OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 22 June 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 ALLEN LEE PENG-FEI, C.B.E., 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 STEVEN POON KWOK-LIM

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

THE HONOURABLE TIK CHI-YUEN

THE HONOURABLE JAMES TO KUN-SUN

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

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

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

THE HONOURABLE ALFRED TSO SHIU-WAI

IN ATTENDANCE

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

MR ALISTAIR PETER ASPREY, C.B.E., A.E., J.P.
SECRETARY FOR SECURITY

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

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

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

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

MR NICHOLAS NG WING-FUI, J.P.
SECRETARY FOR CONSTITUTIONAL AFFAIRS

MRS RACHEL MARY BEDFORD CARTLAND, J.P.
SECRETARY FOR RECREATION AND CULTURE

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	*L.N. No.*
Marine Fish Culture (Amendment) Regulation 1994	361/94
Boundary and Election Commission (Registration of Electors) (Geographical Constituencies) (Amendment) Regulation 1994	365/94
Building (Administration) (Amendment) (No. 2) Regulation 1994	366/94

Sessional Papers 1993-94

No. 89 — Report of Changes to the Approved Estimates of Expenditure Approved during the Final Quarter of 1993-94 Public Finance Ordinance : Section 8

No. 90 — Hong Kong Provisional Airport Authority Annual Report 1993-94

Address

Hong Kong Provisional Airport Authority Annual Report 1993-94

FINANCIAL SECRETARY: Mr President, in accordance with section 10 of the Provisional Airport Authority Ordinance, the Annual Report and audited accounts of the Provisional Airport Authority for the year ended 31 March 1994 are tabled today. The annual report also contains a detailed review of the Authority's activities covering events up to early this month.

The report tells a story of solid progress and achievement in the development of our new airport against a challenging and, at times, difficult background. I would like to highlight some of these key developments.

On the construction front, work on the largest reclamation ever undertaken in Hong Kong, to form the 1 248-hectare airport platform, has been continuing round the clock, seven days a week. So far over 700 hectares have been formed — which amounts to more than 60% completion. Detailed design on the terminal building, the largest building in Hong Kong, is virtually

complete. Detailed design is also well advanced on all other aspects of the airfield, such as runway, taxiways, aprons and key airport utilities.

On the non-physical front, work has continued on commercial, operational and financial planning. In particular, the Authority has developed, with the prospective franchisees, business plan specifications and draft franchise terms for the key services of cargo handling, aircraft maintenance, catering and aviation fuel supply. Negotiations are planned to commence on the air cargo franchises in the near future, and others will follow.

Progress on all these fronts could not have been made without the vigorous efforts of the board and the management team, and I would like to take this opportunity to thank the management and staff of the Authority for their dedication to the project.

I am also pleased to say that the report makes it clear that tight control of costs continues to be exercised and that all costs and commitments so far incurred by the Authority have been contained within the Authority's own budgets, and of course within the funding approved by the Finance Committee of this Council.

Looking ahead, following the achievements made during the past year, the Authority is now ready to intensify its activities in commercial, operational and financial planning. It is also ready to undertake the next major step in construction of this project, comprising the terminal building, the first runway and other essential airport infrastructure facilities. For that we are requesting a further $15 billion in advance funding and I very much hope that the Finance Committee will approve this on 1 July. This crucial next step must be taken without further delay if we are to maintain project momentum. We are meanwhile continuing our talks with the Chinese side and I am sure we all hope that good progress will be made at the next meeting of the Airport Committee to be held this Friday.

Finally, this report (and I hope I am really saying this for the last time) should be the last one issued by this provisional body. We aim to introduce the Airport Corporation Bill as soon as we can to this Council after our current consultations with the Chinese side have been completed.

Mr President, only three years remain in the context of the Government's commitment under the Memorandum of Understanding to complete the airport to the maximum extent possible by 30 June 1997. The Authority's task is thus a formidable one and it is essential that we give it the necessary tools to carry it out. These tools are: further funding; agreement with the Chinese side on financing arrangements; enactment of the Airport Corporation Bill; and progress on airport franchises.

