

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 11 May 1994

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 SIR NATHANIEL WILLIAM HAMISH MACLEOD, K.B.E., J.P.

THE ATTORNEY GENERAL

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

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

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

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

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, O.B.E., J.P.

THE HONOURABLE MOSES CHENG MO-CHI

THE HONOURABLE MARVIN CHEUNG KIN-TUNG, O.B.E., 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 LAU CHIN-SHEK

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 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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

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

THE HONOURABLE ALFRED TSO SHIU-WAI

ABSENT

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

THE HONOURABLE STEVEN POON KWOK-LIM

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

IN ATTENDANCE

MR MICHAEL LEUNG MAN-KIN, C.B.E., J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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

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

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

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

MR MICHAEL DAVID CARTLAND, J.P.
SECRETARY FOR FINANCIAL SERVICES

MR CANICE MAK CHUN-FONG, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

MRS REGINA IP LAU SUK-YEE, J.P.
SECRETARY FOR TRADE AND INDUSTRY

THE CLERK TO THE LEGISLATIVE COUNCIL
MR RICKY FUNG CHOI-CHEUNG

THE DEPUTY SECRETARY GENERAL
MR LAW KAM-SANG

Papers

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

Subject

Subsidiary Legislation	<i>L.N. No.</i>
Drug Addiction Treatment Centre (Hei Ling Chau Addiction Treatment Centre) (Amendment) Order 1994.....	249/94
Prisons (Amendment) (No. 2) Order 1994	250/94

Oral Answers to Questions**Age discrimination in employment**

1. MR TAM YIU-CHUNG asked (in Cantonese): *Will the Government inform this Council whether it is aware that in recruiting their employees, some organizations and trades impose strict age limits upon applicants even for jobs that are not of a special nature; and whether consideration will be given to introducing legislation or taking other measures to tackle the problem of age discrimination and to protect those people who have undergone employees retraining against unemployment because of age discrimination?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, in a free labour market such as ours, both employers and employees are free to make choices most suited to their requirements. While it is still common practice for an employer to list out certain criteria for employment such as qualification, experience and age, an increasing number of employers have lifted or relaxed the age limit in an effort to recruit sufficient staff from a tight labour market.

The Administration will continue to promote fair employment opportunities for all. But we believe that persuasion and encouragement would be better than intervention by legislation in this case. Staff of the Local Employment Service of the Labour Department would, as a matter of practice, advise employers to relax age requirement in their recruitment. This message is conveyed to employers whenever promotional visits are made to establishments or when employers register their job vacancies with the department.

As for retrainees under the Employees Retraining Scheme, the best preparation for them is to improve their competitive edge, such as through training in social, language and practical skills. Employers are closely involved in designing and monitoring such programmes to ensure that the retrainees

possess skills that meet market needs. Recently, a special retraining programme for retrainees aged 50 or over has been introduced. The response from employers has been most encouraging. Further retraining programmes for this age group will be designed and launched in the near future.

Furthermore, to encourage employers participating in the On-the-Job Training Scheme to take on older job applicants, the Employees Retraining Board has recently revised the criteria for reimbursing training expenses so that employers can claim reimbursement only for employing retrainees aged 40 or above.

MR TAM YIU-CHUNG (in Cantonese): *Mr President, people in the labour sector are of the view that age discrimination is a result of importation of labour. Will the Administration inform this Council whether introduction of legislation can protect local workers by giving them priority in employment?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, any employment is a matter between employer and employee and is dictated by the requirements of either party. The employer has to look for the best person for the job while the employee has to look for the job that most suited him. The Government has very stringent restrictions as far as importation of labour is concerned. Employers are required not to impose any age limit when filling any vacancies. Contravention will lead to disqualification of the employer who will be debarred from making further applications for imported labour. We are also closely monitoring whether the quota system has been complied with. Random checks and surprise visits are conducted from time to time to prevent employers from abusing the scheme by making use of any loopholes in it. We will certainly protect the interests of local workers by giving them priority in employment when any vacancies arise and that foreign labour will be imported only in the event that there is insufficient supply from our labour market.

MS ANNA WU: *Mr President, does the Government consider itself bound by the international obligations to prohibit discrimination and whether the Government intends to establish guidelines prohibiting age discrimination for itself and the private sector?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, we are not aware of any international organization or convention which stipulates anti-age discrimination, nor are we aware of any particular anti-age discrimination legislation in other countries. The situation in Hong Kong is that we have a very tight labour market. As I said in my main reply, the demand for the labour force is increasing. Market forces simply dictate the requirements which employers themselves are subject to when they try to recruit their staff. To that

extent market forces are probably the most effective way of regulating supply and demand and this is what we are now experiencing in Hong Kong. And I do not think we need any particular legislation to interfere with market forces.

PRESIDENT: Not answered, Ms WU?

MS ANNA WU: *Not answered, Mr President. I asked if the Government intends to establish guidelines to prohibit age discrimination applicable to the public as well as the private sectors?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the answer is no. The Government does not think any guidelines are necessary. As I said in my main reply the existing practice of encouraging employers to relax their requirements are sufficient for this purpose.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, I would like to follow up with Ms Anna WU's question. According to a survey conducted by the Hong Kong Confederation of Trade Unions, age discrimination is a serious problem not only in the private and public sectors, but also within the Government. All the employers are only willing to recruit people under the age of 30. This is particularly the case with the private sector, where age discrimination exists in respect of 90% of the posts whereas in the Government departments, the figures are close to 30%. Will the Secretary advise this Council how the Government is going to take the lead in reducing age discrimination and whether the age limit will be lifted in the recruitment of civil servants?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the recruitment of civil servants falls within the ambit of the Secretary for the Civil Service. I will refer your suggestion to him for his consideration.

MR FREDERICK FUNG (in Cantonese): *Mr President, in the third paragraph of his reply, the Secretary has mentioned that a special retraining programme for retrainees aged 50 or over has been introduced and that the response from employers has been most encouraging. Will the Government ask employers, in their recruitment of staff, to give priority to people who have received retraining, regardless of their age?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, this retraining programme, intended for people aged 50 or over, is designed in conjunction with the employers concerned. That is to say,

basically we expect that employers are interested in taking part in the programme and that they are going to employ these retrainees. Therefore, I can assure you that the scheme will be successful.

PRESIDENT: Not answered, Mr FUNG?

MR FREDERICK FUNG (in Cantonese): *Mr President, in the third paragraph of the reply, apart from the special retraining programme for retrainees aged 50 or over, retraining programmes outside this age group are also mentioned. In general, can employers applying for imported labour be asked to give priority to these retrainees in their recruitment of staff?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, it has been stated very clearly in the third paragraph of the main reply that the objective of the Employees Retraining Scheme is to improve the competitive edge of the employees through training in various skills. Certainly, under a free market, no restriction in whatever form is allowed, which means both employers and employees should have the freedom to choose and this is the very basic principle under which Hong Kong operates. Therefore the Government cannot interfere with the market at will.

As for the question of whether employers participating in the labour importation scheme should give priority to this category of employees, we will step up publicity in this connection through the daily operation of the Labour Department. We will definitely urge the employers to see first of all whether local employees are available, in particular those retrainees who have met the job requirements before considering importing labour. We would certainly continue to step up promotional activities in this regard.

MR MICHAEL HO (in Cantonese): *Mr President, in response to Mr LAU Chin-shek's question, the Secretary said he would refer the question on recruitment of civil servants to the Secretary for the Civil Service for consideration. Will the Administration inform this Council whether there is any age limit in the recruitment of civil servants? If the answer is in the affirmative, what does the Government intend to do in this regard?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, I have said just now that matters in connection with civil servants should be considered by the Secretary for the Civil Service. But one point I may add is that the Secretary for the Civil Service, in answering a question on recruitment of civil servants two months ago, told this Council that all the criteria, including age and qualifications will be taken into account. If circumstances permit, the Government will consider relaxing the age limit of

certain posts, for example, those of the clerical grade. Anyhow, I will refer this suggestion to the Secretary for the Civil Service for his consideration.

MRS PEGGY LAM (in Cantonese): *Mr President, will the Administration inform this Council how many workers have undergone retraining under the Employees Retraining Scheme, and how many of them, in percentage terms, have obtained employment?*

PRESIDENT: Secretary, do you have the answer?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, more than 10 000 people have undergone retraining, and over 70% of them have obtained employment.

Motions carried by the Legislative Council

2. MR JAMES TIEN asked (in Cantonese): *Despite the motions carried by a great majority of Members in this Council on community wide retirement protection at sittings in November 1992, February 1993 and January 1994, the Government has so far not taken any concrete action in response to these motions. Will the Government inform this Council:*

- (a) of the constitutional status of a motion carried by the Legislative Council; and*
- (b) of the criteria used by the Government for deciding whether or not to take action according to a motion carried by the Legislative Council; and whether the Government adopts the same attitude towards every motion carried in this Council?*

CHIEF SECRETARY: Mr President, constitutionally a motion carried by Legislative Council does not create or impose any legal obligation on the Government. In particular, it does not oblige the Government to introduce legislation or to take any specific administrative action.

Nevertheless, the Government attaches great importance to motions carried by this Council and takes them into account in the formulation or development of its policies. Before deciding whether or not to take action according to a motion carried by this Council, the Government will carefully consider the proposals contained in the motion carried in the light of other policy and resource considerations. Where it is not possible to take the action suggested in the motion, the Government will state the reasons for this and why

it considers that an alternative approach is preferable. This principle applies to every motion carried by Legislative Council.

MR JAMES TIEN: *Mr President, on the subject of the retirement scheme that this Council endorsed by way of motions on several occasions in the past, the Chief Secretary said in her reply that the Government will consider the proposals, in the light of other policy and resource implications. As far as the retirement scheme is concerned, would the Chief Secretary please inform this Council what the other policies are that she was referring to? Also, she said that the Government will state the reasons for this and why it considers that an alternative approach is preferable. Will the Chief Secretary also elucidate why the alternative approach the Government is now proposing, this is, the old age pension scheme, is better than the retirement protection scheme. that was endorsed by this Council?*

CHIEF SECRETARY: Mr President, in considering the retirement scheme there are other factors that we need to take into account. For example, whether the degree of benefit that the proposal will bring to the general public is commensurate with the resources involved, whether there are adequate financial resources available, whether any duplication of effort or resources will result if the proposal is implemented and whether the proposal is a realistic one.

Insofar as this specific proposal is concerned, I think in the previous three debates the Government has explained why we do not consider that the establishment of the central provident fund (CPF) is appropriate and why we believe that an old age pension scheme is appropriate. And I will briefly recount the reasons for this. We do not consider the establishment of the CPF appropriate because first of all, it does not provide meaningful cover to the majority of the population. Secondly, the investment returns are typically far from satisfactory. Thirdly, it imposes daunting administrative burdens on the community and fourthly, it has no immediate benefit for those who are already old. Individuals would have to accumulate benefits for three to four decades before they become meaningful. What the community needs is a scheme that will provide, within a reasonably short time, a regular pension benefit at a basic level for all eligible elderly persons irrespective of their participation in the workforce. This is what the proposed old age pension scheme will provide.

MR LEE WING-TAT (in Cantonese): *Mr President, the UDHK has carried out a study on the motions endorsed by the Legislative Council in 1992-93 and found that for 39% of the motions carried, the Administration has taken no action or even openly opposed to them. Since the present Administration is not a democratic one, will the Administration agree that more and more people have no faith in the Administration that it will act on the motions carried in the Legislative Council, for example, the retirement protection scheme, bus fare*

increase and the scrapping of the “double-rent” policy, and this has the effect of undermining the credibility of the Government?

CHIEF SECRETARY: Mr President, as I have stated in my principle reply, the Government does take into serious consideration the views expressed by Members in the motion debates but as an executive-led government, in the final analysis it is for the Administration to make the policy decisions, having regard to the best public interest.

MS ANNA WU: *Mr President, is the Government willing to provide a comprehensive account of its responses to all motion debates carried in the Legislative Council during the year, prior to or immediately following the Governor’s policy speech each year?*

CHIEF SECRETARY: Mr President, could I seek elucidation of the question? Is Ms WU’s question aimed at asking the Government to explain on each and every occasion when a motion debate is not accepted the reasons for it, or is there some other reasoning behind the question?

MS ANNA WU: *Mr President, I am asking the Government if it would respond to all the motion debates by giving a comprehensive account in one go, at the end of each legislative year, before or immediately following the Governor’s policy speech? The response could take the form of what consideration has been applied by the Government, what areas they have refused to accept and why they have decided to act or not to act.*

CHIEF SECRETARY: Mr President, it is our usual practice in the context of a particular motion debate for the responsible policy secretary or whoever replies at the government end to explain why we are unable, and where we are unable, to accept it, and what alternatives we propose. If that is considered inadequate and if Ms Wu suggests that we should give further explanation then we are of course happy to consider her proposal.

MR HENRY TANG: *Mr President, will the Administration confirm that when they wish to take a policy forward, for example, for the old age pension scheme, and decide to consult the Joint Liaison Group (JLG), if the JLG does not approve that policy, will the Government then shelve the old age pension scheme or will it insist on forging ahead with it, without the JLG’s approval?*

PRESIDENT: Are you seeking elucidation by asking whether that is a factor in Government’s consideration, Mr TANG?

MR HENRY TANG: *Mr President, I will rephrase my question. Will the Administration then consider the JLG's decision as a factor in its policy decision on whether to forge ahead with the old age pension scheme?*

CHIEF SECRETARY: Mr President, I do not wish to pre-empt the findings of the consultancy study. Obviously in the light of the consultancy study and the public comments, the Government will make a final decision having regard to a range of factors.

MR TIK CHI-YUEN (in Cantonese): *Mr President, the Legislative Council is a body with public representation and Members give their views on behalf of the public. If the Administration does not act on the motions carried in the Legislative Council, can we take it that an executive-led government does not accept public views?*

CHIEF SECRETARY: On the contrary, Mr President, I think as I have said in my main reply and in answer to supplementary questions, we do seriously take into account the views expressed by Members of this Council, the views expressed by public outside and views expressed by a variety of other sources.

MRS SELINA CHOW (in Cantonese): *Mr President, just now the Chief Secretary has explained to this Council why the Administration does not agree with the views on the central provident fund supported by a vast majority of the Members of this Council, which is actually the retirement protection scheme mentioned earlier. In fact, the Administration has clearly stated that it is in support of a compulsory retirement protection scheme, only that later it changes its position and supports the old age pension scheme instead. Can the Chief Secretary inform this Council why the Administration changes its stand and withdraws its proposal which has received the overwhelming support of this Council in a number of debates on retirement protection scheme, and supports the old age pension scheme instead?*

CHIEF SECRETARY: Mr President, I think we have explained in previous debates, particularly in the statement made by the Secretary for Education and Manpower in this Council on 15 December, why we have opted for an old age pension scheme. We believe that, having analyzed all other proposals, that proposal is the best option for providing financial security for all eligible elderly people in our community.

MR JIMMY MCGREGOR: *Mr President, a number of Members of this Council plus a great many organizations outside this Council, in fact, are perfectly happy with the Government's proposals in regard to the old age pension scheme.*

PRESIDENT: Yes. I do not think that is strictly a question, Mr McGREGOR.

MR JIMMY McGREGOR: *Mr President, would the Government take note of it?*

PRESIDENT: Strictly a question should seek information. You do not wish to rephrase it?

MR JIMMY McGREGOR: *I have made my point.*

Follow-up on the Second Review of the 1989 White Paper

3. MR PETER WONG asked: *Will the Administration inform this Council whether it has formulated any action plans based on the feedback obtained from the public consultation exercise conducted after the publication of the Second Review of the 1989 White Paper on "Pollution in Hong Kong — A Time to Act"?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the *Second Review of the 1989 White Paper on Pollution in Hong Kong*, published in December 1993, is a document which sets out in detail what we have achieved, what we are still working on and what we hope to do in future. It is therefore already a document of action plans. Whilst we are still receiving comments on the Review, I am glad to say that feedback from the community so far has been generally positive. Although the feedback is diversified, there are items common to many responses. These are:

- (a) the need for more environmental education;
- (b) the need to promote recycling;
- (c) the need to tackle air pollution; and
- (d) the need to promote sustainable development.

In response to these common items, we have formulated and are formulating action plans. For example, to combat air pollution, we are taking or planning to take various actions to build on the controls already provided for under the Air Pollution Control Ordinance. Foremost among these plans are regulations to control open burning and examination of the feasibility of converting diesel powered taxis and public light buses to unleaded petrol powered engines.

MR PETER WONG: *Mr President, the Secretary has listed the need for more environmental education as the first comment and to me the foremost criticism of our environmental portfolio in Hong Kong. Will the Secretary inform this Council what plans there are to make good this knowledge gap in the various sectors of our society?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, environmental education is a very important item in our environmental programme. We are already doing a lot in environmental education. For general community education, we have plans in hand to build on the excellent work in this area by the Environmental Campaign Committee. We have established recently an environmental and conservation fund for which environmental education is a main item.

For education on energy efficiency, we will continue the publication by the Energy Efficiency Advisory Committee of a broad range of information and advisory notes on energy efficiency issues.

For environmental education of industrialists and businessmen, measures to assist industrialists to meet their obligations under environmental legislation has already been formulated by the Industry Department.

For environmental education in schools, there is now a broad range of environmental issues spread throughout the curriculum, from the kindergarten level to the primary and secondary levels.

Of course, no government will be satisfied with the environmental education programme because it is such an important and diversified one. Yet let me say that the Government is satisfied that we are doing a lot and will continue to do so.

MR LAU WAH-SUM: *Mr President, on the production of waste, may I ask the Government what sort of action plan they have to educate the public on the need to reduce the production of waste and also the separation of waste for different types of disposal?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, let me begin by saying that there is already a great deal of recycling in Hong Kong. Our rate of recycling of our waste is higher than that in many other countries. We recognize that this is an important area of our environmental programme and we will continue to do much more in this field. We have already started a consultancy to study how in Hong Kong we can reduce our waste still further and that consultancy will be completed by next year and from then on we will devise an overall strategy on waste minimization and recycling.

PRESIDENT: Not answered, Mr LAU?

MR LAU WAH-SUM: *The question has not been answered. What I asked is: what sort of action plan you have arranged to educate the public in two areas, one is to reduce the production of waste and the other is to separate the type of waste so that you can recycle some of them?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, educating the public on waste reduction and recycling of waste is a long-term programme that the Government has in hand. It is not an easy area because education here not only means publicity or education per se. It also means a change in consumer habit; a change in attitude towards both waste and recycling. We have taken various initiatives. For example, we are making a lot of publicity efforts, aiming to teach people to change their habit, such as taking your bag with you when you go to the supermarket. We aim to spread all these common sense little points throughout the community.

Also in industrial production, we are aiming to introduce, as much as possible, clean technology to the industrialists and encourage them to use clean technology in their production process.

All these are what we are doing to minimize waste and to encourage recycling.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, the common items mentioned in the Administration's reply include "the need to promote sustainable development". What does this mean? Can concrete examples be cited to illustrate clearly the work done and to be done by the Administration in this respect?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, "sustainable development" is a relatively new concept in environmental protection. At the earth summit meeting held in Rio de Janeiro in 1992, the concept of "sustainable development" was completely recognized. However, it is not an easy task to put this concept into practice in our society. We must first of all do more in environmental education to make more people know about our environment and the importance of environmental protection. I believe that the first step is to keep on expanding our education campaign in environmental protection. We hope it will lay a good foundation and then we can apply the concept of "sustainable development" to both the government and private sectors.

PRESIDENT: Not answered, Mr MAN?

MR MAN SAI-CHEONG (in Cantonese): *Mr President, can the Secretary for Planning, Environment and Lands illustrate specifically the areas in which “we can apply the concept to the government sector”? Should there be any conflicts between conservation of natural environment and economic development, what would be his standpoint?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, regarding “sustainable development”, perhaps an example would make my reply clearer.

Take energy conservation as an example. We all know that at present electricity in Hong Kong is generated from coal and petroleum. If we do more to educate the public, more energy can be conserved in industry or our daily life, which would be conducive to “sustainable development”. Of course, this is just a beginning. We have been doing a lot in energy conservation and we hope that we can proceed in this direction. Energy conservation is but one of the aspects of “sustainable development”. There are other aspects such as the introduction of green technology to industry. I believe that we still have a lot to do.

DR LAM KUI-CHUN: *Mr President, still on the question of recycling, what actual plans have been formulated by the Government to promote recycling in industry and how well are such plans generally received by industry in Hong Kong?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the recycling in industry was promoted both by the Government and by the Private Sector Committee on Environment, as well as by the Productivity Council. Their work involves publicizing the need for recycling in industry as well as assisting industrialists to achieve as much recycling as possible.

MRS PEGGY LAM (in Cantonese): *Mr President, in sub-paragraph (b) of the main reply, the Secretary for Planning, Environment and Lands said that there is “the need to promote recycling”. The public also agree that this can help improve our environment. Given that waste paper, aluminium cans and glass are the few types of waste which can be recycled most easily, would the Administration inform this Council whether it has given consideration to classifying on-street litter bins so that the public can dispose of such waste separately?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, at present there is no such classification for the on-street litter bins. However, we have tried our best to encourage government and private offices to do so. Moreover, regarding industrial waste, we have examined with the manufacturers the way to minimize the dumping of things other than waste into landfills. As regards the proposal to classify on-street litter bins just put forward by Mrs LAM, we will consider it.

Vetting of senior civil servants by ICAC

4. MRS SELINA CHOW asked: *Will the Government inform this Council whether the vetting of senior civil servants by the Independent Commission Against Corruption (ICAC) will be subjected to the monitoring of the ICAC Operations Review Committee; if not, why not?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, before I reply to the question, may I first of all explain what integrity checking for civil servants means.

The purpose of integrity checking is to ensure that the Civil Service is staffed by persons of high integrity. Indeed the community and this Council would demand no less. Hence all civil servants have been and will continue to be subject to some kind of checking. The level of checking applicable in a case will depend on the nature of the post.

It should be noted that checking is and has to be conducted with the full cooperation and consent of the civil servants. Subject to the deliberations of the ICAC Operations Review Committee, we hope to be able to ask the ICAC to coordinate some record checks and to conduct interviews for the highest level of checking, that is extended checking, which will be applied to top civil servants. None of the checks will be used as a form of political vetting and no investigation will be conducted on a candidate's political beliefs and affiliations.

If the ICAC does assume the task of integrity checking, I do not see any objection of letting the ICAC Operations Review Committee or any other appropriate body monitor and advise on the procedures of integrity checking. However, given the personnel management function of the checks, it would be inappropriate to ask any outside body to look at the individual cases. The results of individual checking will be passed to the Administration for appointment and promotion purposes.

MRS SELINA CHOW: *Mr President, will the Secretary confirm that individual case files under investigation for corruption are subject to monitoring by the Operations Review Committee and if so, why is it appropriate for the committee*

to do so and yet inappropriate to look at files of top civil servants under extended checking?

SECRETARY FOR THE CIVIL SERVICE: Mr President, I think the Honourable Member in her question has already drawn the distinction between persons investigated for corruption and officers being checked for their integrity before their appointment or promotion. So I think I draw a difference there. Secondly, as I mentioned, integrity checking has to be conducted with the full cooperation and consent of civil servants. Disclosing private information of individual cases to an outside body would discourage civil servants from providing the necessary information for checking. This would undermine the efficiency and effectiveness of the system. Furthermore, decision on whether an individual should be appointed or promoted is an internal civil service matter which should be handled by the Administration.

MR EDWARD HO: *Mr President, the Secretary has said that this checking would require the cooperation and consent of the civil servants. Would he inform this Council, in seeking this consent, whether the individual would be informed by what means he or she will be checked, for instance, telephone bugging, and whether the result would be made known to him or her afterwards?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, first of all, the new system of integrity checking has yet to be put in place. The points mentioned in the question will be discussed. Since civil servants have to cooperate and have to fill in the forms required, I think they will definitely be informed of the procedures as to how the checking is to be conducted. For example, they need to provide references and their referees will first of all have agreed to be their referees and also agreed to be interviewed by the interviewers concerned. As to whether civil servants would be informed of the results, I think this will depend on the circumstances of each case. For example, if the results of the checks show that an officer is being investigated in connection with a corruption case, it would not be appropriate to alert him of the investigation. But if, on the other hand, he is found to be heavily in debt, the management may probably try to see if anything could be done to help the officer.

MR MAN SAI-CHEONG: *Mr President, I want to ask whether divided loyalty to a person's political master is considered by the Government as a measure of a civil servant's lack of integrity?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, I am glad to say that I have no political master now and I hope I will not have a political master in future.

MR SIMON IP: *Mr President, is the Administration satisfied that the ICAC has the statutory power under the ICAC Ordinance and the Prevention of Bribery Ordinance to undertake integrity checking which may not involve any corruption at all?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, the ICAC has a role to play in ensuring a clean civil service. Therefore, integrity checking is no more than an extension of their corruption prevention function. In addition, we have obtained legal advice on the matter. We believe that it is legally in order for the ICAC to coordinate the record checks and to conduct interviews under the new integrity checking system we are proposing.

MR JAMES TO (in Cantonese): *Mr President, the Secretary did not answer the first part of Mr Simon IP's question and my question is similar to that. I am going to read it out, "Will the Government inform this Council whether it is necessary for the ICAC to invoke its investigatory power under the ICAC Ordinance or the Prevention of Bribery Ordinance or other ordinances when it conducts extended checking on the senior civil servants; and whether the ICAC should invoke such power?"*

SECRETARY FOR THE CIVIL SERVICE: Mr President, I am not *au fait* with the Ordinances mentioned by the Honourable Member, so I would not be in a position to answer that question authoritatively. But as I said in my reply to the last supplementary question, the ICAC has a job to prevent corruption and to ensure and satisfy the community and this Council that a clean civil service must be within its ambit. And, Mr President, the legal advice I have obtained confirms that view.

PRESIDENT: Not answered, Mr TO?

MR JAMES TO (in Cantonese): *Mr President, the Administration did not answer my question. If the Secretary finds himself incapable of answering that question authoritatively, would he seek the assistance of other policy secretaries who can provide us with an authoritative written reply?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, I am not a 100% sure as to what part of Mr TO's question I have failed to answer.

MR JAMES TO (in Cantonese): *Mr President, may I repeat my question? I am asking whether it is necessary for the ICAC to invoke its investigatory power under the ICAC Ordinance or the Prevention of Bribery Ordinance or other*

ordinances when it conducts extended checking; and whether the ICAC should invoke such power. For example, can the ICAC invoke its power under the Prevention of Bribery Ordinance to check from the bank a certain civil servant's past consumption pattern, the source of his income or to whom his money is transferred?

SECRETARY FOR THE CIVIL SERVICE: Mr President, I will take the question away and consult with my colleagues to see whether a written reply should be supplied to the Member concerned. (Annex I)

MR MARTIN BARROW: *Mr President, is the Secretary aware that the current vetting process can take many weeks which sometimes results in applicants looking elsewhere for employment and could he confirm that the ICAC vetting unit will be subject to performance pledges covering the number of days to complete the task?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, I will expand my answer to cover the entire recruitment process. One thing I agree with the Honourable Member is that the recruitment process takes far too long. I am reviewing this to see whether it could be streamlined and as part of that process we will definitely look at the time taken for integrity checking. It is perhaps a bit early, since the ICAC has yet to take over this particular task, to commit myself to a performance pledge.

PRESIDENT: Not answered, Mr BARROW?

MR MARTIN BARROW: *Can the Secretary confirm whether or not there will be a performance pledge?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, it will not be appropriate for me to commit the ICAC to a performance pledge, particularly when they have yet to take over the task but I think I will bear that in mind.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, it was said in the Government's reply that checking was conducted with the full co-operation and consent of the civil servants. Since it is conducted with co-operation and mutual consent, will the Government inform this Council whether the senior civil servant concerned is entitled to know and gain access to his own personal record as held by the ICAC? If yes, through what channels can he rectify the record or appeal in case he finds out that some information is wrong; if not, how does the*

Government ensure that the relevant information is correct and that the conclusions drawn from such information on the civil servant are fair ones?

SECRETARY FOR THE CIVIL SERVICE: Mr President, in answer to a previous supplementary I have already outlined the difficulty of giving a categorical answer to such a question. Mainly, it would depend on the circumstances of the particular case concerned. If the officer is suspected of corruption I am quite sure that case will be followed up and the officer will know, before too long, that he is subject to investigation and he would have plenty of opportunity to explain to the ICAC that he is not corrupt. But in the majority of cases, since we have a very clean Civil Service, officers have nothing to fear.

