptual alignment for it. I assure Members that transportation is one of the key elements which has been assessed throughout the strategy formulation process.
- (d) There are concerns about the imbalance between distribution of population and jobs in the territory. The TDS has established that this imbalance is related to structural changes in the economy which is shifting away from labour intensive blue collar jobs to white collar jobs in the service sector that are heavily concentrated in the metro area. Job balance is a factor which will be looked at further in deriving a preferred strategy.
- (e) Some respondents have criticized the TDS for not addressing issues in detail, such as housing. The TDS is not a social policy document. It is intended to cover a wide range of subjects and to provide a broad development framework. Specific issues will always be addressed separately, for example, the Long Term Housing Strategy, the regular Environmental White Paper Reviews, and so on.



The public consultation process will end on 31 December 1993. Comments and suggestions are most welcome and, including those offered by Members today, they will be seriously considered when finalizing the strategy review. We aim to complete the review by the middle of 1994. A report will be prepared with a full response from the Administration to the comments received and this will be available to the public. We will also consider some of the more short term advice which Members have taken the opportunity of this debate to offer.

*Concluding remarks*

The Government fully recognizes the need to promote the economic well-being of Hong Kong and to improve the living and working environment of the community. The importance of these basic principles has all along been fully recognized and embodied in the current TDS review. It is our intention to formulate a TDS to meet the challenges of the next century. In this case, the motion urges the Government to do what it already has the urge to do.

Thank you, Mr President.

PRESIDENT: Mr HO, do you wish to reply? You have 1 minute 39 seconds left.

MR EDWARD HO: Mr President, I should first like to express my thanks to my colleagues who have participated in this debate.

There are two main objectives in my motion: the promotion of the territory's prosperity and improvement of our quality of life. Both objectives — taken together, not in isolation — have been endorsed overwhelmingly by my colleagues in this Council. Members have been disappointed at the mismatch of development and infrastructure in the past and also the lack of attention to environmental protection and conservation. Many Members pointed out the importance of establishing contacts and consultation between authorities on both sides of the border in the formulation of the strategy which has been lacking. I strongly urge that before the finalization of the strategy Members' views will be carefully considered by the Administration.

Thank you.

*Question on the motion put and agreed to.*

8.00 pm

PRESIDENT: It is now eight o'clock and under Standing Order 8(2) the Council should adjourn.

CHIEF SECRETARY: Mr President, with your consent, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this evening to be concluded.

*Question proposed, put and agreed to.*

## **CONSUMER PROTECTION**

MR MAN SAI-CHEONG moved the following motion:

"That this Council requests the Government to expedite the enactment of legislation for better protection of consumer rights, establish a Consumer Representative Action Fund, allocate more resources for consumer education, and take active measures to study the expansion of the terms of reference of the Consumer Council, so as to reinforce its monitoring of non product-related service industries, such as property transactions, thereby achieving the objective of more comprehensive, fair and effective consumer protection."

MR MAN SAI-CHEONG (in Cantonese): Mr President, Honourable Members, today what we wish to discuss is not only the issue of "what constitute consumer rights", or for that matter, "whether consumer rights should be a matter of concern", but also more importantly, "what should be done in order to provide more comprehensive, fair and effective protection of consumer rights". First of all, I would like to preface my speech by giving some background to the consumer rights movement.

The way that modern economics works means that commodities and services are invariably mass produced and supplied. The individual is rather isolated as a consumer of such commodities and services on the massive and complicated market. In this regard, he is obviously placed in a rather disadvantageous position. He is even more vulnerable if it is the intention of individual producer or supplier to take advantage of the situation to engage in dishonest advertising or otherwise resort to deceptive means to put defective goods on sale. A consumer rights movement to rectify the situation has already come into existence in many overseas countries since the turn of this century in order to give more protection to a wider public. Indeed, United States President John KENNEDY proposed in the sixties a whole list of consumer rights, including, specifically, the right to gain access to information, the right to choose, the right to express one's views, the right to enjoy product safety and the right to receive appropriate compensation.

It goes without saying that there are many ways to protect consumer rights. Basically, the producer of goods and services should be encouraged to take the initiative to improve their products and make them more appealing to consumers in order to increase sales. Meanwhile, consumers should also be educated about their rights and be given sufficient market information so they

will become astute consumers. The process of natural selection should be allowed to run its own course such that unscrupulous suppliers who cheat on consumers will be eliminated.

Unfortunately, the idea of such a perfect market turns out to be no more than an academic theory which is too good to be true or a utopia which some economists are obsessed with. Even now, there are frequent reports of members of the public being deceived into buying residential and commercial premises which are seriously "under-sized" compared with sale description. There are also stories of condoms which are not remotely as safe as they are advertised to be. And a final clearance sale often turns out to be no more than a publicity stunt. It is in view of these that other, more effective, means have to be adopted to give better protection to consumers. For example, the Government should enact legislation to protect consumers and to monitor the quality of goods, and to see if there are any malpractices, on the market to safeguard consumer interests. Meanwhile, the Government should also provide easily accessible, efficient and inexpensive legal means so that consumers will be able to turn to the court to seek appropriate compensation. Also, the Government should encourage and assist in the setting up of various kinds of consumer organizations. Such organizations will in turn play an active role in giving advice on consumer rights protection. If no effort is made along these lines, then all the talk about consumer protection cannot be taken quite seriously.

The history of consumer protection as a social movement in Hong Kong is not long but it is by no means a brief phenomenon either. However, the Government has never had a comprehensive policy on consumer protection all along. At the global meeting of an international consumers association held in 1991, it was pointed out by some speakers that the Hong Kong Government was pursuing a "positive non-intervention policy", whereby tighter control would only be imposed after problems were identified. Rather than a policy of "positive non-intervention", I would say it is a policy treating the symptom only. Indeed, I might as well say that it is a clumsy policy which exclusively deals with crises.

Given the Government's limited role, the drive for consumer protection has to be largely taken by the Consumer Council. Set up in 1974, the Consumer Council has a history of nearly 20 years. It is true that the Consumer Council spares no effort in the dissemination of information about consumer rights and the provision of advice to the Government. It has created for itself the image of consumer rights champion in the minds of the public. However, due to its rather limited terms of reference, the Consumer Council has never been in a position to take on the function of giving full protection to consumers. I am quite sure that the past chairpersons of the Consumer Council, Mrs Selina CHOW and Mr Martin LEE and the incumbent chairperson, the Executive Councillor Professor Edward CHEN will agree with the comments which I have made above.

Given the passive role played by the Government and the limited powers vested in the Consumer Council, Hong Kong's consumer protection policy is neither comprehensive nor effective. Incidentally, the results of an opinion survey released the day before yesterday indicate that 60% of the respondents took the view that consumers are not properly protected in Hong Kong and indeed, 63% of the respondents or their families had the experience of being ripped off or unfairly treated in their purchases of goods and services. The survey indicates that our efforts in the direction of consumer protection are not quite enough to meet the needs of the public.

As a matter of fact, given the level of economic development in Hong Kong, we can do better in terms of consumer protection. We can accept the view taken by some that, since we are new to the game, it is unrealistic for us to set a standard as high as that of the United States, Australia and some European countries. However, we should catch up with our neighbours like Japan and Korea, which are newly industrialized countries with an already relatively comprehensive consumer protection policy. Meanwhile, Taiwan and indeed China are already in the process of drawing up legislation to serve as guidelines for consumer protection. Hong Kong should do well to reflect on its own record in the light of the experience of other countries.

In order to promote consumer rights protection, I have the following specific proposals to make.

- First of all, in terms of legislation, Hong Kong has very little to offer in the way of legislative protection to consumers. Members of the public are not able to have the basic protection which they deserve. And the Government, for lack of any powers under the law to monitor the situation, is likewise not in a position to assist members of the public to seek financial redress after they have been ripped off.

We believe that Hong Kong should have legislation which sets out the guidelines for consumer protection whereby basic principles are laid down and ways to protect consumers' rights stipulated. Such guidelines are useful in terms of being used as criteria for formulating other legislation on consumer protection.

Meanwhile, the existing legislation and the four bills which will go before this Council tend to focus rather more on product safety and quality assurance. They also address the issues of unfair contract terms and disclaimer clauses. Yet we do not have adequate legislative means to either encourage more competition among franchised utility companies, or to control unscrupulous trading practices, misleading advertising and loan for consumers. It is up to us to fill that void in our statute book as soon as possible,

- The availability of legislation does not necessarily mean that a consumer will have the necessary legal support. When an individual consumer suffers minor loss, he may take the matter up with the vendor and demand a replacement or refund. However, if the consumer buys an unsafe product and gets hurt as a result, and if the vendor is not willing to compensate the consumer for his injury, then the only alternative left to the consumer is to take his case to court. We all, however, know that civil litigation is not something which everyone can afford in Hong Kong. As a lawyer myself, I can very well appreciate the difficult position of the aggrieved consumers.

In the case of mass produced merchandize, however, we are probably talking about hundreds or thousands of aggrieved consumers if the merchandize turns out to be defective. If they can join forces and take collective legal action by pooling their resources, then the aforesaid problem of spending large legal fee for meagre damages can be resolved. The amount of legal fee required is likely to be smaller in the event of collective legal action than would be the case with the individual going it alone. In this regard, the United Democrats strongly support the Government's proposal to set up a Consumer Representative Action Fund. We believe that it is a very useful mechanism which will enable individual consumers to protect their rights. Looking at it from another perspective, what the fund does after all is to effectively restore the equality between consumer and supplier in the litigation. In a positive sense, the establishment of the fund will provide an incentive for manufacturers to improve the quality of their products to cater to the needs of the consumers.

With regard to the operation of the fund, I hope that the Consumer Council will finalize its criteria for assessing applications as soon as possible and conduct open public consultation to make sure that the fund will eventually meet the needs of the public. On the part of the Consumer Council, it should widely publicize the purpose of the fund and how applications could be filed, in order that the fund will become an effective mechanism for consumer protection.

In so far as education is concerned, members of the public should meet two requirements to become astute consumers. Firstly, they should know what sort of rights they have as consumers and how they would be protected by such rights. Secondly, they should, while making their purchases, have access to more accurate information for comparison purposes. In this regard, we take the view that consumer protection should feature in the civic education curriculum to educate students at primary and secondary levels basic knowledge about consumer protection. Meanwhile, it is also up to the Government to provide the resources to encourage studies

of consumer rights and then draw on the findings of such studies to improve on its various policies on consumer protection.

- In so far as the Consumer Council is concerned, we request that the Government should give active consideration to broadening its terms of reference to cover more service industries. As service industries are after all more complicated in terms of the large clientele involved and the broad interests at stake, close attention must be given to the regulation of the service industries, particularly, among others, the regulation of property transactions in the real estate sector, as well as the banking and insurance sector.
- Meanwhile, the Government should also consider ways in which consumers can be given more protection in dealing with statutory bodies, utility companies and government departments. The views of the consumers should be heeded. Such public services have a direct impact on the well-being of the public at large. There is all the more reason for consideration to be given and importance attached to the consumer rights in that regard.

I would like to say in conclusion that Hong Kong is a highly developed economy and therefore, there is all the more reason for us to take the issue of consumer rights seriously. I believe that the protection of legitimate consumer rights will improve people's quality of life as a whole. Hong Kong has already been rather late in working towards the cause. We should work much harder and formulate, with a sense of urgency, a policy which will provide more comprehensive, fair and effective protection to consumers.

Mr President, with these remarks, I move the motion.

*Question on the motion proposed.*

DR DAVID LI: Mr President, this motion contradicts the fundamental principles on which Hong Kong's economic success has been built. It violates the most basic standards of good government. It is dangerous because it would give regulatory powers and responsibilities to a body that is not directly accountable to the people of Hong Kong.

However well-intentioned, it is a move in the wrong direction, a direction that can only bring about the slow but sure decline of our economy and our way of life. This motion calls for Hong Kong to abandon the policy of positive non-interventionism by which this territory and its people have grown more and more prosperous. With that prosperity comes greater sophistication, and the desire for a better quality of life. But that desire cannot be met by creating a legal tangle, a web that ultimately will stick consumers with the cost of higher legal fees.

It is easy to say that more should be done to protect consumers. It is easy to say that we should expand the "terms of reference" of the Consumer Council. After all, it does good work. But the Consumer Council has not been structured to what on that, in effect, is a regulatory role for which it is neither credible nor accountable.

Nor should Hong Kong consciously seek to slip into the litigious mode. Instead it should search for ways to serve the demands of its citizens without compromising its success. Yes, there are things Hong Kong should do in the area of consumer affairs. But we must be very careful how to go about them. We must consider carefully the implications of our actions.

I agree that it is important to educate consumers, and that there are means of redress for consumers who have been wronged. But it should not be the task of the Administration to fund a non-governmental body in pursuit of some misguided notion of fair and effective consumer protection.

Is it fair and effective to spend a taxpayer's money on a body that is not directly accountable to that taxpayer? Indeed, the taxpayer would be better served if he or she were protected from such a motion as this, which will only end up costing the taxpayer and the consumer more and more money.

If the Government begins taking responsibility for protecting consumers, consumers can only be expected to behave more irresponsibly, particularly if they can look forward to large settlements which we see awarded in the United States, thanks to similarly well-intentioned legislation and the world's largest legal force. Do we know how much class action suits cost consumers and taxpayers in the United States each year?

Have we studied the effect of such a confrontational legal environment on the behaviour of consumers and of businesses? Do we know how such an environment affects an economy, as businesses use capital they would have spent on innovation or investment to complete paperwork that shows that they comply with regulations, or to guard against legal action?

And have we estimated how much such action would cost Hong Kong? In the United States, more than US\$500 billion is spent annually on compliance by those who are regulated. That does not include spending by the regulators.

Are we not concerned that any new regulations may add even more to Hong Kong's spiralling cost structure, making this territory even less competitive than it is already rendered by endemic inflation? Do we not think that more regulation may convince producers, already facing higher charges for necessary environmental regulation, that it is time to move, or simply cease operations?

Look at the experience of the United States, where the Code of Federal Regulations occupies 21 ft of library shelf space. In 1993, the estimated cost of consumer-related regulation was US\$45 billion. That same year, total regulatory costs amounted to an estimated US\$581 billion, or almost US\$6,000 for each and every household. Let us hope Hong Kong is spared such a disaster.

Of course, some regulation is essential. The safety of our environment and of our transportation systems, for example, is necessary. And regulation can be a valuable tool for changing behaviour. But all regulation is costly. How costly? Has anyone asked that question? It is tempting to pass regulations. Since the administration costs do not show up on our Administration's bottom line, the public can never learn how much it costs when politicians want to be seen to be doing something.

Does anyone really wish to burden Hong Kong's economy in such a manner? Does anyone think that consumers will be "fairly and effectively" served by comprehensive regulation that brings Hong Kong's economy to its knees? I think not.

With these remarks, I oppose the motion.

THE PRESIDENT'S DEPUTY, MRS ELSIE TU, took the Chair.

PRESIDENT'S DEPUTY: The President has permitted the Rev FUNG Chi-wood to speak next.

REV FUNG CHI-WOOD (in Cantonese): Madam deputy, environmental protection has become a trendy cause in recent years. In selecting what products to buy, the consumer does not only look at the price, other factors such as durability, packaging and brand name will also be taken into account. He will also want to know whether the product is environmentally friendly. There are many manufacturers who have taken advantage of this sentiment of consumers to promote sales by labelling their products as environmentally friendly. The result of this is that we have all sorts of environmentally friendly products on sale, ranging from batteries, shampoo, hair spray, ready-to-wear fashion, to even diapers. There is indeed something for everybody on the environmentally conscious market. However, if the consumer is really taken in by the promotion and believes that by selecting these environmentally friendly products over others, he is being kinder to our earth, then he cannot be more mistaken.

There is no legislation in Hong Kong which requires the manufacturer to provide objective and reliable information on the label of the products which they claim are environmentally friendly. It often turns out that while the manufacturer of brand X refrigerator claims that his product produces 50% less



CFC, he fails to mention at the same time that it also consumes more energy than refrigerators of other brands. Likewise, while lipstick of brand Y may be claimed to contain no artificial colour, there is no mention at all of the ingredients which are difficult to dissolve. It is clear that not all the self-styled environmental friendly products are indeed environmentally friendly. It is common that the consumers are fed with all sorts of misleading and indeed deceptive information. Yet the Government has failed to address this problem.