Oral Answers to Questions

Use of Hong Kong as a base for subversion

1. MR CHEUNG MAN-KWONG asked (in Cantonese): *Regarding the recent remarks made publicly by the Chief Secretary that the Hong Kong Government would not allow individual pro-democracy activists to try to use Hong Kong as a "base for subversion", will the Government inform this Council:*

(a) the definition of a "base for subversion";

(b) the activities that would be regarded as "subversive", and whether comments expressed freely by individuals are included; and

(c) the number of Chinese citizens, scholars or people in exile overseas for supporting the Chinese Democratic Movement in 1989 who have been refused entry into Hong Kong by the authorities concerned in the past five years, the reasons for the refusal, the number of people in this group who have been refused entry for political reasons or for trying to use Hong Kong as a "base for subversion", and the names of those who have been refused entry and the relevant dates?

SECRETARY FOR SECURITY: Mr President, we are committed to maintaining Hong Kong as a free and open society, and to upholding the rights and freedoms of Hong Kong people.

In making her comments, the Chief Secretary was referring to our long-established policy, which we believe is understood and supported by the community at large, not to allow Hong Kong to be used as a base for political activity by visitors campaigning to undermine any of our neighbours.

There is no offence of subversion in Hong Kong law and therefore no legal definition of "subversive" activities. The word in its normally accepted sense refers to activities which threaten the safety or well-being of a state and which are intended to undermine or overthrow a state by political or violent means. This does not include the peaceful and lawful expression of views by Hong Kong people on any issue, including events in China.

We do not comment on individual cases. Each case is considered on its merits. Hong Kong has very liberal immigration and visa policies. This is a key ingredient of our economic success and we are committed to maintaining it. However, our overriding responsibility is to safeguard the interests, freedoms, rights and privileges of Hong Kong people, and this is our prime concern in considering and deciding individual cases.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, the remark that no visitor would be allowed to use Hong Kong as a "base for subversion" was made by the Chief Secretary. If she does not mind, I hope she could clarify in public what legal principles did she refer to when accusing a person who has not yet arrived in Hong Kong of using Hong Kong as a "base for subversion", since the offence of subversion does not exist in the law of Hong Kong, nor does the legal definition for "subversion". Are such remarks, together with the refusal of leave to land directed towards individual pro-democracy activists as well as the unreasonable attitude towards the peaceful memorial activities for the June 4 Incident, some of the means the Government adopted to achieve its aim of ingratiating with China by repressing and sacrificing the freedom of speech, freedom of assembly and freedom of petition enjoyed in Hong Kong, so as to trade in for Chinese Government's improved attitude towards the Hong Kong Government and China's co-operation in other affairs in the coming three years?*

SECRETARY FOR SECURITY: Mr President, I do not think that the Chief Secretary's statement, nor the Hong Kong Government, has accused anybody of subversion and I think that in my main answer, I have explained what we mean by the policy we have.

MR SZETO WAH (in Cantonese): *Mr President, could Mrs Anson CHAN, the Chief Secretary, inform this Council whether I, as Chairman of the Hong Kong Alliance in Support of Patriotic Democracy Movements of China (HKASPDMC), would be considered as a subversive; and as one who engages in political activities which try to undermine our neighbouring countries. In addition, would I be refused entry into Hong Kong if I travelled abroad?*

SECRETARY FOR SECURITY: Mr President, I am tempted to say that we do not comment on individual cases. But perhaps I would rather refer to my main answer which makes it very clear that we do not include in the definition of subversion or subversive activities, the peaceful and lawful expression of views by Hong Kong people on any issue, including events in China.

MR LEE WING-TAT (in Cantonese): *Mr President, the Secretary said in the third paragraph of his main reply, "This (subversive activity) does not include the peaceful and lawful expression of views by Hong Kong people on any issue, including events in China." I wish to know if the Government has discussed with China the legal definition of the term. In other words, is the term "subversion" provided by China, with regard to its long standing allegation that the HKASPDMC is engaging in subversive activities, entirely identical with the legal definition of such term provided by the Government?*

SECRETARY FOR SECURITY: Mr President, no.

MR LEE WING-TAT (in Cantonese): *Mr President, could the Secretary explain the meaning of "No"?*

SECRETARY FOR SECURITY: Mr President, we have not discussed the definition of "subversion" with China.

MR JAMES TO (in Cantonese): *Mr President, the second paragraph of the Government's main answer says "..... our long-established policy, ... not to allow Hong Kong to be used as a base for political activity by visitors campaigning to undermine any of our neighbours." Recently, some pro-democracy activists or scholars have been refused entry into Hong Kong. In this connection, I wish to ask whether some neighbouring countries have informed the Administration that these people would undermine their interests and urged it to render assistance by implementing such long-established policy so as to safeguard their interests; or is it the Government's own wishful thinking that Sino-British relations would be improved by such "friendly gestures"?*

SECRETARY FOR SECURITY: Mr President, we take these decisions ourselves. They are sometimes difficult decisions and we take them on an individual basis depending upon the merits of each case. I do not think I can say any more than that.