Bank mortgage loans

5. MR LEE WING-TAT asked (in Cantonese): *Will the Government inform this Council:*
- (a) *whether it has information on the proportion of mortgage loans made by banks which are members of the Hong Kong Association of Banks, for domestic flats in the private sector which are 0 to five years old, five to 10 years old, 10 to 15 years old, 15 to 20 years old and over 20 years during the past five years; and*
 - (b) *whether the Government is aware that banks in general adopt an unenthusiastic attitude towards mortgage applications in respect of old flats; and if so, whether it will consider adopting measures to improve the situation?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, as regards the first part of the question,

- (a) Such statistics are not readily available. It is however the Government's understanding that, for properties below 20 years of age, the lending ratio normally ranges from 45% to 70% depending on the age, value and condition of the property. Age of the property, however, is not the only factor. Other important considerations include the repayment ability of the borrower, his relationship with the bank concerned, his credit history, the bank's overall exposure to the property sector, perceived market risk and so on. The policy, therefore, varies from bank to bank. Within each bank, the lending ratio also varies from case to case even for properties of a similar age. There are no hard and fast rules. In fact, the Government understands that some banks, including certain

major ones, do not distinguish between old and new properties as far as the lending ratio is concerned.

With regard to the second part of the question,

- (b) The Government is aware that, generally, banks are taking a more cautious approach towards mortgage lending on older properties. Normally the age of the property and the term of the mortgage together would not exceed 30 years. Also, for some banks, the lending ratio may be lower for old properties. Major reasons include the poorer marketability, higher cost of maintenance and deteriorating quality of these properties relative to newer properties. It is not the policy of the Government to interfere with commercial decisions on the part of banks unless there are good prudential reasons to do so. In particular, we need to be cautious about trying to influence banks to assume higher risks than they might otherwise wish to take.

MR LEE WING-TAT (in Cantonese): *Mr President, I am surprised and disappointed that the Secretary would give such an answer. I have great doubts as to the accuracy of the information provided. General home buyers who require mortgage loans will know that with the exception of some properties with particularly high marketability, banks are very unenthusiastic in providing mortgage loans or even refuse to do so for properties over 10 years of age. Is the Administration aware that this discriminatory policy of banks will largely reduce the number of flats available in the private sector market and may therefore lead to a rise in property prices; and will it consider examining and interfering with such a policy?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the information I have given in my main answer reflects the understanding of the Government with regard to the situation in the banks and their attitude towards mortgage lending on older property. It is extremely difficult to distinguish between cause and effect. The contribution of bank's mortgage policy towards the marketability of older property is perhaps one factor but there are other factors as well and they are very hard to disaggregate. Bank's mortgage lending policy may be playing a diminishing role in influencing buying decisions since there are indications that more purchases are being financed on cash terms. There is also the valid concern that the cost of maintenance does generally increase with an increase in the age of properties and this does affect the attractiveness of older properties in the market generally.

Mr President, the real point is that the Government does not believe that it is appropriate to pressure the banks to change their policy with regard to assessing the commercial viability of a particular loan. It is for the banks themselves to assess the risk that they are prepared to take in any particular

case. I think this also has to be seen against their overall exposure to the property sector. With regard to the totality of bank loans in Hong Kong, if one looks at that, 40% of the domestic loans are for directly property related matters. If one takes into account indirectly related matters, then that percentage would be very much higher. This is already a level at which, the regulator believes, is necessary for banks to be cautious. I am not suggesting though that Mr LEE might not have perfectly understandable concerns and be reflecting community concerns about the state of the property market. What I am saying is that the solutions to those problems should be sought in directions other than pressuring the banks to accept a higher degree of risk in respect of mortgage or pressuring the banks to accept a greater degree of exposure to the property market.

MR RONALD ARCULLI: *Mr President, I would like to follow up on the Honourable Member's question regarding cause and effect and bank's attitude towards older properties. As the Secretary is aware, there are 850 000 residential units in the private sector market and the annual production is roughly 30 000 units. If one looks at the financing of 30 000 and the potential availability of 850 000 units, one does not have to be a genius to work out the probability of people wanting to buy what I call an older property. Now in that respect, surely the Government must recognize that by encouraging banks not to break prudential lending rules, it will help the price control in terms of the property market now. Would that not be a fair comment to make?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, I do not exclude that solutions to related problems in the property market might not be addressed and might not be considered. What I am indicating clearly is that the Government does not believe that it is appropriate to pursue them by means of pressuring the banks to accept a greater degree of risk or greater degree of exposure. But that said, Mr President, I would draw Honourable Members' attention to the fact that the Government has established a task force with regard to the property market and property prices and I would not exclude that the issue that Mr ARCULLI has referred to might well be considered by that task force. It is tasked with producing recommendations to the Government by the middle of the year. I do not wish to anticipate what it might come up with on any particular issue. Clearly if it is addressing the subject of older property and the banks' attitude to that, it would have to take account of, and balance, the prudential concerns that I have expressed.

MR ROGER LUK: *Mr President, referring to the last part of the Secretary's answer to (b), would the Administration assure this Council that there is absolutely no intention on the part of the Administration to impose credit allocation guidelines on banks?*

SECRETARY FOR FINANCIAL SERVICES: I can give that assurance, Mr President.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, many members of the public have the intention to buy older properties but have been unable to do so because of the very low mortgage lending ratio of banks or their refusals to offer any mortgage lending. Does the Administration consider that if banks are encouraged to accept mortgage applications in relation to older properties, it will have the effect of curbing the rise in property prices? The Administration has said that it will not interfere with commercial decisions of banks; what in fact are the difficulties in so doing?*

SECRETARY FOR FINANCIAL SERVICES: I am sorry, Mr President, I missed the last part of the question, I wonder if that could be repeated.

PRESIDENT: Could you repeat the question, the last part please, Rev FUNG?

REV FUNG CHI-WOOD (in Cantonese): *Mr President, the second part of my question is: The Administration has said in the main answer that it has no intention to interfere with the commercial decisions of banks, that is, it will not discuss this issue with the banks; what in fact are the difficulties and demerits in so doing?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the Government is not in a position to judge the risks that are accepted by the banks. The banks themselves are in the best position to judge that for themselves. They are in the market and they are directly affected by their own commercial decisions. On the face of it, the policies they are adopting are not unreasonable given that older properties generally have a lower market value and demand for such properties is not as strong as for newer properties. This may be due to lower quality, lower marketability, less satisfactory condition — the factors which I mentioned in my answer to the main question. These are the reasons why banks are inclined to be more cautious. And also they relate to the reasons why the Government is disinclined to pressure the banks to change their practices in this respect.

I think, Mr President, one has to recall that in recent years we have seen major shake-outs in the property markets in North America, in Europe, in Japan, at times when the banks were very heavily exposed to those markets. The consequences for the banking sectors in those places were quite severe. It is for those reasons, Mr President, that we are understandably cautious now about the degree of exposure that the banks currently have. Members will recall that last year with the Government's encouragement the banks did adopt a guideline,

that is to set mortgage ceiling at 70% and have voluntarily gone below that since that time in order to protect their own position at a time when the property market is extremely active and at quite high levels. That of course is something that might change over time if the market adjusts. Yet for the moment it is a reflection of the commercial realities. The Government, I think, is understandably cautious about doing anything that would increase the exposure of the banks at this time.

Generic drugs

6. MR MICHAEL HO asked (in Cantonese): *In view of the fact that some members of the pharmaceutical profession have pointed out recently that the use of generic drugs might affect patients, condition, for example, they may give rise to side-effects and prolong the course of treatment, will the Government inform this Council:*

- (a) what legislation is currently in force in Hong Kong to control the manufacture of drugs;*
- (b) when registering generic drugs, what criteria are adopted by the Government for determining whether their curative effects and safety standards are equivalent to those of patented medicines of the same kind; and*
- (c) regarding the manufacture of drugs, whether the Government would consider introducing into Hong Kong the "Good Manufacturing Practice" which has already been adopted in many countries abroad?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the legislation currently in force to control the manufacture of pharmaceutical products is the Pharmacy and Poisons Ordinance (Cap. 138) and its Regulations.

Under the Pharmacy and Poisons Regulations, the criteria for evaluating a pharmaceutical product for the purpose of registration are

- (a) its safety;
- (b) its efficacy; and
- (c) its quality.

The same set of criteria and standards apply whether the product to be registered is a patent medicine or a generic one. This is in line with internationally recommended practices.

The Pharmacy and Poisons Board supports in principle the introduction of Good Manufacturing Practice among pharmaceutical manufacturers in Hong Kong. The Board set up a working party earlier this year to draw up a set of Good Manufacturing Practice Guidelines for local manufacturers and to propose a schedule for the implementation of these guidelines. It is expected that the working party will submit its recommendations to the board by early next year.

MR MICHAEL HO (in Cantonese): *Mr President, as the current legislation allows doctors to use drugs that are unregistered, the drugs manufactured by pharmaceutical manufacturers and sold to doctors, or the drugs used by doctors in the treatment of patients may well be drugs that have not been registered, or simply there is no need to have them registered. Will the Administration inform this Council whether it is aware that some generic drugs manufactured locally have never been registered? Will the Administration consider making certain amendments to the current legislation that allows doctors to use unregistered drugs, so that local pharmaceutical firms and manufacturers must have their drugs registered before they can manufacture or sell them?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the existing control mechanism, under the current legislation, includes several control measures. The current legislation controls the operations of licensed manufacturers in respect of both the manufacturing conditions, the premises and the finished products; there is also provision for a recall system. If it is a question of forged medicine, that is to say, if it is a question of consumer products which are on the market in breach of the Pharmacy and Poisons Ordinance then obviously the sanctions would come under that Ordinance. However, if the offence or the breach comes under the Trademarks Ordinance, then the sanctions would come separately under the Trademarks Ordinance.

PRESIDENT: Mr HO, not answered?

MR MICHAEL HO (in Cantonese): *Mr President, what I ask mainly is about a provision in the Pharmacy and Poisons Ordinance, which allows doctors to use unregistered drugs. In other words, it would not be against the law for any registered medical practitioner to use unregistered drugs. The result is that this kind of drugs manufactured by manufacturers or sold to doctors simply need not be registered. I think this is a loophole in the existing Pharmacy and Poisons Ordinance. How is the Administration going to plug this loophole in order to ensure that the prescribed standards have really been met in the manufacture of drugs, thereby protecting the safety of the public?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I do not know the circumstances under which it would appear certain drugs have been used by doctors, either under licensing conditions or pre-licensing conditions. Unless a particular case can be substantiated it would not be possible for me to give a comprehensive reply. So what I want to say in response to this question, which is a follow-up of the previous supplementary, is that where licences issued under the existing Ordinance and where there are breaches of the licences under the Ordinance, then suitable penalty will be measured under inspection. We do have control measure mechanism and inspection. Where there are particular circumstances which indicate, either a breach of the law or a gap which has got to be filled, I would like to know the detailed circumstances in order to give it proper consideration.

DR LEONG CHE-HUNG: *Mr President, we know that the Hospital Authority has decided to use more generic drugs as a means of reducing drug costs. Could the Secretary inform this Council whether this move is fully endorsed by the Government taking into account the possible lower efficiency and safety of generic drugs or will the Government consider that such a move by the Hospital Authority should only be a pilot study for subsequent review?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the use of any type of drug, patented or generic, simply on the grounds of cheapness is unlikely to be in the best interests of either the patient or of the public purse. Indeed, if it prolongs the patient's course of treatment or leads to side-effects, it may not be cost effective. In respect of what we call the paradox of drug prescribing, it is important for us to note that our interest lies in "cost effective prescribing" and not "cheap prescribing". In respect of the particular over-riding principle of any cost saving measure, the quality of patient care is of paramount importance. With particular reference to the Hospital Authority, I have written to the Chairman of the Hospital Authority on this specific point and I am awaiting his reply.

DR CONRAD LAM (in Cantonese): *Mr President, in view of the fact that the question asked by Mr Michael HO is a bit technical which might cause misunderstanding among the public, may I ask the Secretary whether the generic drugs referred to by Mr HO will really have any side-effects and will prolong the course of treatment? If the answer is yes, will the Secretary cite some actual cases? I understand that generic drugs may not necessarily be forged drugs, and that the term translated into Chinese does not appear to be the same as "仿製藥" used by Mr HO, since the term "仿製藥" itself may mislead the public, making them feel that they are something forged and not genuine. Will the Secretary inform this Council what the main difference is, if any, between patent and generic drugs in the treatment of patients?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I am no expert in translation but I did ponder over the Chinese terminology. For example, in the Chinese version of the question there are three words, "仿製藥", or the so-called "仿製藥及非專利的同類藥物". This is also translated as "generic drug". Of course, "專利藥物" must be patent drugs. I do not think we can say specifically whether generic drugs are either good or bad. What we have said, is that the use of any type of drug, patented or generic, simply on the grounds of their being cheap may not be cost effective. We have to make sure that whatever treatment is given to the patient, it actually improves quality care rather than concentrating only on the dollar sign, because it has been studied elsewhere, through various consultancy reports, that in some cases patent drugs produce quicker results and are cost effective, but this only relates to certain prescription; in the whole paradox of prescribing, we should concentrate not on whether it is a generic or patent drug but rather on how it cures the patient.

Written Answers to Questions

Social welfare services provided by SWD

7. MRS ELSIE TU asked: *Will the Government inform this Council:*

- (a) *whether different welfare service units of the Social Welfare Department in the same district can be relocated to premises within close proximity, for the convenience of clients who are seeking or receiving services from different units at the same time;*
- (b) *whether the social security field units of the department are also responsible for handling cases in need of compassionate rehousing; if not, how the housing need of clients in receipt of social security benefits is ensured and promptly attended to; and*
- (c) *for the convenience of clients and as a measure to economize resources, whether a generic approach, as against compartmentalization of services, will be adopted in the delivery of social welfare services so that clients in need of multi-services will need only approach one single social worker for assistance?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the answers, *in seriatim*, are as follows:

- (a) The Social Welfare Department's services are provided mainly on a district basis through a wide network of service units including 30 Family Services Centres and 32 Social Security Field Units. These centres and field units are the most commonly approached by the public for enquiries and assistance. The majority of these centres and field units are located in the same building or within close

proximity. Only one quarter of them are not located in close proximity due to a lack of space or suitable premises. Where suitable premises are available, efforts will be made to relocate them within closer distance.

- (b) The Social Security Field Units of Social Welfare Department are also responsible for processing applications for compassionate rehousing from social security recipients who are 60 years of age or over. These applications are handled by the field units as they are mainly based on old age and financial grounds. Other social security recipients who require housing assistance on social grounds are promptly referred to an appropriate service unit of the department such as the Family Services Centre for action.
- (c) A generic approach is adopted in the delivery of social welfare services whereby one single caseworker, be he or she a family service worker, a medical social worker or a probation officer, handles and coordinates assistance to all the welfare needs of the client and his or her family including housing, financial or material assistance, counselling and other support services.

Airport security expenditure

8. MR HOWARD YOUNG asked: *Will the Government inform this Council of the respective capital and running costs of security measures implemented at the airport last year and whether and how these costs are shared between the Government and the airlines?*

SECRETARY FOR SECURITY: Mr President, the total capital and recurrent costs for responsibilities discharged by the Civil Aviation Department and the Airport Division of the Royal Hong Kong Police Force in respect of security measures implemented at the airport in the 1993-94 financial year were \$6.03 million and \$117 million respectively.

Airlines operating at Kai Tak are also responsible for providing a number of security services to meet the standards required by the Director of Civil Aviation. These measures include the security screening of passengers, hand luggage, hold-stowed and interline transfer baggage. The cost of providing these services is recovered by the airlines through a \$20 Security Service Charge which is levied on all departing passengers, except those transiting or transferring in Hong Kong, at the time of purchase of their airline tickets.

Construction of an ICAC headquarters complex

9. MR ERIC LI asked (in Chinese): *Since its establishment 20 years ago, the headquarters and the various departments of the Independent Commission Against Corruption (ICAC), are still being housed in different Government and private buildings, thereby posing a lot of constraints in the design of its security system. The recent arson case occurring in the Operations Department of the ICAC has aroused public anxiety over the use of ICAC facilities. Will the Government inform this Council:*

- (a) whether consideration will be given to the construction of a specially-designed ICAC building to accommodate all its departments, so as to improve administrative and management efficiency and to reinforce the security measures during its opening hours; if so, when the project will commence and be completed, and what the estimated cost is; and*
- (b) if not, what the reasons are, and what will be done to improve the present security arrangements and the situation of having scattered offices?*

SECRETARY FOR THE TREASURY: Mr President, at present the ICAC is accommodated mainly in Fairmont House and the adjoining Murray Road Carpark Building.

We are considering the need for a specially-designed building for the Commission. Currently the Government Property Administrator is reviewing the feasibility of making available an existing GIC site which meets the ICAC's specific operational and location requirements. To build a new ICAC headquarters complex would cost about \$400 million at 1994 prices. Until we can identify a site and agree it with the ICAC, we cannot commit to a construction timetable.

Pending the provision of new facilities, the Government Property Administrator has arranged for the Commission's existing accommodation in Murray Road Car Park Building to be refurbished, and for additional space to be provided in the building. By the end of 1995 the Commission, excluding regional offices and the ICAC training school, will be housed in owned accommodation in either Murray Road Car Park Building or Fairmont House nearby. This centralization of accommodation and manpower resources will greatly enhance management and operational efficiency.

The Commissioner has recently reviewed and strengthened security arrangements at Murray Road Car Park Building. The proposed refurbishment will further upgrade security.

Psychological service for school children

10. DR HUANG CHEN-YA asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the number of school children who received psychological counselling or examination service provided by the Government in each of the past five years and whether the number has been on the increase;*
- (b) *of the number of psychologists who provide service to these school children; and*
- (c) *of the average waiting time in respect of new cases?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) The number of school children receiving psychological counselling or assessment provided by the Government in recent years has increased. The numbers for the past five years were:

<i>School year</i>	<i>No. of children</i>
1988-89	5 574
1989-90	5 997
1990-91	7 119
1991-92	8 157
1992-93	8 634

- (b) Currently, psychological counselling and assessment are provided by special education teams comprising educational psychologists, educational counsellors and psychologist assistants. The Education Department has a total establishment of 59 posts for these teams, comprising 31 educational psychologists, 15 educational counsellors and 13 psychologist assistants.
- (c) The average waiting time for service to new cases is about six weeks. However, immediate assistance is provided if the circumstances warrant exceptional treatment.

Protection for aircraft passengers' rights

11. DR HUANG CHEN-YA asked (in Chinese): *Will the Government inform this Council:*

- (a) *whether it is aware of the number of cases last year in which airlines operating in Hong Kong were unable to provide seats for passengers with confirmed flight reservations; and*
- (b) *whether it will consider drawing up regulations to ensure that consumers' rights, including rights to compensation, are protected?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, the Board of Airline Representatives in Hong Kong, made up of the major airlines operating at Kai Tak airport, oversees a voluntary scheme under which participating airlines offer compensation, in cash or in kind, to eligible passengers with confirmed flight reservations who are denied access to boarding in Hong Kong. The Administration does not, at present, ask airlines to provide statistics on the number of such cases each year.

The adequacy of the current arrangements is under review. Amongst other things, we are considering whether it would be desirable for the Government to have legislative powers to require airlines, if necessary, to compensate passengers with confirmed flight reservations who are denied boarding and to supply statistics on the number of such cases on a regular basis.

Graduate teacher posts in primary schools

12. MR CHEUNG MAN-KWONG asked (in Chinese): *In the light of the plan to provide more graduate teachers for primary schools, will the Government inform this Council:*

- (a) *of the details of the plan and the implementation time-table;*
- (b) *of the degree qualifications required of the graduate teachers in primary schools; and of the criteria to be adopted in assessing the qualifications;*
- (c) *given that many headmasters, senior teachers and teachers are already degree holders, how the additional graduate teacher posts to be created formally in the different ranks will be distributed in primary schools; what the ratios of graduate teacher posts to non-graduate teacher posts will be in each rank; for those primary school teachers who are already degree holders, whether their qualifications and years of service before the creation of graduate teacher posts will be recognized; and*

- (d) *of the salary scales and promotion prospects for graduate teachers in primary schools; whether the minimum and maximum salary points of such teachers will be different from those of their counterparts in secondary schools; if so, what the reasons are?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) Graduate teacher posts in primary schools will be provided in phases, starting with 180 posts in September 1994 rising to a planned provision of 860 posts by September 1997 as follows:

	<i>1994-95</i>	<i>1995-96</i>	<i>1996-97</i>	<i>1997-98</i>
Graduate Posts (cumulative)	180	216	360	860

- (b) In accordance with the recommendation of Education Commission Report No. 5, graduate posts in primary schools will generally be allocated to heads, deputy heads or teachers to enable them to meet the major challenges facing our primary schools, including implementing Target Oriented Curriculum, reforming school management, improving language teaching, and so on and to provide the higher order of managerial and educational leadership required. For such enhanced responsibilities, a degree in primary education or equivalent from an approved university will normally be the required qualification. A degree in a specific subject relevant to the primary school curriculum may also be considered.
- (c) The graduate teacher posts will be distributed among government and aided primary schools on the basis of school size and mode of operation. These posts will be offset by the deletion of an equivalent number of non-graduate posts. The arrangements will be announced later.

Acceptable degree qualifications acquired prior to the creation of primary graduate posts will be recognized. The question of post-degree experience for incremental credit purposes in those cases will be examined in consultation with Civil Service Branch having regard to the relevance of such experience to the enhanced responsibilities mentioned in (b) above.

- (d) The Standing Commission on Civil Service Salaries and Conditions of Service will shortly be consulted on the ranking structure and salary scales of a new graduate grade in primary schools. Details of the salary scales and promotion prospects for the new graduate teaching grade will be announced in the near future.

Service with the SAR Government

13. MISS EMILY LAU asked: *Will the Administration inform this Council whether it is aware of the following:*

- (a) *whether people working for the Hong Kong Special Administrative Region (SAR) Government and their relatives would be regarded as a security risk by the British Government; and*
- (b) *whether the Home Office has warned a Home Office staff member engaged in sensitive duties that his career could be detrimentally affected by a relative's plan to continue working for the Hong Kong Police Force after 1997; and if so, did the warning contradict the British Government's earlier assurance that such people and their families would not be affected by working for the SAR Government?*

SECRETARY FOR SECURITY: Mr President, the Government is aware of the matters raised. Any queries relating to United Kingdom public service employment policy, including security clearance, are matters for Her Majesty's Government (HMG). The Government has referred this question to HMG and the answers are as follows:

- (a) HMG has given an assurance that service with the SAR Government after 1997 will not debar any officer or his relatives from United Kingdom Crown Service or in itself have any bearing on security clearance or suitability for a particular post;
- (b) HMG does not, as a matter of policy, comment on individual cases. However the assurance given by HMG means that the fact that an officer works for the SAR Government after 1997 will in itself have no bearing on the security clearance or the suitability for a particular post of his or her relatives working for the United Kingdom Civil Service.

Legislation on occupational safety

14. MR SIMON IP asked: *In view of expressions of dissatisfaction with existing legislation on safety and health at work by the Occupational Safety and Health Council last autumn, will the Government inform this Council whether it intends to propose comprehensive legislation to replace the current legislative framework relating to occupational safety, and if so, the scope of the proposed legislation?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Administration has not received any advice from the Occupational Safety and Health Council (OSHC) that it is not satisfied with existing legislation on safety and health at work.

The Administration considers that the existing industrial safety legislation is already comprehensive. However, as an on-going programme, we regularly review the provisions of the law and, where necessary, propose amendments or introduce new legislation. In the last two years, eight pieces of safety and health at work legislation were enacted.

But legislation alone is not enough. Publicity, training and research in occupational safety and health matters are equally important in bringing about a higher standard of workplace safety. In this connection, the OSHC has a statutory duty under the Occupational Safety and Health Council Ordinance to enhance the standards of safety and health at work through promotion, training and research.

Legal counsel in the Office of the COMAC

15. MR SIMON IP asked: *Will the Government inform this Council why, despite the evident need for legal expertise in the Office of the Commissioner for Administrative Complaints, it has failed to establish a post for legal counsel in that office and what measures will be taken to ensure that the need is fully met?*

CHIEF SECRETARY: Mr President, the role of the Commissioner for Administrative Complaints (COMAC) is to investigate into complaints of maladministration. Legal advice is needed in respect of some cases brought before COMAC, but these cases are relatively few in number. The Commissioner does not consider that the establishment of a full-time legal counsel post is justified. However, to ensure that he has ready access to independent legal advice, the Commissioner intends to establish a Panel of Legal Advisers, consisting of lawyers in private practice. The Law Society has been approached to assist in this, and their initial response has been encouraging.

Improvement for TV reception in Tsuen Wan

16. MR TAM YIU-CHUNG asked (in Chinese): *According to a survey conducted by a local residents' group, the majority of residents living in the lower floors and in old tenement buildings at the Tsuen Wan town centre experience problems in receiving transmission of programmes from the two main television stations, such as unstable images, snowy effects and multiple images and the reception cannot be improved by replacing the antennae and installation boosters. Will the Government inform this Council whether*

discussion will be held with the two television stations with a view to finding ways to improve the situation?

SECRETARY FOR RECREATION AND CULTURE: Mr President, the tenement buildings in question are served by the Golden Hill transmitting station which covers the Tsuen Wan area. This station is part of a comprehensive network of UHF transmitting stations that cover the whole of Hong Kong. Under existing law and in accordance with their licensing conditions, the two commercial television stations (TVB and ATV) have fulfilled their obligations by providing this territory wide network. Any localized problems of reception caused by the physical environment in any location fall outside these obligations.

Poor reception in the area in question is the result of rapid high-rise building development over the past several decades creating artificial obstacles to the UHF signals. The solution to providing better reception to such shadow areas cannot be found in increasing the number of transposers in the UHF network since there are insufficient additional frequencies in the UHF spectrum, or to installing individual signal boosters, but to provide localized microwave or cable relay systems. The two commercial television stations are not licensed to provide the latter. These systems are and can be provided by private operators, often at extra cost to subscribers, or by groups of individuals on their own initiative. The Telecommunications Authority will hold discussions with such operators to find ways to improve the reception problem in the Tsuen Wan area, and can offer advice to groups of individuals upon request. In the longer term, reception in all shadow areas will be improved by extension of Wharf Cable's subscription television network, though this will benefit only subscribers.

Inequitable tax base for local brewers

17. MR HENRY TANG asked: *Under the new ad valorem duty system for alcoholic drinks, duty for local beer is based on the wholesale price which includes distribution and promotion expenses whereas duty for imported beer is based on the cost alone. The difference in tax base has resulted in complaints about inequity from local brewers, who are subjected to a higher tax base. Will the Government inform this Council:*

- (a) whether it is aware of the situation;*
- (b) whether anything will be done to rectify the situation; and*
- (c) whether measures will be taken to ensure that benefits derived from the reduction in duty under the new system will be passed on to consumers?*

SECRETARY FOR THE TREASURY: Mr President,

On questions (a) and (b)

We believe that the local breweries' complaint is due to a misunderstanding of the way we shall determine the taxable value of beer under the new duty system. We have explained to the breweries that in the case of *imported* beer, costs items such as commissions, royalties and licence fees paid for the right to use the patent, design or trade mark of the goods, which may not have been reflected in the transaction price, are in fact taxable. For *local* beer, on the other hand, certain costs items which are built into the ex-warehouse price, such as the delivery cost of the finished products to the local buyers (for example, supermarkets, retailers, restaurants and hotels) together with certain expenses which are not incidental to the sale of the product to these local buyers (for example, the cost of promoting the product to the ultimate consumers) are not taxable.

While the Customs and Excise Department is still in the process of ascertaining the precise taxable values of the products of the two local breweries, latest indications are that both local breweries would enjoy a substantial reduction in their duty payment under the new system.

On question (c)

We cannot and would not wish to regulate prices in the retail trade or the catering industry. Thus, it is not possible for us to ensure that the trade will pass on the full benefit of the new system to consumers. However, we have seen evidence that some wine merchants and retailers have already cut the prices of products which enjoy a duty reduction under the new system. I understand that the Consumer Council will also monitor the situation through their Market Price Survey.

Reallocation of surplus quotas under the British Nationality Selection Scheme for journalists

18. MR JIMMY MCGREGOR asked: *Given the serious concern about protection of press freedom after 1997 and to allay journalists' worry over individual freedom in undertaking the job, will the Government request the British Government to accord priority to journalists in reallocating surplus quotas under the final phase of the British Nationality Selection Scheme?*

SECRETARY FOR SECURITY: Mr President, under Article 3 of the British Nationality (Hong Kong) (Selection Scheme) (Amendment) Order 1993, the Governor has the power to transfer any unallocated places between classes. We do not yet know whether there will be any surplus places available in any of the classes of the British Nationality Scheme. No decision on reallocation has been made.

However, since demand is strong among all occupational groups, and given that they all play an important role in Hong Kong, it would be difficult to single out any one occupational group for special treatment.