As a result of improved education standards, most consumers are quite capable of understanding what is written on the label description. Consumers of today are not only more demanding in terms of product quality; they are also more wary of the product ingredients. Whereas we already have legislative requirements with regard to such information as weight, ingredients and validity which has to be provided on the product label, there is no similar regulation with regard to the authenticity of environmentally friendly claims made on the product labels. If the information provided on the label is totally unreliable, then how can the consumer be expected to make an informed choice?

As a matter of fact, an eco-label movement has already been formed in many countries. In 1991, a study report on eco-label was published by the Organization for Economic Co-operation and Development. In the study report, a comparison is made of the situations in the various countries which have subscribed or will be subscribing to the eco-label movement. Countries which have subscribed include Germany, Australia, Canada, Japan, Finland, France, New Zealand, Norway and Sweden. Countries which are considering subscription are Britain, the United States, and the European Community.

The practice of eco-labelling involves the use of a set of objective and uniform standards for a consolidated assessment of the environmental impact of the product in question in terms of the three stages of product life, namely, manufacturing, use and disposal. The eco-label may only be used if the product meets the standards set for all these three stages. The advantages of eco-labelling are firstly, that the consumer may make his purchases based on the reliable and widely recognized standards; secondly, that the manufacturer will be encouraged to improve on the production process; and thirdly, that the manufacturer will have the economic incentive to produce more environmentally friendly products. The practice of eco-labelling does in certain ways have an educational effect to the extent that it influences consumer's choice.

Germany is the first country to introduce eco-labelling. The concept of eco-labelling received attention in as early as 1971. And implementation of that concept began officially in 1978. In 1990, Germany had already 68 kinds of products, and among them, 3 600 eco-labels.

In comparison, we can see that the Hong Kong Government has yet to begin to study the concept of eco-labelling. Admittedly, the Consumer Council has already completed its study report on the concept and submitted it to the

Government. However, despite the promise of a response to be made in March this year, no response has in fact been made so far in the nine months which have elapsed since the submission. It is as though the study report has sunk into oblivion.

Meanwhile, the energy efficiency labelling issue is being studied by the Energy Efficiency Advisory Committee. However, due to the lack of manpower and resources, it has to rely on the Electrical and Mechanical Services Department for assistance. The committee is in the process of studying the issue of how refrigerators, air conditioners and washing machines may be labelled according to their energy efficiency. The labelling of electrical appliances according to their energy efficiency will enable the consumer to make a more informed choice. I am hoping that the energy efficiency labelling effort will bear fruit as soon as possible.

The labelling effort involves a good deal of manpower and resources in terms of product assessment and testing. It can be seen from the experience of overseas countries that government commitment is rather modest, amounting to no more than a few million dollars each year. The reason is that the Government can actually fall back on the application and processing fees which will recover part of the running costs. Since the eco-label will naturally boost product sales, manufacturers are quite happy to pay the processing fees.

As a matter of fact, the Government should also ask the utility companies to conduct environmental audits in order to make sure that they are run efficiently and at low operating costs, to the benefit of the consumers. Although it is already stipulated in the new Scheme of Control that energy efficiency and environmental audits should be submitted by the utility companies with regard to their production process, there is no requirement for the utility companies to conduct environmental audits. The United Democrats of Hong Kong would like to request the Government to make the conduct of environmental audits a stringent requirement for the utility companies and the two municipal councils, in order to minimize the waste of energy and paper. It is regrettable to find that the air-conditioner is still running at full blast on the de luxe buses and in the indoor games halls of the two municipal councils even in winter when temperature falls to a freezing 12, 13 degrees. I hope that such blatant waste of energy will not recur.

Madam deputy, with these remarks, I support the motion.

MR MARTIN BARROW: Madam deputy, we must all welcome measures to improve the level of consumer protection. Visitors, for example, an important element of consumers in Hong Kong, account for a large proportion of retail sales, and it is very much in our own economic interest to make sure that they receive a positive impression of our retail industry.

From January to September this year, visitors spent more than HK\$18 billion on shopping. This accounts for just one half of total visitor expenditure and it is quite clear that shopping continues to play a major part in Hong Kong's appeal as a tourist destination. The variety, trendiness, convenience and value for money offered by our retail industry has strengths which feature prominently in the territory's marketing campaign.

Although the Hong Kong Tourist Association does deal with a small number relatively of — usually well-publicized — complaints from tourists about the behaviour of retail staff and underhand practices of some establishments, we believe that they are caused by a few bad apples, and are not indicative of the industry as a whole.

At the same time, attitudes and standards of service do vary considerably. The retail industry has grown very rapidly in recent years and, like other service industries, has had difficulties in recruiting sufficiently well-trained staff. Better training is obviously one solution, but we would also like to see a more flexible policy of allowing more people to come into Hong Kong to work in the retail trade.

This must be complemented, however, by improved consumer education and selective application of more effective protection. My note of caution, however, is that the Government must avoid going down a path of regulatory overkill and a bureaucratic steeplechase, which could damage Hong Kong as an international centre and eventually affect our economic growth. This would have a detrimental effect on the very people, the consumers of Hong Kong, that this motion is designed to help. The same point applies to regulating the estate agents. Yes, we must have ways and means of eliminating or minimizing abuses, but let us not go overboard and affect the industry overall.

In conclusion, Madam deputy, I welcome the overall aim expressed in the motion, but I would not favour over-regulation, and I share Dr David LI's concern about moving away from positive non-interventionism. Thank you.

MRS PEGGY LAM (in Cantonese): Madam deputy, we have been consumers since early childhood. We consume one thing or another, in greater or lesser quantities. Very often, after buying from a dishonest vendor, we tell ourselves that we have bought a lesson or we vow "never to patronize" him again, and we do not file a claim against him. We are awed by the notice that reads, "Goods sold not refundable", even though the relevant law has long been curtailed in its validity. Yet, the public's sense of social justice has been heightened and they are now better informed about consumer rights.

The following happened to a lady who lives in my neighbourhood in Wanchai. Early last year, after paying \$1,500 for a talking electronic dictionary, she soon found that it misspelt or mispronounced several English words. When she approached the manufacturer and the agent, she was told that

they could do nothing about it. It was revealed that all products of the particular model were flawed in the same way. What they could do is to provide in due course to each buyer a list of mistakes and corrections for their reference.

Nothing happened for half a year since then. The lady went back to the company to ask for her list of mistakes and corrections. She got the list, but it carried only a few mistakes and corrections. To her dismay, even the mistakes that she had complained about were not among them. Disgusted with the company's indifference, she then decided to take the case to the Small Claims Tribunal. Her argument was that, because the electronic dictionary contained the mistakes that had been identified and might possibly contain other mistakes, its performance was not what was represented.

Before that, the lady had asked the Consumer Council to intervene, and the company had thereupon agreed to give her a refund of between \$300 and \$400 plus letting her exchange her electronic dictionary for one of an older and cheaper model. During the hearing at the Small Claims Tribunal, the company further volunteered the information that the particular model was defective and had been taken out of production. The company then settled the claim by giving the lady a newer and more expensive model.

The lady refused to settle out of court because she was unhappy with the way the company handled her complaint. She insisted on taking her case to court and there she won.

The case took 10 months to settle after many twists and turns. How many consumers are prepared to wait so long and so patiently for justice? How much pressure must be brought to bear on such vendors before they will take consumers' legitimate complaints seriously?

This case is illustrative in that, if he relies on his own resources, an individual consumer with a complaint will only meet with indifference and evasion. With the help of the Consumer Council, he will get a somewhat substantive response. Yet, he will get a relatively reasonable settlement only in a court of law.

Hong Kong does not give adequate legislative protection for consumer's rights. Now, we do not mean to say that we should look at everything from a consumer's angle and ignore the importance of the non-intervention policy in a free society. Still, the bottomline is that the principle of equity, openness and safety must be upheld.

Four consumer protection bills are now on the drawing board. I expect the Government to speed up the process and table them at this Council soon. Every citizen is a consumer. Protecting consumer rights is almost like protecting the rights of the entire community.

I also expect the Consumer Council to complete and release its reports on the supermarket industry, the financial service industry, the broadcasting industry, the liquefied natural gas supply industry and the telecommunications industry. We believe that fair competition will be conducive to the market's automatic self-adjustment. Consumers, however, do not have real alternatives in certain cases, for instance, in the context of the laying of gas pipe and the uniform bank-interest-rate mechanism. Judging from the progress so far, we must wait another nine months before the reports will be ready. What I would like to do now is to urge the industries in question to co-operate fully with the Consumer Council. They should provide information to the Consumer Council to help it to produce accurate reports.

On top of this project, the Consumer Council will be taking up an additional responsibility of filing class action suits on behalf of consumers. Consumer claims will be filed against dishonest vendors even where the individual consumer's loss is insignificant or the claims are costly to file. Indeed filing class action suits, in a sense, affirms the Consumer Council's role as a body to protect consumer rights.

The Consumer Council has been in existence for many years. I think that it is now we should expand its scope beyond the testing of physical goods to include the study of service products, new products, new services and new consumption modes and to keep consumers well informed. Informed citizens are, after all, prudent consumers.

Madam deputy, with these remarks, I support the motion.

MR FREDERICK FUNG (in Cantonese): Madam deputy, if consumer rights are to be safeguarded, not only must consumers be accessible to necessary information, but the Government should enact and enforce legislation to regulate vendors and punish the unscrupulous ones among them. In the past, the Consumer Council looked like a body mainly concerned itself with product safety while not caring too much about other consumer rights. During the past year, it was obvious that the Government tried harder to promote consumer interests. For instance, it introduced the Sales of Goods (Amendment) Bill and the Supply of Services (Implied Terms) Bill. Still, Hong Kong does not yet have a complete set of statutes for fully safeguarding consumer rights. In this connection, the Government may, in fact, learn from the United Kingdom's consumer protection legislation. Beginning in 1967, the United Kingdom has passed a series of consumer protection acts including the Fair Trade Act of 1973, the Consumer Credit Act of 1974 and the Consumer Protection Act of 1987. Similar statutes are also found in other Western countries including European Community countries and the United States. Similar legislation is virtually nowhere to be found in our statute book. I think that the Government should make a comprehensive study of American, European and British consumer protection statutes and consider introducing them into Hong Kong to safeguard our consumers' rights.

On top of legislative measures, the Government should also expand the Consumer Council's terms of reference. The Consumer Council is as yet a semi-official body under government control and subordinate to the Trade and Industry Branch. This has practically restrained the Consumer Council from playing a bigger role. Another problem is that the Trade and Industry Branch, whose larger interest lies in promoting Hong Kong's commercial and industrial prosperity, may tend to overlook consumer interests. This could be a case of conflicting roles. I suggest that the Consumer Council should be detached from the bureaucratic structure of the Government and turned into an independent body that, like ICAC, is responsible only to the Governor. Furthermore, the Consumer Council should include elected Legislative Councillors in its membership. This will broaden its base. The terms of reference of the Consumer Council, as an independent body, should be broadened. Its role should no longer be confined solely to the dissemination of information and serving as an advisor to the Government. I suggest that the Consumer Council should be given additional powers so that it can effectively regulate the public utilities in respect of levels of charges and the quality of services, conduct comprehensive investigation into unfair trade practices, such as banks' monopolistic practices, misleading advertisements and escalating service charges, and take effective measures to remedy the situation.

The Government has promised to allocate \$11 million to the Consumer Council for setting up a Consumer Representative Action Fund. The Association for Democracy and People's Livelihood, including myself, thinks that this is necessary. Though class action suits are admissible under the existing law, consumers wince from invoking such provisions because it is a costly and time-consuming process. With the fund in place, consumers will be able to file class action suits against financially powerful and influential vendors and service providers. Such suits will be less costly or time-consuming for the consumers as individuals. I hope that the Government will quickly and actively set up the fund as promised.

Lastly, I think that the Government should do more to inform consumers of their rights. So far, members of the public do not know clearly what their rights are. Often, after being cheated or treated unfairly, they do not want to file claims and stand up for their rights. I think that the Government and the Consumer Council should do more in the area of public education. Consumer rights should be taught to primary school and secondary school students, for instance, with textbooks telling them that every citizen has legitimate rights as a consumer and what channels are available through which they could file their complaints. More resources should be allocated to consumer education. Publicity campaigns should be launched to brighten citizens' awareness of their consumer rights.

In sum, I hope that the Government will give more power to the Consumer Council, better inform consumers of their rights and thereby make Hong Kong a fairer community where people would enjoy full consumer protection.

With these remarks, I support the motion.

MR MICHAEL HO (in Cantonese): Madam deputy, in Hong Kong, the rights of health care consumers have so far been neglected. It was not until very recently that some patient's rights groups were formed and began speaking up for them. These are some reasons for such a development. For one thing, it is hard for patients, as consumers, to organize themselves into a health care consumer body with a united voice. For another, health care is different from other kinds of services in that health care providers and health care consumers are far from being on an equal footing where accessibility information is concerned. The combination of these factors has placed health care consumers in a disadvantaged position and made their consumer rights harder to be safeguarded.

The want of consumer protection for health care consumers is the most conspicuous in terms of private health care services. A patient in receipt of health care services in the private sector is seldom given adequate information. Ordinarily, when a person buys something, he already knows what the price is. But when a patient goes to see a doctor, he is sometimes forced to buy service without prior knowledge about how much it will cost. I have heard a complaint about this. A patient went to see a private doctor. He was very smart in the sense that as soon as he set his feet inside the clinic, he asked the doctor how much his charge would be. But the doctor said that he could not give an estimate until he had done a physical check-up on him. After the check-up, the doctor told him the charge. The patient thought that it was unreasonably high. But by then he had already received the physical. I mention this case to illustrate a problem: There is no safeguard for a patient's consumer rights as long as he is not sufficiently informed. As a result, it is impossible for a patient to make an intelligent and informed choice. To deal with the problem of patients being kept in the dark about doctors' fees, I suggest that the Government should perhaps consider learning from what is being done in other countries. One possible action to be taken is enacting legislation to require the posting of a list of services and fees at a prominent place in a clinic. This information will help patients to make their own decision. The Hong Kong Medical Association now has a guideline according to which its members should post notices at their places of service, advising visitors that they can seek pertinent information from the staff on duty. I am now holding in my hand a notice designed by the Consumer Council. A sample of the notice appeared in *Choice* monthly last year. The Consumer Council recommends that the Hong Kong Medical Association should use this format and cause a notice to be posted in every clinic, advising patients that they can check with the nurse at the receptionist desk if they wish to know in advance how much the charge will be

for consultation, laboratory testing and surgery. But the fact is that many private clinics have not posted even such a notice, which I think is not good enough. The real problem is that, even where the notice is posted, patients may not want to ask doctors about their fees. I have talked with some patients about this matter. They say that they want to ask doctors about their fees but are afraid of the consequences of doing so. They are afraid that the time taken by the doctors to answer them such questions will be factored into the medical bill. That is to say, where the supply of information is concerned, health care providers have the upper hand. There is not a level playing field for vendors and consumers. I hope that our friends in the medical profession will take the initiative and do something to rectify the situation. They should post lists of services and fees in prominent places. If a visitor to a clinic wants merely to consult the doctor, from the posted lists he will know how much he has to pay for the consultation. There will then be less misunderstanding and less friction. I want to stress here that I am not at all urging the Government to control private doctors' fees. I am only suggesting that lists of services and fees should be posted to help to minimize the chances that consumers will be treated unfairly.

There is also the legislative means that the Government may take for improving the situation where health care consumers, being insufficiently informed, fail to receive consumer protection. The Government may expeditiously enact legislation on drug labelling. Now, very often, after a health care consumer has consulted a doctor, he still does not know how his condition is, what courses of treatment he is undergoing and what medicine he is taking. Therefore, I think that a health care consumer should be entitled to the most basic information, such as the description on the label and the name of the drug prescribed by his doctor. I hope that legislation will soon be enacted to give this kind of help to consumers.

Health care is an indispensable consumer item. It is very important to consumers. The lack of consumer protection in this area has very serious consequences. Therefore, I hope that the Government would move quickly to enact legislation to deal with the problem stemming from inadequacy of information made available to patients.

*The buzzer sounded a continuous beep.*

MR HOWARD YOUNG (in Cantonese): Madam deputy, the Liberal Party is in favour of the Government's moves to provide consumers with better protection and to enable citizens to obtain goods or services at a reasonable price. Consumers have been denied adequate protection in the form of free flow of information and legislation. Citizens do not know what rights they have as consumers. The Liberal Party feels that the first positive step to take is to strengthen consumer education. I do not merely mean that consumers should be taught to be prudent when they try to secure reasonable service. More importantly, I think that the idea of doing business conscientiously, reasonably



and honestly should be instilled into merchandise vendors and service providers. This will basically obviate possible disputes between consumers and goods or service providers. To achieve this, the Consumer Council must improve its communication and co-operation with traders and trade associations and encourage effective self-regulation within each trade. A case in point is the tourism industry, of which I am the representative. Ever since 1989, Travel Industry Council has been working with the Consumer Council to lay down rules of self-discipline for the trade. This has paid off. The same mode can indeed be employed by other service trades, for instance, by real estate agents.