PRESIDENT: I am sorry, Mr TO. Not answered?

MR JAMES TO (in Cantonese): *Mr President, as the words "undermine any of our neighbours" appeared in the main reply, I wish to know if it is the Secretary himself who define what "the interests of our neighbouring countries" are; or he has been informed by the countries concerned that some categories of people might undermine their interests?*

SECRETARY FOR SECURITY: Mr President, neither. These decisions are taken by the Director of Immigration. He may seek advice — he may seek advice from me; he may seek advice from the Political Adviser — but these decisions are taken by the Hong Kong Government.

MR LAU CHIN-SHEK (in Cantonese): *Mr President, will the Government inform this Council what objective criteria it will use to determine whether the activities of certain categories of people are indeed undermining our*

neighbours? I wish to stress the words "objective criteria". Is there any channel for the aggrieved person who is not satisfied with the restrictions imposed on him by the Hong Kong Government to file an appeal?

SECRETARY FOR SECURITY: Mr President, I think I have explained in my answers what we are seeking to prevent and those are the criteria we use. These decisions are taken by the Director of Immigration and anybody has a right to appeal against the decision of the Director in these cases.

PRESIDENT: Not answered, Mr LAU?

MR LAU CHIN-SHEK (in Cantonese): *Mr President, could the Secretary explain what the appeal channels are?*

SECRETARY FOR SECURITY: Mr President, there is provision for appeal to the Governor against the decisions of the Director of Immigration.

MR FRED LI (in Cantonese): *Mr President, will the Secretary inform this Council the number of people who had been refused entry into Hong Kong on the ground that they would engage in political activities undermining our neighbours with the exception of China?*

SECRETARY FOR SECURITY: Mr President, as I have said, we do not comment on individual cases and we do not keep statistics in that way. We have statistics on the number of people who are refused entry into Hong Kong but we certainly do not keep them in those terms. The number of people who were refused entry by the Director of Immigration at entry points is very large. The number who we would refuse entry to, because of their possible political activities in Hong Kong, is probably very small.

MRS ELSIE TU: *Mr President, I recall that an American lady was prevented from coming to Hong Kong because of something that she might have done in the Philippines. So, would the Secretary confirm that this is not a recent policy but that it has continued for decades?*

SECRETARY FOR SECURITY: Mr President, yes, as I think I indicated in my main answer, this is a long standing policy. It is not a new policy.

MR JIMMY McGREGOR: *Mr President, although there is no offence of subversion in Hong Kong, it is known that China has designated certain people in Hong Kong as counter-revolutionary and subversive. Since China will be the sovereign power in Hong Kong after June 1997, what is the attitude of the Hong Kong Government to the continued strong and vocal opposition by these Hong Kong citizens to the nature, style and characteristics of the Chinese Government?*

PRESIDENT: I am sorry, I did not quite catch the last part of the question, Mr McGREGOR.

MR JIMMY McGREGOR: *What is the attitude of the Hong Kong Government to the continued strong and vocal opposition by these Hong Kong citizens to the nature, style and characteristics of the Chinese Government?*

PRESIDENT: Are you able to answer that, Secretary?

SECRETARY FOR SECURITY: Mr President, I would like to refer back to my main answer which indicates that we are very fully committed to upholding the rights and freedoms of Hong Kong people, including the freedom of expression. Clear evidence of that, of course, is our introduction of the Bill of Rights Ordinance into this Council. We do not include in any definition of subversion — again as I said in my main answer — the peaceful and lawful expression of views by Hong Kong people.

DR CONRAD LAM (in Cantonese): *Mr President, I would like to use a real example to help the Secretary explain the term "interests of our neighbouring countries" more clearly. Some countries have claimed recently that sanctions might be imposed against North Korea; if so, North Korea's interest will surely be undermined. Would the Secretary say that anyone calling for sanctions against North Korea would be regarded as "persona non grata"?*

SECRETARY FOR SECURITY: Mr President, the question is of course hypothetical but I would say, no.