Fund-raising activities by hospital

19. DR TANG SIU-TONG asked (in Chinese): *With regard to the fund-raising concert staged in the Hong Kong Coliseum on 26 April 1994 by the Prince of Wales Hospital, will the Government inform this Council:*

- (a) whether the fact that the above hospital has to raise funds through a concert suggests that insufficient funds have been provided by the Hospital Authority for the hospital to maintain its operation; if not, why there is a need for such activity;*
- (b) whether other hospitals under the Hospital Authority will also raise funds through similar means; if so, what are the reasons;*
- (c) on what ground the Hospital Authority would give consent to hospitals under its management to raise funds through this means; whether the Hospital Authority will, by approving such activities, encourage other services organizations to follow suit; and*
- (d) whether the Hospital Authority is confident that such fund-raising activities would not adversely affect the image of the Government and other related service organizations in the public sector?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, following approval of its budget in the government resource allocation exercise every year, resources are allocated by the Hospital Authority to individual hospitals based on prevailing operational needs in providing patient care. Fund-raising activities are sometimes organized to foster community involvement and support.

The fund-raising concert in question was organized by Friends of the Prince of Wales Hospital as the climax of activities to celebrate 10th Anniversary of the hospital. This is in line with the Hospital Authority's mission to foster a close partnership with the local community, and is in keeping with the tradition established by many former subvented hospitals.

All proposed fund-raising activities are considered by the Hospital Governing Committees comprising mainly of non-officials and local representatives. Guidelines have been promulgated to ensure that the acceptance of any donations or sponsorship will not adversely affect the reputation of individual hospitals or the Hospital Authority.

Publication of annual reports by government departments and statutory bodies

20. MR MARTIN BARROW asked: *Will the Government inform this Council:*

- (a) *how many departments and statutory bodies published annual reports in 1993;*
- (b) *what attempts were made to ascertain readership requirements before publication;*
- (c) *how many copies remain undistributed;*
- (d) *what was the total cost of producing the copies of reports which have been distributed; and*
- (e) *what was the total cost of producing the copies which remain undistributed?*

SECRETARY FOR HOME AFFAIRS: Mr President, annual reports form a useful tool for explaining the departments' areas of responsibilities and working procedures. They also provide ready reference on the departments' statistics.

The originating departments distribute copies to their clients and interested organizations, both local and overseas, which have frequent contact with them.

The Information Services Department (ISD) makes copies available to the media, Members of the Legislative Council, City and New Territories Administration district offices, government branches and departments, municipal council libraries, tertiary institutions, chambers of commerce, consulates and so on.

A small number of copies is also kept by the Marketing Office of ISD for distribution to the public on request.

A total of 29 departments and statutory bodies published annual reports in 1993, a list of these is attached.

Readership requirements are assessed and reviewed regularly on the basis of:

- (i) the extent of interest in the reports as reflected in past demands and take-up rates; and
- (ii) the need to promote public understanding of the work of the departments.

71 690 copies of annual reports were printed at a total production cost of \$1,021,155. Of the total number of copies printed, 48 590 were for the originating departments' own use, and 23 100 were for ISD's general distribution. 4 859 copies remain undistributed. The total production cost of the left-over copies was in the region of \$63,155.

Appendix

List of Annual Departmental Reports Produced in 1993

1. Accounting Services Department
2. Agriculture and Fisheries Department
3. Audit Department
4. Commissioner of Banking
5. Civil Aviation Department
6. Education Department
7. Environmental Protection Department
8. Fire Services Department (biennial)
9. ICAC
10. Postmaster General
11. Public Accounts Committee
12. Public Services Commission
13. Royal Hong Kong Police Force
14. Rating and Valuation Department
15. Sir David Trench Fund for Recreation Trustee Report
16. Social Welfare Department
17. Trade Unions
18. Transport Complaints Unit
19. Hong Kong Broadcasting Authority
20. Industry Department
21. Judiciary
22. Office of the Commissioner for Administrative Complaints
23. Department of Health
24. Electrical and Mechanical Services Department
25. Port Development Board*
26. Office of the Commission of Insurance
27. Official Solicitor's Office, Legal Aid Department
28. Controller, Student Financial Assistance Agency
29. Registrar General

* though not a statutory body, it works for the Marine Department which did not publish an annual report in 1993.

First Reading of Bills**ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL 1994****TRAVEL AGENTS (AMENDMENT) BILL 1994****ROAD TRAFFIC (AMENDMENT) BILL 1994**

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

Second Reading of Bills**ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL 1994**

THE ATTORNEY GENERAL moved the Second Reading of: “A Bill to abolish the special jury, to establish the Criminal Procedure Rules Committee, to provide for evidence of the speed of vessels, to abolish marine magistrates, to abolish assessors in proceedings before magistrates, to expand the right to obtain copies of court proceedings, to permit magistrates to impose partly consecutive sentences of imprisonment, to remove the power to punish summarily for wilful false testimony, to give the High Court jurisdiction in connection with testamentary gifts for unspecified charitable purposes and to make a number of miscellaneous amendments to the criminal law.”

He said: Mr President, I move that the Administration of Justice (Miscellaneous Provisions) Bill be read the Second time.

The purpose of this Bill is to make improvements and corrections to legislation relating to the administration of justice, and to repeal certain obsolete provisions. The Bill is part of an on-going process in my department of keeping the law relating to the administration of justice under constant review, in order to ensure that it is efficient and effective. This process involves consultation with the legal profession. I would like to acknowledge the role played by the Law Society and the Bar Association in the preparation of this Bill, which incorporates some of their ideas.

Improvements

The improvements contained in the Bill include provisions relating to the right of interested parties to obtain a court record; the possible joint summary trial of adults and juveniles; and the setting up of a Criminal Procedure Rules Committee. It is also proposed that a court should in some circumstances be able to give an alibi warning to a defendant in writing, and to dispose of property of no value.

Some of the reforms proposed relate to magistrates. The Bill seeks to give them the power to impose partly consecutive imprisonment sentences, and greater powers to impose fines and to award costs and compensation. The provision empowering a magistrate to imprison a person for non-payment of fines or costs is brought up to date, and the procedure for reviewing a magistrate's decision is revised so that an application can be made in writing.

Other amendments include a new evidentiary provision in respect of radar devices used to measure the speed of vessels and a provision to enable the court to give effect to certain defective charitable bequests.

Obsolete provisions

The legislative provisions which are considered to be obsolete and which are to be repealed by the Bill include provisions for special juries, marine magistrates, assessors in the magistracy, summary punishment for false testimony, and recognizances for appeals. In addition, the Bill proposes the repeal of existing requirements for the licensing of auctioneers, marine store dealers, marine hawkers and tallyclerks, and the repeal of the Venereal Disease Ordinance and the School Medical Service Board Incorporation Ordinance.

Another part of the Bill deals with the repeal of six provisions which are considered to be inconsistent with the Bill of Rights. These relate to the power of the police to search certain premises for stolen goods; presumptions of dishonesty against the drawers of dishonoured cheques; the award of costs to an appellant when an appeal court orders a retrial; offences of unlawful possession and assembly at night-time; and the power to impose an enhanced penalty on an offender convicted of operating or managing an unlicensed massage establishment.

Mr President, as I said earlier, this Bill is part of a continuous process of review. I will, from time to time, be bringing forward Bills of a similar nature in order to improve our legal system and to repeal obsolete provisions.

Mr President, I commend this Bill to the Council.

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

TRAVEL AGENTS (AMENDMENT) BILL 1994

THE SECRETARY FOR TRADE AND INDUSTRY moved the Second Reading of: "A Bill to amend the Travel Agents Ordinance."

She said: Mr President, I move that the Travel Agents (Amendment) Bill 1994 be read the Second time.

The Amendment Bill seeks to bring section 29 of the Travel Agents Ordinance in line with the Bill of Rights Ordinance by transferring the power to prohibit a travel agent from leaving Hong Kong from the Registrar of Travel Agents to the Magistrate.

The Travel Agents Ordinance empowers the Registrar to conduct an investigation into the business of a travel agent if he suspects that the business of the travel agent is being carried on contrary to the public interest. Having decided to conduct an investigation, the Registrar may, under section 29 of the Ordinance, require the Magistrate to issue a prohibition order to the travel agent to prohibit him from leaving Hong Kong. Legal advice has indicated that section 29 in its present form could be held to contravene the right to leave Hong Kong and the right to a fair hearing laid down respectively in Articles 8(2) and 10 of the Bill of Rights Ordinance.

The Bill seeks to make the issue of a prohibition order a judicial function. The discretion to issue such an order will be exercised by a Magistrate if he is satisfied that the travel agent under investigation is likely to be able to assist the Registrar in connection with the investigation; if there are reasonable grounds for believing that the travel agent intends to leave Hong Kong; and if it is in the public interest to stop the agent from leaving Hong Kong so that he can assist in the investigation.

The Bill also provides for an appeal to the High Court against the decision of the Magistrate to make the prohibition order. The proposed procedure follows closely a similar precedent in the Inland Revenue (Amendment) Ordinance which was passed by this Council last July.

Mr President, I believe the Bill would strike a balance between the protection of outbound travellers and the need for the Travel Agents Ordinance to be compatible with the Bill of Rights Ordinance.

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

ROAD TRAFFIC (AMENDMENT) BILL 1994

THE SECRETARY FOR TRANSPORT moved the Second Reading of: "A Bill to amend the Road Traffic Ordinance."

He said: Mr President, I move the Second Reading of the Road Traffic (Amendment) Bill 1994. This is an omnibus Bill aimed at streamlining and updating the Road Traffic Ordinance.

As part of an on-going process to simplify procedures and speed up action, the Administration has been examining existing legislation to identify powers, for example, those which relate to technical, operational or other routine matters, which can be delegated from the Governor in Council to the

relevant branch secretary. In the Road Traffic Ordinance, powers to amend the Road Users' Code and most subsidiary legislation fall within this category. Clauses 3 to 11, 15 and 24 to 26 of the Bill seek to delegate such powers from the Governor in Council to the Secretary for Transport. Likewise clauses 27 to 30 provide for the transfer of some of the Governor's powers now contained in the regulations.

Notwithstanding these delegations, I should emphasize that subsidiary legislation made by the Secretary for Transport will continue, as at present, to be subject to consideration by the Legislative Council.

The Bill also deals with two other aspects:

- (a) The Transport Tribunal has been established to hear appeals, for example, against licensing decisions. Clauses 12 to 14 of the Bill seek to enhance the impartiality and independence of the Tribunal by removing the requirement to appoint a public officer as a member and the restriction that the Tribunal's legal advisers should be selected from a panel appointed by the Attorney General.
- (b) To regularize existing practices and adapt the Ordinance to current day conditions — clauses 16 to 23 provide for this.

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

CHINESE PERMANENT CEMETERIES (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 20 April 1994

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).

CIVIL AVIATION BILL

Resumption of debate on Second Reading which was moved on 19 January 1994

Question on Second Reading proposed.

MR JAMES TO: (in Cantonese): As most of the laws of Hong Kong originate from the United Kingdom, we have to localize the legislation relating to civil aviation before 1997. I am very pleased to learn that the Administration has this time obtained agreement from China to launch the first stage Bill in relation to the Localization of the Civil Aviation Act 1949 (Overseas Territories) Order 1969. However, if one looks at the clauses of the Bill, one will notice that they are rather technical and not controversial at all. I agree that nonetheless the Bill has laid a good foundation for future discussion on more complicated issues.

1997 is indeed fast approaching. We can foresee and imagine that many provisions of our legislation, especially those in relation to emergencies, war and serious national crises, will become more controversial. I therefore hope that the Administration can discuss this as soon as possible with China on the foundation which has so far been laid.

I wish to draw the attention of the Administration to one constitutional aspect. Paragraph 5 of the Legislative Council Brief says that experts from the Chinese side have basically agreed to the first stage Bill. That has been confirmed at the 28th Session of the Meeting of the Joint Liaison Group. I think the problem is that the public feels that the Joint Liaison Group has been operating behind closed doors and they do not know what is going on. Indeed, the public has to rely on leakage of information or hearsay to find out what subjects have been discussed in the meetings. That is undesirable.

Worst of all, even after certain provisions or steps have been confirmed or agreed upon, there is still no clear announcement. Take the legislation on civil aviation as an example. I hope that the British representatives of the Joint Liaison Group can, with China's consent, disclose to the public what has been agreed, for instance, disclose relevant parts of the proceedings of the recent 28th Session of the Meeting. If that was not done in the past, I hope that the Administration will, with China's consent, reasonably disclose information so that Members of this Council will really understand what the Administration has achieved, not only in relation to the laws on civil aviation, but also in relation to the laws on marine matters and other areas which need to be localized. Of course, it would even be better if the Administration could consult the opinion of Members of this Council and of the public, through formal or informal channels, on more complicated issues where necessary.

With these remarks, I support the motion.

SECRETARY FOR ECONOMIC SERVICES: Mr President, may I refer to two points made by Mr TO in his statement just now. First of all, I confirm that we are now taking forward with the study of the contents of the second stage Bill and we shall certainly bear in mind the points made by Mr TO just now about the need to consult experts, consult the trade and so on. As regards disclosure of the proceedings of the Joint Liaison Group meetings, section 10 of Annex II of the Joint Declaration provides that "proceedings of the Joint Liaison Group

shall remain confidential". In view of this provision, we regret that Mr TO's request cannot be met.

PRESIDENT: That has strayed beyond the debate on the Bill itself.

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.

CHINESE PERMANENT CEMETERIES (AMENDMENT) BILL 1994

Clauses 1 to 5 were agreed to.

CIVIL AVIATION BILL

Clauses 1 to 4, 6 to 8, 12 and 14 were agreed to.

Clauses 5, 9 to 11 and 13.

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members under my name. The purpose of the amendment to clause 5(2) is to remove the stipulation that proceedings against defendants charged with non-compliance with the regulations are to be heard summarily in respect of the first offence and on indictment which normally means a jury trial in respect of a second or subsequent offences. In the absence of an option as regards summary proceedings or proceedings on indictment, a jury could infer from the fact that the case was briefed before them that the defendant had a previous conviction under the Bill. The proposed amendment removes the risk, small though as it may be, of an accused being so prejudiced. If this amendment is accepted, the position specified in the clause will be in line with that of the corresponding section in the United Kingdom Civil Aviation Act 1982. The other amendments under clauses 9, 10, 11 and 13 are minor drafting changes to the Chinese version of the Bill.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 5**

That clause 5(1)(a)(i) be amended, by deleting “爲酬賞” and substituting “受酬” .

That clause 5(2)(a) be amended, by deleting “of a first offence against the regulations”.

That clause 5(2)(b) be amended, by deleting “of a second or subsequent offence against the regulations”.

Clause 9

That clause 9(1)(a) be amended, by deleting “海域或任何潮汐水域之內、之上或上空” and substituting “海中、海面或海的上空、或位於任何潮汐水域的水中、水面或其上空的飛機，” .

Clause 10

That clause 10(4) be amended, in the Chinese text, by deleting everything before paragraph (b) and substituting —

“(4) 本條適用於下列飛機 —

- (a) 在女皇陛下爲履行《芝加哥公約》中有關本條第(1)或(2)款所涉事項的條文而作的樞密院頒令中聲明惠及的國家或地區註冊的飛機，而該頒令是在當時是有效的，但本條所適用的飛機不包括作軍事、海關或警務用途的飛機；及” .

Clause 11

That clause 11(1) be amended, by adding “會” after “成文法則” where it secondly appears.

Clause 13

That clause 13(4) be amended —

- (a) by deleting “be deemed to have been duly made by virtue of this Ordinance and”.

(b) by deleting “shall” after “section 14”.

(c) by deleting “also”.

Question on the amendment proposed.

MR JAMES TO (in Cantonese): Mr Chairman, I would like to speak on this aspect.....

PRESIDENT: Sorry, Mr TO, do you wish to speak?

MR JAMES TO (in Cantonese): Mr Chairman, I just wish to make one point only. I support

PRESIDENT: Mr TO, can I just remind you that at the Committee stage your comments should be confined to details not to principles?

MR JAMES TO (in Cantonese): Mr Chairman, first of all, I support the Administration's amendment to clause 4 at the Committee stage because the clause will, obviously, enable the jury to know that it is prosecution in respect of a second offence and that there may be breach of procedures. But I would like to remind the Administration by means of this record that I believe the situation specified in this clause is not unique among the ordinances of Hong Kong. I am worried that the situation specified in this clause may also be found in other existing ordinances. I hope that the Legal Department will follow up the matter to see whether such a situation does exist and, if it does, amend other ordinances as soon as practicable.

Question on the amendment put and agreed to.

Question on clauses 5, 9 to 11 and 13, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

CHINESE PERMANENT CEMETERIES (AMENDMENT) BILL 1994

had passed through Committee without amendment and the

CIVIL AVIATION BILL

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

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

Bills read the Third time and passed.

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 May. The mover of the motion will have 15 minutes for his speech including his reply; 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.

CAPITAL GAINS TAX ON REAL PROPERTY

DR HUANG CHEN-YA moved the following motion:

“That, in view of the fact that speculation in private real property has intensified the upsurge of real property prices in Hong Kong, thus rendering it difficult for members of the public to acquire their own property, this Council now urges the Government to immediately study the proposal to introduce capital gains tax on real property, to analyse in detail the merits and demerits as well as the feasibility of the proposal, and to submit to this Council a report on the findings of the study.”

DR HUANG CHEN-YA (in Cantonese): Mr President, I move the motion standing in my name in the Order Paper.

It appears that property prices in Hong Kong have been riding the escalator since the 1970s. Residential property prices increased eleven-fold during the years 1976-1992. Despite a slight slowing down of the tempo of price rises in the second half of the year, for the whole of 1992 the price of private residential property was still 42% higher compared with 1991. Beginning in March 1993, the tempo picked up again. Generally, property prices went up by about 10% from the middle of 1993 to the end of the year. Specifically, the prices of larger residential units went up by between 10% and 15%. The asking price in some cases rose to \$10,000 per sq ft.

As 1994 began, the property market became more and more frenzied. Each time a developer put a new housing development on the market, the price went higher. This was frightening. Housing developments in the New

Territories were no exception even though they were still relatively cheap. Here is an example. When units of Phase I of a housing development in the New Territories were put on the market for the first time in early March, the asking price was \$2,950 per sq ft. But by the time when units of Phase III of the same development were put on the market 21 days later, the asking price had gone up by 17% to \$3,333 per sq ft. Since 1990, residential property prices have been going up faster than household incomes. The average citizen can no longer afford to buy a home.

The Government has in recent years taken a number of financial measures to discourage property speculation. These measures, all intended to add to the costs of property transactions, fall into three broad categories:

- (1) Suggestions were made to the banks that they should tighten mortgage lending;
- (2) A stamp duty was collected on every property sale and purchase agreement that was signed; and
- (3) More effective measures were taken to identify property speculators; these were then required to pay a profits tax on their gains from property speculation.

In November 1991, the Office of the Banking Commissioner issued a guideline to the banks, suggesting a 70% limit on the mortgage ratio. The Hongkong and Shanghai Banking Corporation and (HSBC) the Standard Chartered Bank in July 1993 announced a tightening of mortgage lending to buyers of luxurious residential property. In August 1993, HSBC and the Hang Seng Bank made a six-point announcement on tightening mortgage lending. In January 1994, HSBC and the Hang Seng Bank announced further mortgage tightening measures directed against the runaway prices of luxurious residential property.

However, as acknowledged by HSBC in its monthly economic report of April 1994, the banks' mortgage tightening measures failed to arrest the upward trend of property prices. There were two explanations for the failure: the massive flow of overseas money into Hong Kong's property market; and special financing offered by developers on top of bank mortgages.

Worse yet, some of the mortgage tightening measures have had the following undesirable side effects:

- (1) They have hindered home purchases by genuine end-users;
- (2) They have shifted demand onto the presale market for new about-to-be-completed developments; and

- (3) They have taken some of the profits from the pockets of speculators and put them into the pockets of banks.

As regards the requirement for a stamp duty to be paid on every property transaction, a rule was introduced from 1 January 1992, requiring a stamp duty to be paid on every sale and purchase agreement when it was signed. Previously, a stamp duty had to be paid only at the time of the formal completion of the assignment. The new rule made it more costly for a person to engage in quick buying and selling for profit. But it did not have a clear deterrent effect on him, since his additional cost would make only a small dent in his profits from the fast rising property prices.

The Inland Revenue Department in January 1993 put a new set of criteria into effect. A closer look was taken at the huge profits made by those who bought and sold property several times within a short period or who sold property after holding it for under two years. On this basis, a decision was made as to whether they had to pay profits tax.

Like the stamp duty on property transactions, the profits tax normally accounts for only a small percentage of speculators' gains and has not had an appreciable deterrent effect.

Mr President, true, property speculation is not the only cause of rising property prices. There are also other contributory factors, including:

- (1) Land shortage;
- (2) Low interest rates;
- (3) Steady increases in the number of households and in household incomes; and
- (4) The massive influx of money from overseas investors.

The United Democrats of Hong Kong think that the Government should adopt comprehensive measures to slow down the rise in property prices. The long-term solution, of course, is to increase the supply of land, to speed up urban renewal and to build more public housing. But the Government must also take some short-term measures directed specifically against property speculators. UDHK think that one feasible measure is to collect a short-term capital gains tax.

To put it simply, a capital gains tax on property is a tax on profits or capital appreciation from the sale or trading-in of residential property. Such a tax exists in many parts of the world including the United Kingdom, France, the United States, Japan and South Korea.

The United Kingdom, the United States and Japan are global economic powers. Their having a capital gains tax shows that this tax has no adverse effects on investment. Nor, as far as one can see, is it bound to be bad for the property market in the other countries that have it.

Many countries in the world, including Japan, Canada and the United Kingdom, use the capital gains tax to deter property speculation. Not too long ago, China, too, proposed to introduce a capital gains tax on land. China's main rationale was that this tax would help to discourage excessive property speculation and to prevent the loss of income derivable from state-owned land.

Mr President, so far, the Government in Hong Kong has tried to discourage property speculation by making it more costly for people to buy or dispose of property holdings on a short-term basis. This is the right policy direction. However, the methods used so far have raised costs only slightly. They have not been effective as a deterrent.

It is in fact possible for the Government to introduce a capital gains tax on property that is appropriate to Hong Kong and the purpose of which is to discourage short-term speculation in the property market. One should not worry that this tax will hinder normal and long-term investment in the property market: Nor should one worry that it will bring about the collapse of the entire property market.

Intending to find solutions for the most pressing problems, we suggest that the capital gains tax should be restricted in the sense that it is to apply only to residential property transactions. Thus, it will not affect Hong Kong's other economic activities. The more important consideration is that housing is a necessity of life. Citizens do not have to own stock or other kinds of assets. But they must have homes. So we should try to help them and enable them to buy homes as they need or desire.

The rate of the short-term capital gains tax on property should be high enough to discourage short-term speculation in the property market. Some property owners may deliberately put off sales to avoid paying a high short-term capital gains tax. To forestall this, the rate of the capital gains tax should decrease in inverse proportion to the number of years the property has been held before disposal.

It is sometimes difficult to define net capital gains. Some of the gains may be due to capital appreciation. Some may be due to improvements on the property. A fair way to assess taxable capital gains is to allow inflation and essential expenses to be deducted.

UDHK think that the Government should introduce a short-term capital gains tax on residential property. Its purpose should be to increase the operating costs of speculators and thereby to discourage property speculation.

As to the specific principles for the capital gains tax on property, we have the following suggestions to make:

First, the taxable capital gains should be the proceeds from a property sale, less the original cost, less any maintenance, repair or redecoration expenses, less any price appreciation due to inflation as indicated by the Government's annual inflation figures, and less any stamp duty paid. The amount of the capital gains tax should then be worked out by using a rate that varies with the number of years over which the property has been held.

Secondly, the rate of the capital gains tax should be inversely proportional to the length over which the property has been held. The longer the property has been held, the lower should be the tax rate. The rate in the case of property which has been held for under three years should be higher than the profits tax rate, so that it may have a deterrent effect.

Thirdly, if a home owner trades in his original home for a new home, he should not be required to pay capital gains tax.

Fourthly, the capital gains tax on property should come into effect from the day on which the Government introduces the Bill at or tables the resolution to this Council.

With these remarks, I move the motion.

Question on the motion proposed.

MR RONALD ARCULLI: Mr President, I think, first of all, I would like to say that all of us are concerned with unreasonable and high property prices, and indeed the speed at which prices has risen over the past few years has made a number of us sit back and wonder what the root cause is. I think, to cut a long story short, Mr President, in the long-term the solution really lies in one simple word: additional supply.

In terms of the proposals put forward by Dr HUANG, and the reasons that he gave, I would not go into the reasons but I think it is interesting to note that the proposal that he has put forward is really a description of what I would call profits tax today. It is not really capital gains tax. To introduce a system of capital gains tax to attack a particular economic activity would really be using revenue laws for a wholly different purpose. Revenue laws are for the purposes of the Government to raise money to fund public expenditure for the benefit of all in Hong Kong. That is why I think, when we have our Budget debates, occasionally the Financial Secretary and the Administration get berated for raising too much money because we do not need the sort of level of reserves that we have.

The very fundamental success of Hong Kong lies in the fact that we have a low, stable and simple tax system. To introduce a sort of tax system that has been suggested by Dr HUANG, (1) it would take too long to actually initiate because it is not as simple as he would put it; (2) it would send the wrong message; and (3) it would penalize some 850 000 residential units and perhaps a couple of 100 000 home ownership units where people have bought from the Government. When the restrictions for resale come off they might find themselves in a bit of a bother as far as that is concerned.

To introduce a sliding scale where the longer you hold, the less tax you pay, must be something of an innovation in terms of capital gains tax. But those are his considered views and I suspect that if the Government requires time to consider it, no doubt that would be one of the aspects to be taken into account.

Coming to the Government's taking time to consider this issue, the Liberal Party will vote against the motion for the very simple reason that we believe the Government has actually researched this issue of capital gains tax not so long ago and it took about, I understand, a year and a half to study the problem and decided not to introduce it.

Now, Dr HUANG has asked the Government to study it and to report to this Council on the merits and demerits. I would invite the Administration today to tell them all the demerits because I certainly cannot think of any merits.

I think, in terms of our current tax laws, most of us who have an inkling of what profits tax is will believe that speculators are caught. What we need today is additional resources for the Inland Revenue Department to track down property transactions. Because of the legal requirement now to stamp property transactions at the sale and purchase stage, the Commissioner and his merry men would undoubtedly have advance warning of property transactions and can trace it quite easily.

Lastly, Mr President, over the past couple of years administrative and other measures have been introduced with a view to curbing property speculation. Things like encouragement by the banks to reduce the mortgage rate or by the Government to introduce stamp duty. I remember, as far as the latter was concerned, I was probably the only Member of this Council that said it would not work. Well, I hate to say "I told you so", but I did tell you so.

I think all these short-term administrative measures are really directed at suppressing demand, not increasing supply. And I think any measure that is going to be introduced to suppress demand and not to increase supply — whether short-term, medium-term or long-term — will succeed only for a very short period of time, but may have a fairly damaging effect on local and overseas investors' confidence and, more importantly, on our economy. Perhaps the proposal was actually couched so as to try to avoid an overall collapse of the property market.

Mr President, there is one fact that is perhaps not too well known and perhaps not sufficiently widely reported, that is, we have more domestic units than households. We do not have anyone sleeping in the streets. The only thing I can say therefore is that as far as the prices are concerned, it is an incredible vote of confidence by a sector of our community, or indeed by our friends from overseas to invest in property in Hong Kong.

With those observations, Mr President, I will oppose the motion.

MR HUI YIN-FAT (in Cantonese): Mr President, according to the Hansard record, since 1991 when property prices were beginning to rise, this Council has asked no fewer than ten questions, held no fewer than five motion debates and conducted follow-up action through no fewer than three subcommittees to keep urging the Government to work out measures to deal with those speculators bent on profiteering from property speculation in order to strike them a hard-hitting blow. Unfortunately, even though this Council has long displayed such insight and, apart from putting forward many constructive proposals, has even been prepared to take up part of the political responsibility, yet from time to time the Government has merely responded with various excuses to stall and delay. The result is that rising property prices have today reached dangerous proportions. The Administration can never escape the blame that lies at its door.

As a matter of fact, it is plain to everyone that the crux of the matter is whether the Administration has the determination to combat activities of property speculation in the remaining 37 months or so of governance, even at the cost of a temporary revenue setback. The saying that “subject to the premise of not wanting to interfere unduly with the free market, there is not much that the Administration can do” is merely a pretext to cover up the Administration’s cowardice and its mentality to get by with as little trouble as possible.