Of course, more is needed than encouraging industry initiatives in the interests of consumers. We also need some legislation for better and more comprehensive consumer protection. As far as I know, the Government is now drafting three bills aiming at the better control of product and service quality. The Liberal Party in principle supports the spirit of these three bills. In an absence of such legislation in the past, members of the public, after making the payment, might not receive goods or services of a reasonably good quality. Moreover, some trades or vendors used contract forms which they themselves had designed, with terms prejudicial to the consumers, who, by signing then, gave up their right to file claims later on.

I suggest, nevertheless, that the Government should be very careful when drafting the bills. We have never had such comprehensive legislation in the consumer protection area before. I am worried about the possibility of overkill in the sense that some of the provisions of the bills may be too harsh or impractical or may be unrealistic about what standards the trades will be able to meet.

I have a few points of concern. First, the standards for some trades are global standards or standards set by international bodies. In such cases, Hong Kong's companies, to meet the world-wide standards, may probably not adhere to standards set under Hong Kong law, which they do not intend to break. Second, some trades provide services which are completed by a third party outside Hong Kong or some trades provide services through a third party outside Hong Kong. Companies in Hong Kong often have no control over services provided outside Hong Kong. The tourism industry and the airline industry, of which I am a representative, very often provide services involving third parties outside Hong Kong. I think that the Government should consider this problem and deal with it flexibly. Meanwhile, it is most difficult for service industry to define reasonable industry-wide standards. Different companies offer different services both in terms of packaging and form. Furthermore, service providers and consumers may have different ideas about how reasonable standards should be defined. If "a reasonable standard" is defined too loosely, consumer rights will not be protected. If it is defined too strictly, it will kill business and probably drive small companies out of business.

Therefore, it is necessary to consult the trades in question before the relevant bills are finalized. On that front, the Consumer Council can play an

active bridge-building role. The Consumer Council should represent members of the public and let the trades know what is expected from them. At the same time, it should consult the trades to find out how much can realistically be expected from them.

The Governor's policy address this year mentioned the establishment of a Consumer Representative Action Fund, which is a new idea in Hong Kong. Some cases in foreign countries indicate that consumer litigation is likely to be exploited and abused. It can become a disguised way to extort money from commercial institutions. A bad consequence of this is that commercial institutions will factor this kind of risk into their costs and then they will charge consumers more for their goods or services. In the end, it will be the consumers who stand to lose. Of course, this is a rather extreme example. Still, suffice it to say that we must proceed cautiously when carrying the proposed Consumer Representative Action Fund forward. We must review the situation from time to time and consult both consumers and service providers.

The Liberal Party feels that the various measures prepared in today's motion about consumer protection are reasonable in spirit and deserve support. However, I would also like to urge the Government to hold some serious consultation in advance, lest healthy economic activities should be hindered and consumers interests cannot be protected. We support the motion.

DR TANG SIU-TONG (in Cantonese): Madam deputy, the thriving consumer goods and service market in Hong Kong is full of loopholes which unscrupulous businesses can take advantage of to rip off the consumers, given the failure of the Government to introduce proper regulatory legislation and the lack of public understanding of consumer rights. The consumer is faced with all sorts of pitfalls. There is no protection of consumer rights to speak of, whether we are talking about the transaction of property, insurance service, bank deposit and lending services, package tours, or indeed, purchases a shopper makes. Chances are the consumer will fall into one of those legal loopholes or be deceived into buying a defective product. The consumer is not protected at all. He can only count on his luck if he does not want to be deceived, hoping and praying that the shop he walks into will not rip him off. As a matter of fact, the consumer himself is not well aware of his legitimate rights either. It sometimes happens that the consumer is not even aware that he has been ripped off.

Admittedly, the Government is always encouraging the consumer who suspects that his rights have been infringed upon to lodge a complaint with the Consumer Council. However, given the lack of regulatory legislation and the lack of legislation to protect consumer rights generally, the act of complaining is only as helpful as the venting of anger. Even if the Consumer Council resorts to the naming of the culprit, there is no way to stop the unscrupulous shopkeeper from carrying on his business of ripping off other victims in the same way as before. It does not help the cause of consumer protection very much.

The Consumer Council has been set up for nearly 20 years. It has created a very good image for itself in the eyes of the public, thanks to the function it has performed through the years as a protector of consumers. However, the responsibilities of the Consumer Council are quite incompatible with the powers which it is given. The Consumer Council only plays the role of a disseminator of information and an advisor to the Government. It does not have any regulatory powers, nor indeed does it have the authority to enforce the regulations and prosecute offenders. As a result of these constraints, the Consumer Council is only able to perform a limited function. An ex-member of the Council who has served for a number of years describes the Consumer Council as "a watchdog without teeth."

We may take a look at the positive role played by consumer bodies in other countries. A consumer affairs department is usually found in Britain, the United States, Australia and most countries in Europe to deal with the issue of consumer protection. In China, a Chinese Consumers Rights Protection Act was passed by the National People's Congress last month to give greater powers to the Chinese Consumers Association. The Act specifically stipulates the rights and obligations of the consumer, the penalties and damages which liable business enterprises are obliged to pay for hurting the interests of consumers, the ways in which the arbitration of consumer disputes will be conducted, as well as other basic regulations aiming at the protection of consumer rights. In Japan, Korea and indeed Taiwan, there are also similar regulations which aim at protecting the consumer. In comparison, of the four Little Dragons of Asia, Hong Kong would appear to be rather conservative and primitive, in terms of consumer protection regulations.

Towards the end of last year, the Consumer Council received a government allocation of close to \$800,000 for conducting market structure research into the issue of market dominance and corporate behaviour detrimental to competition, in a wide range of trades including, for example, the supermarket business, the broadcasting industry, the supply of gas, financial services, the driving school and telecommunication. "Competition and the Consumer" is one of the items which has been included in this year's policy address and a report on the work progress achieved so far was made. The Government has also committed a further \$3.5 million for consultancy work. Meanwhile, a number of draft bills prepared by the Law Reform Commission on consumer protection and product safety are ready to be introduced for legislation. The Consumer Council has received a government allocation of \$11 million for the setting up of a Consumer Representative Action Fund. It can be seen from these developments that the Government is eventually determined to provide the Consumer Council, which has been "a toothless watchdog" for the 20 years since its inception, with the necessary ammunition to do a proper job. Although such work should have been done 20 years ago, the tardy improvement is after all better than no improvement.

However, if we rely entirely on the above measures, we can only expect very modest improvement in consumer protection. If the consumer does not

know how to exercise his legitimate rights, it is unlikely that the measures will produce the perfect result. In this regard, it is very important for us to promote consumer education. Admittedly, consumer education has not been as actively and intensively promoted as we would have liked. It is up to us therefore to double our effort to make up for lost time. Meanwhile, whether the terms of reference of the Consumer Council should be expanded is another issue which we should study. If the Consumer Council is empowered to regulate trade practices, enforce regulations and prosecute offenders, then it will surely shed its image of being "a toothless watchdog". It would become a watchdog which is armed to the teeth. I agree that the terms of reference of the Consumer Council should be suitably expanded. But the expansion should not in any case result in the non product-related services industries also coming under the jurisdiction of the Consumer Council. Its terms of reference should be clearly delineated so that it will not duplicate the work of existing regulatory authorities. Recently, there has been much public concern about the new banking policy governing the deposit and withdrawal of large bank accounts and the lending and borrowing service. The banking industry has been criticized for charging excessive fees and misleading consumers. According to the principle of consumer protection, it would seem that the banking services should also come under the jurisdiction of the Consumer Council. However, if that should be the case, the Consumer Council would end up duplicating part of the function performed by the Monetary Authority. Scenarios like this will confuse not only business, but also the consumer. In February this year, a debate was held in this Council about the issue of fair trading practice. Although a consensus was reached with regard to the principle of protecting consumer rights, Members were nevertheless clearly divided on the advisability of setting up a fair trade practice committee and introducing anti-trust laws. The expansion of the terms of reference of the Consumer Council is an issue which will inevitably touch on the above issues. In this regard, the Government should conduct a wide public consultation and solicit views of the various sectors before proceeding to further expand the Consumer Council. It is necessary to strike a balance between the interests of the consumer and the business sector so as to ensure that the free market will continue to operate. It is only in this way that fair competition will result and consumer protection materialize.

Madam deputy, with these remarks, I support the motion.

MR ROGER LUK (in Cantonese): Madam deputy, once upon a time, there was a fruit vendor in Hangzhou, China. He was very good at keeping mandarin oranges. He could keep them for a year and they would not go bad. Instead, they would acquire the bright lustre of gold and the smooth texture of jade. He would sell them for 10 times the normal price and people would still scramble to buy them. One day, a man bought one of them and cut it up. He found that its inside was as dry as discarded cotton. Surprised, he said to the vendor, "Look, the mandarin oranges that you sell will be used as offering to the spirits of ancestors or for entertaining guests. But they are good only for impressing the dim-witted and the blind. What you do is too bad. Actually, it is cheating."

The fruit vendor smiled and responded, "I have been in this trade for many years to make a living. I sell; customers buy. No customer has ever complained before. You are the only one to do so. Why do you do it? This world is in fact full of dishonest people. I am not the only one."

The fruit vendor's words were an oblique swipe at those politicians who were hypocritical, duplicitous and fed on public trough.

In modern days, there is a professor in Hong Kong who is erudite on pricing theories. He once set up a stall in the Chinese New Year's Eve fair to sell tangerines. His purpose was to put some economic theories to practical test on the basis of data in relation to changes in demand, price fluctuation and bargaining over the price as he could gather during several hours of this vending operation. He wanted to know why some people were willing to pay \$200 for a flower which others might get at \$50. What factors are in force to determine the fluctuating prices in the New Year's Eve fair? What goes wrong when price movement run counter to one's anticipation? Similar goods with the same cost price are sold at different prices. This is known as "price differentiation". Similar tangerines are sold in the same New Year's Eve fair. To sell them out, their prices will have to be adjusted. Without price differentiation, it will be hard for merchants not to lose money. In this connection, some sellers, as well as buyers, will inevitably have to play some "tricks". After testing the conventional economic theories in practice, the professor concluded that the two postulates about price differentiation in conventional economic school were obviously wrong.

More is meant than meet the eyes also in the story of this present-day fruit vendor, which is that practice is the sole criterion for testing truth. Conventional economic theories often become inapplicable under changed circumstances. If one adheres to them blindly and fails to take the changed circumstances into account, one will of course make mistakes.

The two stories I mention above, though taking place during different eras with different messages, have one point in common about consumer rights. The fruit vendor in the first story argued, "I sell; customers buy. No customer has ever complained before. You are the only one to do so. Why do you do it?" (Note 1) This sounds familiar, does it not? However, if the buyers of mandarin oranges or tangerines had agreed that the price was right for the particular merchandise, there would have been no dissatisfied party and, of course, no complaint.

Why, then, must we promote the institutionalization of consumer protection? Firstly, a consumer's bargaining power is usually undermined by the paucity of information, monopoly or oligopoly or his lack of financial means. Secondly, a consumer who wants to see justice done and his legitimate interests served is usually deterred from filing claims under the law because this involves prohibitive paper work and cost.

Colleagues who spoke a moment ago have made many valuable and insightful observations concerning legislation, class action suits, public education and the terms of reference of the Consumer Council. Still, in the final analysis, market forces, and not administrative actions, are the best safeguards for consumer rights and interests.

Take the United States for example. It has, I believe, the most comprehensive consumer protection statutes in the world; its investment in resources for consumer protection is also comparatively the greatest in amount. However, the effects are usually the opposite to those originally intended. Consumers there are prone to file claims. They file claims and seek legal redress too readily, often with results that neither sides gain.

In fact, where market forces are not in full play, the usual cause of this is incomplete market information and the fact that either consumers are not fully aware of their rights or inadequate resources are allocated to consumer education. Therefore, corrective policy must be introduced to heighten consumers' awareness and hence their bargaining position. This, coupled with market forces, I am sure, could achieve maximum results. The New Year's Eve fair is a good case in point.

China was historically an agricultural country. Throughout its history, farmers' interests were promoted at the expense of those of merchants. That was probably necessary because of the political and economic realities. However, there was also a deeply rooted prejudice against merchants, as seen in these words: "The big among the merchants hoard produce until prices double. The small ones who do business by roadside would also try to corner the market, though on a smaller scale. When they, on their daily tour of the market, notice that any merchandise is in critically short supply, they would never fail to mark up the price of such merchandise." (Note 2) In Hong Kong, there is ample room for improvement in the area of consumer protection. However, we must not do more than what is necessary. And corrective actions adopted should not dampen the vigour of industry and commerce. If they do, consumers will be the losers at the end of the day. That is really not what we want.

Madam deputy, with these remarks, I support the motion.

Note 1: LIU Ji (Ming Dynasty), *Words of the Mandarin Orange Vendor*.

Note 2: CHAO Cuo (Han Dynasty), *Report to His Majesty on the High Price of Millet*.

MS ANNA WU: Madam deputy, the Consumer Council was formed in 1974 and it will be celebrating its 20 anniversary in 1994. It is time to take stock of the past and to reflect on the future and as Vice-Chairman of the Consumer Council I welcome this debate.

I would like to begin with the questions: Why is it so important to protect our consumers and what kind of consumer do we wish to see?

We need to protect our consumers because the law accepts that freedom to strike a bargain and the sanctity of contracts are subject to the principles of reasonableness and fair play. This means that a consumer must get a fair deal. To enable a consumer to get a fair deal, the consumer's right to know, right to a choice and right to redress must be respected.

We want an astute consumer who will force the supplier to meet the consumer demands more precisely and thus result in a more competitive and efficient market.

We want a well-informed and street-wise consumer who will not allow himself or herself to be baited or browbeaten.

We want a confident consumer who knows his or her rights and knows how to get redress.

We want a responsible consumer who wants our water to be drinkable, our air to be breathable, and who wants to preserve trees and use less plastic bags.

The Consumer Council promotes and protects consumer interest in goods, services and immovable property. It collects and disseminates information, receives and examines complaints, resolves disputes, analyses quality, pricing, market trends, trade distortions, barriers to competition, deters illicit trade practices and encourages the use of codes of practice, consumer consultation groups and self-regulatory systems for different industries.

These activities aim to achieve a number of objectives. First, to enable a consumer to help himself or herself, a consumer must be equipped with information necessary for the consumer to make a choice. Second, to provide the consumer with a more meaningful choice, market distortions and barriers to competition must be pointed out and removed where possible. Third, to establish a consumer culture by encouraging contact between suppliers, manufacturers and consumers and the voluntary setting and policing of standards by industries. Fourth, to assist consumers to enforce their rights and to secure redress.

Legislative proposals have been made to better protect the consumers in the areas of sales of goods, supply of services and product safety. These measures recognize the need to set basic standards for goods and services.

It is particularly encouraging to see an advancement in our use of legislation to protect the consumers. Up until recently, our consumer legislation has only been used to deal with the basic qualitative aspects of goods. We now have the Control of Exemption Clauses Ordinance and legislative proposal has

been made for the control of unconscionable contract terms. This represents a welcome though belated move to combat the inequities arising from the relative lack of bargaining power faced by the individual consumer.

What is still lacking is a comprehensive code dealing with misleading advertisements, misleading price indications, inadequate supply of pertinent information to the consumers and illicit trade practices.

Competition and consumer interest go hand in hand. We need to establish whether there are tendencies of monopolization and concentration of market power in Hong Kong and how consumer interest is affected by such practices. We need to formulate a comprehensive competition policy to provide an open and efficient market structure.

While the need to protect a consumer is clear, the ability of a consumer to secure redress is weak. During the past 18 years of service, the Consumer Council has come across numerous cases where a substantial number of consumers have suffered at the hands of a common defaulting trader.

While the Consumer Council acts as a mediator in many cases, it does not have the power to enforce its decision on a defaulting trader. Many consumer complaints are often small individually but are large in aggregate. Often ignorance of the law, fear of the economic strength of the defaulting trader, disproportionate legal cost and the lack of legal assistance make it difficult and impracticable for individuals to seek redress. This state of affairs makes consumer rights hollow. I welcome the bold but modest initiative taken by the Government to provide for consumer representative or group actions. This will enable multiple wrongdoings to be grouped together and for legal assistance to be provided in these cases. Effective use of the scheme may also help to deter illicit trade practices.