Consumer price index

2. MR ROGER LUK asked: *Will the Administration inform the Council what responses have been made to the unfavourable criticisms of the ability of the consumer price index to reflect the current inflation trends?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, in responding to criticisms made by various commentators, the Administration has reiterated its conviction that the consumer price index (CPI) is a valid means of reflecting the current inflation trends.

I will highlight the major issues to which criticisms are often directed and the common misconceptions about them.

First, it is not uncommon for people to have the impression that the increase in the CPI does not adequately reflect specific price increases which they happen to have encountered. This misconception is not surprising since people tend to remember items which have had drastic, frequent price increases but to overlook or forget those where the increases have been negligible. Not only do they tend to ignore the offsetting effect of the lower increases, but they also overlook the fact that many of the lower increases occur in items which actually represent quite a significant share of household expenditure.

Criticism that the CPI is not based on adequate price data is unfounded as a continuous pricing survey is undertaken by the Census and Statistics Department. A total of some 40 000 price quotations are collected each month from 3 500 different outlets and service providers.

Second, some people fail to distinguish a genuine price increase from an increase in expenditure due to an increase in the quantity they consume or improvement in the quality of their consumption. The household expenditure bill may rise because the household has bought more appliances or there has been more travelling by the household members. These changes should not be attributed to price changes and hence "inflation". The CPI is intended to measure the effects of price changes on the total expenditure as defined by a given basket of goods and services.

Third, some people may find that the expenditure pattern used in compiling the CPI does not tally precisely with their own expenditure patterns. This, however, should not be unexpected because the expenditure pattern adopted by the CPI represents the collective expenditure patterns of households. While individual experiences may vary, the CPI reflects collectively the inflation situation faced by all households.

Fourth, most recently there has been a criticism that the expenditure ranges to which the three series of CPI relate do not reflect the actual expenditure of households. This comment is misplaced simply because the commentator has confused expenditure levels at 1989-90 prices with current expenditure levels.

Fifth, as the expenditure patterns of households change over time, some people suspect that the inflation situation reflected by the CPI will soon be outdated. This is not true because expenditure patterns of households only

change gradually and the impact on the CPI is usually minimal. Past research on actual figures well illustrates this.

Nevertheless, updating is part of the system. It is an established practice that the Government will carry out a Household Expenditure Survey once every five years to ensure that changes in expenditure patterns over time are taken into account in the compilation of the CPI. The next survey will start in October this year. In this, as in all other respects, the CPI is compiled by scientific methodology that fully accords with international standards and practices.

MR ROGER LUK: *With the increasing trend of home ownership over the years and the soaring property prices, will the Secretary explain whether the housing component of the CPI reflects the actual experience of the owner-occupier houscholds?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, there are in fact three separate indices which cover different groups of households within the community groups and the relative level of private and public housing is different in each one. The CPI(A) which is the most commonly used affects 50% of households in Hong Kong and has the largest public housing component in it. The CPI(B) which covers the next 30% in terms of expenditure above that group has a much smaller public housing element. And the Hang Seng CPI which covers the next 10% above that has in fact no public housing element in it at all. It is possible, therefore, to get a comparison of the effect by looking at the three indices and looking at the three breakouts for housing which normally give a breakup between private and public.

I should point out that even on the CPI(A) which is the one we most commonly use and the one with the largest proportion of public dwellings, even there the weighting for public housing in the overall weightings is only 4.47% as opposed to 14.76% for private dwellings, out of a total housing component of 20.56%.

DR HUANG CHEN-YA (in Cantonese): *Mr President, as we all know, in addition to the Government-published CPI (A) and CPI (B), the Hang Seng CPI and the GDP deflator are also means of reflecting inflation trends. The compilation methodologies of and the facts reflected by these indices are different and the difference in figures measures up to 20%. The Government has been combating inflation for years but success is yet to come. In view of that, will the Government tell us whether it has chosen the inaccurate indices and therefore become less aware of the inflation trends; and whether it is using the inaccurate indices knowingly to project a more appealing picture in order to save face?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, this question is not about the Government's tackling of inflation. The question is about whether the CPI adequately reflects inflation. Indeed, there has been some criticism against a comparison between the GDP figures which have been quoted by Dr HUANG and the Private Consumption Expenditure which is derived from the GDP. There has been a comparison of that with the total household expenditure from the CPI. This is criticized as an invalid comparison because when the comparison was made, it not only took a different period for the figures — the total household expenditure figures are based on the 1989-90 Household Expenditure Survey whereas the private consumption expenditure figures were taken from current figures — but there is a different coverage for these two elements because the household expenditure is only seeking to reflect what is common household expenditure and not other forms of public expenditure which are reflected in the GDP.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, the public is always sceptical about the CPIs, especially that variation in the price of vegetables affects the indices considerably. Will the Government prepare a detailed list of the percentage taken up by every kind of item in the CPI when it conducts the review in October this year, so as to enable the public to compile a CPI in the light of the current market prices?*