Take a look at the Administration’s total recurrent revenue last year. One-third of it was from land sales proceeds. Besides, as land supply is subject to restrictions in the Sino-British Joint Declaration and by the Land Commission, and as the Administration is bent on paying the price in the form of negative interests in order to defend the linked exchange rate, speculators are no doubt quick to spot such weaknesses of the Administration. They know that the Administration is holding back from action against speculators for fear of hurting innocent end-users and that the Administration dare not risk any go-far-bust tactics: The result is that they churn up the property market, and jumpers on the bandwagon are made to believe that under such conditions property prices would only go up, and not the other way round. Thus spurred on, more and more people are scrambling to jump on the bandwagon. It would be surprising indeed if property prices did not go up spiralling.

But who will be the one to puncture this “bubble economy” of the property market? As “whoever started the trouble should end it”, I think that as high land prices, high property prices, high rents, high rates and high inflation (the five high’s) are either directly or indirectly the result of the relevant policies, it is only right for the Administration to deliver a message, clearly and forcefully, when it announces the series of measures to curb property prices next month. The message should be to the effect that factors favourable to speculation will soon be gone, that there will be no more guarantee for property prices to rise, and that speculators will have to pay a heavy price and even derive no profit. Only then can the property market hopefully stabilize. Of course I understand that measures too drastic would hit the economy in general, and it would be unfair to the man in the street who has never taken part in any property speculation activity. Therefore, I think that the Administration will have to be bold yet cautious in dealing with such matters. Once the target is in the sights, hit it hard. I believe we can get instant results and the impact will not range far too wide.

In the long run, increasing land supply, increasing the density of development, increasing the proportion of land resources allocation for public housing, and requiring property developers to complete the superstructures within a reasonable period of time and to publicly offer for sale all the units are all effective measures to stabilize the property market.

On the other hand, with the present overheated speculative climate as well as the dangerously high property prices, I think the most effective and direct way to deal with the problems is as follows: To impose a capital gains tax on property which is re-sold within, for example, one to two years; to strictly prohibit property developers from selling pre-sale flats in the form of “internal subscription” from now on; and to impose a higher rate of capital gains tax on professional speculators who have acquired units by way of “internal subscription” in the name of their companies in the past two or three years because they have obtained huge profits through unfair competition. I think that once speculators take a dim view of the market and the second-hand property market quietens down, property prices will gradually fall; hence, a cooling effect can be achieved instantly.

Since high property prices are affecting livelihood in every way, the general public have become victims through no fault of their own. Therefore, I think that the Administration should earmark the income from capital gains tax for the purpose of a land development fund in order to grant land to first-time home buyers at low prices to enable them to build homes under the aegis of co-operative societies which will be another form of low cost housing to co-exist with public housing and subsidized housing currently available under the respective policies.

Mr President, any decent business has to pay profits tax to the Government. But professional speculators existing as parasites on the property market are not only contributing nothing to the economy of our community, but

are also not required to fulfill their social obligations. The Administration should never encourage such selfish practice. I believe there are quite a number of measures to curb property prices that we can choose from. But the most important thing is that the Administration must, with the greatest determination and courage, maintain its governing authority in the next three years and ensure a smooth transition for our community. I hope that the task force will carefully consider the views of this Council.

With these remarks, I support the motion.

MR TAM YIU-CHUNG (in Cantonese): Mr President, concerning the capital gains tax proposed in the motion, I feel that there are still certain technical issues yet to be resolved. The Democratic Alliance for the Betterment of Hong Kong (DAB) is of the view that the imposition of tax is a feasible means to curb speculation. However, we must at the same time take into account our need to hit the mark at one stroke to produce immediate effect while preserving the simplicity of our taxation system. Against this background, we are in favour of a so-called "property transfer tax" because such a tax would operate under the existing taxation system. Furthermore, its design and implementation would be simpler than those of the vacant property tax or the capital gains tax and its economic impact would be minimum, too.

The property transfer tax we have in mind would seek to combat speculation through the levying of profits tax on the speculators in respect of the profits they gain from property transfer. In June 1993, the Inland Revenue Department began making a close scrutiny of people who frequently speculate in the property market such as those who have made resales twice within six years. New files on those people have been opened to determine their liability to tax. In spite of this, the DAB still finds such an action not effective enough to produce any deterrent effects. As a matter of fact, professional speculators may make use of different identities and the names of their relatives, spouses and so on to evade the Inland Revenue Department's tax net easily during the speculation period.

In view of the above-mentioned reasons, the DAB proposes a kind of withholding profits tax on property transfer. In other words, when a seller concludes an assignment at a solicitor's firm, the solicitor will, on behalf of the Inland Revenue Department, withhold a sum equivalent to a certain percentage of the difference between the buying and selling prices, that is, a profits tax rate between 15% to 16.5%. Should the seller be an individual taxpayer, he will have to pay 15% and in case of a company it will have to pay 16%. In order not to affect the genuine end-users, the Inland Revenue Department may allow the seller to prove to the Department within a specified time that he has never engaged in any property resale transactions of a commercial nature, for example, he sold his self-occupied premises because of emigration. If his case can be established, the tax withheld will be refunded.

There are certainly some technical issues in respect of this proposal that would require further deliberations, for instance, how to make it easier for a genuine end-user or an owner-occupier to furnish his explanations to the IRD and receive the refund of the withholding tax. Frankly speaking, the property transfer tax would indeed be a measure to deal with the speculators. To sum up the above-mentioned arguments, the property transfer tax put forward by the DAB would in essence be consistent with of Hong Kong's simple taxation spirit. Furthermore, it would not require any major amendment to the existing legislation nor cause too much impact on Hong Kong's economy. It would be capable of implementation within the shortest time to hit the speculators hard. It would produce immediate effect in terms of suppression of property speculation.

Mr President, these are my remarks.

MR VINCENT CHENG: Mr President, I share the community's concern about high property prices. Like all my colleagues in this Council, I want to see lower and stable property prices which are affordable to the people of Hong Kong.

Now I do not want to analyze why property prices have skyrocketed. Even a child knows that prices rise because demand is greater than supply, and to keep prices low one could either suppress demand or increase supply. I do not believe in suppressing demand. If the society has a certain material need we should encourage the market to increase supply through removing supply-side constraints. This is especially so in the property market. It is most people's wish in Hong Kong to own their own homes and on the part of the Government, it should help Hong Kong people to realize this dream. Unfortunately, for most people, owning a home is fast becoming a dream. But imposing a capital gains tax cannot help them to realize their dreams.

Hong Kong's success has a lot to do with our tax system. Not only are the tax rates low and the system simple, but our taxation policy has never been political. Its main objective is to raise sufficient revenue to meet expenditure, not for social engineering. Of course, we tax the rich more but that is based on affordability rather than political considerations. Instead of using revenue measures to achieve certain social objectives, we channel government revenue to areas such as housing, law and order, social welfare and education. Thus we achieve our social objectives through spending. This system has produced splendid results. There is no disincentive to work. Taxpayers do not have to hire tax consultants and tax evasion is relatively a minor problem compared with many developed economies. Unless there is a very convincing reason we should keep it that way.

Capital gains tax is a blunt weapon. Not only would it send the wrong signal to investors and the people of Hong Kong who may think that this is the beginning of a new tax regime. It would not achieve what we want to achieve.

For it to be effective, the rate has to be very high. If it is high, its impact would go beyond the property market and it would also encourage tax evasion or avoidance and indeed can be avoided quite easily. All we need to do is to set up an offshore company and there is no shortage of tax advisers to tell us how to do it. Secondly, it could lead to under the table deals. Speculators could ask to be paid in cash, for a portion of the price, and avoid most, if not all, of the tax liability.

Furthermore, speculators are already liable to tax. The question is how to catch them. I understand that the Inland Revenue is taking this up with vigour. Since a deemed tax system for property trading is already in place, there is no need for an additional tax. The solution to the problem is to increase supply and the Government has promised to do so.

I also support the idea of government facilitating the resumption of land for redevelopment purposes provided adequate compensation is paid to landlords and tenants and stringent conditions are imposed on developers to ensure that flats so developed would be speedily constructed and sold to the general public. An additional measure would be perhaps to increase stamp duties on subsequent transactions, if a flat is sold a few times within a short period of time, before or shortly after completion. We also need a greater supply of government flats for lower income groups and the sandwich class.

I would also like to remind Members of China's experience of imposing capital gains tax on property. Since the announcement, new investment in property in China has virtually come to a halt. We certainly do not want a sharp reduction in the building of residential units in Hong Kong. On the contrary, we want more. Imposing capital gains tax may, at least in the short term, result in a reduction of investment in property construction by investors.

Mr President, a capital gains tax would not solve the problem. I therefore do not support it. We want a stable and orderly property market which would allow a steady supply of new flats to meet demand. A capital gains tax would be an overkill.

MR ERIC LI (in Cantonese): Mr President, if the Government has to give three reasons to justify a tax levy, the first is sure to be "more revenue". "More revenue" should also be the second reason and the third. To enforce a simple, easy to implement and cost-effective low tax system successfully, the Government should levy tax solely for the purpose of putting money into the treasury in pursuit of a balanced budget. It should not have an "ulterior motive" in trying to make tax serve a secondary purpose or in using tax as a weapon for combatting social problems. In the final analysis, "dual purpose tax system", in terms of practical effect, will be just a step removed from a "harsh and complex tax system". Our social problems are legion. If tax is used to resolve any social problem or injustice, a precedent will be set and it may evolve into a "political trend". Then, when the Government or a political party

wishes to raise tax, it will have a noble justification. This has in fact happened many times in China as well as abroad. It happened yesterday. It is still happening today.

On 19 February 1992, this Council debated a motion moved by Mr Fred LI calling for a “comprehensive review of the tax system”. The outcome of that debate showed that this Council did not want changes to the basic principle, which was that tax should be simple and low. Dr HUANG Chen-ya’s motion today calls for a capital gains tax, that is, a new tax which is inconsistent with the spirit of our existing tax system. It is the same old attempt made in this Council to “rob the rich to pay the poor”, although this time sugar-coated and packaged more handsomely as a means of deterring property speculation. If Members fall for the packaging ruse, if they do not fully oppose the motion, they will surely be ridiculed by the community, who will accuse this Council of inconsistency between what it said before and what it is saying now.

I must first of all remove the sugar coating which bears the label, “To deal with property speculation which makes it difficult for citizens to buy homes”. I believe that everybody is concerned because high property prices are making life miserable. I made a long speech on this subject during the Budget debate just over a month ago. I do not intend to repeat myself now. But there should be a specific remedy for each social ill. To save a man’s life, one must have a complete plan on how to proceed. Water can be used to put out a fire. So can chemical foam, and sand. One cannot say that the best method to put out a fire is the triple method of mixing water with chemical foam plus sand. There are all kinds of methods for correcting the long-standing imbalance between supply and demand in the housing market. Each method is effective in its own way. While a capital gains tax may be effective for suppressing short-term demand, one must not advocate its use without first asking if it fits in with the other methods already being used. “Doing whatever comes to mind” is a poor way to prescribe a remedy. It will only make the Government look unjust; it will give people the impression that the Government is at its wit’s end and off balance when there is a problem to be dealt with.

Obviously, if we want to find a long-term solution for the supply-demand problem of housing and satisfy the strong “home ownership” yearnings of the people of Hong Kong, we must work on the supply side. A short-term demand restraint will only lead to a “stop-go cycle” in the property market, that is, property price volatility marked by sharp rises and falls. It will merely distort and weaken the self-adjusting functions of the market, making it more difficult for ordinary people to tell if property prices will go up or down. Some will benefit. But there will be more victims. For instance, if property prices fall sharply, those who have bought property at high prices will find themselves in a precarious position: Their mortgage bankers may at any time ask them to inject more cash to increase their equity in their property. It is certainly possible that the run-away property prices of the past year were the unintended result of the short-term measures taken earlier by the Government and the banks to restrain basic demand.

Society has become more advanced. The economy is better developed. The average size of a family has shrunk while the number of families has increased. It is natural and healthy that the demand for private residential property should go up sharply. The motion today calls for combatting speculative activities. But who are the good guys and who are the bad guys in this context? It is not just as plain as black and white, is it? Let us talk about buyers first. A developer recently told me the following: When residential property was selling for \$5,000 per sq ft, more than 3 000 buyers would line up to buy whenever a new development was put on the market. The Government has now made it widely known that it will announce in June measures for cooling the property market. Even before anything is done, property prices have already declined by between 10% and 15% and the volume of property transactions has declined by 75%. Now, when a comparable new development is put on the market, there are only a handful of buyers. Something else has also happened. According to the Government, the genuine end-users, those who applied for loans under the Sandwich Class Housing Scheme, have suddenly disappeared. Judging him by his action, every buyer seems to be a speculator. When he sees a rising market, he scrambles to buy. When he sees a falling market, he holds off. This is basically because everybody in Hong Kong already has a roof over his head. People buy residential property mainly as a long-term investment or to upgrade their homes. They can buy this year or they can hold off until next year or the year after. Another thing is that people in Hong Kong change their residential addresses a lot. This can be seen from the address changes reported during each voter registration exercise. When property prices suddenly take off or come down, buyers and speculators take market actions together, making it difficult for enforcers to tell who are the good guys and who are the bad guys.

Now let us talk about sellers. If a capital gains tax is to produce an instantaneous effect on property prices, its rate must be high and it must be enforced vigorously. Mr Vincent CHENG told us that, when China tried this early this year, the instantaneous effect was a deterrent effect on investors. Without investment, there will be no fresh supply of residential property over the intermediate term. Without investment, there will be no revenue from the capital gains tax over the long term. In each case, what will happen is just the opposite of what is intended. If an over-dose is prescribed, both supply and demand in the market will disappear. In the end, we will be farther and farther away from the goal of helping people to buy their own homes.

The Hong Kong Society of Accountants has major reservations also about the technical problems of enforcing a capital gains tax on property. The Government has made its basic position clear on a number of occasions. It clearly doubts the long-term efficacy of a capital gains tax. It understands full well that a capital gains tax will be effective only if the rate is high. A high tax rate is bound to lead to massive tax avoidance. For instance, people can form offshore companies and use them to buy and sell property in Hong Kong. If tax regulations become too complex, the Inland Revenue Department must hire a large number of additional tax assessors. Therefore, a capital gains tax will not

be to the Government's advantage in terms of revenue receipts or enforcement costs. I think that, though Dr HUANG means well, there is a strong *prima facie* case against a capital gains tax.

Now that the Government has reserves of over \$100 billion, its first order of business should be to make a full effort to increase the supply of housing. It should not divide its attention and waste money and manpower on a study just to prove that a capital gains tax is the wrong prescription.

With these remarks, I oppose the motion.

MR JAMES TO (in Cantonese): Mr President, I would like just to respond to some of the points made by Members who spoke a moment ago.

Mr Ronald ARCULLI says that introducing a capital gains tax would be using a revenue means to a non-revenue end. But I recall that Mrs Selina CHOW of the Liberal Party made a suggestion some time ago to the Government to collect a tax on vacant flats. Well, that, too, was a suggestion to use a revenue means to a non-revenue end, was it not? Many of our existing taxes also serve other purposes apart from putting money into the treasury. Examples are tobacco and alcohol duties, which are collected with citizens' health in mind. Therefore, we cannot say that all taxes must serve a single purpose and none other.

Mr ARCULLI also says that introducing a capital gains tax would be equivalent to penalizing the 850 000 existing property owners. I believe that the Government ought very much to penalize them if they all sell their property within this year or the next. But the truth is that not all of the 850 000 existing property owners are speculators. Only some of them are. Mr Eric LI puts it well when he says, "It is hard to tell the good guys from the bad guys." What we are now proposing is a capital gains tax which will enable us to tell the good guys from the bad guys. It will let us know who are the speculators and who are the end-users. The capital gains tax will be directed against the short-term speculators who buy property and resell it for gain. It will have no major impact on those who have confidence in the prospects of Hong Kong's property market and who make long-term investments.

Mr ARCULLI says that he opposes the motion because the Government has been studying the property market for one and a half years already and is now close to drawing the conclusions. If this is really the case, then Mr ARCULLI should vote for today's motion and urge the Government to give a report to this Council immediately. But he says that he opposes the motion. I wonder what he is really opposing. Is he opposing the study or is he opposing the Government giving the report to this Council? I hope that Members from the Liberal Party will answer this question later.

Mr TAM Yiu-chung suggests that a property transfer tax should be introduced. I feel that his proposed tax is similar in spirit and in substance to the short-term capital gains tax proposed by the United Democrats of Hong Kong. However, if Mr TAM's proposed tax rate is fixed between 15% and 16.5% as he has argued, I doubt it will be "instantaneously effective" and deal a "heavy blow" to speculators, as he would have us believe.

Mr Vincent CHENG says, "We should not suppress demand." Mr President and colleagues, will we really be suppressing demand if we increase the costs of transaction for speculators? We are not telling anybody to stop buying property. If a property buyer is a genuine end-user, he will have nothing to fear. Nor will he have to worry if he decides later to trade in his original home for a new home. This is because our existing tax system does not require him to pay tax under these circumstances.

Mr CHENG also says that, if the tax rate is too high, some people will not want to work. I really cannot see his logic. We are not talking about any tax on income from work. We are not talking about an extra tax on over-time work, are we? We are talking about a capital gains tax on property value appreciation. I fail to see how Mr CHENG's comments are relevant. Mr CHENG says that one solution is to increase the stamp duty on property transactions. I cannot help but observe that in that case the stamp duty will be a revenue means to a non-revenue end, will it not? So, there seems to be a contradiction between the various arguments advanced by him.

Mr Eric LI says that the capital gains tax is sugar-coated poison and will ultimately have the effect of "robbing the rich to pay the poor". I would like to tell Mr LI that any progressive tax structure requires higher-income people to pay more tax. The only question is whether the nature of the tax itself is acceptable. Our existing tax structure also "robs the rich to pay the poor", does it not?

Mr LI says that he opposes today's motion. I hope that I will have a chance to talk to him later as to why he does so. Has he already received a detailed report on the merits and demerits of a capital gains tax? If he has, I hope that he will make a detailed analysis for the benefit of Members and provide a copy of his report so that we may all debate it on another occasion. If not, why then is he obstructing the study that this motion calls for? I am greatly puzzled.

With these remarks, I support the motion.

MR FREDERICK FUNG (in Cantonese): Mr President, run-away property prices have been a matter of the greatest concern to the people of Hong Kong in recent years. The general public may not be able to afford to buy a home even after a life-time of work. On the other hand, many speculators can make a profit of several hundred thousand dollars within a month or two. What kind of

a place is Hong Kong? I feel that it is speculators' paradise and salary earners' hell. A salary earner spends all his hard-earned income on mortgage payments. This sounds like a horror story but it is true. Not only do ordinary salary earners have difficulty in buying homes, but some members of the middle class also complain that they cannot afford to buy a suitable home. Things have come to such a pass that home ownership now marks the difference between the rich and the poor. If one owns a home, one is rich. If one does not own a home, one is poor. As Chinese living in Hong Kong, what we want the most are a safe home and an enjoyable job. We need a snug nest. With 1997 approaching, Hong Kong's stability will be greatly enhanced if every family owns a home. I would like to make a comment from the supply and demand angle on what should be done about the runaway property prices in the private sector.

On the supply side, I think that the most fundamental thing to do is to make an effort to increase the market supply of residential property. This effort should consist of two parts. One is to find a long-term solution. The other is to find a short-term solution. By long-term solution, I mean an increase in the supply of land, something that the Government has been stressing all the time. That the supply of land should be increased is undoubtedly right. But even with more land, more housing will not be completed until five or seven years later. So what are we going to do about the housing shortage in the meantime? I think that we must find a short-term solution.

Of course, it will be difficult to increase supply sharply in the private residential property market. This is because China and the United Kingdom have agreed to limit the annual supply of land. However, the supply of government-controlled housing can be sharply increased within a short time. I have two suggestions to make:

Firstly, the Government can make use of the Home Ownership Scheme under the Housing Authority and the Sandwich Class Home Ownership Scheme under the Housing Society. Presale of vast numbers of uncompleted units under these two schemes can be launched on the market by the authorities within the shortest possible time. For instance, we can put on the market now not only the units that are scheduled to be completed this year but also those which are scheduled to be completed next year and the year after. By doing so, we can, within a few short months, put an additional 40 000 or so HOS or Sandwich Class housing units on the market. If we also put on the market the units that are scheduled to be completed in the more distant future, we can increase the supply to over 60 000 units. I believe that a citizen will feel more assured after he has bought a unit with a future completion date, knowing that he will be able to occupy the unit in two or three years.

Secondly, concerning demand, we must make an analysis to find out what kinds of people want to buy residential property. Demand for residential property is generated mainly by three groups of people:

- (1) genuine end-users;
- (2) investors; and
- (3) speculators.

I do not think that we should do anything to discourage groups (1) and (2). The market should be able to meet the demand of those who buy residential property as investors or end-users. However, we must discourage speculators. There are two ways to do so. Firstly, we can control property prices. (Please do not be alarmed, particularly Mr LI.) Hong Kong in fact has had price controls all the time. The price of rice is a case in point. I agree that price controls are not the best way, since they will not only deter speculators but also discourage investors. But what can we do that will hurt speculators without also hurting end-users and investors? I feel that it is feasible to increase the cost of speculation for speculators. This is why I am essentially in agreement with Dr HUANG Chen-ya's motion calling for a short-term capital gains tax to be collected from property speculators. The Association for Democracy and People's Livelihood, including myself, made some similar suggestions in the past. We suggested that a higher profits tax should be collected on short-term gains from property transactions. We suggested that, if somebody sold a piece of property after holding it for under six months, he should be required to pay a 60% profits tax; if he sold a piece of property after holding it for between six months and one year, he should be required to pay a 40% profits tax; if he sold a piece of property after holding it for between one year and two years, he should be required to pay a 30% profits tax; but if he sold a piece of property after holding it for more than two years, he should not be required to pay any special tax. I feel that, if this is done, we will not only hurt the speculators but also discourage property hoarding.

I would like now to respond to something that Mr Ronald ARCULLI said. He says that there are far fewer families in Hong Kong than there are residential units. This is true. Hong Kong has 1.25 million families but more than 1.4 million residential units. Why then do we have a shortage of residential property? The explanation is that, in many cases, a speculator or a person of a certain kind owns several residential units, sits on his holdings and waits for a good price before selling them. I hope that the measures to be announced by the Government in June will be effective in restraining property prices. I also hope that the Government will undertake a comprehensive review which will include a feasibility study on capital gains tax. The Government should try to find out how the capital gains tax on property value appreciation is working in other countries and give a report to the Legislative Council.

With these remarks, I support the motion.

MR LAU WAH-SUM (in Cantonese): Mr President, although the motion seeks to urge the Government to study the capital gains tax (CGT), it is a virtual Pandora's box ready to be sprung. Why should I say this? It is because there are, among many others, two factors that are particularly essential to Hong Kong's present economic success. First of all, Hong Kong people are hardworking. Secondly, both overseas and local investors are very keen to invest in Hong Kong. The introduction of CGT will obviously scare investors away. I do not intend to repeat to this Council the example of China cited by Mr CHENG just now. China's proposal to introduce CGT has, in fact, made all investors baulk at investing.

I learned from the newspapers that the proponents put forward the proposal with three goals in mind. First, to curb property prices and help ordinary citizens purchase their own homes; second, to narrow the gap between the rich and the poor; and third, to provide the Government with substantial added revenue. With such added revenue the Government can, of course, increase enormously its expenditure on social welfare. Yet, we should not forget that the more welfare we provide, the less will people bother to work.

I have been involved in taxation matters for more than a decade. Even without the need to conduct a study, my experience tells me that there are more demerits than merits in introducing CGT. Just now two Members have already described the demerits and the problems CGT may bring about, such as tax evasion. Later Mr Peter WONG will elaborate on the demerits of introducing CGT.

In order to curb soaring property prices, we have to get to the root of the problem and prescribe a remedy suited to the case. According to the studies made by many experts, the demand for real property rose sharply between the year 1991 and 1993 because our population increased by 220 000 during these few years. Yet, the Government estimated that our population would not reach the 6 million level until the year 1999 or 2000, but presently we have already exceeded this number. Population growth will naturally boost the demand for real property. The studies also indicated that the increase in population was partly caused by the return of professionals who emigrated to other countries in the earlier years. These people, aged between 30 and 50, are very keen to purchase real property. Secondly, as a considerable number of foreign companies have set up branches in Hong Kong during these years, they need to provide quarters for their expatriate staff, thus leading to the surge in housing demand. Thirdly, many mainlanders who came to Hong Kong with one-way permits are extremely well-off. They have poured huge sums of money into the property market and, as a result, property prices are rising continuously. The experts also found that there was an increase in the number of people aged between 30 and 50 despite the declining birth rate in Hong Kong and that the average family size also shrank from 4.2 to three persons, which should mean an increase in the number of families. These families also need to purchase their own homes, thus whipping up the demand for real property.

The last point to note is the rapid increase in the number of old buildings demolished during these few years. Nevertheless, we should realize that in most cases the redeveloped buildings have changed from residential to commercial purpose and consequently the demand for residential units rises dramatically.

Now let us take a look at the housing supply. According to the Government's Long Term Housing Strategy, the Administration has planned to supply 40 000 rental and home ownership units each year. As regards private sector housing, 30 000 units are expected to be completed each year. Thus we should have a total of 70 000 units. However, the actual number of units completed shows that we are far behind this target. Taking 1993 as an example, there were only slightly more than 19 000 residential units completed in the private sector, which is far short of the target of 30 000 units. Given the excessive demand and the tight supply, the property prices are staying on the high side, thus providing a good opportunity for speculation. In fact, the Government has, through the collection of stamp duty from sellers, subjected most of the speculators to profits tax. I think the urgent tasks before us are to increase land supply, expedite land developments and the vetting procedures. I would like to point out that the zero growth policy implemented in various government departments several years ago has been a mistake because some departments need to increase their manpower to deal with increasing work loads. For instance, if the number of land executives and land surveyors had been increased several years before, there would not have been such a large backlog today

The buzzer sounded a continuous beep.

PRESIDENT: You have to stop, Mr LAU.

MR WONG WAI-YIN (in Cantonese): Mr President, the Governor stressed publicly that holding property prices down would be his first order of business. Soon afterwards, the Government announced four price-curbing measures. The Legislative Council and members of the public have criticized these measures as futile, like "fetching water from far away to put out a fire next door". They have also called the measures "old wine in a new bottle". The measures have not been useful for holding property prices down. The Government has now stressed that it will announce extra measures next month to cool property prices further. Meanwhile, however, according to the Financial Secretary, the Government does not want to see a sharp drop in property prices, which may have undesirable side effects. He notes in particular that a capital gains tax on property value appreciation will be unfair to the more than 800 000 people who already own property. We can tell from his words how resolved the Government really is to hold property prices down! We greatly doubt the Government's resolve.

The Government will perhaps announce new measures which include compelling developers to put on the market such residential property as they may be hoarding and making it more difficult for developers to hoard residential property massively. These measures to boost supply may stabilize the market and cause property prices to decline over the short term. But commercially viable market strategies can be developed to sustain the upward trend of property prices to a certain extent. The Government will perhaps try to hurt speculators by raising the cost of speculation. This is action to hold down demand. Yet the Government wants to limit the impact of its price-combating measures lest there be adverse effects on the operation of the market. In most cases, it is the small speculators who will be hurt. But even small speculators are likely to find ways in six months or a year to pass their additional costs to end-users. The effect, like that of the stamp duty, will be short-lived.

The Meeting Point thinks that, if the Government really wants to hold property prices down, it should do what is within its power as Hong Kong's biggest developer. It should limit property price increases by increasing supply and setting reasonable price levels. It should stabilize the residential property market and thereby solve citizens' housing problems. On the supply side, the Government should participate in the market as a supplier. It should change the long-term housing strategy which gives the dominant role to the private sector. A new long-term housing strategy should be adopted, giving the dominant role to the public sector, which means public housing and Home Ownership Scheme housing. The Government should build more public sector housing for sale or rent according to the needs of the public. This will enable genuine end-users to rent or buy public sector housing, as the case may be, depending on their financial situations. The Government may also wish to consider making rental units of public sector housing available on a priority basis to sandwich class families and to the better-off families now living in public housing estates.

The Government has already promised to make 10 000 Sandwich Class housing units available. The Meeting Point suggests that the Government should put all of these uncompleted units on the market by way of presale before the end of this year, offering them as units that will be ready soon or in the more distant future. At the same time, the Government should raise the target for the Sandwich Class housing to 30 000 units within three years. Not only will this increase supply and stabilize property prices, it will also solve the difficulty of sandwich class families in finding homes to buy for their own habitation. The Government should co-ordinate with the Housing Authority in having more Type-II public housing units built for sale, so as to increase supply further but not at the expense of rental public housing. The Government is Hong Kong's biggest developer. It has an influence on property prices and should use it. It should not have linked the prices of public sector housing to the prices of private sector housing, thus causing a vicious circle to develop to take the prices of public sector housing ever upwards and make HOS housing unaffordable to members of the public. The Meeting Point further suggests that the Government should immediately freeze the prices of HOS housing at their

present level. The prices of HOS housing then will not keep rising in tandem with the prices of private sector housing but will remain affordable to members of the public.