It must be emphasized yet again that existing law already provides for representative and group actions and the proposed scheme will only be helping the consumers to realize what is already theirs.

It must be clear to all that the Consumer Council is a lobbyist for consumers. It seeks to extend consumer protection in any area where the need is felt.

Madam deputy, one of the earlier functions of the Consumer Council in the 1970s was to collaborate with the Government on the revision of creakingly ancient laws as to defy coherent interpretation ..... in the words of Mr Hilton CHEONG-LEEN made in a Legislative Council speech in June 1977. The example given was a section of the Weights and Measures Ordinance which referred to "woods and bamboos being tipped at the ends with metal to the satisfaction of the examiner of weights and measures."



Madam deputy, both our laws and our approaches to consumer protection must be constantly updated. Today we have children being cheated out of school fees, the purchasing public being bombarded with misleading advertisements and the use of pyramid sales. We are a long way from the worries described by Dr David LI.

Madam deputy, I support the motion.

MR TIK CHI-YUEN (in Cantonese): Madam deputy, the Administration has been more active in recent years than in the past in protecting consumer rights. The most obvious example is that the Administration has already implemented the proposals recommended by the Law Reform Commission in its Sale of Goods and Supply of Service Report published in February 1990, by way of drafting three Bills specifically on consumer protection. The Administration already submitted the Consumer Goods Safety Bill to this Council last Wednesday. The enactment of these bills will undoubtedly provide more protection for consumers, but the progress is really not satisfactory as it has taken more than three years after the publication of the report to complete the drafting of these Bills. The Administration should indeed expedite the progress of formulating legislation for consumer protection.

Another measure worthy of support is that the Administration will allocate \$11 million to the Consumer Council for the setting up of a Consumer Representative Action Fund and the recruitment of legal consultants. This is really an important weapon for safeguarding the interests of individual consumers. Therefore, I hope that the Consumer Council can complete the relevant study as soon as possible so that the fund can be made available for public application. The Administration should be cautious in handling the management of the fund, and launch extensive publicity exercises to introduce to the public the meaning of the fund and the way how it is used, so that its effectiveness can be brought into full play in safeguarding the interests of consumers.

The Consumer Council is currently vested with limited power, only playing the role of a consultative body and a complaint handler. It has no law enforcement power, let alone the power to directly instigate prosecutive actions against questionable traders. There have been many reports pointing out that monopolistic situations do exist in trades such as supermarket, banking and gas supply in Hong Kong. For example, the two largest supermarkets have in total taken up a 70% share of the market, and the four largest banks in Hong Kong have accounted for nearly 80% of all Hong Kong dollar deposits. The supply of gas is even a public utility not subject to any control. Since the passage of a policy by the Housing Authority in 1987, the gas company has been monopolizing fuel gas supply in public housing and Home Ownership Scheme estates.

As a matter of fact, it is widely known that banks in Hong Kong "make huge profits". The Interest Rate Agreement is obviously an unfair pricing policy, and the difference between the deposit and lending rates has caused widespread discontent in the community. Moreover, the rates of profit return of the Hong Kong and China Gas Company Limited and the Hongkong Electric Holdings Limited are far higher than that of their counterparts in other countries. A further example is the insurance premium "proposed" by the Accident Insurance Association of Hong Kong to its members. This is virtually a tacit agreement on pricing, which violates the principle of determining prices by market forces. All these have shown that many unfair competitions do exist in the market of Hong Kong.

Therefore, in order to achieve more comprehensive protection for the interests of consumers, I think the Administration must formulate a comprehensive policy on fair trading, and by way of legislation or other measures, uphold a fair and healthy competitive environment and ensure that consumers can enjoy the benefits brought about by competition. Apart from preventing large enterprises from infringing upon consumer interests by means of pricing or other transaction terms after having acquired a certain share of the market, the formulation of a fair trading policy can also lay down a set of open criteria defining what commercial practices are acceptable or otherwise, such that investors will have guidelines to follow and consumers can know clearly what rights they are entitled to.

It is not true that the Administration has done nothing in promoting competition in the market. Last year, it allocated \$800,000 to the Consumer Council to study the market competitive situations of five trades. This year, it has allocated an additional \$3.5 million to the council to continue with its study. Recently, the Administration has also been active in requiring public utility companies to disclose more information. The opening up of the telecommunications network and the introduction of competition into this market are measures showing improvement.

However, these piecemeal measures are far from being satisfactory. In the absence of a comprehensive policy on market competition and relevant statutory provisions, any individual measure will easily give rise to suspicion of its fairness and its coherences with other policies.

It is regrettable that the Administration has all along lacked a long-term orientation and plan for the formulation of a fair trading policy. It has said that after the Consumer Council has completed its study on various trades, the department or policy branch concerned will have to propose a solution in six months' time. But at the same time, the government official concerned has said that due to the divided views of the Legislative Council on the enactment of fair trading legislation, the Administration will not make a decision in this regard in the near future.

I cannot help wondering how the Administration can possibly fairly formulate specific policies and measures on competition in individual trades, when a set of objective criteria for determining what fair trading is, what market monopolization is and what constitutes damage of consumers' rights has yet to be defined.

It is a good beginning for Mr MAN Sai-cheong to move a motion today demanding comprehensive protection for consumer interests. But to really achieve the objective of "more comprehensive, fair and effective consumer protection", we must have a long-term and comprehensive fair trading policy before we can ensure that consumers can benefit from fair market competition.

With these remarks, the other Members from Meeting Point and I support the motion.

THE PRESIDENT resumed the Chair.

MR PETER WONG: Mr President, the Liberal Party supports fair and effective measures to safeguard consumer interests, especially in circumstances where the consumer may be in a disadvantageous position and unable to exercise those rights for good reasons. However, we do need to look further into the proposal to fund a Consumer Representative Action Fund and see how it will work out in practice. It apparently has some of the attributes of class actions of the United States which, if it is so, is probably something we should avoid or, at the very least, is a matter which we should treat with great care.

If it is to be introduced we will need to be satisfied that there are proper checks and balances to ensure that public money is only spent on appropriate cases and that it is in the best interests of Hong Kong.

Subject to this reservation, the Liberal Party will vote in favour of Mr MAN's motion.

DR HUANG CHEN-YA (in Cantonese): Mr President, I am aware of some of the views expressed recently that the effort to protect consumer rights would put the normal activities of the business sector in jeopardy and that this would eventually hurt the economy of Hong Kong.

As a matter of fact, most of our businessmen are honest and reliable people who will not seek to profiteer by unscrupulous means. They have nothing to worry about the protection of consumer rights causing harm to their interests. Indeed, it is the black sheep of the business community who will seek to enrich themselves through deception, who will not seek to compete by improving on their production technology and product quality, and who, if unchecked, will steal the market share of honest businesses. It is these

unscrupulous businessmen who have to worry about being put on the blacklist and sanctioned accordingly.

Findings of many surveys point to the same fact that one unscrupulous businessman is already quite enough to tarnish the reputation of the whole trade, once his malpractice has been exposed and publicly condemned. In this regard, the unscrupulous businessman is not only taking an illegitimate share of the market but his bad influence is likely to cause the shrinking of the market. Intimidated consumers are likely to buy less of the product in question and this will in turn cause a slow down in economic development. As a matter of fact, protection of consumers will lower the cost to the consumer in making his purchase. He will be a happier buyer because he does not have to worry about spending time researching the profiles of the suppliers and quarreling with them afterwards if a mishap happens. Whether a local or a tourist, the consumer will have a greater incentive and be in a better position to spend more, resulting in even greater economic prosperity for Hong Kong.

Furthermore, consumer protection is an issue to which countries around the world are attaching increasing importance. If Hong Kong continues to turn a deaf ear to the requests for consumer protection and continues to supply goods and services which fail to meet international standard, then our competitiveness will be eroded and gradually we will suffer an economic recession. It is for this reason that I believe that the protection of consumer rights will actively help economic growth, and that the interests of the consumer may not necessarily clash with that of the business sector.

It goes without saying that consumer rights may be protected by legislative means so that products will have to meet a required standard. Alternatively, the cause of consumer protection may also be advanced by increasing the dissemination of information for the benefit of the consumer, by providing the means for consumers to take collective action against defaulting traders, and by providing economic incentive and penalties to all parties concerned. Different methods may be used, equally effectively, with regard to different kinds of goods and services. However, it must be noted that mandatory legal regulations are likely to cause inconvenience and raise costs. New products may have to face more obstacles in entering the market. This will have the undesirable effect of perpetuating the dominance of the market by the existing suppliers. In this regard, it is vital that the terms of reference of the Consumer Council should be expanded so that the consumers will become more knowledgeable and are in a better position to get redress. There are advantages to be gained for the whole community if this is the case.

Mass consumption is a feature of most of our modern societies. A certain brand of goods or service will frequently have a countless number of patrons. In this regard, if the goods or service in question prove to be harmful, it is likely that there will be more than just one victim. If the individual consumer is not able to claim compensation from the supplier on his own, if he feels that it is too time consuming and too costly to take legal action, and that the

compensation which he will get eventually will not in any case justify the trouble, or if he feels that he is no match for the supplier who can afford to hire a great number of lawyers to defend himself, and that the party not able to foot the litigation bill will have to lose the case regardless, then this means that there is nothing to stop the unscrupulous supplier from getting away with his malpractice.

It may also happen that the consumer does not have a good understanding of his legal rights, bearing in the mind the unavailability of speedy and reasonably priced legal advice. He may be too intimidated by the time and money which the taking of legal action will entail.

In this regard, the setting up of a Consumer Representative Action Fund will have the following advantages.

- It will provide effective assistance to consumers in terms of claiming compensation.
- It will discourage suppliers from providing sub-standard goods and services which are harmful to consumers.
- The taking of collective legal action by the same group of aggrieved consumers is preferable to separate actions by individual consumers. It is more efficient and cost less time and money.

The United Democrats of Hong Kong (UDHK) are in support of the setting up of the Consumer Representative Action Fund. However, with only \$11 million in the fund, it is expected that only a little more than \$1 million may be used to finance the litigation cost each year. In this regard, the UDHK take the view that it may be necessary for the amount of the fund to be reviewed regularly in order that it will be able to meet actual needs.

The UDHK also take the view that a reasonable set of criteria should be devised as soon as possible in order that the Consumer Council will be able to ensure that the limited resources are used efficiently and that waste is kept to a minimum. The more important factors which should be taken into consideration include cases where consumers who have suffered enormous physical harm and monetary loss; where there is an enormous number of victims; where consumers have common ground for claiming compensation; where the plaintiff will set a major precedent if he wins the case with significant impact on the law and government policy; and where the plaintiff will have a very good chance of winning. A public consultation should be conducted on this set of criteria when it has been formulated. This will enable more views to be incorporated so the Consumer Representative Action Fund will better answer the real needs, quite apart from allaying the fears of the business community. This will also go a long way towards overcoming the resistance of some business leaders who have a rather negative impression of the concept due to the

unsuccessful experience of some countries (for example, the United States) in implementing the concept.

Indeed, comparison with the foreign experience is not entirely appropriate. The reason is that we can always devise more rigorous criteria for applicants for the Consumer Representative Action Fund and indeed our lawyers will not resort to encouraging consumers to engage in unnecessary litigation. In this regard, it is quite inconceivable that the law courts will end up hearing trivial consumer complaints.

Mr President, with these remarks, I support the motion.

MR JAMES TO (in Cantonese): Mr President, today I would like to speak in support of the motion. I would like to talk in particular about the issue of "shrunk flats" and the way in which small landlords are being exploited by unscrupulous management companies.

The property market is one of the most important arenas of economic activities in Hong Kong. According to the Government's *Economic Report* of the third quarter, 1993, there were 43 700 property transactions recorded for the months of July, August and September, involving a total amount of \$140 billion. The average home buyer has to come up with millions of dollars to become a flat owner. It is indeed unfortunate that there is no protection for the home buyers. It is very likely that they will end up buying a "shrunk" flat. Given the existing loopholes in the law, there is nothing much the aggrieved buyer can do except to air his grievances through various channels. The fact is that there is nothing he can do practically to save his investment. Even if the home buyer is lucky enough to acquire his property in decent condition, he may still be subject to the exploitation of unscrupulous management companies after he has taken occupation. I trust home buyers who have the sort of unhappy experience which I have described above will be most concerned about the issue which we are debating today.

The problem of the buyer ending up buying a "shrunk flat" is one which is usually associated with the pre-sale of commercial premises or premises which have undergone conversion. Insofar as the spot market is concerned, the buyer can always go to inspect the flat. There is no question of the buyer being deceived into buying a "shrunk flat" on the spot market. However, in the cases of the pre-sale market and the conversion flats, given the fact that the final product, that is, the flat which is going to put on sale, is actually still under construction or conversion, there is no way the prospective buyer could get to know the real size and the dimensions of the flat. The best that the prospective buyer can do is to examine the building plan and trust the developer. The problem arises when some unscrupulous developers take advantage of the loopholes in the existing laws to make unwarranted alterations to the design of the commercial premises and the conversion flats.

Developers tend to be more reasonable in terms of giving buyers value for money when it comes to the pre-sale of residential flats, which is governed by law. It is stipulated in the relevant ordinances and lease conditions that the pre-sale of residential flats should have the endorsement of the Land Registrar. Generally speaking, the buyer of a pre-sale flat is usually aware of its gross and usable floor areas. However, premises which are for commercial or commercial-cum-residential uses and premises which have been converted or are being converted are not subject to the same regulations. This constitutes a loophole which the unscrupulous developer can take advantage of. He may, for example, only inform the buyer of the gross floor area without supplying any information about the usable floor area. The terms of the contract may also be written in such a way as to protect the right of the developer to change the building plan as he sees fit. The result is of course that the proprietor frequently ends up receiving shop or flat premises which are notoriously under-sized. This is in fact what has happened to the proprietors of two shopping arcades located in Jordan Road and San Po Kong, who eventually came to this Council to seek redress. In the most notorious case, the completed flat has shrunk to no more than one third of the size of its building area.

As a matter of fact, it is not only commercial premises which present a problem to buyers. Given the fact the commercial-cum-residential premises are also not subject to the regulation of the Crown Leases Ordinance, it is also likely that they will have the same sort of problem. With the prevailing high property prices, one cannot really rule out the following scenario. One commercial-cum-residential unit is actually divided into two small units which will not therefore be subject to the regulation of any existing legislation. In this way, unscrupulous developers will be able to produce a whole new crop of shrunk flats, and with them, a whole new batch of aggrieved buyers. Indeed, the small proprietors will be able to have greater protection if the Government widens the existing legislation to cover also the commercial-cum-residential and conversion units in pre-sale buildings which do not allow on-site inspection.

The small proprietor is not only unable to enjoy any consumer protection in making the purchase of a flat but also upon taking occupation, he is likely to be subject to all kinds of exploitation by the management company. A small progress has been made in the way of protecting small proprietors as a result of the enactment of the Multi-storey Buildings (Owners Incorporation) (Amendment) Bill in May this year. The small proprietors can now fire an unscrupulous management company. However, the fact is that there are so many malpractices in the building management business that the small proprietors do not really have too much of a choice. For example, in the Kowloon West constituency where I come from, I have received complaints of book-keeping irregularities of management companies, of high management fees and poor service, of financial loss recurring year after year, and of proprietors frequently having to dip into their pockets to pay for charges of all kinds and so on. With the enactment of the Bill, the owners incorporation can give warnings to the management company concerned. If no improvement is made within a prescribed period, the owners incorporation can fire it. After assessing the

situation, the management company may eventually decide to resign of its own accord. However, it is not easy for the owners incorporation to find a new management company which they consider to be trustworthy. Indeed, a lot of residents told the staff of my ward office that they had encountered such a problem. Having met and exchanged experience with other owners in similar plight, they came to the conclusion that no management company is worthy of trust. They have had to settle for the only alternative left. The owners incorporation has taken over the management of the building. Owners hire their own security and cleaning personnel and keep their own books. According to a chairman of an owners incorporation, the result of self-management has been the saving of over \$10,000 in the first month alone. It is sad to learn that the small proprietors have decided to take on themselves the management of their own building at the expense of their rest and recreation time, just for the sake of freeing themselves from the exploitation of the unscrupulous management company.

The small proprietor as a consumer has the right to a reasonable service. However, as a result of the longstanding policy of non-intervention on the part of the Government, there is no consumer protection for the small proprietors. The Government should consider introducing licensing system to regulate these management companies so as to improve the standard of service and to ensure that the consumer rights of the small proprietors are protected. But having said that, the Government should of course still seek to retain some living space for small management companies when it contemplates the implementation of the licensing system.