SECRETARY FOR FINANCIAL SERVICES: First of all the pricing, as I have mentioned in my main answer, is looked at on a monthly basis in a very comprehensive survey, covering, as I mentioned, 40 000 price quotations. So the pricing is up-to-date. The weighting, which is looked at every five years, only changes gradually. It is available in published form from various outlets and it does not change because the patterns in fact, as I mentioned in my main answer, are only subject to very gradual change over time. This is not only the Hong Kong experience but also the international experience. We update the weightings every five years. It is also the practice in Australia and in Singapore. In the United States where they have an annual household survey, they still only re-base the CPI once every 10 years. The United Kingdom also follows our practice of re-basing every five years. So we are following international practice there and the reason is the same, which is that the patterns change only gradually.

To illustrate the gradual effect, a comparison was done in 1992 on the basis of 1992 figures using the Household Expenditure Survey of 1989-90 and the earlier one of 1984-85, and comparing what the effect would be if each of those was applied to the 1992 price data. The difference was actually minimal; in no one month for 1992 was the difference greater than 0.5%. So I think that very clearly illustrates that the change is gradual and the effect on the price figures is minimal.

MR FRED LI (in Cantonese): *Mr President, will the Government inform this Council why the Government chooses to use CPI (A) as our inflation indicator, instead of using the average of the Composite Index (covering both CPI (A) and CPI (B)) and Hang Seng CPI figures to reflect the real picture of Hong Kong's inflation situation?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, the CPI(A) has the highest coverage of the three indices which I have mentioned, that is to say the "A", the "B" and the Hang Seng; it covers 50% of the households in Hong Kong. It also covers the 50% in the lower income bracket; and it is generally assumed that the lower income — or rather the lower expenditure bracket in this case — are in fact the ones who are likely to be most impacted by inflation because they have the least affordability cushion against it. However, it is true that the Composite Index, which is also published monthly and is derived from all three of these indices, gives a broader picture covering 90% of the households in Hong Kong and consideration is being given to using it for general economic analysis purposes instead of the CPI(A).

MR PETER WONG: *Mr President, since we are trying to attract international companies to stay in or come to Hong Kong, will the Government compile an index other than the CPI (A) or (B) or Hang Seng indices, which is relevant to this sector of the market? And if not, is the Government too frightened of what the result may be?*

SECRETARY FOR FINANCIAL SERVICES: No, Mr President, the Government is not frightened of that. The fact of the matter is that the coverage of the indices we have at the moment does cover 90% of the households. The bulk of the 10% who are not covered are not missed out because they are at the top. They are out because they are at the bottom and covered by a separate index which is not often mentioned — the Public Assistance CPI which is compiled on the basis of the CPI(A) less some of the elements which are provided at cost under the Public Assistance System.

Certainly, it is observable that analysts and others from the upper expenditure brackets do express a preference for the Hang Seng CPI, simply, I suppose, because it reflects more closely their own situation. Certainly, the Government does not have any objection to constructing a higher index. We simply do not have a plan to do so at the moment, but our mind is not closed against it.

PRESIDENT: Not answered, Mr WONG?

MR PETER WONG: *He has not answered it, Mr President, because I am really asking about the cost to the investor which will include rents, travelling, and so on, for their employees.*

SECRETARY FOR FINANCIAL SERVICES: Well, Mr President, the indices that exist at the moment measure the actual situation for the groups that they cover. So if another index were to be constructed to cover another group that is not already covered, then it would have to reflect the expenditure patterns of those groups. But this is a hypothetical question because we have no plans to do that at this time.