Over the long term, the Meeting Point thinks that the prices of public sector housing, like the rents of rental public housing, should be set having regard to the incomes of members of the public and what they can afford. The 1990 policy address of the then Governor said that, by 1997, 60% of all Hong Kong families should own their homes. This surely can be done since the Government is Hong Kong's biggest developer. The Government surely must do more to improve the people's livelihood and consider it its first order of business to solve their housing problem.

Dr HUANG Chen-ya's motion today urges the Government to proceed at once to make a study of a capital gains tax on property. The Meeting Point agrees that such a study should be made as soon as possible. The purpose of such a capital gains tax is of course to raise the cost of property transactions. But will it be effective in holding property prices down? The answer will depend mostly on the tax rate. Too high a rate will have major repercussions for Hong Kong's property market besides holding property prices down. But I believe that too low a rate will not be of much effect, particularly because speculators can pass part of their higher costs to end-users. Therefore, the Meeting Point agrees that a study should be made of the capital gains tax.

Just now, many Members said that they would vote against the motion. They included Members from the Liberal Party and others. Mr Eric LI, for instance, spoke against the motion in his capacity as a tax expert. But I stress that we should all take a better look at the specifics of the motion. The motion merely urges the Government to study a proposal, to analyze its merits and demerits as well as feasibility and then to submit to this Council a report on the findings of the study. Mr Ronald ARCULLI says that the Government has in fact already completed such a study but is withholding the report from us. I hope that the Secretary for the Treasury will, when he speaks later on, clarify if such a study has in fact been completed. Mr LAU Wah-sum says that the study will not be necessary, since he can tell from experience that a capital gains tax will have more demerits than merits. It seems that such an arbitrary and dogmatic statement should not come from a responsible Member. Members who oppose to the motion are afraid of something. What are they afraid of? We are now talking just about a study. We are not asking the Government to introduce a capital gains tax. We are just asking it to make a study. Why should Members be afraid even of a study? Some Members say that it is a foregone conclusion that a capital gains tax will have more demerits than merits. Well then, in that case, the findings of the study will confirm their conviction. So they should support the study. I believe that they are afraid of the study solely because its findings may be that a capital gains tax will have more merits than demerits. This will put them in an embarrassing position, and therefore

The buzzer sounded a continuous beep.

PRESIDENT: Mr WONG, you have to stop.

MR LEE WING-TAT (in Cantonese): Mr President, I do not want to repeat the points already made by Dr HUANG Chen-ya and Mr James TO. I just want to respond to some questions.

First of all, some colleagues say that property transactions are already subject to profits tax. Of course, any property transaction identified by the Government or the Inland Revenue Department (IRD) as a trading activity is subject to profits tax. However, it cannot be denied that among property transactions many are short-term asset transfer activities. In respect of many of such activities, it is hard to prove, as IRD would confirm, that they are essentially a transfer of asset or a trading activity. IRD has opened many files on such activities and has succeeded last year in recovering some of the profits tax due. Obviously, however, what IRD is doing cannot make it a mandatory requirement that those engaged in short-term property transactions must pay tax. This is a loophole of the law.

According to information supplied by the Government, 6% of all property transactions between private parties take place in the name of companies. But such transactions actually account for more, much more, than 6% of all property transactions. We do not have the exact figures now. We hope that Mr Donald TSANG will see if there may be information on this point to supply us. How many property transactions, in terms of the percentage proportion of overall market turnover, take place in the name of companies? This is another question that we must look into.

In fact, introducing a short-term capital gains tax on property will send the right signal to the market. Despite one Member's views to the contrary, I feel that such a signal will be the right signal. If you buy a home in which you yourself will live, or if you trade in your existing home for a bigger home, you probably will not have to pay any capital gains tax. Only property speculators will be required to pay capital gains tax.

Some Members say that Hong Kong has a very simple and very stable tax system and that any study of a capital gains tax will cause conceptual damage. I feel that this is an exaggeration. Why cannot we even make a study? I feel that this assertion is tantamount to making in this Council a very anti-intellectual, anti-scientific and anti-truth-seeking statement. Why cannot we even try to find out what it is like? Must all tax matters adhere to a principle that is immutable and final, the principle which says that the tax system must be simple? What kind of a tax system should be in force depends on the circumstances. A simple tax system is just an abstract principle. Two or three years ago, I discussed the idea of a sales tax with the Financial Secretary. Is a sales tax not even more

complex? Of course, sales tax differs from capital gains tax. Sales tax is to be payable by the totally defenceless members of the working class, who will not even know how to oppose the tax. A capital gains tax is to be payable by property speculators and it will also hurt developers and members of professions who offer support services to property speculation. Who are they? I do not have to name them. They are very nervous. Why did they not oppose the sales tax idea which is even more complex and troublesome? Why are they so nervous at the mention of the capital gains tax? Clearly, interests are more important than principles in this case.

In fact, our suggestion is only about a tax on short-term capital gains from property speculation. Those who sell property acquired less than three years ago may have to pay this tax. It is quite likely that those who sell property acquired more than three years ago do not have to pay it. In this sense, therefore, the tax will be very helpful to genuine end-users, to those who buy property for their own use. I said during one debate in this Council that the run-away property prices gave little benefit to the 850 000 existing property owners, being just a paper gain. The unit where I live used to be worth \$1 million. Now it is worth \$2 million. But it is still the same unit that it has ever been, same size and so forth. When property prices go up faster than individual and household incomes, it is difficult for members of the public to improve their living environment. They cannot trade in their 400 sq ft homes for 600 sq ft or 800 sq ft homes. Simple arithmetic will tell us why.

I had a talk just now with Mr Eric LI. I learnt that the Hong Kong Society of Accountants had mentioned a similar tax to the Financial Secretary (who, I think, has already received the message). But they did not call it a "capital gains tax on property". Nevertheless, it was a tax similar to that being now proposed by the United Democrats of Hong Kong. Yet they will not support our motion. In fact, our purposes are similar. We both want property traders to pay a profits tax. Our proposed tax will be payable by those who do not have to pay profits tax now. Mr LI just calls the same tax by a different name. I do not understand why he will not support us. I hope that he will change his mind.

Lastly, I would like to talk about Mr LAU Wah-sum's points. Mr LAU says that many people have stopped investing in property in China since its recent announcement of a land value appreciation tax. He finds that tax terrifying. I do not agree with his simplistic analysis. What is deterring people from investing in real property in China? I think that the deterrent is that prospective investors do not know what kind of a property or land value appreciation tax will be put into effect in the end. If the tax rate is low, almost as low as the rate of profits tax, why should investors be afraid? If Mr LAU's argument is valid, then nobody should be investing in any country where a capital gains tax exists. But let us look around. The United States levies capital gains tax, and so do Canada and Japan. Among all Asian countries, only Singapore and New Zealand do not levy it besides Hong Kong. Is it true that people are investing in New Zealand, Singapore and Hong Kong but nowhere

else? The answer is no. The main deterrent is that investors do not know how much capital gains tax they must pay and how it will be levied. The capital gains tax *per se* is not a deterrent. So I feel that Members should not exaggerate the adverse effects of the capital gains tax. Mr Ronald ARCULLI says that he will vote against the motion. I totally fail to see why. I must reiterate that opposing the study is anti-scientific, anti-intellectual and anti-truth-seeking

I wonder if Mr TSANG has made such a study. If he has, he should tell us about the study's findings. If he fails to do so, people will keep thinking that he is not telling the truth. It will seem that he has made such a study but is hiding the findings because they are not to his liking. However, my own feeling is that the Government has not made such a study. At least, as convenor of the Legislative Council's Housing Panel, I have received a letter from the Government saying that it is studying the matter but that the study has not yet been completed. So I feel that those who say that they will vote against the motion should not do so.

MR PETER WONG: Mr President, amidst public outcry against spiralling property prices, the call to impose a capital gains tax (CGT) has once again revived. The motion today, which urges the Government to study the feasibility of CGT, serves only for us to rehearse the familiar arguments for and against this fiscal measure. Let there be no doubts about the Liberal Party's stance on this issue — we believe that CGT as a short-term measure to curb real property speculation is inequitable, impractical and hazardous. In other words, a wrong prescription to cure the property speculation disease. This view is generally shared by my functional constituents.

First, equity. In many countries, especially those with low tax rates, any gains made from the sales of capital assets including real property are exempt from tax. Hong Kong is no exception. Supporters of CGT argue that it will broaden our tax base thereby bringing extra income for the public coffer. However, with a \$15 billion budget surplus, does the Government really need the money that CGT can raise? More importantly, why should one form of capital gains be taxed while other capital investments such as foreign currency, stocks and shares are let off the hook?

Second, practicability. The Liberal Party's strong objection to CGT is based on the following practical problems envisaged. Unlike the levy of stamp duty on property transactions, CGT, to be effective, has to be set at a level high enough to produce a deterrent effect. It is difficult to calculate the appropriate CGT level, since appreciation of real property is due, among other factors, to rampant inflation. Here, Hong Kong can learn from China's unpopular attempt in imposing the real estate gains tax which in its present form fails to separate inflation from a real gain, thereby taxing the same profit twice. In my view, the introduction of CGT will complicate our low, simple and predictable taxation system.

Furthermore, it is difficult to differentiate speculation for gain from capital investment made by long-term investors who buy real property to hedge inflation and to produce rental income. Even if it were possible to clearly define short-term capital gains on real property, our tax system which relies on taxpayers' voluntary disclosures in tax returns immediately poses enforcement problems. To track down speculators who would not report property sales or defer transactions until after the short-term measure is over will place a further drain on the hard-pressed Inland Revenue Department (IRD) investigation team. The immense resources needed to initiate and regulate a CGT, which can be substituted by other low-cost measures serving the same functions, outweigh the benefits gained.

Third, risks. CGT is an unstable source of revenue. While there is no guarantee that introducing CGT will automatically bring property prices to a realistic level, its introduction will definitely send out strong negative signals to local and overseas investors. It is likely to drive away individuals, whose hard-earned money has already been taxed through salaries tax and income tax, to go on "tax exiles" in overseas tax havens. Even if CGT may depress real property price in the short term, its knock-on effects on the property market, stock market and other business sectors are too pandemic to be ignored. Indeed, CGT can only victimize non-speculative investors and end-users who have underpinned strongly the property market in Hong Kong. I have spoken on the demerits of CGT, the only merit I can think of is to give me and my constituents of very lucrative capital gains tax practice. For the good of Hong Kong, I feel that this really should be an overall demerit.

I understand that the IRD has identified about 40 000 cases last year that are prime property trading suspects. Some \$400 million of assessments have been issued and another \$500 million are likely to be assessed, so that short-term speculations will be fully taxed. Various suggestions have also been made to counter speculation by fiscal means. Firstly, mortgage deposits can be increased but this will make it harder for first time buyers to purchase their own homes. Secondly, double rates can be imposed on flats left vacant for more than six months, but speculators can easily make the flats appear occupied. There have also been suggestions to deem certain quick resales as trading or impose a withholding tax. We have to think very carefully whether such actions will have the desired effect, otherwise we may end up with the patient, the vibrant property market, dying on the operation table.

Mr President, property prices in Hong Kong have now gone beyond realistic bounds and the dream of the ordinary Hong Kong citizen to own a home has been largely shattered. Just imagine the hardships of a sandwich class family with a monthly income of \$25,000, having to pay an \$18,000 mortgage payment for a 600 sq ft flat. The property price hike is attributable, to a great extent, to the real demand for homes, the short supply of land and the negative real interest yield. My Liberal Party colleague, the Honourable LAU Wah-sum, has already explained that the real cause of increase in domestic property prices is one of supply and demand. We need a proper study of the supply and demand

of domestic property situation — a task now in the hands of the Government task force. I trust that it will work closely with the economic experts and interested parties to come out with a solution that we can all support.

While the motion today aims to dampen ruthless property speculation, to pursue CGT is an inappropriate means to that end. CGT not only is unjustifiable, costly to enforce and will affect the way our economy has developed, but also violates Hong Kong's liberal tax policy. As such, we do not need a feasibility study to confirm the overkill which CGT can surely bring to our property market.

With these remarks, I oppose the motion.

MR ROGER LUK (in Cantonese): Mr President, during the Taiyuan reign of Emperor Xiaowu of the Jin Dynasty, a fisherman of Wuling Prefecture, while fishing in a creek, lost his way and strayed into a wood of peach trees. He found a different world at the back of the wood. "There was a wide expanse of flat land with neat houses, lush fields, scenic ponds and groves of mulberry trees and bamboos. The fields were criss-crossed with paths. Chickens and dogs were seen here and there." The place looked like heaven on earth.

Hong Kong today may not be like the paradise described by the poet TAO Yuanming. Still, it is a happy home to over five million people. "A mountain does not have to be of a towering height; it will be famous if there are immortals dwelling on it. A river does not have to be deep; it will be legendary if there are dragons dwelling in it. Mine is but a humble abode; it will be fragrant if I am virtuous." What people generally want is in fact nothing more than a roof over their heads. One is not asking too much if one simply wants to own a home. Unfortunately, because of escalating property prices in recent years, one must now sigh at the unaffordability of even a simple home.

We hear again and again that run-away property prices are due to various objective causes: high inflation, low interest rates, the shortage of sites at good locations and so forth. But it must not be forgotten that waves of speculation have made things worse. Such being the objective situation, it is not surprising that members of the public should echo the calls of politicians for the introduction of a capital gains tax to discourage the improper practice of property speculation.

A home for every family is becoming an impossible dream. This is a social ill and not a sign of a healthy economy. So our first order of business should be to hold property prices down. This is a responsibility from which the Government cannot run away. However, will a capital gains tax be instantaneously effective just as we hope?

Proponents of capital gains tax are of course right to say that the tax burden should be shared evenly. It will indeed be wrong if those who work

have to pay tax on their earned incomes while those who do not work can keep all that they have come by. However, if the tax system is unfair, the unfair parts should and can be corrected. There is no need to change the entire system. Proponents think that a high capital gains tax rate will deter speculation, cool the overheated property market and stabilize property prices to the benefit of the general public. Yet just the opposite will happen if the experience of Europe, America and Japan is any guide.

Many Members speaking before me have already provided detailed analyses of the adverse effects of a capital gains tax. I just want to offer a few additional comments:

- (1) If a capital gains tax is payable only on gains from property transactions, it will be partial and unfair. If it extends to other kinds of capital gains, such as gains from stocks, bonds, commodity futures and precious metals, then we will see a transformation of our tax policy. Therefore, a capital gains tax will have for Hong Kong's economy wider and farther-reaching repercussions than are imagined by its proponents.
- (2) In economic theory and in practice, a capital gains tax will slow down market activities and lead indirectly to a decline in supply, to the long-term detriment of consumers. We should indeed learn a cautionary lesson from what caused Tokyo's booming property market and its aftermath a few years ago.
- (3) In a free economy, ways, legal or illegal, can always be found to avoid tax. It is not easy at all to enforce a capital gains tax. The rate of capital gains tax must be high if speculators are to be deterred. But a high capital gains tax rate will lead to under-the-table deals and give rise to a hundred other ways to avoid or evade tax. The net outcome will be easy to imagine.
- (4) Hong Kong has long adopted a simple tax system. The introduction of a capital gains tax will in fact change the tax policy. It therefore is not an isolated issue to be handled on its own. It must be handled as an integral part of the tax system.

The property market is now overheating with adverse effects on people's livelihood. This problem must of course be addressed. But there are no good short-term solutions. Administrative measures may cool the market for a time but will leave endless trouble for the future. It is not advisable. Increasing supply can of course help to slow down the upward trend of property prices. But this effect will not become noticeable immediately. Therefore, our first order of business should be to eliminate the factors that contribute to speculation, to stabilize the market and to reassure members of the public. These moves will have a positive impact.

The marketing methods used by property developers have long been widely criticized. They put units on the market long before they are ready for occupancy. They sell too many units through internal subscription. They set the amount of the initial deposit too low. They raise prices too often. They allow pre-occupancy transfers. All these methods indirectly contribute to property speculation. Therefore, even as they strongly oppose the capital gains tax, developers should review their marketing methods and come up with some positive changes. They should put units on the market only shortly before they are ready for occupancy. They should stop selling units through internal subscription. They should change their bad habit of phasing their sales, offering only a few units at a time and asking for a higher price with each new offer. They should forbid pre-occupancy transfers. These changes will help to discourage speculation, stabilize the property market and put the market on the right track.

Mr Frederick FUNG says that Home Ownership Scheme housing units should be put on the market long before they are ready for occupancy. This may work for a time. But if presale of uncompleted units is not sustained as a policy, the number of units put on the market will eventually decline and we will again have a supply shortfall due to artificial factors. Therefore, over the long term, a proper policy on public sector housing is needed as the main stabilizing factor for the housing market. We have had public sector housing for 40 years. Public sector housing has accomplished its mission as a social service. Thanks to it, a vast number of middle- and low-income people are now living in homes that they can afford. We should build on this foundation in order to satisfy citizens' home-ownership aspirations. As a matter of fact, Hong Kong now has two residential property markets: a public sector market for dwellers and a free market for private sector housing. The two complement each other. Right now, however, the situation is that property prices are still rising in the free market, owing to strong internal and external demand pressures. Prices in this market are now soaring from the levels that members of the public can afford. Meanwhile, in the market for dwellers, where most units are rental units, there is not enough of a turnover to maximize the utility of these units. To end this stalemate, we must have a different policy for public sector housing. Most units of public sector housing should be sold to middle- and low-income people, who want to become home-owners. Rental units should play only a supplementary role. This will increase the rate of turnover in the market for dwellers and make this market a real market where people can shop for the homes that they want to buy depending on their financial resources. Selling rental public housing units to their sitting tenants is the first step in this direction.

Mr President, introducing a capital gains tax to discourage property speculation is an ill-advised policy. It is like drinking poison to quench thirst. Adverse effects will ensue long before good effects will emerge. Besides, the Inland Revenue Department is already taking active steps to collect profits tax from property speculators. In theory, this will be similarly effective as a deterrent. It will be a waste of time and resources to make a study of a capital

gains tax, which is not feasible in practical terms. The current wave of property speculation is partly due to the lower than inflation interest rates. Interest rates have hit the bottom and are now picking up again. Inflation, on the other hand, has slowed down. As real interest rates switch from being negative to positive, the wave of speculation will diminish of its own accord.

For the above reasons, I do not support the motion.

MR FRED LI (in Cantonese): Mr President, the motion moved by Dr HUANG Chen-ya today, which urges the Government to study the feasibility of levying a capital gains tax (CGT) on real property, is meant principally to combat speculation in real property and to bring property prices down. Actually, property appreciation is not the only item on which capital gains tax can be imposed. Capital gains tax can be levied on items such as landed property, shares and stocks, housing property and bonds.

Undeniably, the current property speculation in the private sector is very serious, and property prices have spiralled to an intolerable level. Any measures which may help to curb the spiralling prices are worth studying and considering. Just now Mr WONG Wai-yin of the Meeting Point has gone to great lengths in discussing the long-term policy of curbing property prices. I, on the other hand, wish to look at the issue from a more macro point of view and to talk about an overall review of the tax system.

All along, the Hong Kong Government has taken great pride in its policy of simple and low tax which has attracted investments from overseas. It has been complacent with the economic prosperity and boom brought about by this policy. Hence, the policy has been regarded as a sacrosanct and immutable principle of financial management by successive Financial Secretaries.

However, in the face of rapid social changes, continual economic transformation and increasing disparity between the rich and the poor, the Hong Kong tax system has not been revised to cater for the actual needs of society. Rather, the Government insists on pursuing a policy of simple and low taxation. How can the same old rule apply throughout to varying situations?

The tax base of Hong Kong has been criticized by many academics as being extremely narrow in that it allows little flexibility in the Government's policy of revenue and expenditure. The most seriously criticized aspect of the taxation system in Hong Kong is that it is not fair and cannot function properly in the redistribution of social wealth. Therefore, there is a need for an overall review of the Hong Kong tax system. I have also urged the Government many times to set up an independent tax review committee to review the current tax system. Unfortunately, the Government never takes our advice, but still holds fast to the same old set of rules and guidelines.

The high property prices in recent years have enabled many property owners to reap substantial profits and to accumulate vast wealth. However, since no capital gains tax is levied in Hong Kong at the moment, we can achieve neither horizontal equity (that is, taxpayers who earn similar income and who are more or less in the same financial situation should pay tax at the same rate), nor vertical equity (that is, the more the taxpayer earns, the higher the rate at which he should pay tax). We can say this is a major loophole in the present tax system.

Capital gains tax is levied in many advanced industrial countries and developing countries as well. Its objective is to maintain a fair and equitable taxation principle, because if the increased wealth brought along by capital gains need not be taxed, it will be unfair to people who rely on wages to make a living but who also have to pay taxes at the same time.

Undeniably, it is not easy to change any taxation system. Both the taxation authorities and the taxpayers need time to familiarize themselves with the change, and the cost of administering a capital gains tax is higher than that of administering other taxes; but reasonable taxes should not be stagnated because of efficiency problem in the taxation administration system. In Asia, for example, capital gains tax is levied in Japan, the most economically prosperous country, as well as in ASEAN countries such as Indonesia and Thailand. It is thus clear that such tax is absolutely feasible as far as taxation administration is concerned. This would pose no problem at all in Hong Kong in particular, given the fact that the Inland Revenue Department of Hong Kong is a very efficient department. If we think the levying of such tax in Hong Kong as a financial centre would have adverse effects (many Members here may have such worries), precedents exist in international financial centres such as in Britain, the United States and Japan, where capital gains tax is levied. I feel that we should not allow such worries and doubts to linger in our minds.

Of course, we cannot overlook the problems resulting from the introduction of a new form of tax. Capital gains tax is quite a complicated form of tax. Although today we are only discussing the somewhat simpler capital gains tax on real property, the technical implications as well as the effects on the overall economy of the community resulting from capital gains tax should still be handled carefully. For example, how to work out a fair and equitable tax rate; and how to lay down appropriate tax exemptions for the genuine end-users and so on. The property market accounts for a considerable portion of the gross domestic product of Hong Kong. Therefore, while attempting to contain property prices, efforts should also be made to avoid causing an excessively serious impact on the property market, triggering a catastrophic collapse of the market and affecting the stability of Hong Kong's economy.

To conclude, the study of a capital gains tax on real property would only be a start. In the long run, the Government would need to review, as soon as possible, the present tax system of Hong Kong, and to study the feasibility of a full-blown capital gains tax so as to realize a more equitable taxation principle.

Mr President, these are my remarks, and Members from the Meeting Point support the motion.

MRS SELINA CHOW: Mr President, Mr James TO has said a moment ago that I have, in a sitting of this Council or in a Panel meeting, requested the Administration to introduce a tax on vacant premises. I have never heard myself make such a request. That is of Mr TO's own making. I remember that once in a Panel meeting, in view of speculation on new property, I had asked what the Administration's position was on vacant premises. As I believed then that no Member would support measures which encouraged hoarding and speculative activities, I asked whether there were cases where owners of vacant premises could be exempted from paying rates or half of the rates payable.

The Administration then replied that that was indeed the case when it came to commercial premises. I inquired further and was told that owners of commercial premises could apply for having half of the rates payable slashed. At that meeting, I said that residential premises should never be given such an exemption even if they were vacant — in fact, there is no such exemption. Anyway, I have never suggested that additional tax should be imposed on vacant premises.

In relation to the motion now under debate, I entirely agree with what my colleagues from the Liberal Party have said and I do not wish to repeat their views here. However, if Mr James TO's remarks in question have presented a wrong or distorted picture to other colleagues, I just want to put the record straight.

MR MOSES CHENG (in Cantonese): Mr President, I would like to take this opportunity to respond to the points raised by some Members.

Hong Kong is a free society. Everyone or every association is free to carry out academic studies on any subject. However, as regards endorsing a motion in the Legislative Council that urges the Government to study a particular measure, I believe that we, as responsible Councillors, should study the issue in considerable depth first and put forward a motion urging the Government to carry out a study only when we think that the measure in question is highly feasible. The difference between the two is considerable. Thus it shows why the Liberal Party opposes the present motion.

Second, I fail to see any substantial difference between the capital gains tax on real property as proposed by the United Democrats of Hong Kong (UDHK) or the property transfer tax as proposed by the Democratic Alliance for the Betterment of Hong Kong (DAB) and the existing profits tax or stamp duty. They, of course, think that there is a remarkable difference. The UDHK said that they hoped a capital gains tax would catch those who benefited from property appreciation and succeeded in avoiding tax thereon. However, the

major aim of the motion today is to curb speculation in real property, that is, to strike a blow at those people who make profits from short-term property speculation. Under the existing tax system, I cannot see how speculators are able to avoid paying the profits tax. The DAB has proposed that a property transfer tax be collected through the solicitor who is responsible for arranging the property transaction. This would be a new measure requiring a long period of study to determine its feasibility. If this tax should be collected through solicitors' firms, I believe it would add to the burden of solicitors who would, in turn, shift the cost onto the consumers. Such an arrangement would undeniably save government expenditure but the responsibility would, in fact, be imposed on the ordinary citizens or consumers.

Third, I heard the UDHK say that the introduction of capital gains tax on real property would be a short-term measure to curb the soaring property prices. Some other Members also observed that the many measures presently proposed by the Government were virtually slow remedies which would be of little avail in dealing with an urgent situation. Yet, I just cannot see how such a measure as proposed in the motion could be "fast" enough to meet the urgency. I believe we also heard remarks from a number of Members who pointed out just now that the formulation of a tax system and the levy arrangements was a very complicated and time consuming process. Even if we decide to go ahead with the measure today, I wonder how long it will be before the measure is actually implemented. I think we all know the answer pretty well. If this proposal can only be put into effect after several years, how can we call it a short-term measure to curb runaway property prices? I do not know whether Members have thought about the negative impact of such a tax. Our property developers may, in view of the measure's short-term nature, slow down their building projects for the time being and, as a result, aggravate the already tight housing supply. Have Members thought about this point?

Just now Mr Fred LI also observed that the capital gains tax levied in European and American countries was an extremely complicated system which would be difficult to implement or introduce. I definitely agree that it is a highly complicated measure. As we agree that this is a complicated tax system requiring long-term implementation arrangements before it can, or may, achieve the expected result, how can it ever become a measure capable of curbing property prices in a short period of time?

Finally, I would like to add that the capital gains tax currently levied in Japan, Europe and America is virtually different from the kind of tax proposed by either the UDHK or the DAB today. If we conduct an in-depth study or contact people who have been engaged in property investments in European or American countries, we will learn that they usually consult their tax advisers and make appropriate arrangements before investing in any real property. Would such a tax be beneficial to Hong Kong?

For the above reasons, I can neither endorse nor support today's motion.

MR ALBERT CHAN (in Cantonese): Mr President, originally I did not intend to speak, but having heard Mr Moses CHENG saying that there were quite a number of things that he did not understand, I think I have to say something. Mr CHENG said that he could not see the difference between the capital gains tax proposed by the United Democrats of Hong Kong (UDHK) and the existing profits tax. I would like to ask Mr CHENG whether he has listened to other Members' speeches as this debate is coming to its end and he still does not understand the difference between the two taxes.

Capital gains tax is a tax levied by the Administration on sellers of properties, which equals to a certain percentage of the profits they derived from the appreciation in the value of their properties. Mr CHENG said that he was not aware of any property speculators who succeeded in escaping from the tax net. I wonder if he has read the Director of Audit's report which pointed out that many people have evaded tax in property transactions and it is therefore necessary to step up investigations in this regard. Although there are many aspects that Mr CHENG does not understand, he eventually decided to oppose Dr HUANG Chen-ya's motion. When confronted with social problems, we should not ignore them simply because we do not understand them. I hope that this is not the party line of the Liberal Party.

When a certain social problem arises, what we should do is to find out the crux of the question and look for solutions. We cannot ignore the problem simply because we do not understand its solution.

In today's debate, different political parties have different views and such a difference actually reflects the positions of different social strata. Members from the commercial and industrial sectors are nearly unanimous in opposing this motion. The two Members from the banking sector and those from the accountancy sector are also in opposition to it. Clearly, Members with any relations to Hong Kong's economic activities have stood on the same side. Among them, the one who opposes most vehemently must be Mr Ronald ARCULLI because he comes from the Real Estate and Construction Functional Constituency and is also speaking on behalf of the Liberal Party. Perhaps there are many common interests in his dual hats, and it explains why his opposing voice is the strongest of all.

I think that a capital gains tax will definitely be effective in curbing the rise in property prices. Mr Moses CHENG said just now that he could not see how this tax can be of any immediate effect. But I believe that if the Administration agrees to this motion today and immediately starts to study the proposal of introducing such a tax, the rise in property prices will immediately be checked, because many a speculator will shrink from the activity on learning that the Administration will consider introducing a capital gains tax as a means to curb property speculation. In addition to the control by large developers, the manipulation by speculators is clearly another factor contributing to the spiralling property prices. The most effective way to impact on speculators is to introduce a capital gains tax.