The consumer frequently finds himself up against the large corporation. He is always the small individual having to fend for himself against large corporations. The extent of protection which the Government gives to the consumer also reflects, ironically, on the extent of protection which the Government gives to the large corporations and big businesses. One tends to vary inversely with the other. The policy of the Government has for a long time been too protective of the interests of the large corporations and big businesses, at the expense of the interests of the public as a whole. Times have changed, however. As a result of the democratic process over the past 10 years, the general public have been keener and more vocal than before in fighting for their rights. The Government, therefore, should respond to these demands and give further consideration to the issue of consumer rights without delay.

Mr President, with these remarks, I support the motion.

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I am grateful to Mr MAN Sai-cheong for giving me an opportunity to reaffirm the Government's commitment to consumer protection. I would also like to thank other Members who have spoken in this debate either to support the further enhancement of consumer protection or to caution against regulatory overkill or



a bureaucratic steeplechase, if I may borrow Mr Martin BARROW's imaginative language.

Protection of consumers has always been a key consideration in the formulation of government policies governing the supply of goods and services in both the public and the private sectors. We fully recognize the need for proper safeguards against abuse of consumers, especially the individual consumer whose bargaining power is considerably weaker than that of business corporations.

#### *New legislation*

Mr MAN and some other Members have referred to the need for comprehensive legislation on consumer protection. I wish to point out that the Government does attach importance to the protection of the consumer by way of legislation. A good example is the Consumer Goods Safety Bill which I introduced into this Council last Wednesday. Upon the enactment of the Bill, there will be, for the first time in Hong Kong's history, catch-all legislation requiring the supply of consumer goods which are reasonably safe, and introducing criminal sanctions against the supply of unsafe consumer goods. This means that manufacturers, importers and suppliers will need to take a critical look at the safety of their goods before they are brought on to the market.

This general safety requirement will need to be supplemented, in some cases, depending on the nature of the product, by specific schemes of safety control. We already have legislation governing specific types of consumer goods such as food, water, pharmaceuticals, gas appliances as well as toys and children's products. We will continue to introduce specific legislation setting out the detailed safety requirements for a specific type of consumer goods when and if the need arises. For example, I know that there has been considerable public concern regarding the lack of specially designed legislation governing the safety of electrical products. I can assure Members that the Government is working hard on the required legislation, and my colleague the Secretary for Economic Services will be introducing regulations under the Electricity Ordinance to control the safety of plugs and adaptors in 1994 and of domestic electrical products in general in 1995.

Apart from introducing legislation to enhance the safety of consumer goods, we are also working on legislation to ensure the quality of goods and services supplied. The legislation in question is the package of three Bills on the sale of goods, supply of services and unconscionable contracts, on which we are now consulting interested bodies prior to their introduction into this Council. This represents a major step forward in our efforts to assist consumers to seek civil remedies against unscrupulous trading practices not just in respect of the sale of goods but also in respect of the supply of services, an area which I note is of considerable concern to Members and to the community.

As regards the need for legislation to provide channels for consumers to seek compensation, I am happy to inform Members that the Attorney General will invite the Law Reform Commission to consider the existing law governing compensation for injury and damage caused by defective or unsafe goods and to recommend such changes in the law as may be considered appropriate.

As our society becomes increasingly affluent and sophisticated, there is a growing need to address the legitimate concerns and aspirations of consumers in a variety of situations which go beyond the realm of basic safety and quality. This ranges from the protection of the privacy of the personal information of consumers to the rights of the small investors in financial markets. As examples I would like to mention legislation in the pipeline to protect the privacy of personal information; amending legislation to increase the transparency of price information in respect of motor cars; and legislation to protect consumers of overseas tertiary education services.

I am sure that the need to protect the consumer in other situations will arise as new goods and services are introduced and new market practices emerge. However, in case there is concern that the Government might end up over-legislating and over-regulating the markets, I wish to reassure Members that the Government will only intervene where the evidence available indicates that consumers are not able to protect themselves, and that the prevalence of malpractices and complaints from consumers is such that government intervention is necessary.

#### *Non-statutory measures*

Apart from introducing legislation where appropriate, the Government also relies on a range of administrative measures to strengthen consumer protection. We have just heard from Mr TIK Chi-yuen the importance he attaches to the promotion of competition as a means of enhancing consumer welfare. Promotion of competition has, of course, always been a major objective in the formulation of the government policies. Recognizing the close relationship between competition and consumer protection, we will shortly issue a directive to require all branch secretaries to assess the impact on competition at an early stage of policy formulation, and to include such an assessment in their submissions to the Executive Council.

Several Members have referred to the present state of competition in certain business sectors, such as supermarket and banking. As Members are aware, the Consumer Council is conducting studies into the state of competition in five major business sectors which affect the daily life of the general public. We have earmarked an additional \$3.5 million for the Council to complete these studies. On the basis of the findings of these studies, we will, where appropriate, revise our policies and formulate new ones in order to promote competition. We shall publish a detailed response to each study within six months of its release. The Consumer Council aims to complete the studies by September 1994.

Separately, we recognize that the Government, as the largest supplier of services to the public, has a special obligation to have regard to the changing needs of its clients. For this reason, the Government last year introduced a Performance Pledge Programme to improve its services to the public; and to develop a client-based culture in the Civil Service. Good progress has been made and we will keep under review our programmes to enhance the transparency and accountability of the public sector.

Other notable initiatives in the public sector include the Hospital Authority's implementation of a Patients' Charter.

We also encourage big businesses in the private sector to introduce measures to protect consumer interests through incorporating appropriate conditions to this effect in the relevant regulatory regime. For instance, television and sound broadcasting licensees are subject to control and monitoring by the Broadcasting Authority. The Authority has adopted the practice whereby public hearings are held before broadcasting licences are renewed. As for public transport operators, we have also incorporated a new condition in some franchises requiring the establishment of passenger liaison groups to provide a channel for passengers to voice their opinions and make complaints. This requirement will be included in other franchises when they are next renewed.

We believe fuller disclosure of financial data by public utilities and transport companies will assist the public in judging whether the regulators are properly protecting the consumer's interests, as they are supposed to do. My colleague, the Secretary for Economic Services, has recently briefed the Economic Services and Public Utilities Panel of this Council on the Government's objectives. Discussions with the relevant companies have begun and we are hopeful of their early acceptance of the new standards of financial disclosure to the public.

#### *Consumer Representative Action Fund*

Mr MAN and some Members have urged the Government to set up a Consumer Representative Action Fund as soon as possible to help consumers to bring action against unscrupulous suppliers of goods or services. As the Governor announced in his policy address to this Council in October this year, the Government has earmarked \$10 million for the proposed Consumer Representative Action Fund which is intended to enable the Consumer Council to assist groups of consumers to initiate legal proceedings against a common defendant. Another sum of \$1 million has been set aside for the Council to conduct legal consultancies on this project. The Consumer Council has set up a Working Group, chaired by the Honourable Anna WU, to draw up proposals for the operation of the Fund.

Members have expressed mixed views on the proposal to set up this Fund. Some have asked for its early establishment while others have expressed

reservations about its possible interference with the efficient and legitimate operations of our trade and industry. In view of Members' comments, we will consult this Council as well as other interested bodies on the Consumer Council's proposals as soon as they are available. I can assure Members that there will be plenty of opportunity for Members to comment and offer advice before the Government's proposals are finalized.

### *Consumer education*

Turning to consumer education, we share Members' view that it is important to make sure that consumers are armed with adequate information on the basis of which they can make sensible decisions. Consumer education is more effective as a preventive tool than most legislative measures which tend to be remedial in nature.

The Consumer Council has been playing a leading role in organizing consumer education campaigns. In addition to the recurrent subvention to the Council for its regular ongoing publicity campaigns, we intend to make a further \$1.5 million capital grant to the Council for the purpose of organizing special consumer education campaigns on fair trading and other consumer-related matters in the next two years.

The Information Services Department has organized a series of publicity programmes to enhance consumer awareness of government policies and legislation which affect consumers' interests. Such programmes are particularly important from the point of view of encouraging compliance with new consumer protection legislation such as the Toys and Children's Products Safety Ordinance and the Travel Agents (Amendment) Ordinance, and complaints against breaches of such legislation. We plan to continue the effort next year by allocating additional funds for this specific purpose.

### *Terms of reference of the Consumer Council*

We are in close touch with the Consumer Council on the need to expand its terms of reference. We are at present actively reviewing the justification for retaining the Schedule to the Consumer Council Ordinance. This Schedule sets out a list of companies and organizations which are excluded from the purview of the Consumer Council. The exempted bodies in the Schedule include virtually all the public utility and transport companies, television and sound broadcasters, the Housing Authority and the Hospital Authority.

That Schedule was introduced in 1977 when the Ordinance was first enacted. The justification then was that as these bodies were already subject to some special scheme of government control or public monitoring, they should be exempted from the purview of the Consumer Council in order to avoid any duplication of work.

Over the years, there have been repeated requests from consumer conscious groups, including the Consumer Council itself, for the deletion of this Schedule. The Consumer Council feels increasingly inhibited from handling consumer complaints and conducting research projects involving some of these bodies which are of general public concern.

After consultation within the Government, we consider that there is a need to review the original justification for the Schedule with a view to enhancing consumer protection. In conducting this review, we will of course be mindful of the need to minimize any duplication of efforts between the Consumer Council and the relevant regulators. We shall shortly seek the views of the bodies listed in the Schedule and other concerned parties.

As to the question of "non product-related services industries" referred to in Mr MAN's motion, the Consumer Council Ordinance already enables the Consumer Council to protect and promote the interests of consumers of services. In particular, the Ordinance was amended in early 1992 to empower the Council to deal with consumer complaints relating to immovable property. The Council is represented on the Working Group on the Regulation of Real Estate Agents which was recently established to study the operation of real estate agents and to make recommendations for a regulatory framework. The group aims to produce its recommendations in the summer of 1994.

In relation to so-called "shrunk" property, the Law Reform Commission Subcommittee on Description of Flats on Sale will issue a consultative document in early 1994 and then submit a final report to the Law Reform Commission following the public consultation exercise. The Government will consider the way forward in the light of the Law Reform Commission's recommendations.

In response to the Rev FUNG Chi-wood's point on environmental protection, I would like to point out that there are joint efforts between the Government and consumer conscious groups in promoting consumer rights and environmental protection, as the two subjects are becoming increasingly related. For instance, the Consumer Council is working closely with the Environmental Protection Department and the retail sector on the ways to reduce the use of plastic bags.

As regards Mr Michael HO's point on the disclosure of more information to patients by the medical profession, I note that the Consumer Council is working with the Medical Council on the introduction of measures in this regard.

Mr Frederick FUNG has pointed out a possible conflict of roles between my responsibilities for the development of Hong Kong's trade and industry and my responsibilities for consumer protection. Let me assure Mr FUNG and this Council that I have had no difficulty at all in reconciling the apparent conflict between my two roles and that I perform both with equal zeal and passion. In

case Mr FUNG is not convinced by what I have just said, possibly because he finds it unbelievable that a bureaucrat could be arguing for the retention of responsibilities, let me take the liberty of commending to Mr FUNG a quotation from Somerset MAUGHAM which goes like this: The fine mind is distinguished from the fustian by a noble disregard for apparent inconsistencies.

### *Conclusion*

Mr President, as I mentioned earlier, the Government's policy on consumer protection is such that we would consider introducing legislative or administrative measures to protect consumers only where they are not able to protect themselves. The doctrine of caveat emptor, that is, let the buyer beware, should continue to be our guiding principle, although of course it should not always be relied on entirely, especially in this day and age when consumerism is ever rising and so is the unfair exploitation of consumerism. We shall keep under review our consumer protection measures so as to ensure that they are able to keep pace with the latest market environment and trade practices. We shall keep an open mind on what additional administrative or legislative measures may need to be introduced. Before new measures or controls are introduced, we shall make sure that there is adequate consultation with concerned parties and the general public, so that we may strike a balance between, on the one hand, affording reasonable protection to consumers and, on the other hand, allowing Hong Kong's trade and industry to continue to flourish. Above all, we will always bear in mind the importance of avoiding the unjustifiable creation of regulatory bureaucracy and of avoiding excessive or unnecessary interference with market forces. Thank you.

PRESIDENT: Mr MAN, do you wish to reply? You have four minutes left.

MR MAN SAI-CHEONG (in Cantonese): Mr President, if Members of this Council are the "policy consumers" of the Administration, then I believe that they will agree that the comprehensive reply and the open and liberal attitude of the Secretary for Trade and Industry can generally be said to be "substantive" and "sincere". I agree very much that the Administration should intervene when necessary because it has the ability to intervene by introducing policies. This is especially true insofar as the improvement of cost-effectiveness is concerned or when regulation by market forces fails. The Administration can also improve the relationship between manufacturers and consumers. It has to intervene to uphold social justice especially when there is an imbalance of bargaining power or when either party is in such a position that it is unable to obtain a fair treatment. I further believe that the Administration has special resources in drafting legislation. It also has an administrative framework for policy implementation and the power to reduce transaction fees. In particular, the Administration has the credibility in the protection of consumer rights and can do more in the setting out of safety requirements and the formulation of regulatory policies.

Mr President, except one Member who has amazed this Council with inconceivable remarks, I believe that all the Members, regardless of what party they belong to, support today's motion which urges the Administration to provide better protection to consumer rights. This is really encouraging. This debate is also the first one since the introduction of elected elements in this Council which examines in a comprehensive and in-depth manner the issue which is closely related to the public. With regard to the promotion of a fair trading policy, I hope that the Administration can really establish a fair and competitive environment in the next two years, strengthen the monitoring of public utilities and enhance the consumers' rights in knowing, choosing and seeking redress, thus bringing us into a new era of consumer protection. I also hope that the Secretary for Trade and Industry can put his words today into action and implement the consumer protection work vigorously advocated by the Governor. He should place this popular topic into the discussion agenda of society and formulate a consumer protection policy which will be beneficial to the general public.

*Question on the motion put and agreed to.*

### **Private Member's Bill**

#### **Second Reading of Bill**

#### **PUBLIC OFFICERS (VARIATION OF CONDITIONS OF SERVICE) (TEMPORARY PROVISIONS) BILL**

#### **Resumption of debate on Second Reading which was moved on 3 November 1993**

*Question on Second Reading proposed.*

MR VINCENT CHENG: Mr President, on 30 July 1993, the Government announced a new arrangement to give overseas agreement officers who are permanent residents of Hong Kong an option to apply to renew their contracts on local terms if they fulfil certain conditions. This was discussed at the Legislative Council Panel on Public Service. The majority of the Panel Members did not support the new arrangement and wrote to the Governor twice requesting for an immediate halt to allow time for consultation and discussion with staff associations. The request was turned down. They also studied the feasibility of supporting a Private Member's Bill as a legislative means to freeze the new arrangement.

On 29 September 1993, Members of the House Committee agreed to support the Panel's recommendation to proceed with a Private Member's Bill to impose temporary restrictions on the variation of conditions of service between local and overseas terms for civil servants on contract terms. The Chairman of the Panel, the Honourable TAM Yiu-chung, would be the "Member-in-charge".

The Bill was introduced into this Council on 3 November 1993. A Bills Committee of 19 Members was formed and commenced scrutiny of the Bill on 17 November 1993. Altogether we held three meetings including meetings with the Administration, the Senior Non-expatriate Officers Association and the Association of Expatriate Civil Servants of Hong Kong and considered submissions from these two associations. As Chairman of the Bills Committee, I would like to take this opportunity to thank my colleagues in the Committee for the time and effort they put in the discussion. I would also like to thank the Administration for their quick response and the two associations for submitting their views and taking part in our deliberations.

Divergent views were expressed in those meetings. The Administration did not support the Bill, whereas the Senior Non-expatriate Officers Association indicated they would. And the Association of Expatriate Civil Servants of Hong Kong said that they would not oppose it.

As regards the views of the Committee on the Bill, some Members considered that the Bill should be passed in order that the Administration could initiate an early discussion with the staff associations concerned on the long-term arrangement. Other Members had reservations. I do not propose to go into details as my colleagues will elaborate on their views later on in their speeches.

Since I am speaking as Chairman of the Bills Committee, I consider it inappropriate for me to express in this speech my personal view on the Bill which has been made known on other occasions.

Thank you, Mr President.

MR ALLEN LEE: Mr President, a Private Member's Bill is not routine. If there is ever a time to exercise this power and responsibility it is now on a matter of pressing concern to this community.