Kau Sai Chau Public Golf Course

3. REV FUNG CHI-WOOD asked (in Cantonese): *Regarding the construction of the Kau Sai Chau Public Golf Course, will the Government inform this Council of the following:*

(a) what are the approval procedures for its construction;

(b) whether the public have been consulted prior to such approval;

(c) whether the planning, construction and management and so on of the course have been entrusted to an organization with public representation, such as the Regional Council, if not, what the reasons are;

(d) whether the Environmental Impact Assessment carried out on the project, which lasted for four months, will provide an adequate understanding of any environmental problems that may arise from its construction;

(e) in regard to the seven environmental problems which are known to remain unsettled, whether the Administration will take measures to resolve them before granting official approval to the related construction works;

(f) whether any construction work has been carried out at the site; and if so, what is the progress of such construction work; and

(g) how can it be ensured that the charges of the course will be set at a level acceptable to the general public?

SECRETARY FOR RECREATION AND CULTURE: Mr President, I shall respond to the seven issues raised in Rev FUNG's question in the order in which he has raised them.

The development of this Public Golf Centre is within the responsibility of my branch, the Recreation and Culture Branch, but the Royal Hong Kong Jockey Club will meet all the costs. Therefore, the project did not need to be processed through the Public Works Programme. The project was submitted to Executive Council for approval in principle. On 5 October 1993, the Council advised and the Governor ordered, that:

(a) part of Kau Sai Chau island should be made available for a public golf centre;

(b) the Recreation and Culture Branch should hold discussions with the Royal Hong Kong Jockey Club (the Jockey Club) with a view to entering into an agreement to enable the Jockey Club:

(i) to fully finance and be responsible for the planning, design, construction and project management of the public golf centre at Kau Sai Chau including the conduct of environmental, traffic impact and other studies and the provision of any infrastructure and ancillary facilities arising from the golf centre development; and

(ii) initially, to manage the golf centre on behalf of the Government, but at the Jockey Club's expense, until it is running smoothly when it may be handed over to an alternative management body.

The public have been consulted at different appropriate stages of the project. The Golf Association of Hong Kong, which is the governing body for the sport in Hong Kong, was consulted at the conceptual stage. The association strongly supports the proposed project and considers the proposal a constructive means of promoting golf in Hong Kong, especially to the young. The development of this project will allow members of the public to enjoy this pastime which in Hong Kong has mostly up to now been restricted to members of exclusive private clubs and their guests. Experience worldwide has been that when people can get access to the facilities for golf the game becomes widely popular. Other bodies likely to be particularly interested in the development have also been consulted over the past few months. These have included the Sai Kung District Board, the Advisory Council on the Environment (ACE) and through their representation on the ACE those commonly known as the "green" groups, that is, with a particular interest in the environment. The district board is generally supportive of the proposed development, and the ACE endorsed the (EIA) Environment Impact Assessment at its meeting on 16 May 1994. People in the district are mainly interested in the provision of additional parking spaces and satisfactory compensation arrangements for any losses caused by the project.

The third question raised is about the organization to which the planning, construction and management of the golf centre have been entrusted. As I have mentioned earlier, the Royal Hong Kong Jockey Club will fully finance the proposed project. The concomitant agreement is that the Club will be responsible for the planning, construction and initial management of the golf centre as well. The Royal Hong Kong Jockey Club has formed a project board to oversee the progress of the project. The board is chaired by a steward, and the Secretary for Recreation and Culture is a member. The agreement is that the Royal Hong Kong Jockey Club will manage the completed centre using revenue generated by the centre, on behalf of, but at no expense to, the Government. When the centre is running successfully and at a surplus, its management may then be transferred to a separate, statutory, non-profitmaking body specifically constituted for the purpose. We have adopted a similar arrangement for the Ocean Park with success.

The EIA undertaken for the project started in July 1993 and was completed in March 1994. We are confident that the study, which totalled nine months rather than the four mentioned in the question, does provide an adequate understanding of any environmental problems that may arise from its construction. I am glad to be able to remind Members that our confidence was underpinned by the endorsement of the EIA by the ACE on 16 May 1994.

The fifth item in the question mentions seven environmental problems which are yet unsettled. I take this to refer to the six, not seven, conditions laid down by the ACE when it endorsed the EIA report. Broadly we accept all these conditions and we believe that we can meet each of them at the appropriate time. If Members would bear with me (and I promise to be brief), I would like to elaborate on them one by one. The six conditions laid down by the ACE were:

(a) To implement all the measures recommended in the EIA study;

(b) To carry out a quick ecological survey that would include a bird survey and a fresh water habitat survey;

(c) To report back to the ACE's EIA Subcommittee in due course on the ecological survey, the implementation of the turf management plan, the progress of the mangrove transplantation and the restoration of habitat;

(d) While the golf course is being constructed, to consider repairing the bomb damaged landscape outside the golf course;

(e) To consider the use of zero-emission vehicles on the island; and

(f) That any further developments on the island outside the boundaries of the public golf centre be subject to separate EIAs.