Mr President, property prices have been rising tremendously for many years and the problem is seriously getting out of proportion. That property prices can rise in such a manner is in fact due to the rigging of the market by developers, speculators and real estate agents. Although the Administration has taken a number of measures, they have not been very effective. But since the Administration's announcement a month or so ago of its intention to rigorously curb property speculation, prices have adjusted downwards by 10%. So should this magnificent start by the Administration end in a poor finish for lack of any effective measures, I believe property prices will rise even more fiercely later because the public will have lost their confidence in the Administration's sincerity in containing rising property prices.

I agree with Mr HUI Yin-fat, who said earlier that one of the effective ways to curb speculation was to prohibit internal sale of flats by developers. That property developers have made available to certain people a large number of flats by way of internal sale has enabled these people to make huge profits by subsequent resales, and their profits have thus snowballed. If the Administration had stopped the snowball from rolling from the very beginning, the speculation in real properties would not have been so heated and the rise in property prices would not have been so hefty. It would have benefited the real users.

I think that the problem is so serious that it is gradually becoming a social crisis. I call on the Administration to be sincere and resolute in facing this problem squarely. To start to examine the proposal of introducing a capital gain tax is the best way for the Administration to express its sincerity.

MR JAMES TIEN (in Cantonese): Mr President, what is the main reason that a country considers the introduction of a new tax? I think it is none other than the consideration that the economy of the country is not doing well and expenditure is excessive so that a new source of income has to be sought. It is rare that having regard to the rising real property prices a country should consider capital gains tax as a means to suppress them; or that having regard to the excessively high stock prices a country should seek to impose a capital gains tax to suppress the stock prices; or that having regard to the excessively high taxi licence price a country should seek to impose a capital gains tax to suppress the taxi licence price. Therefore, I think levying taxes, especially new taxes, and suppressing property prices are two different matters.

The main reason real property prices in Hong Kong are so high, especially in recent years when they have risen so sharply, is that there is the land grant limitation of 50 hectares as stipulated in Annex III of the Sino-British Joint Declaration. In the 1980s, 50 hectares was a reasonable figure. However, the economic development of Hong Kong in recent years has been excellent and this, coupled with the open Chinese economy, has attracted many investors to set up offices in Hong Kong, and a lot of expatriates are being sent to work in Hong Kong, causing the rent of luxury apartments to rise, which has in turn triggered

the sharp rise in prices of medium to low price real property. Coincidentally, overseas economies have not been performing well. Those who have emigrated to Canada and Australia are beginning to return as they cannot make a living there. They have to find themselves dwellings. Besides, many people coming from China also buy real property in Hong Kong. These are simply the factors in the supply and demand equation.

The Hong Kong Government has now implemented four measures to curb real property prices. In the short run, it might not produce any result. But in the long run (in a few years' time) we surely can get a result.

On the other hand, the rocketing of real property prices caused by the feverish speculation also has something to do with interest rates. The linked exchange rate makes it impossible for local interest rates to rise substantially so as to level with inflation. Therefore, everybody is of the mind that keeping banknotes is of no use, and it would be better to own real property which has a physical existence. Suppose the interest rate is a mere 6% or 7% whereas the inflation is 9% or 10%. Then it would be too foolish if one does not make investments of one's money. Hence, everybody is making investments. However, doing business in Hong Kong is no easy thing. What would be the easiest thing to do? It is investment in real property. Thus, we have property prices as high as several thousand dollars a sq ft. The rise in property prices in recent years is especially sharp. Over the past few months, the interest rate in the United States has already risen by 3/4% and will be rising. If the interest rate rises and the rate of return is low, property prices will come down as a matter of course. Therefore, I think if Members care about the living environment and purchasing power of the ordinary citizens, they should give more thought to the question of land supply. Besides, did we not ask whether the Government could raise the mortgage ratio of older property during Question Time of this Council? If this can be done, then the prices of new property can be lowered accordingly. So, I do not think there is the need to impose any kind of new tax in view of the present fiscal surplus which is so huge.

Let me return to the subject of capital gains tax. The United Democrats of Hong Kong (UDHK) started the debate with remarks like: "doing business according to business principles" and "where God has His church, the devil will have his chapel". The views they expressed were copious. But is there any "real substance" in them? Buying a flat is a simple thing. If someone asks me to study the matter, I can tell him right away. I would buy a flat through a company. In due course I would sell it to you through the company. Can we impose capital gains tax on transactions between companies? If you prescribe a longer period, say three years, I would sell it to you in two years' time, with the power of attorney as well. I can "circumvent" it by selling the power of attorney to you. So these ideas are mere "talk"! The capital gains tax in other countries covers everything including stock, real estate and financial instruments. Besides, it has never been proposed in those countries that the period for the capital gains tax levy is to be three years, beyond which it will

not become leviable. Conversely speaking, the United States, Australia and Canada levy the capital gains tax. Are they aiming to suppress property prices? I think it is never the case. The reality is that the governments create some new breeds of taxes when they are in need of money and when all the social facilities have run out of funds. They are in no way created for the purpose of suppressing property prices. Also, once we start levying the tax, it will be difficult to stop it. For example, in New York commercial premises are now 25% vacant. Even if the rent should fall to ten odd US dollars per sq ft per annum, it would still be difficult to let out these premises to people because as long as there is the capital gains tax, overseas investors will be deterred from investing. This is the kind of scenario the people of Hong Kong do not want to see. Hong Kong people are in a dilemma. On the one hand we want economic prosperity. On the other hand, economic prosperity fuels the upward spiral of land prices, which affects the general public. Hence the capital gains tax proposal is put forward by Members today. I oppose this motion. Why do I oppose the study? It is because I am outright against the capital gains tax and therefore I will not support even a study of it.

Mr President, with these remarks, I oppose this motion.

MR HOWARD YOUNG (in Cantonese): Mr President, I speak in opposition to the introduction of a capital gain tax. I recognize that the spiralling property prices are a big problem to Hong Kong and a solution is needed. But in tackling this problem, we should not adopt negative approaches such as setting a ceiling on property prices, or employing tax measures or even interference to distort the functioning of the market, or using taxation as a means of social engineering. I think we should consider something more positive, such as increasing the land supply. The Administration's recent allocation of more funds at the Housing Authority's disposal is also a positive measure. Spiralling property prices or an excessive number of speculators in the market are phenomenal of the imbalance between supply and demand. This is not a complicated economic theory and you do not have to be a university graduate or holder of a degree in economics to understand it. Speculation is in fact a feature of the capitalist free market, as well as one of the chain effects resulting from imbalance between supply and demand. To put right such an imbalance, the positive way, I think, is to increase the supply instead of artificially suppressing the demand. During my visit to Britain last week, I contacted some people of the property sector. I asked them whether Britain had a capital gains tax. Their answer was yes, but it is exempted on non-residents, that is, you do not have to pay this tax if you are not residing in Britain. Why does the British Government make such a provision? I believe that one of the reasons must be that the British Government has found it more advisable to exempt foreigners as it is very easy for them to legitimately avoid this tax. So the capital gain tax is applicable only to local British residents. If Hong Kong is to introduce this tax, will it be applicable only to local residents?

The second point which I would like to talk about concerns well-off public housing tenants. When this Council debated the Public Housing Subsidy Policy, some Members asked during that debate whether it would be appropriate to require public housing tenants who own private properties to give up their public housing units or pay double rents. Many colleagues said at the time that since the public housing tenants' purchase of properties were only a form of investment, it should not be used as the reason for disqualifying them. Buying in stocks and gold is also a form of investment. Why are these investments not considered? It can therefore be seen that in discussing this problem, Members have not drawn a distinction between properties and other forms of assets. All in all, buying in gold, stocks and properties are personal investments. If the Administration is to introduce a capital gains tax on real property, it will be unfair if other forms of investment are not subject to such a tax. We should not single out real property for this particular taxation. I think Members should think about this point very carefully.

As a matter of fact, the Administration has not been indifferent to property speculation. I know that the Inland Revenue Department has recently put in vigorous efforts to pursue those people with frequent transactions of properties and examined their old transactions in the last few years. If it is found that their purchases of properties were not for investment or self-occupation, profits tax will be levied on them. Given that the Administration has already had in place this kind of measures, what is the point of finding all sorts of excuses to introduce this capital gains tax? So I think that it is unnecessary for the Government to consider this proposal. I therefore oppose the motion.

SECRETARY FOR THE TREASURY: Mr President, I am grateful for the opportunity offered by this debate to listen to the diverse views of Members on the introduction of a capital gains tax to tackle high property prices.

I share Members' concern about the sharp rise in property prices in recent years. The Administration is keen to take effective action to bring down prices to a more affordable level. The Governor and the Financial Secretary have on various occasions repeated our commitment to this aim. We have recently set up an inter-departmental task force, chaired by Mr EASON, the Secretary for Planning, Environment and Lands, to consider ways to increase the supply of sites for housing and to discourage speculation in the property market. The task force intends to complete its study and to make recommendations on possible solutions next month. One of the issues which the task force is looking at is whether a capital gains tax can play an useful role in cooling the over-heated property market.

Some Members have spoken of the introduction of a capital gains tax as a panacea capable of bringing property prices down quickly. I would like to respond to this view by sharing with Members the thinking of the Administration on a capital gains tax.

Members will recall that on 9 March this year, I dealt with this subject in some detail in this Council in my reply to a question raised by Dr the Honourable YEUNG Sum. In his speech concluding the Second reading debate on the Appropriation Bill held on 30 March this year, the Financial Secretary again touched upon this issue.

Parameters of a capital gains tax

Whether a capital gains tax on property transactions will actually bring prices down hinges on a number of factors, in particular the parameters of the tax and the reaction of the market.

Members are familiar with the fact that speculative property profits are not tax-free. At present, profits from property transactions are already chargeable to profits tax if they arise from a business of property trading or property dealing. This covers transactions carried out by property dealers, property developers as well as those persons who re-sell a property before assignment for quick profits. Last July, the Inland Revenue Department introduced new selection criteria for opening property dealing files to help identify those property transactions concluded as part of a trade. This has brought more potential taxpayers to scrutiny by the department. I should add that the enactment of the Stamp Duty (Amendment) Ordinance 1992 also enabled the department to obtain a more extensive database on property transactions, thus enhancing its ability to identify cases which might have a tax liability.

Against this background, any capital gains tax would have to be sufficiently punitive in order to provide an effective additional deterrent against property speculation. But a punitive capital gains tax would send a strong negative signal to both local and overseas investors across the board. The prospect of having the tax as a band-aid solution to address a temporary problem would seriously undermine two much-vaunted principles of our taxation system — its stability and its predictability. Investors would think twice about committing capital to Hong Kong once we got a reputation of introducing stop-gap fiscal measures to tackle social problems, and abolishing them when the need for them went away or political whims turned against them.

Dr HUANG commented that a few developed countries have introduced capital gains tax to curb a sharp rise in property prices. He mentioned Japan, in particular. According to my information, the capital gains tax in Japan has caused devastating effect. In an article written exactly a month ago by Prof Keith McKINNELL, the head of the Department of Surveying in the University of Hong Kong, and Prof Takahiro MIYAO, Professor of Economics at the University of Tsukuba in Japan, they said, "In 1991 capital gains tax were raised sharply to discourage property transaction culminating in 1992 with a new national land holding tax, the so-called land value tax in Japan. These measures were sufficiently strong to stifle Japan's once booming property market. But they did much more than that in that the worst damage was felt on the balance

sheets of most financial institutions and business corporations. This policy-induced collapse of the property market has therefore severely affected the overall economy, leading to the worst recession in Japan's post-war history.”

Reaction of the market

Much as we wish, it is not possible to gauge in advance the reaction of the market to the tax. In a free market economy like ours, the steep rise in property prices reflects an imbalance in supply and demand. In addition to investment demand which has been buoyed up in recent months by local investment capital and the influx of foreign funds, there is a sustained demand from aspiring home-owners locally. This end-user demand has emerged from a combination of factors, including a steady growth in household numbers and household income, aspirations for home ownership and a low interest rate relative to inflation.

An earlier study reveals that the demand for new private residential flats is more sensitive to the household income than, for instance, the mortgage rate or flat prices. So if we did not get the tax right and assuming that supply remained tight before we had an expanded housing supply, we might end up pushing prices up as the burden of the new tax was passed onto end-users.

Furthermore, a tax which managed to keep speculators at bay would probably also dampen demand among those who wanted to make a long-term investment in the property market. This would inevitably reduce the availability of premises for those end-users who opted to lease rather than to own property. There is also the danger that property developers would respond by cutting back their production. End-users would eventually feel the pinch of the reduced output. The point I wish to make here is that it is not all easy to work out a capital gains tax that would solve the problem of property speculation without creating other problems in its train: there is a risk that the proposed tax might hurt the very people we wish to help.

Impact on the overall economy

Apart from the impact on end-users, we also need to consider the implications of a capital gains tax for the economy as a whole. During the period 1989 to 1993, private sector building expenditure took up 50% to 60% of the overall expenditure on building and construction in the economy. This expenditure, together with the real developers' margin, accounted for 30% to 40% of the overall investment expenditure in our gross domestic product (GDP). A capital gains tax on property transactions as suggested would thus impact on a large segment of investment in the economy. In turn, this would have a multiplier effect on the rest of the economy, resulting in curtailment in the overall GDP. On the basis of rateable values of properties in Hong Kong, we have calculated that the total value of all properties in Hong Kong could exceed \$2.3 trillion (\$2,300 billion). No one should speak lightly of introducing

a capital gains tax when it could lead to an unpredictable diminution of that enormous part of Hong Kong's total wealth.

Practical issues

As I pointed out when I last spoke in this Council on this subject, there are practical issues we would have to address if we were to introduce a capital gains tax, for instance:

- the appropriate treatment of gains attributable to inflation;
- whether losses should be deductible and, if so, whether they should only be offset against capital gains;
- whether gains should be averaged and brought to charge over a number of years; and
- whether the tax should apply to transaction in stocks and shares in property-related businesses.

In an attempt to alleviate the plight of those looking for an affordable home, many people have demanded that the Administration takes concrete action to tackle property speculators. Yet it is extremely difficult to define in clear legal terms a "speculative" transaction. One man's speculation is another man's investment. It is a challenge to the Law Draftsman to work out a legal definition of speculators which will not unintentionally penalize genuine end-users or those for whom property transactions are the mainstay of a regular day-to-day business. This could be a source of controversy and we would have to provide avenues for appeal. Moreover, almost by definition, a punitive tax would invite widespread attempts to avoid or evade tax. This points to an expensive scheme with doubtful cost-effectiveness.

In short, the establishment of the Task Force on Land Supply and Property Speculation demonstrates the Administration's resolve in tackling the spiralling property prices. On the question of a capital gains tax, we need to give very careful consideration to its possible ramifications in Hong Kong. We are particularly mindful that we should not adopt a measure which would likely land us with a bigger problem than we originally have.

The Administration will take careful note of the views expressed by Members in the course of this debate. The Official Members will abstain from voting on the motion.

PRESIDENT: Dr HUANG, do you wish to reply? You have three minutes 39 seconds.

DR HUANG CHEN-YA (in Cantonese): Mr President, it is the United Democrats' view that multifarious measures must be adopted to curb the rising property prices. These measures, among others, should include the increase in the supply of land and the construction of more public housing. However, land supply is not infinite and it takes time to construct public housing. This is why the United Democrats feel that a capital gains tax on property transactions is a feasible measure to combat speculation and help to fulfil people's aspiration of home-ownership. Meanwhile, I am really surprised to know that the Liberal Party and some Members are against today's motion. They are not simply against the capital gains tax. They are indeed in opposition to our call for a study of the feasibility and pros and cons of such a tax.

Today's motion as moved by myself on behalf of the United Democrats merely urges the Government to conduct a study of the capital gains tax and then submit to this Council a report on the findings. Why do they oppose to the Government's studying of such a tax? Do they not realize that the ordinary people cannot afford the runaway property prices? Do they not see that ordinary people who might own their premises cannot afford to exchange their old flats for new ones to improve their living environment? Why is it that they see only the happy faces of the speculators but not the sad faces of the ordinary people? If these Members really understand the grief of those who cannot afford their own flats and if it is not their intention to safeguard the interests of the speculators and the property developers, why should they even oppose to such a study? Why should they oppose to a call for the Government to submit to this Council a study report? Are they apprehensive that the findings of the study are affirmative and that the tax has more merits than demerits? Are they opposed to the motion because they are apprehensive that once the Government carries out the study and then submits the report to this Council, such a tax will surely be imposed?

As a matter of fact, we all know that speculators and property developers do not oppose an increase in land supply. What they are strongly against is the capital gains tax on property transactions. We can infer from this opposition that such a tax should be really effective in lowering speculators' profits.

To my surprise, several Members have put forward some specious and misleading arguments against the motion. For example, Mr Vincent CHENG, Mr Eric LI and Mr James TIEN all said that people may evade such tax by means of setting up a company to cook the books. I would like to thank them for pointing out the loopholes. This is precisely why we need a study so that the Government may plug the loopholes before the introduction of the tax. But I would like Members to consider one thing: When loopholes are identified, does it mean that it is not necessary for the Government to put forward any rectifying legislation? Is it that so long as one Member identifies some loopholes, no legislation should be made then? Mr Ronald ARCULLI said that the tax would affect the end-users. Obviously, he must be taking a nap while I spoke or he was trying to mislead the public on purpose. I have pointed out clearly that we propose to exempt self-occupied premises from this tax and it

will not have a bearing on the end-users. On the contrary, it will stabilize property prices and benefit the end-users. Mr Ronald ARCULLI and Mr LAU Wah-sum said that the tax would scare away prospective investors. We have repeatedly said that the capital gains tax is aimed at speculators making quick profits, not the long-term investors. Do Mr Ronald ARCULLI and Mr LAU Wah-sum consider it a good idea to encourage speculators to push up property prices further? The critical remarks made by Mr WONG and others

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PRESIDENT: Dr HUANG, you have to stop. You have reached your time limit.

Question on the motion put.

Voice vote taken.

Mr Peter WONG voiced three “Noes” and the President ruled that out of order and pointed out that Mr WONG was entitled to one “No”, not three.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Members please proceed to vote.

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

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Ms Anna WU and Mr Alfred TSO voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr Roger LUK and Mr James TIEN voted against the motion.

THE PRESIDENT announced that there were 21 votes in favour of Dr HUANG Chen-ya's motion and 31 votes against it. He therefore declared that the motion was negatived.

RELEASE OF MR XI YANG

DR YEUNG SUM moved the following motion:

“This Council urges the Chinese Government to respect Hong Kong's freedom of the press and to release Mr XI Yang as soon as possible.”

DR YEUNG SUM (in Cantonese): Mr President, I am proposing a motion debate on urging the Chinese Government to respect the freedom of the press and to release XI Yang as soon as possible. In doing so, I have but one purpose, which is to express my hope that this Council will, as a representative body, convey to the Chinese Government the reactions of the people of Hong Kong to the XI Yang case.

According to an independent research company's public opinion survey, the findings of which were published on 10 April, nearly 70% of the respondents thought that the 12-year prison term for XI Yang was improper. Nearly 60% said that the Chinese Government's action undermined their confidence in Hong Kong's freedom of the press. 70% said that it undermined their confidence in Hong Kong's freedom of the press after 1997. From these findings and from the views aired by members of the public on the radio and in the press, I can conclude that the people of Hong Kong are very unhappy with the Chinese Government's heavy sentence passed on XI Yang.

I hope that Members will arrive at a consensus through this debate and do something in a joint effort to secure XI Yang's early release. XI Yang is already in prison and this is a fact. Still, there are legal avenues the Chinese Government can avail itself of to set XI Yang free at an early date. I am convinced that Members will each make what he or she thinks to be an appropriate suggestion that will enable XI Yang to return to Hong Kong soon.

My speech will be in three parts. I will first analyze the facts, evidence and law to show that the Chinese Government handled the XI Yang case improperly. I will then analyze the impact of the case on Hong Kong's freedom of the press. Finally, I will sum up the freedom of the press issues that the case has raised, and make some specific suggestions.

Facts and evidence

When we call for XI Yang's release, our first question is: What crimes has he committed? Does the Chinese Government have enough evidence to prove that XI Yang committed a crime, and a very serious crime into the bargain? According to a 24 April dispatch of the Hong Kong China News

Agency, which was based on an interview with a responsible official of the Beijing Municipal Higher People's Court, XI Yang during the months of June and July 1993 made use of TIAN Ye, who stole, elicited and illegally obtained for him an abundance of financial information that was state secrets. Such information included:

- (1) Samples of Chinese currency notes;
- (2) Information on gold sales by the People's Bank of China on the international market and on the bank's plan to adjust exchange rates;
- (3) Information that the People's Bank of China would raise interest rates on deposits in July;
- (4) An exposition of the Interim Regulations on Foreign Financial Institutions Doing Business in Renminbi, based on which an article was written;
- (5) The publication by XI Yang of the above information in *Ming Pao*, thereby causing serious financial harm to the state; and
- (6) State secrets including information on high-level personnel changes in the People's Bank of China which XI Yang was alleged to have stolen, as revealed by TANG Zhanyun, Vice President of the Beijing Municipal Higher People's Court, to a member of the Hong Kong Association for Democracy and People's Livelihood.

Now let us see if the specific charges constitute a crime punishable by 12 years' imprisonment. Mr TO Yiu-ming, lecturer of the Department of Journalism at the Baptist College, has made a study of the reports carried in Hong Kong's major newspapers during the period from 28 June to 28 July 1993 having to do with the six points listed above, that is to say, having to do with the allegation that the confidential information caused serious financial harm to the state. I do not intend to give a detailed account of the study. I am just quoting the study's conclusions.

The researcher found that most of the allegedly financially damaging information, including the information on personnel changes in the People's Bank and information on the July interest rate hike and the RMB exchange rate readjustment, was not XI Yang's scoop. True, *Ming Pao* published an exclusive report on gold sales. But foreign news wires had reported the same information earlier. These news stories of financial interest were already circulating widely in Hong Kong's press. Yet the Chinese Government considered them to be leaks of secrets resulting in serious financial harm to the state. This was a trumped up charge. Every news release published by the Chinese Government so far has gone only to show that XI Yang did nothing different compared with other reporters covering events in China.

Sovereignty and law

The Chinese side says that, legally speaking, the case was within China's sovereign jurisdiction and that Chinese laws were enforced along the principle that "every law must be observed, every law enforcement must be rigorous and every unlawful action must be investigated". And it told the people of Hong Kong not to "meddle and interfere". But the truth is that nobody in Hong Kong has ever said that the case is not within China's sovereign jurisdictions. The Chinese side, saying what it did, was being politically over-sensitive. Concerning law enforcement, we think that the case revealed a big problem in the legal and judicial procedures. The case was handled in a manner that was a far cry from the principle of the rule of law. It was handled in a manner contrary to Chinese law. So we have strong doubts about the fairness of the verdict.

Firstly, the crux of the case is the manner in which XI Yang was found guilty of "stealing and eliciting state secrets" and thereby causing "serious harm" to "the security and other interests of the state". This point has already been addressed above.

The term "state secrets" is ill-defined in China's State Secrets Law. XI Yang may have been involved in "secrets concerning the national economy and social development" under Article 8(4). The specifics are left to the interpretation of the executive authorities. There is no legal guidelines concerning their interpretation. The court, too, can only act according to the executive authorities' interpretation. There is no room for independent judicial interpretation. This enables the executive authorities to give "state secret" an arbitrary and *ex post facto* interpretation. The term "state secrets" is an all-powerful restraining device.

Our second doubt is about the judicial procedure. According to the Criminal Procedural Law, the court may choose not to hold public hearings in a case allegedly involving state secrets. Still, the court must pronounce its verdict in open court. In fact, as far as we know, this provision was not observed during the first hearing. The masses attended the second hearing where the verdict was pronounced but members of XI Yang's own family were not notified. China's official news agency, on the other hand, has published nothing but a one-sided story. We feel that this is contrary to the procedure laid down in Chinese law and that it prevents people from finding out the truth from a full and fair presentation of the facts. It is unfair to XI Yang and it makes people doubt the fairness of the judicial process.

My third point is about the sentence. Article 186 of the Criminal Code provides that any employee of the state may be sentenced to a prison term of over 10 years if he leaks an important state secret and if he does so under very objectionable circumstances. From the above analysis and from available evidence, even if XI Yang did break the law, he could hardly be found to have done so under very objectionable circumstances. The fact that XI Yang was not

an employee of the state should also merit a favourable measure of discretion under the criminal law. Therefore, the 12-year sentence is very unreasonable.

In view of the above facts and doubts, we must come to the following conclusion about XI Yang's trial: "The facts were not clear. The evidence was not convincing. There were judicial procedural irregularities and misapplication of the law." Therefore, we absolutely cannot accept that the case was handled justly under the law.

The XI Yang case and freedom of the press

The people of Hong Kong reacted strongly to the news of the heavy sentence passed on XI Yang. But Chinese officials have said again and again that he deserved the heavy sentence and that the people of Hong Kong should not worry. They say that the XI Yang case is an exceptional case which has nothing to do with the issue of the freedom of the press. They are telling a big lie knowingly. The XI Yang case has sounded a warning bell for Hong Kong's press and the reverberations are continuing. Not long ago, some Hong Kong reporters were denied permission to cover the Qiandao Lake incident. And Hong Kong reporters invited to a seminar in Beijing on state-owned enterprises going public overseas received caution letters from Chinese officials. The reporters were invited to the seminar by a public relations company and yet they received caution letters from Chinese officials. This is a reverberation of the threat to the freedom of the press triggered by the XI Yang case.

Since 4 June 1989, Chinese officials have been tightening control over Hong Kong's journalists covering events in China. The seven rules governing the conduct of Hong Kong reporters in China were made in the wake of the June 4th incident.

Still more frightening is the fact that the Chinese Government has no confidence even in this kind of control. It is still afraid that it may not be able to control Hong Kong's news media. The 12-year sentence passed on XI Yang is a new move to overawe Hong Kong's journalists. Many Hong Kong reporters covering events in China are worried that what has happened to XI Yang may happen to them. Intangible pressure is making them exercise self-censorship lest they be falsely charged with leaking state secrets. This, coupled with the seven rules, puts Hong Kong reporters in danger of being accused of "covering news events illegally" and of having the ulterior motive of probing state secrets. The Chinese Government has thus fully accomplished its goal of controlling the Hong Kong media's coverage of news events in China.

Freedom of the press

We believe that, if freedom and democracy are to be maintained, defending the freedom of the press is a *sine qua non*. Therefore, we implore the Chinese Government and the Hong Kong Government to proceed quickly to repeal the provisions that restrict the freedom of the press and to enact freedom

of information legislation to protect the freedom of press workers in covering and reporting events. This will protect citizens' right to information.

Specifically, we urge the Chinese Government to enact an information law that is reasonable, clear and objective, so that the provisions of the National Security Law, the State Secrets Law and the Criminal Code may cease to be vague and easily abusable by the executive authorities.

We further urge the Chinese Government to abolish immediately the seven rules on news coverage put into effect in 1989, particularly the rules requiring Hong Kong reporters to apply to Beijing for permission before entering China to cover events and limiting their activities to coverage of the events specified in the applications. As far as we can see, these rules have been enforced selectively depending on the sensitivity of the events being covered. In addition, Beijing has been discriminatory against reporters of newspapers having regard to the newspapers' relations with it or their "record of performance". For instance, Beijing has been making things difficult for those reporters who are known to have interviewed pro-democracy activists. In operational terms, it is totally impracticable to have to apply for permission 15 days in advance, particularly if the event to be covered is a fast-breaking international news event. If a Hong Kong reporter wants to cover an earthquake or a fire disaster that has already happened, by the time the permission is granted 15 days later, he will no longer have anything newsworthy to report, will he?

Therefore, if the Chinese Government continues to enforce the present rules and provisions, we will have no choice but to believe that it wants to "exercise political news censorship". What else can we believe?

Let us now return to the home front. I hope that the Chief Secretary will pay special attention. There is not much legal safeguard for Hong Kong's freedom of the press. The press in Hong Kong is still subject to the Emergency Regulations Ordinance and the Official Secrets Act directly introduced from the United Kingdom. These statutes are like imperial swords in a standby status. The Government is now more tolerant and it has to heed public pressure. So the statutes are not invoked. But we cannot be sure that the statutes, which potentially restrict the propagation of information, will not become constraints on the freedom of the press.

In addition, Article 23 of the Basic Law provides specifically that the SAR shall make law to "prohibit the theft of state secrets". We are concerned that, when the time comes, if the drafting, enactment and interpretation of the law concerned follow the model of the present State Secrets Law of China, that will seriously restrict Hong Kong's freedom of the press. We must watch out.