Since late July when this Chamber was in recess, the Government has gone on a new course with its localization of the Civil Service. Expatriate officers on overseas contract terms have been told that they may continue employment in Hong Kong as locals by acquiring the British Dependent Territories Citizen travel document to go with their passport. They do not have to give up their full passports in return. The Bill of Rights, which the Legislative Council enacted, has been cited as the reason for this change because it would be wrong, and I agree that it is, to discriminate against expatriates.

I also believe, with equal conviction, that it is wrong to discriminate against local civil servants who are still subject to less favourable terms of employment. For them, however, the Bill of Rights was never invoked by the Government. For them, there was and never has been any compensation for



their having been superseded for promotion. Why the double standard? Why the Bill of Rights being so abused in this dispute?

The move to continue employment for a few expatriate officers has pitted a minority of senior civil servants against the majority. Whereas before only expatriates were prepared to take the Government to court, explained to us by the Administration as the primary reason for this policy change, now the locals are keen to do the same. So, instead of one case, the Government faces two. The Civil Service is divided and morale suffers.

Since summer, a new twist to the debate has appeared. The Government has produced a consultative paper on civil service terms of employment to define who is a "local" and to institute a language exam. This is an artful interpretation of the Basic Law and the existing lax government criteria for distinguishing locals from expatriates. And, of course, the Government tells us the word "expatriate" does not exist in its vocabulary — only "officers on overseas terms" do. And, these do not identify employees by the colour of their skin. This, we know, is a quibble of language to confuse the substance.

We are asking the Government to defer a decision for half a year. The stay of a policy switch will allow us time to examine in depth the meaning of being a "local". The pause also will give the expatriate and local civil servants time to negotiate with the Government and the Government the remedial chance to consult the public on all the implications of a policy change that is highly damaging to its credibility and to the Civil Service, something that could have been avoided had the Government not rammed the decision through the Executive Council by claiming that all this had been a managerial move outside of our scrutiny.

We are not, let me emphasize, challenging the power of the Government to appoint senior staff. What we are doing is to serve the public interest which the Government also tells us is its first obligation. Since the Government's and the Legislative Council's concern for the public is the same, surely we can agree on a freeze of the policy pending further review and debate. The Private Member's Bill before us today is also a statement of our serious disapproval of the way the Government has handled the whole issue, secretly, at first, and without accountability.

Mr President, members of the Liberal Party will support the Bill.

MR ANDREW WONG (in Cantonese): Mr President, I am opposed to the Public Officers (Variation of Conditions of Service) (Temporary Provisions) Bill. The reason is very simple. If the Bill is passed into law, the Government will be forced to put on hold its interim measure, and let me stress that it is an interim measure which has been implemented since 30 July 1993. Under the interim measure, public officers on overseas contract terms who have literally become permanent residents of Hong Kong or who already qualify for

permanent resident status will be allowed to apply, if they also meet some other conditions, to transfer to local conditions of service. I would consider the Bill to be a misguided attempt to solve a misconstrued problem.

The Government, as it has publicly stated on numerous occasions, is determined to implement the localization policy with regard to the Civil Service. In its recruitment of new officers, the Government will give first priority to a local applicant. It is only when no suitable local candidate can be found for the job will consideration be given to recruiting from overseas. As a matter of fact, this policy has been implemented since the 1950s, though largely for economic reason at the time. Following the signing in 1984 of the Sino-British Joint Declaration, we can see that the previous policy of reserving a certain number of posts for British nationals, like Administrative Officer posts and posts above the rank of Police Inspector, was discontinued since 1985. Attempt has been made instead to gradually reduce the recruitment of British nationals and increase the recruitment of locals at the same time. Whereas localization was implemented in the past mainly for public finance considerations, it is now being implemented rather more wholeheartedly.

Secondly, whether a public officer on overseas contract terms could have his contract renewed upon expiry depends on whether or not a local person is available to replace him at that point. Let us bear in mind that we have passed a Hong Kong Bill of Rights Ordinance. It is stipulated in section 21(c) of the Ordinance that all permanent residents of Hong Kong are entitled to equal conditions of service as employees of the Hong Kong Government. Given the fact that many public officers on overseas contracts are eligible to become permanent residents of Hong Kong or have already done so, the Government will obviously breach the Bill of Rights if it refuses to renew the contracts of these overseas officers on the grounds that under its localization policy, the jobs should go instead to equally competent "local" officers. It is admittedly true, as Mr Allen LEE was saying just now, that the local officers can just as well sue the Government on the same grounds. Under these circumstances, the court will become the final arbiter on the interpretation of the Bill of Rights. Its judgement will provide the best answer to the question of who has breached the Bill of Rights.

In order to avoid the risk of breaching the Bill of Rights in the implementation of its localization policy, the Government introduced an interim measure (I would like to stress again that it is an interim measure) on 30 July 1993, allowing overseas officers who have already become or qualify to become permanent residents of Hong Kong to apply for transfer to local conditions of service. In applying to make the switch, they have to meet certain conditions, such as providing proof that they are still competent on the job. As far as the longer-term solution is concerned, the Government is actively studying ways in which a set of unified terms can be devised for both local and overseas officers, in order to get rid of the undesirable consequences brought about by the present disparity in conditions of service between local and overseas officers. The Government will also draw a definition for "locals", so that the policy of

localization can continue to be implemented faithfully. In this connection, a consultation document was issued by the Government on 25 October 1993 to all the organizations concerned, including this Council, staff associations and departmental management, the Public Service Commission and the Standing Commission on Civil Service Salaries and Conditions of Service to canvass their opinions. It is expected that a preliminary proposal for unified conditions of service can be drawn up early next year.

Looking at the Bill before us, we can hardly see any clues to how the term "local" should be defined. If the Bill is passed by this Council, for fear of breaching the Bill of Rights and out of no better choice, the Government may have to renew the contracts of all of those overseas officers who have either literally become permanent residents or are believed to qualify for permanent resident status, during the effective period of the Bill (though it is half a year, it can be extended). And in this case, the contracts will invariably be renewed on overseas terms. I would consider that to be an even more regrettable scenario. It would have negative effects on both local and overseas officers who will be faced with an uncertain future. As a result of this uncertainty in respect of contract renewal faced by overseas officers, government departments will be faced with that much more difficulty in planning co-ordination between manpower resources and operation demands.

Of course, the spirit of the Bill is to freeze the arrangement which allows eligible overseas officers to apply for transfer to local terms, in order that the issues involved will be thrashed out in greater detail between the Government and the related civil service associations and that an agreement acceptable to all parties concerned will be reached eventually. As a matter of fact, I know that the Government has had on-going formal and informal dialogues with the Senior Non-Expatriate Officers Association and the Association of Expatriate Civil Servants of Hong Kong. In other words, the channels of communication between the Government and the relevant civil service associations have always been kept open. There is no need, in that regard, for this Bill to be passed to freeze the transfer arrangement for half a year so that dialogue can take place between the Government and the above-mentioned associations. Mr President, do I have my seven minutes to speak?

PRESIDENT: Debate on this Bill is not subject to the recommendation of the House Committee limiting speeches to seven minutes. So you have 15 minutes under Standing Orders, Mr WONG.

MR ANDREW WONG (in Cantonese): The other reason why I cannot bring myself to support the Bill is I simply do not think it is right to crack a nut with a sledgehammer, that is, the Bill is not the right way to resolve the issue. In the debate held just now on the aircraft noise problem, we saw that legislative provisions already exist to empower the Administration to deal with certain situations. Admittedly, there are still problems which are specifically dealt with

by subsidiary legislation, but what is at stake is after all policy; the subsidiary legislation is there just to provide the legal force (for the implementation of the policy). I understand that in the House of Commons of the British Parliament, a select committee deals with the subsidiary legislation. Members of the committee are basically engaged in studying whether the subsidiary legislation is legally appropriate instead of looking at the specific content of the policy. Similarly, Mr Allen LEE has said just now that this involves the administration of the Government. However, issues such as these which concern civil service appointment is a matter for the Administration. If we think that the Government is not acting properly, then we as a watchdog on the executive should reprove it by way of a motion debate. We must bear in mind that it is not subsidiary legislation we are talking about. We are talking instead about primary legislation, which is to say that we are making a law. If the Bill is passed, then we are playing the role of the Government. I think it is a very dangerous thing to do. It does not matter what role we play over certain policy issues. In so far as legislation is concerned, if legislation is required for certain policy issues, priority should be given to legislative proposals by the Administration, although we also have the right to make such proposals and the right is not exclusive to the Administration. If however we seek to interfere through legislative means in an issue which is basically management of the Civil Service, then we are "cracking a nut with a sledgehammer". If we are not happy with the way the Administration has acted in dealing with the issue, then we may move a motion to criticize it, or indeed a motion of no confidence. I think either option would be a correct way to go, if Members so wish.

Mr President, because of the two major arguments which I have given, namely, that the Private Member's Bill is a misguided attempt to solve a misconstrued problem, and that it is a draconian means to solve an easily mishandled problem, I am opposed to the Public Officers (Variation of Conditions of Service) (Temporary Provisions) Bill. I would appeal to colleagues to consider the Bill most carefully.

MR MARTIN BARROW: Mr President, I have already spoken against this Bill during the Civil Service debate on 24 November. So I will only make a few key points.

This is a complex and sensitive issue. Bringing it into the political arena is, I believe, unhelpful and counter-productive. The Government's proposed interim way forward is a sensible compromise while the consultation process takes place. I must remind Members that this measure in no way negates the overall localization direction which has made excellent progress in the past decade. But it does give time for the Government to work towards implementing a unified scheme which must be the right solution. In the meantime we must remember the point repeatedly made by the Government that the number of people who could be successful in applying under this arrangement would be very small, given the relatively stringent requirements.

By no stretch of the imagination could this be seen as a major setback for localization. The Bill, on the other hand, is going to lead to increased uncertainty among the Civil Service, particularly as it is most unlikely matters can be settled within six months given the need to have consultation through the Joint Liaison Group.

Furthermore, the result of the Bill is that it may perpetuate outdated policies, the very policies supporters of the Bill wish to do away with, given that the Government may have no alternative but to extend certain contracts.

Mr President, we have an excellent, dedicated Civil Service, who work together in a harmonious manner. I am saddened that this issue has been politicized in recent months. I oppose the Bill, and I hope Members will listen carefully to the strong arguments which will, no doubt, be put forward later on by the Secretary for the Civil Service. Thank you.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, the other day I read an article in a newspaper by Mr S W HARBINSON, Acting Secretary for the Civil Service, in which he had expressed some views on this Private Member's Bill. Now I would like to respond to his views.

The article held that the Private Member's Bill, if endorsed by the Legislative Council, would create a state of chaos on various fronts and set a dangerous precedent in the sense that the Legislative Council directly interferes with the nitty-gritty of the Hong Kong Government's management of the Civil Service. All I would like to point out clearly is that the Bill itself is absolutely neutral, neither stating any position nor aiming to side with either local or expatriate officers. The purpose of the Bill merely seeks to allow the Government more time, with its sincerity, to resolve the disputes and contradictions between the Administration and civil servants. It indeed sounds alarmist to say that the Bill interferes with the Government's administration policy. If there is any chaos, it must be created by the Government itself. The spirit of the Bill is nothing more than reversing a confusing policy which receives no support from all parties concerned, and freezing a policy which has undergone no prior consultation but has drawn opposition from the public as well as an overwhelming majority of civil servants. The Bill is intended to urge the Government to do some soul-searching and reconsider the policy so that, with a cool head, it could make use of the breathing space to tackle the issue.

The Secretary for the Civil Service also implied that the Government would be left with only two options should the Bill be passed. One is to violate the Bill of Rights while the other is to automatically renew the contracts of about 50 civil servants on overseas terms, whose tenure of office is to expire during the freeze period. I do not know how the Government arrived at the figure 50. I think the Government is trying to create a smoke screen that it is an either-or situation. In fact, we do have other alternatives. I see no reasons why there should be a mandatory renewal of the contracts of expatriate officers

if their contracts expire during the freeze period. The Government may continue to follow its established policy with regard to the employment of contract expatriate officers. In a nutshell, such renewal must be made on a reasonable basis or out of necessity. Contracts should not be renewed automatically for those who hold redundant posts or are incompetent, or whose posts can be filled by local officers. As regards the alleged violation of the Bill of Rights, it is merely a piece of legal advice and the final ruling should rest with the court instead of the Government. I would like to ask the Secretary for the Civil Service not to complicate the matter by raising false alarm lest new disputes and anxieties will be created.

A final point about the article is that it stated that Members may consider the so-called second best choice whereby the validity period of the Bill is proposed to be extended for one and a half year or two years and the Government can in turn make use of the time available to extend the tenure of office of the expatriate officers. I wish to urge the Government not to divert the attention of both the public and the Members over this subject. The half-year freeze period tentatively stipulated in the Bill seeks to exert pressure on the Government to, instead of employing some stalling tactic, strive for early settlement of the disputes stemming from the conversion arrangements. The longer the stay of a policy switch, the less pressure we can place on the Government for solving the problem. Furthermore, the promotion prospects of local officers will then be gloomier and the stability of the Civil Service shakier.

Mr President, the United Democrats of Hong Kong (UDHK) fully support today's Private Member's Bill in relation to the Civil Service interests. We also think that the Government should review during the freeze period problems in the localization policy, such as the definition of "local officers" and their terms of service, the high proportion of expatriate officers in the directorate grade and the slow pace of localization conspicuously in certain departments. The UDHK would like to further request the Government to consult the Civil Service and the public when it formulates any policy on the Civil Service. And any change must be made in compliance with the following three principles: no violation of the Bill of Rights, no racial discrimination and equal employment and promotion opportunities for all local and expatriate officers alike.

Finally, if the Bill is passed smoothly today, I hope the Governor will refrain from exercising his privilege to veto the Bill. As he has all along emphasized that he would listen to public opinion and attach great importance to the views of Members in the Legislative Council, I hope the Governor will live up to his words. I hope he will not praise the Legislative Council to the skies concerning our support to certain government policies but, on the other hand, turn a deaf ear to our views concerning other matters such as livelihood issues. This will be double standard and deal a blow to our constitution. Furthermore, Mr President, please let me point out in no uncertain terms here that the fundamental power of the Legislative Council is to legislate. It is not, as what claimed by some Chinese officials recently, a mechanism even worse than a rubber stamp. When it comes to government policies which snub public

opinion, Members of this Council have the power to, in the form of, say, today's Private Member's Bill, compel the Government to reconsider its policies, thus putting effects to the Council's watchdog and checks and balances functions. This Council, with its elected elements, is definitely not a rubber stamp or even a hand-raising machine. On the issue in question, the Legislative Council is exercising the power conferred by the constitution and performing its duty by freezing any policy resulted from maladministration and allowing more time to the Government so that it could formulate an appropriate civil service policy through consultation with civil servants and the Legislative Council and, as a result, bring stability to both the Civil Service and indeed the territory.

Mr President, with these remarks, I, on behalf of the 13 Councillors from the UDHK, support Mr TAM Yiu-chung's Private Member's Bill.

MISS EMILY LAU (in Cantonese): Mr President, I rise to speak in support of the Bill. The Government has all along been pursuing a set of civil service policies with an overtone of racial discrimination. Civil servants are classified into locals and expatriates in terms of their conditions of service. Civil servants who come from Macau, Hong Kong, China or Taiwan are employed on local terms. It is evident that people from these four places are mostly ethnic Chinese whereas the majority of the expatriates are white people. The abolition of such a racist policy should have been long overdue.

Certainly, what makes most civil servants unhappy is that officers who are employed on overseas conditions of service enjoy more benefits, including passages to return to their places of original, better leave earning rates and more favourable housing benefits. As a matter of fact, the Government should long have abolished such a racist policy. The Government began its localization policy in the 1940s. Yet the Government still applies two sets of conditions of service for civil servants. I am extremely disappointed that the Government has been unable to unify the different terms of appointment and conditions of service for civil servants. When the Bill of Rights Ordinance was promulgated in 1991 in Hong Kong, I thought that local officers might challenge the Government for practising such a racist policy by invoking the Bill of Rights. I was extremely surprised that local officers did not take up this course of action then.

Mr President, the appointment of civil servants has a bearing on the interests of the public at large. Being an international city, Hong Kong should take into consideration various factors when appointing civil servants. The overriding selection criterion should be the candidate's ability and competence. Both the locals and the expatriates should enjoy equal entitlements. But in view of our localization policy, local officers should naturally be provided with a better chance of promotion. This has prompted a question: What is a local? A hot debate over the issue is well underway. Some Members have time and again unveiled their racial discrimination mentality at meetings of this Council by equating ethnic Chinese with locals. I trust that not too many people support

such a view. We should not determine whether one is a local by one's blood lineage or race. We hope that ultimately we shall have a legal definition of the term "Hong Kong permanent residents" according to the Laws of Hong Kong and once defined, those who are Hong Kong permanent residents should be regarded as the locals and be treated on an equal footing.