Turning now to the first of the six conditions, implementation of measures recommended in the EIA study, the position is that the measures recommended in the EIA will be fully incorporated into the design, and an Environment Monitoring and Audit Manual to be used by the contractors and the future management body of the golf centre.

As regards the ecological survey that was requested, the position is that the field work has been completed and a report will be submitted to the ACE's EIA Subcommittee within the next couple of months.

Monthly progress reports on the implementation of the turf management plan, the transplantation of the mangroves and the restoration of habitat will be drawn up and submitted to the subcommittee. The ACE's requests for consideration of repairs to the landscape and use of zero- emission vehicles will be given early attention. I intend to use my position on the project board to get these matters raised immediately and discussed thoroughly.

The final condition imposed by the ACE is that any further developments on the island outside the boundaries of the public golf course should be subject to further EIAs. We are happy to accept this condition although I should make it clear that we currently have no plans for other developments and would only ever consider other development that was fully compatible with the golf centre.

Rev FUNG has asked whether any construction work has been carried out on site and, if so, what progress has been made. The present situation is that detailed site investigation and survey work is now underway. We expect actual construction to begin next month all being well and to be completed in December 1995.

The Memorandum of Understanding which will be signed with the Royal Hong Kong Jockey Club includes a provision to the effect that to encourage maximum usage by the general public of the centre and to facilitate the development of golf in Hong Kong, the green fees and other fees at the centre should be set at an economically viable level and as low as reasonably possible in comparison with operating costs and fees prevailing in other golf clubs in Hong Kong, and that any increase in fees will have to be made in consultation with the Government. I will use my position on the project board to begin discussions now about the detail of the level at which fees should be set.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, the golf course project was approved by the Executive Council in October 1993, an Environmental Impact Assessment (EIA) was then carried out on the project. This EIA was completed in April and accepted by the Advisory Council on the Environment in May this year. However, while the golf course project has long been launched, two environmental surveys, namely the bird survey and the fresh water habitat survey, are yet to be conducted. Does this actually reflect the importance of the EIA to the Government? Would it not be more proper to*

have the EIA fully completed and then examined and endorsed by the government departments concerned before any approval be granted to the golf course project? Besides, when will the Government sign with the Royal Hong Kong Jockey Club a contract covering such matters as project operation and construction works?

SECRETARY FOR RECREATION AND CULTURE: Mr President, as I made clear in my answer, what is crucial is that the ACE was very satisfied with the EIA and with the timing on it. The ecological survey that they asked for on the bird population and fresh water habitat was required only to be a brief survey to allow for the fact that previous work had been carried out in the dry season. They wished to have comparative figures and assessment based on what was taking place during the rainy season. That field work has now been done and is ready to be presented to the Advisory Council on the Environment who I have no doubt will be satisfied with this progress since it is what they requested.

The work that is actually being done on site now is survey work only. It is up to the Jockey Club to decide when construction may actually begin.

PRESIDENT: The date of the contract or the Memorandum of Understanding?

SECRETARY FOR RECREATION AND CULTURE: Sorry, Mr President, we expect to sign the Memorandum of Understanding shortly with the Jockey Club, as soon as both parties are happy with the details of the wording.

MR MARVIN CHEUNG: *Mr President, may I ask the Secretary to clarify whether it is the intention of the Government that the golf course will be run on a self-financing basis with no subsidies from public funds, so that green fees and other fees will have to be set at a level sufficient to pay for operating costs?*

SECRETARY FOR RECREATION AND CULTURE: Mr President, it is indeed the intention that there will be no subsidies at all from the Government to the operation of the golf centre in any way and therefore that the green fees and so on will be set on a basis that will allow the centre to be self-financing, but also at a level that will be affordable to the general public.

MR PETER WONG: *Mr President, my understanding was that discussion with ACE was very strictly limited to the EIA and certainly not exhaustive, and to call it "endorsing" is really stretching the meaning of the word "endorse". Will the Secretary inform this Council what is the natural outcome of this apparent policy to promote golf as a popular pastime in Hong Kong? How can we possibly have enough public courses for the 50 000 happy golfers whom the*

Secretary of Recreation and Culture said we will have, or will they, all full of expectation, be totally frustrated or perpetually disappointed without a course to play on?