We think that, now that the public is generally supportive of the right to information and the freedom of news reporting, the Government should quickly enact a Freedom of Information Ordinance. The Governor, in particular,

should not bar Legislative Council Members from introducing Private Members' Bills on the excuse that the introduction of Bills is the privilege of the executive branch of government, or that Private Members' Bills should not be introduced because, if passed, they will constitute a charge on public revenue. I want to stress once more that, where there is no legal safeguard, the freedom of the press will be maintained at the pleasure or the sufferance of the Chief Executive. What we have are stop-gap measures which are weak and short-sighted. It is very ironical that an administration which prides itself on being accountable should drag its feet in carrying out law reform to protect the freedom of the press.

The XI Yang case is not just an isolated case. It is a loud warning bell. China has been tightening control over the propagation of information (particularly economic information and financial information in recent days). Hong Kong will not be immune. In this moment. I hope that all Members will work together for the freedom of the press and the right to information in Hong Kong and for the early release of XI Yang.

Mr President, I so submit.

Question on the motion proposed.

MRS ELSIE TU: Mr President, the motion calls upon us to urge the Chinese Government to respect Hong Kong's freedom of the press and to release XI Yang as soon as possible. I would like to see XI Yang's early release because 12 years is a long time to spend in prison.

None of us know the exact details of what XI Yang did, but according to China he broke Chinese law while in China. It is unfortunate that the case has caused misgivings on the part of some members of the media, and I trust that China will take this into consideration in dealing with the press in future. However, it is difficult to see if XI Yang's case of alleged lawbreaking has anything to do with freedom of the press in general, because Hong Kong reporters regularly visit China and I am not aware that any of them have been arrested for publishing press reports. What was different in this case remains to be seen.

In any case, I do not see how this Council can exert pressure on the Chinese Government which in no way comes under our jurisdiction. On the contrary, I think that by exerting this pressure we are not assisting XI Yang, and in fact it could have the reverse effect on what we would all like to see, that is, the release of XI Yang.

I trust that my colleagues will put the interests of XI Yang first, keeping in mind that reasonableness may succeed where angry confrontation may destroy the case.

Mr President, I shall abstain from voting, though I hope that XI Yang will have his sentence reduced.

MR RONALD ARCULLI: Mr President, although the wording of this motion is contained in one sentence, there are two issues put forward to Members of this Council. Firstly, the motion urges the Chinese Government to respect Hong Kong's freedom of the press. Secondly, it asks the Chinese Government to release Mr XI Yang as soon as possible.

Mr President, the motion does not clearly state what one part of the motion has to do with the other. XI Yang was tried in China, in a Chinese court under the laws of the People's Republic of China. I am sure many of us in this Council will have our own, and indeed different, opinions on the justice system of China but the justice system is, after all, China's.

The Liberal Party knows that the people of Hong Kong, like us, are very concerned over XI Yang's case. We believe it will be more helpful and more productive to ask for official details of the case so that we, in Hong Kong, can get a clear understanding of the incident. By providing details of Mr XI's case, the Chinese Government could quell the Hong Kong citizens' concern and enable them to assess the sentence which, by any standards, seems to be pretty stiff.

In addition, XI Yang's arrest and conviction highlights more than just one profession's access to information in China. Journalists apart, accountants, financial analysts, lawyers and the like have access to confidential, financial information to produce accurate reports and accounts for their employers and investors. If XI Yang failed to comply with Chinese state secrecy laws, then understandably there are worries that others who work in China could inadvertently break the law and face imprisonment. This underscores the importance of clear legal guidelines. The call then for clear legal guidelines in defining Chinese state secret laws has merit and will reduce misunderstandings and concerns.

As regards the first part of the motion, let me make it plain that the Liberal Party subscribes to, and indeed strongly supports, Hong Kong's freedom of the press both now and indeed after 1997. What appears curious is that the motion calls on the Chinese Government to respect Hong Kong's freedom of the press. I say curious because from the materials supplied to us by the Hong Kong Journalists Association and the lists of inadequacies, according to the association, I am not at all sure why the Hong Kong Government or the British Government has been left out of this motion.

Mr President, the Liberal Party, like Honourable Members, recognize that laws do differ from one country to the next. There may be some laws, or some countries we do not like, but until they make changes we must not forget that any of us that break the laws of a country whilst we are in that country do so at

our own peril and there may not be much the rest of us in Hong Kong can do to help. And indeed under our legal system, ignorance of the law is no defence.

In conclusion, Mr President, I would like to put on record that the Liberal Party has continuously expressed the concern of the people of Hong Kong and our concern about XI Yang's case, including the severity of the sentence. We have asked that details of the case be made public. Finally, and most importantly, we have pleaded that XI Yang be pardoned, that clemency be shown by reducing the sentence. We have done so whenever we meet with senior Chinese government officials and we will continue to do so.

Mr President, subject to those observations, Members from the Liberal Party will abstain on this motion.

MR JIMMY MCGREGOR: Mr President, Hong Kong enjoys most of the fundamental freedoms which are part and parcel of a free society operating within a system of government based on the rule of law and the recognition of the human rights of its citizens. These fundamental freedoms are guaranteed within the laws of Hong Kong and are crucial to the continued success of the territory when it becomes a Special Administrative Region of China in 1997. Public confidence is the lifeblood of our successful economic system. Confidence relies on the assurance of stability and continuity of the freedoms I have referred to. These include the freedom of speech, of assembly, of dissent and of expression all provided within the protection of the law.

These particular freedoms are normally spelled out in the human rights legislation in all countries which formally endorse them. They are very important indeed to those people who are engaged day by day in seeking information with the intention of publishing it and commenting upon it for all to see. That surely is the basis for the work of every reporter and writer who produces material for publication. Reporters and publishers are well aware that there are limits to what can be published. Some of the restrictions are moral ones based on inherent but well understood journalistic practice. Some restrictions are based on the legal need to protect the community in one way or another. Defence and security are often the basis for quite severe restrictions in many countries. There is usually legislation in place which establishes the parameters of restriction and provides some basis for journalistic understanding of them, also a system of reference for clarification.

Thus, reporters are usually well aware of the pockets of information which will be considered as state secrets and other areas where a high degree of government sensitivity exists. State secrets to which, for example, an Official Secrets Act may apply, will be pitched at levels of information whose disclosure or transfer to other governments may seriously damage the security or integrity of the state. Publishers are particularly careful when they receive such information. They must judge whether or not to publish all or part of it. Reporters who obtained it can be legally questioned as to the source and jailed

for not disclosing the source. Those who provided the information can be charged with doing so and sentenced to imprisonment. They may lose their jobs and suffer punishment of some kind or another.

The worst punishment however is reserved for those people who obtain information of a secret nature and classification in order specifically to make it available to another country. Spying and spies have been with us from biblical times and probably long before.

There is a difference between a reporter and a spy, however. The reporter obtains information in order to publish it. The spy obtains the information in order to keep it secret and to have it used against the source.

So where does the XI Yang case fit into this pattern? It is clear that he is a reporter with good connections in China, connections which have provided him with information which the state considers to be secret. XI Yang apparently considered the information to be confidential but clearly he did not consider it to be a state secret since he passed it on for publication. If he had realized that the information was a state secret, why on earth would he have sent it forward for publication? He would be aware that the information was going to be made public. It is only a madman or a clown who would have openly published a state secret. XI Yang is neither.

The information he provided would be considered in some countries as something of a scoop. Its publication does not seem to have harmed the Chinese economy in any way. At least, if it has, there is no information or proof of the alleged damage. That is not surprising, given the fact that XI Yang's trial was not open, nor was he allowed access to a defending counsel, nor was his family allowed to see him, nor was any transcript of the proceedings of the trial or the appeal against sentence made available, despite very great concern experienced in Hong Kong and elsewhere. The highest level of secrecy in this sad incident was not attached to the information that XI Yang supplied to his Hong Kong employers but to the course and content of his trial and appeal.

Since the information he obtained was published, it is possible for a view to be taken on his sentence of 12 years in prison. I have to say that, on the information available, the sentence is harsh in the extreme and exceedingly cruel as a punishment. It suggests that the Chinese Government has become greatly concerned with the steady release of confidential and sensitive information through reporters to the international media, information which does not always reflect well on China and that anger and exasperation have resulted in the XI Yang prosecution and sentence as a warning to all others who seek information in China.

Yet China is opening up to the outside world to a degree never before experienced. The Chinese Government has consciously opened up the economy and the Chinese society for very good and sound reasons. In doing so, the Chinese Government must expect a rapid increase in the flow of information

into and out of China. Not all of this will be welcome but that is the fabric of information dissemination. There will be good press and bad press. It is not possible to have only good press.

It is very clear that the sentence on XI Yang is oppressive. It is the kind of action by Chinese officialdom that causes dismay and fear in Hong Kong. The sentence, I hope, will be reviewed and if it is justified at all should be very greatly reduced. I hope also that my business colleagues in this Council will take a similar view since the business view is listened to with respect by the Chinese authorities.

Mr President, I support the motion.

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

MR LAU CHIN-SHEK (in Cantonese): Madam Deputy, I fully support Dr YEUNG Sum's motion urging the Chinese Government to respect Hong Kong's freedom of the press and to release XI Yang. However, I believe that asking the Chinese Communist Government to respect the freedom of the press is asking for the impossible.

Many people think that the Chinese Communist Party came to power in China through "the barrel of a gun". However, it must not be forgotten that, in fact, the Communist Party's pen also played a very important role during China's war against Japan aggression and during the Chinese civil war. Through literature, art and the news media, the Communist Party propagated its messages to all classes. In this way, it won extensive support from the people and laid a firm foundation on which it grabbed political power.

The Chinese Communist Government understands the social functions of literature, art and the news media. This is clear from MAO Zedong's *Talks at the Yan'an Forum on Literature and Art* in 1942. MAO said, "Our struggle for the liberation of the Chinese people takes place on many fronts. We can say that there are a civil front and a non-civil front, that is, a cultural front and a military front. If we want to defeat the enemy, we must depend first on an army which holds guns. But just having such an army is not enough. We must also have a cultural army. Such an army is indispensable if we are to have solidarity among ourselves and defeat the enemy." In the concluding part of the same talks, MAO went on to say, "In the world today, culture, literature or art always belongs to a specific class, a specific political line. Art for art's sake, or art transcending class, or art parallel to or independent of government does not really exist."

MAO's talks at the Yan'an Forum have since become the principles on which the Communist Government bases its policy for culture and art. There

can be no independence for culture or artistic creation. Still less is “autonomy or freedom” permitted for the news media.

In fact, the Chinese Government always regards the news media as the “mouthpiece of the party” or the “mouthpiece of the government”. This was so in war time; it is still so in peace time. It was so during political struggle; it is still so during economic reform. The mouthpiece propagates the government’s policies, educates the people and mobilizes public opinion against the enemy. There is absolutely no such thing as “the freedom of the press”. Conversely, if a news reporting system is independent of the government, it will not carry out the political tasks of literary and artistic propagation given it by the Communist Party. It may take on a position opposed to the official position. This is something that the Chinese Government cannot accept. If you are not a friend, then you must be an enemy. The Chinese Government is therefore terrified of the freedom of the press.

China has stressed in recent years that it will focus on economic development and speed up liberalization and reform. But political controls have tightened. Therefore, it is really very hard to say when the freedom of the press will take root in China! Journalistic workers in China have striven for many years for a good information law to safeguard the freedom of the press. But the government authorities have said no again and again. A Chinese leader has gone so far as to say that the Communists were able to overthrow the Kuomintang (KMT) government precisely because of loopholes in the information law of the KMT government; these loopholes enabled the Communists to mobilize the masses effectively on the propaganda front and the cultural front. So the Communist Government today will absolutely not allow anybody to seek a loophole, or adulterating the situation under the pretext of the freedom of the press for undermining the rule of the Communist Government!

The Chinese Government stresses that the “one country, two systems” concept will be given effect to in Hong Kong. But LU Ping recently warned that Hong Kong must not become a political city. He also talked about being vigilant against foreign forces attempting to use Hong Kong to change China’s socialist system. From his words, we can see that the Chinese Government is very scared that Hong Kong may become a base of “peaceful evolution” aiming at China. Therefore, the pressure on all independent forces outside the economic realm is bound to grow heavier. The news media, being a major front and a major political force, is bound to become a major target for purges and struggles. The outlook on the freedom of the press is getting dimmer and dimmer.

The arrests of XI Yang, TIAN Ye and GAO Yu are of course not isolated incidents. They are a signal that the growth of independent news media as a force will not be tolerated in China and that the people of China will not be allowed to have freedom of the press. They are at the same time a signal to the press in Hong Kong. Hong Kong reporters are required to yield and become

mouthpieces for the official line. They will not be permitted to do anything independently or anything that is beyond official control.

Freedom of the press is the foundation for the development of a pluralistic society. It is a prerequisite for the protection of human rights. It is a powerful weapon for supervising the government. It is important to every member of the community. The press in Hong Kong will be facing a grave situation in the coming years. I believe that the public must work together with the journalists to protect the freedom of the press. Only thus can the freedom and the human rights of the people of Hong Kong be safeguarded.

Madam Deputy, I salute XI Yang. Though he is in prison and, I believe, in solitary confinement, yet he is not alone. Tens of thousands of freedom lovers are counting the days with him.

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

MR WONG WAI-YIN (in Cantonese): Madam Deputy, I would like to make clear my standpoint at the outset which is that the XI Yang case is a miscarriage of justice in the 1990s. A Hong Kong reporter engaging in normal journalistic activities was sentenced to jail for 12 years and through a secret trial into the bargain. XI Yang was being framed up but was denied any chance to make his defence.

The Meeting Point emphasizes that XI Yang is innocent. The so-called breach of the unbreachable rules, as claimed by the Chinese authorities, involves no more than the discharge of the daily duties of every responsible Hong Kong correspondent who has to gather news in order to enhance the readers' understanding of the development of the current situation. Around this time last year, the financial system of China was subjected to severe tests when the inflation rate stayed on the high side, loans and credits snowballed and the currency value dropped. The so-called State secrets disclosed by XI yang, as defined by the Chinese authorities, were in fact those reports relating to the personnel reshuffle of the People's Bank of China, the upward adjustment of interest rates, the stabilizing of exchange rate and the selling out of gold and so on. So it was on outright fabricated charges that XI was arraigned because the economic news were conducive to the readers' mastering of China's economic development and to the enhancement of their understanding of China's determination and ability in implementing its macro-control measures of the economy. All the more, it did not seem that these reports would cause any loss on the part of the State. On the contrary, these reports made the readers and the citizens grow aware of the authorities' determination in implementing its economy-control measures, thereby dampening the speculators' desire of taking advantages. The speculators would then restrain themselves from engaging in speculative buying and selling activities which would disrupt the financial system. As a result, it would be helpful in promoting the launching of control policies.

In fact, as revealed by a study recently published by Mr TO Yiu-ming, a lecturer of the Department of Journalism at the Hong Kong Baptist College, between May and July last year, a number of newspapers made reports and analyses one after another on China's financial scene. These articles followed closely the course of development in China at that time, and the policies and measures devised to address it, fully meeting the needs of those who were most concerned with China affairs. Those were the results of normal journalistic activities. During this period, the mass media were able to, through benign competition, furnish reports of depth and these reports gradually progressed from the superficial to the substantial. Not only did the local readership benefit, but the Chinese Government also gained advantages since these press reports had heightened people's awareness of the authorities' determination to stabilize the State's financial position.

What surprised us more was that, *Ming Pao* reporter XI Yang, all along being one of the many journalists engaged in this sort of press competition, was the only one who received this kind of treatment. Did the sentencing aim at sending a warning to the other journalists at the expense of XI Yang, who is not a permanent resident of Hong Kong? What XI Yang and the other journalists reported catered for the needs of the readers and was consistent with the social situation. Their competition refined the quality of press reporting. After the occurrence of the alleged breach, apart from XI Yang, all those engaged in the press competition were immune from punishment. This served to indicate that the Chinese Communist Party did not regard them as offenders and might even recognize that they had been engaging in normal journalistic activities. Such being the case, why should XI Yang be treated as an exception? Why should XI Yang be treated as a major criminal and be sentenced to jail for as long as 12 years? As the same sort of journalistic activities did not constitute an offence and those other reporters were not labelled offenders, XI Yang should receive the same treatment. His tragic experience flew in the face of reason and of the law. The Chinese authorities have been owing the Hong Kong press sector and the public an explanation.

Madam Deputy, the Meeting Point reiterates that XI Yang is innocent. The real culprit is the exceedingly vague definition of "State secrets" and the unrestrained power of interpretation and enforcement of law vested with the law enforcement authorities. WEI Jingsheng, a leading democratic activist in China, was jailed for 15 years on the charge of, among others, disclosing State secrets. This was yet another instance of gross miscarriage of justice. The term "State secrets" is an imperial sword of the highest authority, which the totalitarian authorities may arbitrarily employ to deal with the dissidents. The veiled judicial process is precisely the tool to cover up the authorities' heinousness and to safeguard the system of arbitrary enforcement of the vague concept of "State secrets".

What horrifies Hong Kong people in the XI Yang case is not only the stifling of press freedom, but also the practice of committing murder with the weapon of the law — to "murder" 12 precious youthful years of a young

reporter through an unjust judicial process — which is yet more infuriating. Therefore, the Meeting Point sides with the public in vociferously protesting against and appealing for the release of XI Yang. With no regret, we will be doing our very best to fight for XI's release and we will never give up until our goal is reached. On behalf of the Meeting Point, I hereby request the Hong Kong Government to explore every possible means to press for the release of XI Yang and to side with the Hong Kong press sector and the public in our appeal to the Chinese Government for a clear definition of "State secrets", so as to ensure judicial fairness, openness and impartiality wherewith to safeguard press freedom and basic human rights.

What is equally important is that the Hong Kong Government must buckle down in good earnest to upholding press freedom by offering protection for press freedom in our laws. The Government must as soon as possible repeal all obsolete legislation which is hampering the freedom of the press, in order to ensure that journalistic activities are immune from the Government's unreasonable intervention. The Information Access Bill should also be introduced to allow further disclosure of information, so as to prepare for the emergence of an open government which is accountable to the public and to provide legal confirmation and guarantee for freedom of expression and press freedom, both of which have all along been treasured by the people of Hong Kong.

Madam Deputy, the community has been greatly shocked by the XI Yang incident and we are worried over the prospects of press freedom. To minimize the negative impact of the incident and to relieve us of our worries, the Meeting Point urges the Chinese Government not to uphold the wrong verdict on XI Yang which was returned in a secret trial but to release XI Yang as soon as possible.

With these remarks, the Meeting Point gives its unreserved support for Dr YEUNG Sum's motion.

MISS CHRISTINE LOH: Madam Deputy, today's debate is not really about what we think of XI Yang's case. I think that is fairly clear. We all think the case is appalling. The debate is really about whether the Legislative Council speaking about it is going to have any very useful effect. The effect can be seen from two perspectives. Firstly, will it help XI Yang himself? And secondly, will it assist any wider issues which may concern us.

On the first point, the Chinese leadership probably finds Hong Kong's continuous complaint about the case rather irritating. That is no reason, however, for us to pipe down since we feel very strongly about the case. Even if we believe that our efforts will not be enough to free XI Yang, it does have the effect of keeping his case alive as an international issue. There is no way for us to gauge whether continuous efforts from us, and perhaps from the rest of the world too, may not help XI Yang in some way.

On the second point, can this debate help to highlight other issues of concern to us? The answer is definitely yes. We are concerned about press freedom and about the freedom of expression. It is not enough for us just to accept that China has her own laws and no matter how poor they are there is no place for us to comment. If we adopt this attitude, as the Honourable Ronald ARCULLI suggests, then why should Hong Kong bother to lobby for Most Favoured Nation (MFN)? It is after all, is it not, a Sino-United States matter? We speak out on MFN because there are narrow as well as wider issues which concern Hong Kong. XI Yang's case is no different.

China's State Secrets Law, which is the law Mr XI is supposed to have breached, is a bad law. This law provides, in effect, that anything relating to state security and interest is a state secret. This essentially means that anything not declared by the state as not being a state secret, could be a state secret. We can see here, in this case, where the abuse can arise from the law itself. So there is no point for us just to accept the bad law uncritically, especially since Hong Kong will be a part of China in 1997.

The lesson for us here is to ensure that Hong Kong reforms our Official Secrets Act as soon as possible so that similar types of abuse can never take place here and further to ensure that official secrets legislation will be balanced by access to information laws as well.

Madam Deputy, I support the motion.

MR CHEUNG MAN-KWONG (in Cantonese): Madam Deputy, there seems to be thunder and lightning outside. They remind me of a Chinese poem: "If the universe has feeling, it, too, will grow old. Life is full of vicissitude." China's real tragedy lies in the fact that, as time passes, the rule of law remains as it has always been. It sometimes even goes backwards. The ponderous wheel of history keeps turning cycle after cycle, thus repeating itself, and people keep suffering new pains.

Last night, I read the history of WEI Jingsheng. It set my thoughts racing. WEI was in prison for nearly 15 years, one of his charges being that he leaked state military secrets to a foreigner. I still remember his handsome youthful face at the time that he went to prison. On the day of his release, he was a loose-skinned toothless middle-aged man. He lost 15 years of his life just like that. Before he went to prison, he had said in the court in self-defence, "I am but an ordinary citizen. I never touched any secret. How could I have any secret to leak?"

Nearly 15 years later, XI Yang, a *Ming Pao* reporter in the prime of his life, was sentenced to 12 years in prison for "stealing and eliciting state secrets". He may be spending the best years of his life in prison. His photo shows that he, too, has a handsome face. He will be 50 years old by the time he leaves prison.

He may not be old, but he will have lost his best years. Both XI Yang and WEI were allegedly involved in cases having to do with the so-called “state secrets”.

Madam Deputy, what are state secrets? WEI had no answer. XI Yang, who was tried in camera, did not even have a chance to argue his innocence. So he had even less of an answer. But I must publicly thank Mr TO Yiu-Ming, lecturer of Baptist College. He scrutinized the Chinese Government’s charges against XI Yang. He found that the “financial secrets” allegedly disclosed by XI Yang had appeared before in seven newspapers (including *Wen Wei Po*). At last, XI Yang’s name has been cleared. He never did anything other than his job as a reporter. He is innocent.

As many have already said, the injustice of the XI Yang case was due to the unclear definition of “state secrets.” It was also due to the secrecy of the trial. Think about this. Both the first and the second trials were in camera. What was even more infuriating was that, members of XI Yang’s family were not informed of, or invited to, either trial. Even more absurdly, there were reportedly 200 observers at the second trial, but XI Yang’s hoary father was not among them. Nor was the lawyer who had had a hard time defending XI Yang. Nor has there been a written verdict which must be made public under the law. The entire trial process showed no respect for human rights or the rule of law. It did not even show any humanitarianism or any human feeling. Madam Deputy, as a Chinese person thinking about an event in China, I feel my heart ache. O China, why dost thou always sadden to tears those who love thee?

The XI Yang case has given rise to great worries in China. From a falling leaf, one can tell that autumn is coming. Everybody is pained by XI Yang’s fate and given cause to worry about Hong Kong’s freedom of the press. More importantly, people get a clear message from the heavy sentence passed on XI Yang. It was an act to smite one in order to scare another. The heavy sentence passed on XI Yang is a warning to all Hong Kong newspapers. They must watch their words and actions, or they will be crushed without mercy. Today, XI Yang has been given a heavy sentence. Tomorrow, the same will happen to you. In fact, China has long wanted to teach the Hong Kong press a lesson and to put it under control. In the wake of 4 June 1989, what most worried China was not only the Hong Kong Alliance for Supporting the Pro-Democracy Movement which mobilized a million people to take to the street, but also the news media which goaded the million to take to the street. The Chinese Government loves and hates the press. It deals with the press by means of an alternately hard and soft approach. XI Yang is a victim of the hard approach. It can be imagined that, if the press does not discipline and restrain itself, there will be many likes of XI Yang.

Madam Deputy, I am not making predictions. I am telling the fact. Recently, over a hundred outraged reporters on the China scene signed to join a boycott against reporting events favourable to the Chinese Government. These reporters refused to discipline themselves. The Chinese Government considered their action confrontational and revoked their permits to cover the Qiandao

Lake incident. Madam Deputy, the Qiandao Lake tragedy and the XI Yang case are totally unrelated, though they are both regrettable incidents as far as Taiwan and Hong Kong are concerned. Why did the Chinese Government not deal with the two cases properly? Why did it link the two events together? Why did it act against the over one hundred reporters of Hong Kong and against the Hong Kong press, and thus hurt the confidence of the people of Hong Kong? Madam Deputy, I cannot resist the temptation to ask again: O, China, why dost thou always sadden to tears those who love thee? Why dost thou always drive good people to desperation?

Madam Deputy, today's motion urges the Chinese Government to respect the freedom of the press and to release XI Yang as soon as possible. This motion probably will not amount to very much in the eyes of China. It is just a weak cry emanating from the people of Hong Kong. But I know very well that even a weak cry is better than total silence, better than aiding and abetting. If China wants to free itself from the historical tragedy that has been weighing it down and save its people from repeated sufferings, we must begin with this weak cry.

Therefore, Madam Deputy, with these remarks, I support the motion.

MR MAN SAI-CHEONG (in Cantonese): Madam Deputy, XI Yang's case conveyed a powerful message to us: Firstly, that the freedom of the press and freedom of information are very vulnerable; and secondly, that the personal safety of reporters is at risk. And the Chinese authorities are obviously making a sacrificial item out of XI Yang by imposing a harsh sentence on him as a warning to other people. Apart from seizing the Hong Kong media with panic, the incident is also meant to highlight the importance of exercising self-censorship to the satisfaction of China. The severe punishment on Mr XI Yang can be seen as a major test of and challenge to the media while at the same time it deals a heavy blow to the freedom of the press.

According to a study conducted by Mr TO Yiu-ming, lecturer of the Hong Kong Baptist College, and released recently, as far as the so-called "leaking of State financial secrets" by XI Yang is concerned, *Ming Pao* was not the first newspaper to report such news. Other newspapers, including even the pro-China *Wen Wei Po*, also reported such news, some of them even earlier than *Ming Pao*. The incident gave rise to query from me, and that is, what offence exactly did XI Yang commit? Since other newspapers had already disclosed similar financial information, some even at an earlier date than did XI Yang, obviously the charge that XI Yang allegedly "leaked State secrets" failed to be established. What then were the grounds on which China punished XI Yang so severely? Was China merely trumping up the charge against him? Or was XI Yang simply being framed as a sacrificial scapegoat to warn the Hong Kong media against any transgression or else serious consequences would ensue?

With the increasingly close financial links between China and Hong Kong, and with Hong Kong becoming the financial centre of the Asia-Pacific region, the competition among the news media to cover financial news on China can hardly be avoided. The heavy sentence on XI Yang is also an indication that China has grossly insulted the status of Hong Kong as the financial and information centre of the Asia-Pacific region. People will think that after 1997, the freedom of the press which Hong Kong has enjoyed so far may evaporate! I cannot help but think that, if a society reports only the good news or officially approved news but hold back the unpleasant information, what kind of society will it be? I only know that it will be a society which is backward, retrogressive and which hesitates to move forward, just like what China was during the Cultural Revolution. If we want Hong Kong to enjoy economic boom, stability and prosperity, we cannot under-estimate the importance of freedom of the press and freedom of information which are the cornerstones of social prosperity, and are also helpful in promoting economic development. Without freedom of the press, a society will resemble a deaf person who cannot have quick access to information, or a dumb man who cannot talk. How can a deaf and dumb society maintain its stability and prosperity and remain unchanged for 50 years?

Hong Kong seems totally helpless as far as XI Yang's case is concerned, and there appears to be no way we can offer assistance. Although Mr PATTEN, the Governor, stressed more than once the importance of the freedom of the press, the Government did not do anything on behalf of Mr XI Yang. I wish to remind the Government, by way of this debate, to make up its mind as soon as possible to formulate the long-awaited legislation on freedom of information so that the freedom of the press can be ensured in Hong Kong.

With these remarks, I support the motion.

THE PRESIDENT resumed the Chair.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, the critical remarks made by many colleagues about the incident seem to give me the impression that I were at another rally of public chastisement. I want to look at this matter from a different perspective and present both sides of the story to the people of Hong Kong. My speech will consist of a series of questions, for Dr YEUNG Sum to answer later.

- (1) What is Mr XI Yang's situation or what are his backgrounds? According to press reports, he previously served in the People's Liberation Army in China. We must realize that, in China, it is not easy for one to serve in the army, which is generally known as "an army of the people". He also once worked as a reporter in China. He was able to come to Hong Kong on a one-way exit permit. His grandfather, now in his nineties and retired, was once the general

manager of Man On Company in Hong Kong. How much do Dr YEUNG Sum and the other colleagues who spoke just now know about XI Yang's backgrounds?