Mr President, at a recent meeting of the Administration of Justice and Legal Services Panel, a senior official of the Legal Department, when discussing with us on the localization issue, suddenly uttered the following: The expatriate officers know their days are numbered. I was displeased by his remarks. Some expatriate officers may take it that certain Members of this Council want to drive them out. Yet I believe that this is not the majority's view at all. Having said that, I am sure that some expatriate officers may infer from this very unhappy incident that some people are sheer racists. Mr President, we understand that the Government's past policy made many local officers feel being badly discriminated against. They are subject to far less favourable terms of employment in comparison with their expatriate colleagues in many aspects. Mr President, who should be blamed for causing such a grave conflict and so many grudges among our civil servants? We are not going to mediate in the dispute today because it is a hard nut to crack, as it were. Members of this Council, however, were really taken aback by the Government's sudden announcement of the conversion arrangement a few months ago. The civil service staff unions find such an arrangement particularly unacceptable. In their opinion, the arrangement is aimed at allowing expatriate officers to keep their senior posts. We hold that if the Government is sincere about listening to public opinion or if the Government wants to run a truly open government, it should carry out consultations prior to implementing a controversial policy even though it is a right policy. By doing so, it will make everyone feel that at least they have been given an opportunity to express their views. It may turn out that not every party finds a policy introduced in this manner satisfactory at the end of the day. But at least no one will accuse the Government of adopting the "high-handed" approach to implement a doubtful and unpopular policy without prior consultation at all. I really cannot support the Government's present course of action.

Nevertheless, I welcome the Government's initiative to work out a solution to resolve and eliminate such a racist policy, though a bit late. I earnestly hope that the Government will implement a set of standardized conditions in its recruitment of civil servants as early as possible. However, I am against the Government's high-handed approach in handling the recent incident. Of course, I realize that time is not on our side and hope that the Government will carry out consultations with relevant bodies in the coming few months. I further hope we could secure the Chinese Government's blessing on the definition of a local so that a durable policy be made public to set our Civil Servants' mind at ease and remove their worries about any future uncertainties.

With these remarks, I support the Bill.



MR FRED LI (in Cantonese): Mr President, I do not think it is very meaningful for us to continue to bicker over the Bill before us. It has been a subject of much debate and discussion by the Public Service Panel over the past months. Indeed, while the Bill was at Committee stage, we had already been provided with all sorts of information by various organizations including civil service staff associations and the Civil Service Branch. It is for this reason that I do not wish to go through the points raised by these organizations. But having said that, I think that the Government should bear full responsibility for the difficult position in which we find ourselves. It is because the Government has all along failed to deal properly with the situation which leads to the current division between local and overseas officers. It is extremely sad and regrettable that the ranks of the Civil Service have split and mutual suspicion has arisen since the introduction of the Bill and the interim measure on 30 July. Relationship between all parties concerned has soured. I refer in particular to the relationship between local officers (and by local I mean local Chinese officers) and overseas officers (expatriate officers). Now they regard each other with mutual disdain.

I think it is up to us to examine why this has happened. It has always been the practice of the Government to appoint civil servants either on overseas contract terms or local contract terms. This practice has given rise to many problems. In the past, anyone contemplating a civil service career would first of all check if he qualifies for overseas contract terms. The fact is that overseas contract terms are superior to local contract terms and an officer on overseas terms is able to enjoy far more fringe benefits than his local counterpart. It is admittedly true that such disparity has narrowed to the extent that there is no longer any great difference in terms of pay and housing benefits between overseas and local officers. The only major difference lies in the allowance which the overseas officer enjoys in terms of annual return air passage to and from the country of origin. One cannot help but ask: Is the practice of overseas recruitment necessitated by the unavailability of required expertise in Hong Kong such that the Government is obliged to offer expatriate terms, that is, better terms to attract foreign nationals to come to work in our Civil Service? The answer is yes in some cases but no in other cases. The cases which Mr Andrew WONG has mentioned just now are of course true. But I have also asked Mr HARBINSON why it is still the practice of the Hong Kong Police Force to hire a small number of police constables in Britain to come to work as Police Inspectors in Hong Kong. Is it that Britons make particularly bright police officers? The answer is of course no. It is clear for everyone to see that, given the fact that Hong Kong is a British colony and that law and order is always a matter of prime concern to the sovereign country, localization is bound to be a slow process in the Police Force. We can also see that police officers above the ranks of Inspector and Superintendent are mostly recruited on expatriate terms. What is the reaction of our local police officers towards this state of affairs? The answer is of course that their morale has been severely impaired as a result. One can imagine their feeling about working as a subordinate to an expatriate officer. The interim measure to allow expatriate officers to switch to local terms was suddenly introduced by the Government on

30 July. The justification used is that the Government may be sued for breach of the Bill of Rights if it fails to act. It is interesting that it has suddenly dawned on the Government that its implementation of the localization policy over the years may actually be construed as a breach of the Bill of Rights. At any rate, even if we were to allow those expatriate officers to switch to local terms, one fails to understand the wisdom in extending that option to expatriate officers who do not at this point qualify for British Dependent Territory Citizen (BDTC) or permanent resident status (because they have not yet bothered to apply for permanent resident status). One fails to understand why the Government does not seek to limit that option to those expatriate officers who have already become BDTCs or permanent residents exclusively. One fails to understand why the option to switch to local terms has been given even to those expatriate officers who may qualify to apply to become permanent residents. This is a very important point. I have never been provided with any statistics on this. I have asked on many occasions who are the people eligible to apply to switch to local terms. Does the Government have an estimate on the numbers involved? Are there only 10-plus officers involved? Is it true that of the several thousand officers on expatriate terms, those who qualify for BDTC status will only form a small number? I think if there are only about a dozen people involved then their case may after all be considered favourably. However, if the eligibility criteria are relaxed to such an extent that all expatriate officers can apply for the switch, then we are actually creating a huge loophole, a wide gap in the gate. I hope the Government will be able to give us a full explanation later on.

The Legal Department will present a document to the Public Service Panel tomorrow. The department will persuade Members to support a series of "double ladder" measures and a variety of developmental posts, in order to enable their Crown Counsels to have better promotion prospects. The Legal Department has 127 overseas officers of whom only three are on permanent and pensionable terms. 75% of its Directorate is made up of overseas officers, of whom only two are permanent residents of Hong Kong. However, those who are not on permanent and pensionable terms now may just as well apply to the Immigration Department to become permanent residents because they have been residing in Hong Kong for seven years. And while their applications are being considered they are also eligible to apply to the Civil Service Branch to switch to local terms. They can apply simultaneously under the present rules. This is a blow to the morale of their subordinates to the extent that the latter are a large number of local officers waiting to be promoted to Senior Crown Counsel or Deputy Principal Crown Counsel. They would consider themselves to be eligible for promotion to these posts because they have accumulated the necessary experience of between 10 and 15 years. Now there has been this change of policy to allow overseas officers to switch to local terms. If the overseas officers are allowed to stay in post forever, then one can imagine the immense blow to the morale of local officers. We can see that the interim measure introduced on 30 July has not solved the problem at all. On the contrary, it has given rise to a whole lot of problems. The present scenario is just like a water tank with a thick sediment of filth which, if it is not stirred, is

not so bad as appearance goes. However, with the introduction of the interim measure on 30 July, the water tank has been stirred up and the problem has become all the more obvious.

The Private Member's Bill before us is not a solution to the problem either but I think it is an option we can consider for lack of a better alternative. We have tried our best to lobby the Government to put the measure on hold. Since our efforts have been in vain, the only option left for us is to introduce a Private Member's Bill. I hope that the Civil Service Branch and the various staff associations would get down to discussions and work out a satisfactory solution eventually in the coming six months. The present proposal for unified terms for both local and overseas officers which we find in the consultation paper is not a solution to the problems which have arisen.

Mr President, due to the lack of a better alternative, Meeting Point is of the view that this Council should make use of its legislative powers to mandatorily bring the Government and the staff associations together to officially (let me stress not unofficially) negotiate a solution to the problem.

We are in support of the Private Member's Bill.

MR ROGER LUK (in Cantonese): Mr President, during the Spring and Autumn Period and the Warring States Period in China, there were a hundred contending schools of thought. Situated in the west, the state of Qin in particular was a great haven for intellectuals from all corners of the country; it was able to draw on a large pool of talents and achieve great military and economic strength. Under the rule of Emperor Mugong, who was assisted by such talents as YOU Yu, BAI Lixi, JIAN Shu, PI Bao and GONGSUAN Zhi, the state of Qin became the most formidable power in the west of China, after annexing a total of 20 minor states. When Emperor Xiaogong succeeded the throne, he threw his weight behind the reforms masterminded by SHANG Yang to revolutionize Qin's social traditions and other systems. Qin was transformed into an affluent state renowned also for its unrivalled order and discipline. During the reign of Emperor Hui, the divide-and-rule strategy of ZHANG Yi was successfully pursued. That strategy was followed by a policy of appeasement and offensive aimed respectively at neighbouring and faraway states, which was the brainchild of FAN Sui and endorsed by Emperor Zhao. It was thanks to this policy that Qin became so powerful that it could conquer the other six major states and unify China. However, at that critical point, a campaign to banish all non-indigenous mandarins in the Qin court was waged by a group of disgruntled blood relatives of the royal family. They questioned the loyalty of the "guest" mandarins who came from other feudal states. (Note)

LI Si, a native of Shangcai in the state of Chu, was also shortlisted for banishment. In his famous petition to the emperor, he said, "The four late emperors were well-served by foreign talents who had helped to advance the national interests of Qin ..... To banish them would actually result in the foreign

talents joining our enemies to our detriment. The brain drain would effectively render Qin unstable quite apart from creating ill feelings among the feudal states." (Note) Seeing the logic in LI's argument, the emperor eventually ruled against the banishment plan. LI Si was re-instated and later appointed the Prime Minister of Qin.

We can have a better understanding of our present situation by learning from the past. The campaign to banish non-indigenous mandarins in the Qin court may not be entirely comparable to the localization policy which we have in Hong Kong. There are nevertheless valuable lessons which we can learn from that historical episode.

It is of course true to say that Hong Kong owes its position as a major international financial centre to its sound physical infrastructure, legal system and other institutions. But it is equally true that Hong Kong owes its success to the fact that both the public and private sectors have been able to draw on and utilize to the full all kinds of manpower and material resources at their disposal. It is important to bear in mind why people in Hong Kong can acquire merchandise not produced in Hong Kong and that there are people not born in Hong Kong who are prepared to serve its interest most faithfully. There are many talented people in the industrial and business sectors while the Government is also staffed by competent civil servants.

Now that the year 1997 has already been set for China to resume sovereignty over Hong Kong. If we should strive to preserve the present civil service intact we will inevitably be faced with the problem of disparity of conditions of service applicable to local and overseas officers. We have to address this matter immediately and to take some bold measures to streamline the system and unify the conditions of service. Unfortunately, the Executive Council has been dragging its feet on this issue. It hastily introduced an interim measure a few months ago in an attempt to defuse the possible legal action against the Government by overseas officers. This was shortly followed by a consultation document on unifying conditions of service as a long-term solution to the problem. The result so far has been an intensification of the conflict between local and overseas officers with the Government apparently failing to please either party. In addition, given the fact that local officers who are prepared to take over from the would-be outgoing overseas officers are in rather short supply in certain departments, the whole issue has become all the more politicized.

Indeed, the Private Member's Bill before us today has been produced under the above mentioned complicated circumstances. While the Bill is surely well-intentioned, bearing in mind the complicated circumstances, I doubt very much whether it will bring any significant breakthrough in six months' time. On the contrary, it may just as well bring forth new problems.

As it is suggested by LI Si, "A great state should look beyond its boundaries to take on talents." Indeed, there are Hong Kong emigrants who have

already taken up jobs in the civil service of their adopted countries. In this regard, it does not really matter what motivated an overseas officer to come to work in Hong Kong in the first place; similarly, it does not matter what sort of background such an individual had when he came to Hong Kong. We should encourage overseas officers to do so and make sure that they can stay if they do wish to stay in Hong Kong to work for the Special Administrative Region Government. Their continued presence in Hong Kong is already provided for in the Basic Law.

If we should go for a recruitment policy which favours locals exclusively and commits the same mistakes as lambasted by LI Si in his petition that "to banish indiscriminately all non-indigenous officers without asking ourselves whether the state can in fact afford to dispense with their service", then I do not think it would be in the interests of Hong Kong. It is never too late to remedy the situation. The conflict between local and overseas officers has in fact been a longstanding problem. The attempt to freeze the Government's proposed arrangement may help to alleviate the tense situation for the time being. However, the right solution to the problem should instead be the early implementation of a unified set of conditions of service applicable to all public servants. It is the best way to deal with the present situation.

Mr President, these are my remarks.

Note: LI Si (Qin Dynasty), *Petition Against Banishment of Guest Talents*

MRS SELINA CHOW (in Cantonese): Mr President, I am not so well versed in constitutional matters as the Honourable Andrew WONG. But he did not, in fact, tell us whether or not he agrees to the Government's practice. Nor did he disclose whether his opposition was only directed at the technical aspects of moving a Private Member's Bill. If he thinks that there are problems with this, why did he, as an expert in this field, not move a motion of no confidence to prove that we have committed procedural mistakes, and to uphold justice — this we should do as a matter of principle?

There are two points in the crux of the matter:

- (1) Is this change in public policy fair?
- (2) Is it fitting of Members of the Legislative Council to move a Private Member's Bill to deal with this matter?

The Liberal Party thinks that this change of public policy is basically a violation of justice. The public and local civil servants have for many years accepted the fact that the conditions of service for civil servants on overseas contract terms are better than that of this local counterparts. It is because local talents are not competent at certain jobs, and thus it is accepted that, before suitable local talents are available, the Government could recruit staff from

overseas and offer them with better terms of service. But when it comes to contract renewal, the Government must consider whether there are suitable local candidates to take up these jobs. The expatriate officers should appreciate this arrangement. For years, however, the Government has not implemented this policy properly. Overseas civil servants always have their contracts renewed unconditionally, thus dampening the promotion prospects of the local officers. In July this year, the Government committed yet another mistake by "automatically transferring" civil servants enjoying favourable overseas terms for many years to local terms and at the same time retaining their senior positions. This runs totally counter to the objective of the original policy. In the past there have been cases where overseas civil servants applied and subsequently were employed for positions lower than their original ones upon their unsuccessful applications for renewal of contracts. The Government argued that it would be a breach of the Bill of Rights Ordinance if overseas staffs contracts are not renewed. I find this argument not convincing. I hope that the Government will refrain from following this practice as so doing will sow even greater dissatisfaction.

This Council has already exhausted all of its patience and efforts in trying to convince the Government of the need to find a solution acceptable to all parties concerned and fair to taxpayers by way of negotiation. Unfortunately, the Government's attitude is closed, stubborn and outdated. This kind of attitude is found unacceptable not only by colleagues of this Council, but also by overseas and local civil servants alike. We have no other alternatives but to try every means to exert pressure on the Government with a view to altering this policy and the relevant practice which the public find difficult to identify with. Therefore, the Honourable Martin BARROW's argument can no longer hold water. We cannot support unfair and unreasonable policies blindly. I call upon my colleagues not to be afraid of setting a precedent, and not to apply loyalty wrongly. We in this Council must fulfil our responsibilities to the public at such critical moments. If this is regarded as politicizing the matter, then so be it as this must be the positive side of politics.

Mr President, the Liberal Party supports the motion unreservedly.

SECRETARY FOR THE CIVIL SERVICE: Mr President, before I go into the pros and cons of this Bill — or more accurately perhaps just the cons — let me run over the main events of the past year in the context of the policy which this Bill purports to address.

A year ago the Association of Expatriate Civil Servants (AECS) was making credible threats of legal action if we did not change our policy on employing permanent residents. The problem was that a permanent resident of Hong Kong employed in the Civil Service on overseas conditions was liable to have his or her employment discontinued solely on the grounds that another permanent resident on local conditions was available as a replacement. However the Bill of Rights says — Article 21(c) — that every permanent resident shall

have the right and the opportunity without any of the distinctions mentioned in Article 1(1) — that is to say race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status — and without unreasonable restrictions, to have access on general terms of equality to the public service.