- (2) According to press reports, any reporter who wants to cover events in China is required to submit an application to the Xinhua News Agency. Did XI Yang do so? Do we know? Did he comply with China's requirements when he took steps to cover events in China?
- (3) Who is the biggest shareholder of Ming Pao? What are his backgrounds? Who is the boss? Do we know? I do not mean to say that the paper's backgrounds are dubious. But we must be fully aware that these questions do exist. According to unconfirmed reports, the paper's former publisher had proposed to spend \$200 million on reorganizing the company. I do not mean to say that there was anything fishy about this. But if one wants to make a criticism, one must first get the full picture.
- (4) Is somebody making propaganda capital out of the affair? Is somebody trying to meddle in other's business or trying to mislead the public?

We must not lose sight of the fact that in its announcements, the Chinese Government has stated categorically that the law invoked was Article 4 of the National Security Law, and stressing that the trial was conducted in accordance with Article 111 of the State Secrets Law. I wonder if any Members have mentioned this. I am not speaking in defence of the Chinese Government. But I find that some people are, to say the least, not qualified to speak, for they fail to put forward any counter arguments in the context of similar cases. According to press reports, a comparable case went on trial recently in the United States. Did any Members condemn the trial? Singapore and some Middle East countries have laws different from ours. Why do we not criticize their laws? Incidentally, should Mr Andrew WONG ever go to the Middle East, I am sure that he would most likely be unable to return to Hong Kong, for even drinking is unlawful or against the law there. Hong Kong Government itself and the Executive Council observe a collective responsibility system and a system of confidentiality. Sir David FORD (our former Chief Secretary) once tried to invoke law to sue Mr Kingsley SIT, a former legislator. So we must bear in mind that different countries or different territories have different laws and different rules. We must respect other people. We know that the Chinese Government has different laws and interpretations from ours. But can we treat China as a non-nation? Can we say that the Legislative Council in Hong Kong is supreme? Can we say that the people of Hong Kong, accounting for 0.5% of the population of China, are supreme? Can we say that the interests of the other 99.5% of the population are totally insignificant? These words come from my heart. In doing so, my most important purpose is to remind colleagues that we should make the public see the whole truth clearly.

Many have advised me to say little about this matter, the less the better. But as a responsible and outspoken Member, I certainly have an obligation to tell the whole truth as I know it. I may not win the approval or support of the entire population of Hong Kong. But at least I have the courage to tell the truth.

It is envisaged that a motion on Hong Kong will probably be moved in the House of Lords in London on the 18th of this month and that this matter will probably be raised during the debate. Should that happen, it would be tantamount to interfering with China's internal affairs, interfering with China's judiciary. I am of the view that no country should do so, least of all Hong Kong. Is the legislature in Hong Kong qualified to interfere? I have serious doubts about this.

One must closely watch out for the United Democrats of Hong Kong (UDHK), which uses every opportunity to attack the Chinese Government with a view to winning votes. We must appreciate that the majority of the Chinese people absolutely support the Chinese Government. Antagonizing the Chinese people in every possible instance will create bad blood and it would not bode well for Hong Kong when the territory returns to China in 1997. Those responsible must absolutely be brought to account for the consequences. What I have just emphasized is that China and Hong Kong have different systems. The "one country, two systems" concept is going to be put into practice in due course. And the Chinese Government has reiterated the importance of the "one country, two systems" concept, which means that you will have your system while I will have mine. Mr LAU Chin-shek just now bared his soul. His remarks which are representative of his party reveal their intention to use this occasion to convert China and to do united front work on China. They are not just simply thinking of Hong Kong. For our part, we should make the public see that what they should do, given the realities, is to care about China and to hope that China will one day become more like us, with the same freedom of the press and the same aspirations. I want to use this occasion to express my hope to the media that they will grasp the meaning of "freedom of the press". Such freedom does not give them a licence to do anything, even things exceeding the limits of the laws or rules of the host country. In addition, we must realize that making unrealistic attacks will not do any good to the matter. Mr President, I also want to take this opportunity to point out that Mr XU Simin misled the public in Hong Kong and thus shares a major part of the responsibility for the whole episode. I hope that, when the incident has cooled off, a special amnesty or a sentence reduction will be granted whereby Mr XI Yang will receive treatment that is fairer or he finds appropriate.

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

MR FREDERICK FUNG (in Cantonese): Mr President, the Association for Democracy and People's Livelihood (ADPL), including myself, has already said a lot about the XI Yang case on other occasions. This speech will therefore focus on Hong Kong's freedom of the press.

Mr President, Hong Kong has always been a free society. The Government observes a non-interventionist policy wherever possible. The Bill of Rights Ordinance has given additional protection to the freedom of speech and freedom of the press. Article 16 of the Bill of Rights Ordinance states, "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of any kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Free speech and a free press have become a part of life in Hong Kong. Their importance must not be belittled. I believe that the Chinese Government should realize how important free speech and a free press are for Hong Kong. Article 39 of the Basic Law provides, "The provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong shall remain in force and shall be implemented through the laws of the Hong Kong Special Administrative Region (SAR)." Article 27 provides specifically that "the residents of Hong Kong shall have freedom of speech, of the press and of publication". However, of late, the XI Yang case has raised new doubts in the minds of the people of Hong Kong and in the minds of Hong Kong's journalists as to whether there will be enough safeguards for free speech and a free press and their confidence in the future is ebbing.

The XI Yang case has created a problem which is that Hong Kong's reporters must tread cautiously from now on when they go to China to cover news events. Hong Kong reporters, uncertain about China's laws, will tend to exercise self-censorship, and this will be bad for Hong Kong free press. To prevent it, I think that the Chinese side must quickly formulate some clear and specific rules on news reporting for the guidance of, and observance by, Hong Kong reporters. ADPL and myself also think that, when XI Yang was covering news events in China in his capacity as a *Ming Pao* reporter, he was just doing his proper duty as a journalist. He had no ulterior motive to steal or elicit state secrets. Yet the Chinese authorities gave him a heavy 12-year sentence. This has cast a dark shadow over the Hong Kong press. Thereafter, a Hong Kong reporter covering news events in China, though his purpose is only to obtain first-hand information for reporting to his readers, can be accused of stealing secrets and is thus in danger of being arrested. I think that the Chinese Government should fully honour the Basic Law's clear and specific provisions and respect the freedom of the press as well as other freedoms in Hong Kong. Its failure to do so will undermine the spirit of the "one country, two systems" concept. Besides, Article 5 of the Basic Law provides that the previous way of life shall remain unchanged in the Hong Kong SAR for 50 years. Free speech and a free press are a part of life in Hong Kong. They should remain unchanged.

If a free press is to be maintained in Hong Kong, the first thing that we must do is to review those existing statutes that are in conflict with the freedom of the press. Because we are now in the transition period, and particularly because of the Chinese side's subtle pressures, Hong Kong's news media have already begun to readapt themselves. In this context self-censorship by news organizations with commercial ties to China is the most apparent. Hong Kong

needs to have full and long-term legal safeguards for its free press beyond 1997. Among Hong Kong's existing statutes, the Official Secrets Act (OSA) is clearly in conflict with the freedom of the press. OSA identifies six major forbidden areas including: no leakage of information on intelligence relating to national security, no leakage of information on defence matters or on international relations, no leakage of information on the investigation of crimes, no leakage of personal information on certain kinds of individuals including civil servants, and no leakage of secret intelligence relating to the state and international organizations. There is, however, no definition of what specifically constitutes damage to state or government interests. Only the Government can determine and it can do so subjectively. Besides, OSA does not specifically provide that a defendant may plead "public interest" by way of defence. I think that, in a fair trial, a defendant ought to be able to argue in his defence that his action does more good to the public than it does harm to a department of the Government.

Besides OSA, yet another statute that is controversial and restrictive of the freedom of the press in Hong Kong is the Crimes Ordinance. Under sections 2 and 9, "treason" and "sedition" are crimes. But the terms lend themselves to very broad interpretation. Sections 2 and 9 of the Crimes Ordinance are therefore in conflict with the Bill of Rights Ordinance's safeguards for free speech. So I think that they must be reviewed lest the public should breach them inadvertently.

Generally speaking, the Chinese side should, out of respect for the freedom of the press in Hong Kong, quickly hold discussions with the British side. An early decision should be made on what to do about OSA and sections 2 and 9 of the Crimes Ordinance. For its part, the Hong Kong Government must consider the need to localize OSA and to amend the Crimes Ordinance so as to enable both statutes to ensure the continuity of the law.

Some provisions of the Basic Law have the same problems as those of sections 2 and 9 of the Crimes Ordinance. Article 23 of the Basic Law provides, "The Hong Kong SAR shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government or theft of state secrets." The terms "secession", "subversion", "sedition", and "theft of state secrets" lend themselves to broad interpretation. The term "subversion", for instance, lends itself to very broad interpretation under China's laws. So I ask the Chinese Government to give specific definitions together with connotations to the above terms, doing so in the interests of safeguarding Hong Kong's free press and respecting Hong Kong's political realities. For instance, "secrets" should be restricted to military secrets, security secrets and secrets about major social and economic policies of Hong Kong. The Chinese side should review the definitions of the terms so as to ensure that the people of Hong Kong can continue their present life-style beyond 1997.

The review of the existing laws and statutes will not be enough in itself to safeguard Hong Kong's free speech and free press. I suggest that the Chinese

and the British Governments should agree on enacting a law on freedom of information in Hong Kong before 1997. In essence, the law on freedom of information is to put in place a statutory system that enables members of the public to obtain information from the Government through lawful channels. With regard to information that the Government need to classify, the statute is to lay down a clear and specific set of criteria. The criteria will set out what sort of information, if disclosed, will damage security or diplomatic interests or prejudicial to personal privacy or commercial secrets.

There are other ways to further safeguard the freedom of the press. We can learn from what western countries have done. We can enact a press law to allow reporters to cover boards and Councils, courts and government departments and to give reporters the right to ask the Government to disclose from its files unclassified information that is of interest to the public and in furtherance of their right to know.

In sum, I hope that the Chinese side will respect the present life-style and freedoms of the people of Hong Kong and that, during the transition period, all possible legislative and other effective steps will be taken to ensure that the people of Hong Kong will continue to enjoy the right of free speech after the transfer of power in 1997. I think that the Chinese authorities must promise to give XI Yang a new trial that will be open and fair and to produce evidence to prove his guilt. Failing this, it should immediately set XI Yang free. I urge that the Hong Kong Government and the British Government include XI Yang's name in the namelist of Hong Kong persons serving prison terms in China.

With these remarks, I support the motion.

The buzzer sounded a continuous beep.

PRESIDENT: Mr FUNG, you have to stop.

MR MARTIN LEE (in Cantonese): Mr President, XI Yang was sentenced to 12 years' imprisonment under an unfair legal system. His case not only rings the alarm for freedom of the press, but also gets on Hong Kong people's nerves.

Over the past few weeks, the editorial and reporting staff of *Ming Pao Daily News* joined hands in supporting XI Yang. The Hong Kong Journalists Association has pulled out all the stops in a bid to see justice done for XI Yang. To express their support for XI Yang, 118 China-reporting journalists from 23 media organizations jointly signed a statement "to boycott all northbound reporting activities invited and organized by the Chinese officials which are of a propaganda and sightseeing nature".

Mr President, in order to fight for social justice and to safeguard freedom of the press, these journalists even risk "victimization" to support XI Yang.

Hong Kong people indeed owe them the highest respect. We should never forget that we rely on these journalists of professional integrity to provide us with worldwide information without our leaving home.

Mr President, should our freedom of the press be eroded, our freedom of information, our freedom of speech and other individual rights will be fading gradually. The deprivation of one or two residents' human rights may lead to other entities in the community meeting the same fate at the end of the day. If we see one or two professions (such as councillors, journalists) being subjected to political vetting but still look on with folded arms, eventually it will be our own profession's turn. Hong Kong people should not cherish the idea that they are permanent residents and so what happened to XI Yang will not happen to them. One should not think that, not being a frontline reporter, one need have no worry about inadvertently touching "state secrets". It is because in a totalitarian state, the definitions of "dissidents" and "state secrets" can be given as wide an interpretation as political expediency may require.

Mr President, a German once said the following: "In Germany, the Nazis first came to arrest members of the Communist Party. At that time, I did not stand up to speak for them because I am no communist. Later, they arrested the Jews and I did not say a word because I am no Jew. They arrested the unionists afterwards. I do not stand up for them because I am no unionist. They then arrested the Catholics and I still said nothing because I am a Christian. Finally, the Nazis came to arrest me. By that time, there was nobody left to defend me". (Martin NIEMOELLER 1892-1984) I hope Mrs Elsie TU and Members from the Liberal Party will do some earnest soul-searching.

Mr President, I hope that the mass media will remain united. Be one a frontline reporter or a newspaper proprietor, one will stand up to protect freedom of the press. I would like to urge Governor PATTEN to be as good as his word. He has time and again spoken in Hong Kong and overseas on the importance of freedom of speech to the territory's economic development. He even assumed the posture of "the Statue of Liberty" to tell the local media organizations not to carry out "self-censorship". However, when this Council and the press urge the Administration to amend the legislation which threatens the freedom of speech, the Governor simply ignores it. When Members seek to table Private Member's Bills to urge the Government to formulate a set of legislation on access to information and to set up a human rights commission, the Governor again uses different excuses to decline it.

Being the "last Governor of Hong Kong", Mr PATTEN has the obligation to repeal or amend as soon as practicable the harsh colonial laws so that they would not become the tools to suppress Hong Kong people's freedoms after 1997. For many years, such laws have been shelved and not invoked by the British Hong Kong Government but it does not imply that the future Special Administrative Region Government is going to exercise the same restraint. The Internal Security Act promulgated by the United Kingdom before the independence of Singapore is a poignant example. Mr LEE Kwan-yew was

himself a victim of this Act. But when he came to power, he found this Act very useful because he could invoke it to have all the dissidents locked up behind bars without going through a trial.

If Governor PATTEN does not immediately repeal or amend such kind of harsh laws, the Special Administrative Region Government will be very grateful to him and invoke them to suppress the people. By then, we would realize why Mr LU Ping called him “a man of guilt” in Hong Kong’s history!

Lastly, I hope the official replying on behalf of the Government will find out the voting intention of the three Official Members before giving us a reply. Do not try to mislead Members, please.

Mr President, with these remarks, I support the motion.

MR SZETO WAH (in Cantonese): Mr President, I remember that Mr LU Xun once quoted a French writer as saying, “Not even rolling one’s eyeballs at someone is an expression of the utmost contempt.” In these three years, I have adopted this attitude towards some of the remarks made in this Council. Why then am I departing from my usual practice today? Contempt is no longer an adequate expression of what I am feeling. Grief and indignation is. As I am concerned that Dr YEUNG Sum may not have enough time to reply to Mr CHIM Pui-chung’s questions, I may as well do so. Mr CHIM’s first question is: Do you know about XI Yang’s background? Mr CHIM has said that XI Yang was an officer in the Peoples’ Liberation Army and a reporter and his father worked in a Chinese enterprise in Hong Kong. Is it a crime to have such a background?

PRESIDENT: Point of order or point of elucidation, Mr CHIM?

MR CHIM PUI-CHUNG (in Cantonese): Mr President, he is wrong. I did not say that Mr XI Yang’s father had worked in Hong Kong.

PRESIDENT: Sorry, do not launch into your speech. Are you making a point of order or a point of elucidation, Mr CHIM?

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I would like to ask Mr SZETO Wah for clarification. What he quoted was not my words. That was a misrepresentation of my ideas.

MR SZETO WAH (in Cantonese): Even if a person has such a background, is that a crime in itself? Did the court of China regard XI Yang's background as part of the evidence leading to his conviction and thus sentence him to 12 years of imprisonment? Perhaps there is a lot to his background that we are not aware of. Mr CHIM may know more and perhaps that is why he thinks that XI Yang has been rightly convicted. Failure to know about XI Yang's background is not our fault; it is only because some people had "working in a black box" that we would not have known it.

PRESIDENT: Order please. First of all, address your remarks to the Chair. Do not address remarks to each other. Mr CHIM, if you have been misunderstood, I will give you a chance after Mr SZETO Wah has finished to explain your position. But meantime, clearly Mr SZETO Wah does not want to be interrupted and he has a right not to be interrupted. Alright?

MR SZETO WAH (in Cantonese): Mr CHIM Pui-chung's second question relates to the fact that XI Yang neither registered his news coverage with the Xinhua News Agency, nor made any application to the Agency 15 days in advance. However, has every reporter who has reported this kind of news about China in the press of Hong Kong made an application to the Xinhua New Agency 15 days in advance? If not, all reporter who have reported such news are guilty.

Mr CHIM's third question is: Do we know of Ming Pao's holding company? I do not. Nor do I know whether Mr CHIM Pui-chung has established any company. I do not care what Mr CHIM's holding company is. I am focusing only on his speech.

Finally, I would make a lighter remark. As far as "state secret" is concerned, I read a report a few decades ago about Nikita KHRUSHCHEV's visit to the United States. According to the report, his excrement and urine were treated as secret and had to be specially dealt with. There is nothing strange about it because if one could obtain KHRUSHCHEV's excrement and urine, one would have known the health conditions of the then highest leader of the USSR. By the same token, when someone said his or her father could walk three kilometres amidst the cold wind, he or she was in fact revealing the health conditions of the father. Is that a disclosure of "state secrets"?

Mr President, with these remarks, I support the motion.

PRESIDENT: Mr CHIM, you said you were misunderstood. And you want to explain?

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I did not say in my speech a moment ago that Mr XI Yang was guilty. Mr SZETO Wah has distorted the facts. This is also the typical views adopted by him, as party whip or one of the leaders of the United Democrats of Hong Kong. He must be held responsible for such an attitude.

Second, he said he would show contempt for the behaviour of other Members. This is his right as well as the usual practice among the United Democrats

PRESIDENT: Listen, do not make a second speech. If you have been misunderstood, clarify your position but do not make a second speech.

MR CHIM PUI-CHUNG (in Cantonese): Just now I did not say that Mr XI Yang was guilty and secondly, neither did I say that his father was in Hong Kong. His father is, as a matter of fact, in Beijing and therefore what Mr SZETO Wah said did not agree with the truth.

MR ALFRED TSO (in Cantonese): Mr President, last September, while covering news in China, XI Yang, a *Ming Pao* reporter, was charged with breaching Chinese law and was subsequently sentenced by the court to 12 years' imprisonment for disclosing state secrets. The incident has generated widespread public concern in Hong Kong and has aroused anxieties among those working with the media. A lot of people in Hong Kong think that XI Yang was only discharging his duty as a reporter in covering and reporting news for his paper. Since the information he disclosed was not any major secret of a material nature, nor was he engaged in any espionage activity, the sentence of 12 years' imprisonment was too harsh a punishment. The media in Hong Kong have also indicated that as China does not have a set of explicit rules for overseas and Hong Kong reporters and journalists to comply with, for those working in China to cover news, they are subjected to considerable pressure. People even think that the XI Yang incident is meant to serve as China's warning to the Hong Kong and overseas media. The incident as it unfolded dealt a serious blow to Hong Kong where people feel strongly about the incident, and they identify themselves with XI Yang. In slightly more than three years, Hong Kong will be returned to China. Therefore people are very concerned about whether, after 1997, Hong Kong can still retain the freedom of speech and freedom of the press; and whether the judicial system will be able to protect every member of the public. This also explains the presence of worries and doubts among the public with regard to China's approach in dealing with XI Yang's case.

While XI Yang was lodging an appeal, I tried to reflect, through the Xinhua News Agency to the National People's Congress (NPC), the Chinese People's Political Consultative Conference (CPPCC) and the State Council, my

opinions on such issues as the transparency of the trial, the discrepancy between the legal systems of Hong Kong and China, the worries of the Hong Kong people and their demand for leniency towards XI Yang. Ever since my participation in politics, I have pursued the objective of a gradual development of our a democratic political system so that Hong Kong can be governed by Hong Kong people. I hope that China-Hong Kong affairs can be dealt with in a practical, constructive and communicative manner. Although I have not been able to make a major breakthrough with what I have done recently, somehow I have set up a channel for communication. I do hope that what I have done will prove to be helpful to a smooth transition for Hong Kong meddling with China's in future. All along, I have hoped that China will adopt an attitude of not meddling with Hong Kong affairs. And so, I am even more opposed to Hong Kong meddling with China's affairs. This is particularly so as far as legal principle is concerned, because XI Yang already pleaded guilty and was convicted by the judicial authorities in China. Even his employer, Mr YU Pun-hoi, admitted in public that XI Yang had broken the law in China. In such circumstances, I should not support the motion. I am even more opposed to the views and attitudes of certain Members from the United Democrats of Hong Kong. However, even laws have to be reasonable, and, taking into consideration the actual circumstances of Hong Kong, I shall support the motion. Although the passing of this motion may be totally useless towards the release of XI Yang, still, as a representative of the public, I do have the obligation to express the worries and concerns of the Hong Kong people through this Council.

Finally, I wish to take this opportunity to say that, at this stage, I believe the demand for an early release of XI Yang has reached the top decision-making level of China. I suggest that all those concerned should change their tactics now and pool forces to communicate with China through dialogue and with sincerity in the hope that there will be a chance to assist XI Yang. I earnestly hope that China will release XI Yang as soon as possible by way of an amnesty.

Mr President, with these remarks, I support the motion.

DR HUANG CHEN-YA (in Cantonese): Mr President, freedom of the press is essential to a society and is an indispensable cornerstone of a society's prosperity. The last 40 years of history in China have borne witness to the fact that the suppression of freedom of the press to the extent that only "big lies" can be covered in the press is bound to spawn disasters such as the Great Leap Forward and the Cultural Revolution. To build China into a country with bright promises, the press must be given a free rein to report faithfully and criticize social ills. For this reason, to uphold freedom of the press is beneficial to China and Hong Kong as well. Should one think that freedom of the press differs from one place to the next and is subject to different standards, or it is not a big deal when journalists are gagged or become merely a mouthpiece of those in power, one is actually helping officials who abuse power and pervert the law to sustain their oppression of the people. For this reason, I cannot agree with the point made by Mr CHIM Pui-chung that we need not ask China, which

was different from Hong Kong, to respect freedom of the press in Hong Kong as that would mean China does not need to respect its own freedom of the press either.

Recently I talked with my friends in mainland China about Mr XI Yang's case. Some of them are of the view that it is improper to ask for a lighter sentence on the grounds that XI Yang is a Hong Kong resident. They said that XI Yang should be treated in the same manner as anyone else who committed the same offence in China. In fact, Mr President, we are not asking for exceptional clemency or a lighter sentence on the grounds that he is a Hong Kong resident. Therefore I will not ask China to grant amnesty to XI Yang. However, the point is that China should respect everyone, be one a Chinese national or Hong Kong resident, and respect his human rights by allowing him to have an open and fair trial. Up to now we have seen no evidence to prove that XI Yang or his friend has committed any offence and it is unreasonable to detain him in prison if he is not given a fair and open trial or there is no concrete evidence produced against him.

For this reason, we should urge the Chinese Government to release XI Yang immediately!

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, Members of this Council has expressed in this debate their grave concern about the incident of Mr XI Yang. This is indeed a reflection of the responses of the various sectors of the Hong Kong community. The Administration is equally concerned about the incident.

Since the arrest of Mr XI Yang, we have been closely liaising with the British Government and the employer of Mr XI to discuss his situation. The British embassy in Beijing has also tried different avenues to obtain authoritative information about Mr XI and requested the Chinese authority to allow access to Mr XI by his family members, colleagues and legal adviser. The British and Hong Kong Governments understand the arrest of Mr XI has aroused anxiety among the people of Hong Kong and have reflected their concern to the Chinese authority.

Every year, many journalists like Mr XI who reside in Hong Kong have to visit China frequently to cover news stories. This is part of their daily duties. Day after day, they bring the news and information on China to us and other places around the world continuously, enabling us to know the details concerning China's opening and economic reforms. Their reports and hard work are beneficial to China, Hong Kong, and all those who have or wish to have any links with China. What these zealous journalists need most in their course of work is clear guidelines for news covering in China. They need to know the lawful scope of reporting as set out by the Chinese authorities, especially laws in respect of state secrets.

The incident of Mr XI has given rise to great perplexity and worries among journalists in matters of this kind. The Hong Kong Government fully understand their deep worries and has vigorously reflected the situation to the British Government which has in turn exchanged opinions with the Chinese Government on the incident of Mr XI. It has also requested China to clarify its laws relating to state secrets and promulgate clear regulations and guidelines on news reporting.

In Hong Kong, we now enjoy freedom of the press, evident in the drastically different contents and opinions expressed in the great number of newspapers and magazines in circulation daily. It is therefore beyond doubt that the Administration has endeavoured to maintain the press freedom enjoyed by newspapers and electronic media.

The Administration's review of laws which may adversely affect the operations of the mass media has demonstrated fully our commitment to maintaining freedom of the press. So far, we have reviewed 27 ordinances, among which 17 were suggested by the Hong Kong Journalists Association. We have already amended nine provisions in three of these 17 ordinances and we are preparing to amend another 19 provisions from seven other ordinances. We will also further consider amending the remaining seven ordinances. As regards the other provisions which may arouse concern, it is considered after the review that they are not in conflict with the Bill of Rights. In fact, these provisions share the common feature of protecting privacy, and privacy is exactly one of the rights protected by the Bill of Rights.

Freedom of the press is an indispensable part of the existing institutions in Hong Kong. It is now, and it should still be so in the future.

The basic rights and freedoms now enjoyed by the people of Hong Kong will remain unchanged after 1997. In fact, freedom of the press in Hong Kong has been clearly acknowledged in the Sino-British Joint Declaration and the Basic Law, both of which have categorically provided that the people of Hong Kong will continue to enjoy freedom of the press after 1997.

I can assure Members that the Hong Kong Government will definitely maintain close liaison with the British Government to follow up the incident of Mr XI Yang and any problems that may arise out of it.

Finally, besides joining Members of this Council and the general public in continuing to express concern over this incident, I sincerely hope that the Chinese authority will state more clearly the basic rules and regulations which Hong Kong journalists working in China should comply with.

PRESIDENT: Dr YEUNG Sum, do you wish to reply? You have just one minute 49 seconds.

DR YEUNG SUM (in Cantonese): Mr President, sometimes rescuing one person is on a par with rescuing the whole world. Now we are concerned with the fate of XI Yang not just because we care about a reporter of *Ming Pao*, but because we care about freedom of the press in the territory. If the Chinese Government is going to release XI Yang upon the views we expressed today, it certainly will be interpreted as a gesture to the people of Hong Kong as well as to the world that the Chinese Government respects freedom of the press in Hong Kong. This should be very favourable to the development of China.

I would like to thank all the Members who spoke today. I hope that the Hong Kong Government can do more in this direction by amending, where possible, all those laws which are inconsistent with press freedom and, in particular, by allowing legislators to introduce the Information Access Bill in the form of a Private Member's Bill. This may be a somewhat heated debate. But I cherish the hope that tomorrow all newspapers will feature headlines like this: "Most legislators support the motion to urge the Chinese Government to respect freedom of the press in Hong Kong and to release XI Yang as soon as possible."

I hope that all Members, including those who have just raised an objection to my motion, will do some soul-searching before casting their votes. And I hope that they will support my motion.

Question on the motion put.

Voice vote taken.

THE PRESIDENT said he thought the "Ayes" had it.

MR MARTIN LEE: Can I claim a division?

PRESIDENT: Council will now proceed to a division.

PRESIDENT: Will Members please proceed to vote?

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

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mr Jimmy MCGREGOR, Mr Albert CHAN, Mr Vincent CHENG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO,

Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr Alfred TSO voted for the motion.

Mr CHIM Pui-chung voted against the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Mrs Selina CHOW, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Elsie TU, Mr Moses CHENG, Mr Howard YOUNG and Mr Roger LUK abstained.

THE PRESIDENT announced that there were 24 votes in favour of Dr YEUNG Sum's motion and one vote against it. He therefore declared that the motion was carried.

Adjournment and Next Sitting

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 2.30 pm tomorrow 12 May 1994.

Adjourned accordingly at Eight o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Administration of Justice (Miscellaneous Provisions) Bill 1994 and the Civil Aviation Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWER**Annex I****Written answer by the Secretary for the Civil Service to Mr James TO's supplementary question to Question 4**

It would be unlawful if the Independent Commission Against Corruption (ICAC) were to use its statutory powers in the integrity checking process. The powers, in any case, will not be needed, either in appointment or normal checking which require only a check of ICAC and police records, or in extended checking which depends on information provided by the civil servant voluntarily. The information provided will be confirmed (or otherwise) at interviews with referees nominated by the subject and his senior officers.