The AECS suggested that we should extend all overseas officers' contracts, on overseas conditions, while a new policy was being thrashed out. The Administration announced publicly in January 1993 — almost a year ago — that the policy was being reviewed, but without extending any contracts. In April, this Council's Public Service Panel started to study the issue. It has been studying the issue ever since, without however arriving at any substantive position.

In late July the Administration announced its two-stage approach. In the long term, the idea was to abolish differential conditions of service and to come up with a new definition of who should be regarded as "local", a definition which would bring our employment practices into line with the Basic Law. This was clearly going to be a lengthy and difficult process; so, in the meantime, until a solution could be reached, we instituted an interim arrangement. The interim arrangement provides that if someone is a permanent resident of Hong Kong as defined under the Immigration Ordinance he or she can apply for employment on local conditions. Apart from being permanent residents, applicants would also have to meet a number of other conditions. But if they were successful we would offer them employment for one contract only, as an interim arrangement, on local conditions. Numbers would be very small. I would point out also here that the vast majority of senior overseas staff are on permanent and pensionable terms and thus not eligible to apply to switch to local terms.

Let me stress, as I have been stressing for the past few weeks, that the interim arrangement does not, in any way, say that those switching to local terms are "local" civil servants. Indeed they cannot be described as "local" because we have no positive definition of such a term at present. Whether they would be regarded as "local" in future would depend entirely on the consideration of the long-term issue, which is of course the subject of a wide ranging consultation exercise.

In September of this year the Public Service Panel then submitted a paper to the House Committee, saying that it supported the introduction of a Private Member's Bill prepared by the Local Crown Counsel Association which prohibits any variation between overseas and local conditions of service and vice versa. This is the Bill we are now debating.

It is illuminating to note that, as I have said, the Panel, after five months of study, was unable to reach any conclusion on substantive long-term issues. It rather lamely noted that the Bill would permit more time for consultation and discussion.

Nevertheless, the Panel's report — Legislative Council paper 4374/92-93 — makes memorable reading. Its rationale for supporting the Bill, and thus for suspending the interim arrangement, is that the arrangement will "block the promotion of genuine locals".

The concept of the "genuine local" has never been explained. It is in fact inexplicable in terms of the Laws of Hong Kong. Certainly the Hong Kong Government cannot operate its employment policies in accordance with such terminology.

In October, the Administration published its promised consultative document outlining possible common conditions of service for the future and asking for suggestions on how to define a "local". The consultation period is still running and indeed some staff associations have asked for more time in which to respond. We believe that although historically there was a rational justification for differential conditions of service, their time has now passed, and they should be done away with.

So much for history. I ask Members in the light of what I have said to consider what this Bill achieves. Does it take us any further forward towards to a long-term solution? How are we to treat permanent residents when it comes to employment in the public service? The answer is that the Bill completely ducks this issue. It seeks to turn the clock back; to prolong differential and anachronistic conditions of service; to ignore the real issues which we have to face and resolve before 1997.

Simply put, what we have before us is a Bill, originally drafted by the Local Crown Counsel Association, to stave off temporarily a threat — which I may say is more imaginary than real — to the promotion prospects of "genuine locals". I ask Members to consider very carefully whether this is really worthy of legislation.

It has of course been argued by some proponents of the Bill that long serving overseas contract officers should in any case not be allowed to become permanent residents of Hong Kong. They should be seen instead as nothing more than migrant workers. I will leave the wider implications of this argument, which are considerable, to others. Suffice it to say that the current laws of Hong Kong allow such persons to become permanent residents and this bestows certain rights on them, including the right of access to the public service. The question is: Are we going to stand by these rights or ignore them?

When this Council passes laws it quite rightly expects the Hong Kong Government to be guided by them. That is what we have done. Members cannot turn round later and expect us selectively to ignore those laws which in retrospect they might have doubts about.



I must say that I find it disappointing that these points of principle are ignored by our major political parties. We are after all used to these parties lecturing us on the importance of human rights, and portraying themselves as the defenders of our freedoms. It is all very well to talk about past discrimination. But do two wrongs make a right?

Some also ask: Why did the Government not just wait to be taken to court? The answer is that we had received independent legal advice which we still believe to be definitive. In all honour we had to act on that advice. It would have been irresponsible to ignore it. In any case a court may have imposed some totally unacceptable conditions on us. It was better for us to keep the initiative.

It has also been argued that we are unilaterally changing the system of employment. Nothing could be further from the truth. That is why we have been so careful to stress the interim nature of the arrangements announced in July and the fact that they make no long-term commitments. As for the future, we have set out to consult widely, including staff associations and the Chinese authorities. This is responsible management, not unilateral action or a "high handed" approach as described by some.

History apart, there are a number of other good reasons also to oppose the passage of this Bill. First, it is a prime example of what I described in the recent motion debate on the Civil Service as "backseat driving".

The Civil Service is a very large and disparate organization. It is not easy to manage. On the whole it is managed very well. If this is to continue, the Administration must retain the flexibility to get on with the job. Furthermore, we are dealing here with civil service appointments policy. This is a particularly sensitive area. Is it right to bring politics into it? If we do so, how and where are we going to draw the line in future? I appeal to Members not to start on this slippery slope.

Secondly, the Bill if enacted is going to create both a policy vacuum and a climate of uncertainty. The Administration has already made it abundantly clear that we will have no option but to extend contracts of qualifying permanent residents (or those having a credible claim to be permanent residents) on overseas conditions. This is because on the one hand staff in this category cannot be subject to localization in the light of the Bill of Rights. On the other they cannot transfer to local conditions because of this Bill. They will be in a sort of limbo, half way between the old policy and a new policy. Uncertainty will be created, not only for the officers directly affected, but also for departments which need to be able to match their manpower planning with their work commitments, and indeed for local staff themselves.

Thirdly, although this Bill is touted as simply creating time for the various parties to get together and reach a consensus, we all know in advance that the timeframe envisaged is totally unrealistic. We need a proper interim

arrangement, such as that introduced in July, to bridge across to the long-term arrangements. This allows for full discussion with staff and in the Joint Liaison Group. Essentially we are engaged here in a process of convergence with the Basic Law. This cannot be achieved overnight and certainly not by 20 April 1994. We need time to get it right and thus construct an employment policy which will last us well into the future. Of course the Bill can be prolonged, but only at a considerable cost in terms of further uncertainty.

Furthermore, some commentators seem to think that it is simply a matter of bringing various staff associations to the table and negotiating a compromise. Unfortunately this is not so. We are dealing here with the rights of individuals guaranteed by law. Staff associations are not in a position to negotiate these away.

To sum up, Mr President, there is a whole host of reasons to oppose this Bill. But the key point is that we have to change our policy in this area to meet the requirements of the future. We cannot bequeath to the SAR Government an anachronistic tangle of staff on local and overseas conditions. A solution must be found. Let us face up to this together and find a way forward. Not a way backward such as this Bill would impose on us. Of course it is a painful process. It was always going to be so. But it can be done successfully provided we look at the issue rationally and keep our eyes fixed firmly on the future.

Mr President, it has been my duty to point out why this Bill is both undesirable and unnecessary. Members now have a clear choice, which they can exercise in the light of the facts as I have described them. The Administration has made it plain where it stands, and I very much hope that Members will on mature reflection see the force of the arguments I have outlined.

If they nevertheless decide to proceed with the Bill, they must do so in the expectation that their wishes will be respected and that the Bill will be brought into effect forthwith.

Thank you, Mr President.

MR TAM YIU-CHUNG (in Cantonese): Mr President, today, 15 December 1993, is an important day. It is a day of historical importance for Hong Kong because it marks a critical point in the history of Hong Kong. It is not because today is my birthday, though my birthday actually falls on today. My birthday is of course of no significance. What is of significance is the fact that, just a couple of hours ago, the Government effectively issued in this Council a blank cheque to our senior citizens. The blank cheque promises to pay each senior citizen a monthly allowance of \$2,100. When will that cheque be cashed? When will the Government deliver on that promise? The answer is anybody's guess. But it has raised the expectations of our senior citizens. On a separate issue today, the Government has seen fit to present to this Council a bill on political reforms which have failed to secure an agreement between the British

and Chinese Governments, effectively putting at risk the on-going Sino-British talks which are on the verge of breakdown. The result of this action would be a critical point in the history of Hong Kong, a point from which China and Britain will go their separate ways in pursuing their policies on Hong Kong. Also critical is of course my introduction of this Public Officers (Variation of Conditions of Service) (Temporary Provisions) Bill by way of a Private Member's Bill. It attempts to freeze until April next year the government arrangement to enable overseas officers to switch to local terms. Such an attempt, by way of a Private Member's Bill, to freeze a government measure is unprecedented in the history of this Council. The Acting Secretary for the Civil Service, Mr Stuart HARBINSON, has given Members some justifications for the Government. But I think his arguments are rather weak and hardly convincing. Here I would like to comment on his justifications. Mr HARBINSON said that the Association of Expatriate Civil Servants of Hong Kong indicated a year ago that they would take legal action. As the convenor of the Public Service Panel, I have been involved in calling meetings on the issue. But as far as I can recall, the issue did not come up for discussion until the beginning of this year. It is true that several discussions were held but each time it was just representations by the staff association. Meanwhile, the government attitude has been quite clearly conveyed to us, that the legal action threatened by the Association of Expatriate Civil Servants of Hong Kong would be futile, and that the government policy (of localization) would not breach the Bill of Rights.

Moreover, the panel was only listening to the views made by the various staff associations. It was not required by the Government to come up with a specific solution to the problem. The fact remains that the panel had not been consulted before the Government took the important decision on 30 July to introduce the interim measure. I do not think it is right to put the blame on the panel. The Acting Secretary for the Civil Service has made the point repeatedly that there is no specific solution to the problem available. Come to think of it, if our elite Civil Service Branch is not able to come up with a good solution, if not even our intelligent Secretary for the Civil Service is able to prescribe the right medicine, as Mr Andrew WONG has put it metaphorically, then how fair is it to ask Members of the panel to assist in solving the problem? As a matter of fact, we cannot help much in terms of providing a panacea to the problem. But we are hoping that the method which will be used will provide reprieve, room for manoeuvre. After that, it will be for the Government to find people of superior intelligence, or to examine other better ways to solve the problem.

The Acting Secretary for the Civil Service has said that the present measure is interim. But the question is really: Can this interim measure provide a solution to the problem? I do not think it will. The Association of Expatriate Civil Servants of Hong Kong has claimed that it will sue the Government. The Senior Non-Expatriate Officers Association has likewise said it is also prepared to sue the Government. This Council is divided on the interim measure. The community at large is not supportive of the interim measure. Put in another way, the interim measure has given rise to a whole lot of controversy. It is in view of the great controversy that the panel has proposed to put the interim

measure on hold to allow time for a comprehensive solution to be found for the problem. It is unfortunate that the Government has seen fit to put the blame on us, repeating time and again that we have failed to provide a specific solution to the problem. In fact, the Government has failed to deal with the problem properly, due to its mistaken priority. Since the Government has not been able to provide a definition for the term "local", one can hardly understand why the Government has not addressed that issue first. Or why has the Government not tackled the other issues first though the definition issue is yet to be resolved? Indeed, once this issue is resolved, all the other issues can then be resolved very smoothly. In this regard, I think it is unfair to us for Mr HARBINSON to describe our Bill as an attempt to hold back the wheel of history.

My Bill has also been said to have political overtones. Let me say here that I have not done any lobbying since the introduction of this Bill because all the major political parties are already firmly committed to supporting it. At any rate, in so far as the introduction of a Private Member's Bill is concerned, we have really no intention whatsoever to create either a messy situation or a dangerous precedent of direct intervention by the Legislative Council in the Government's specific management of the Civil Service. It has never been our intention to question the Government's ability in managing civil servants. Nor is it our intention to cause a confrontation between the legislature and the executive; or to cause embarrassment to the Government; or to trigger off a constitutional crisis. This is not the wish of most Members of this Council. What we want to do is very simple. We only want to give the Government more time to find a comprehensive solution to the problem.

Lastly, I have heard Mr HARBINSON say that if this Bill is passed by this Council then it will be implemented seriously by the Government. The implication is that the Government will still put his signature on the Bill if it is passed. I recall that the Governor has said publicly that since this Bill is in contravention of the Bill of Rights he will not sign it in any case. Now I have heard the Government will implement the Bill if it is passed, which is to say that the Governor will sign it after all. This means that the Bill is not in breach of the Bill of Rights at all. I wonder whether the Governor fully understood the Bill when he said he was not going to sign it, or could it be the case that he was given the wrong legal advice when he said that? We do not have a clue. I will not be surprised if wrong legal advice has in fact been given because it happens all the time. However, I understand from recent press reports that Mr HARBINSON has asked for the effective period of the Bill to be extended for a year and a half or two years. I find it unacceptable. The purpose of the Bill is to give the Government an opportunity to negotiate a solution to problems in connection with localization before the end of April next year. An extension of the Bill's effective period is not necessary. I do not wish to see the Government actually taking advantage of this Bill to achieve purposes other than those it is designed to achieve. I do not wish to say any more in view of the time constraint.

Mr President, I wish to thank the Bills Committee headed by Mr Vincent CHENG and the various major parties which have lent their support to this Bill. I would also like to thank colleagues who do not support the Bill because I quite understand their misgivings. I hope that the Government can learn a lesson from this and will not repeat the same mistake again.

*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).*

### **Committee stage of Bill**

Council went into Committee.

### **PUBLIC OFFICERS (VARIATION OF CONDITIONS OF SERVICE) (TEMPORARY PROVISIONS) BILL**

Clauses 1 to 3 were agreed to.

Council then resumed.

### **Third Reading of Bill**

MR TAM YIU-CHUNG (in Cantonese): This is the first time I handle this kind of legislative matter. Yet I hope I need not do it too often in the future. The Public Officers (Variation of Conditions of Service) (Temporary Provisions) Bill has passed through committee without amendment. I move that this Bill be read the Third time and be passed.

MR TAM YIU-CHUNG reported that the

### **PUBLIC OFFICERS (VARIATION OF CONDITIONS OF SERVICE) (TEMPORARY PROVISIONS) BILL**

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

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

Bill read the Third time and passed.

**Adjournment and next sitting**

PRESIDENT: As we shall be taking a three-week break it remains for me to wish Members a merry Christmas and a happy New Year. In accordance with Standing Orders I now adjourn the Council until 2.30 pm on Wednesday 12 January 1994.

*Adjourned accordingly at two minutes past Eleven o'clock.*

*Note:* The short titles of the Bills/motions listed in the Hansard, with the exception of the Interpretation and General Clauses (Amendment) Bill 1992, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

**WRITTEN ANSWERS****Annex I****Written answer by the Secretary for Health and Welfare to Dr LAM Kui-chun's supplementary question to Question 2**

Salary adjustment in the past two years contributed to about 80% and 75% of the total increase in costs for medical services provided by the Hospital Authority and the Department of Health respectively. During the same period, the pay rise offered to employees of the authority were 11% and 10%, in line with their counterparts in the Civil Service.

**Annex II****Written answer by the Secretary for Constitutional Affairs to Mr Ronald ARCULLI's supplementary question to Question 3**

The Joint Declaration is a bilateral treaty between the United Kingdom and the People's Republic of China. As such it creates rights and obligations under international laws for the two Governments who are partners to it. It does not create any legal rights or obligations for the people of Hong Kong and the latter cannot therefore as a matter of law seek to enforce it against the two Governments.

**Annex III****Written answer by the Secretary for Recreation and Culture to Mr Frederick FUNG's supplementary question to Question 4**

Out of the 988 prosecutions taken out during the period from January 1991 to October 1993, six relate to the display of indecent film posters. Two of these prosecutions are successful; one has been acquitted and the remaining three are pending hearing in court.

The Administration is aware of the problems posed by indecent film posters. However, our enforcement efforts are hampered by a number of difficulties. One of the difficulties lies in tracking down the persons actually responsible for putting up the posters in public, as this evidence is necessary to satisfy the courts. Another difficulty lies in the absence of powers for the Television and Entertainment Licensing Authority's inspectors to seize dubious posters before a classification is sought from the Obscene Articles Tribunal.

**WRITTEN ANSWERS — *Continued***

To overcome these enforcement difficulties, we are considering the possibility of requiring all advertising materials, including film posters, for category III films to be submitted with the film for examination by the Film Censorship Authority. TELA is seeking public opinions on this in the context of a film standards survey, which is scheduled for completion in late January 1994.

When we have drawn up proposed measures to tackle the problem posed by indecent film posters in the light of public comments, we will consult the Recreation and Culture Panel.