SECRETARY FOR RECREATION AND CULTURE: Mr President, I have here the relevant minutes of the ACE which say very clearly that:

> The Chairman concluded that the Advisory Council on the Environment endorsed the EIA report.

As to the question of unfulfilled demand for golf, we take the view that it is better to satisfy some of the demands than none at all — in the words of the proverb: Half a loaf is surely better than none.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, the Secretary has not answered part (c) of the question, in which I asked if any organization with public representation (such as the Regional Council) had been entrusted with or at least consulted about the planning, construction and management works of the golf course? It is because the Regional Council is now constructing in Tuen Mun a Jockey Club funded golf course, which, in fact, is a driving range instead of a standard golf course?*

SECRETARY FOR RECREATION AND CULTURE: Mr President, the Regional Council has indeed been involved at various stages in briefings and discussions on the project at Kau Sai Chau, and as the Rev FUNG rightly points out, they are also operating an excellent centre at Tuen Mun which is also funded by the Royal Hong Kong Jockey Club. It has eventually proved to focus more on facilities for horse-riding — another activity which is under-provided for the public in Hong Kong — but also includes a very comprehensive and special driving-range for use by the public and which will eventually form an ancillary or back-up facility to Kau Sai Chau.

Supply of residential and non-residential accommodation

4. MR RONALD ARCULLI asked: *Regarding the Administration's intention to increase supply of residential and non-residential accommodation, will the Administration inform this Council of:*

> *(a) the total land area currently occupied or designated as and for the use of the Administration; the total gross floor areas of the buildings or structures erected thereon or the land area if not built upon; and the type of usage, for example, residential, office/commercial or otherwise; and*

(b) how the private sector can assist in the development/redevelopment of such land to ensure additional supply of residential and/or non-residential accommodation to both the private and public sectors?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

(a) I regret that there are no readily available statistics on the total land area of government sites, that is, land occupied or earmarked for government offices or quarters, but excluding community facilities.

Government-owned properties on government sites provide a total net floor area of about 4 million sq m. This consists of some 0.72 million sq m of office space, 1.22 million sq m for residential use and 2 million sq m of special accommodation, including schools, hospitals, police and fire stations and so on.

(b) A Committee on Redevelopment of Under-developed Government Sites, shortly known as CRUG, was set up in August 1991 to determine the appropriate land uses and redevelopment potential of under-utilized government sites. The major obstacles to the redevelopment of these sites are the need to reprovision existing facilities and public objections to the rezoning proposals which may be necessary.

Since 1990, 12 government sites have been sold for private sector development. To facilitate redevelopment of other government sites, we are considering the possibility of involving the private sector in reprovisioning the government facilities on some of them. But each case has to be considered on its merits and suitable funding arrangements worked out.

MR RONALD ARCULLI: *Mr President, I am disappointed that the Government cannot supply us with land area statistics regarding use by the Government for residential and office premises. But be that as it may, could the Secretary inform this Council the extent to which there is under-utilization in square metre terms, as regards the 720 000 sq m of office accommodation and the 1.22 million sq m of residential accommodation, bearing in mind that reprovisioning for either or both of these could be provided by the Government on its own development or indeed by the private sector in some sort of a joint venture?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think the Honourable Member is asking for a statistical impossibility because obviously in each case, each site would need to be examined in the local

planning context and its potential could range very widely according to local conditions and what the use of the site, alternative to the government use, might be. I would be willing to venture to attempt an answer at that question in writing, but I think it could be an answer which would be perhaps not much more helpful than the question. (Annex I)

MR ALBERT CHAN (in Cantonese): *Mr President, in the last paragraph of his main reply, the Secretary stated that the Administration was considering the possibility of involving the private sector in reprovisioning the government facilities on some of the government sites. What factors or criteria would the Administration take into account when considering the possibility of involving the private sector? How is it going to ensure that, when the private sector is involved in such projects, the land prices would be reasonable and the sites would not be offered on favourable terms through illicit transfer arrangements between the Administration and the establishments concerned?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, in response to that question, I should say that our experience with what might be described as joint venture projects in the 1980s was not particularly satisfactory. Not because of any of the implied difficulties in that question, but because with the passage of time during negotiations, situations in the market change and so consequently there is a tendency for negotiations to be extended and therefore progress to be slowed down. This is why we prefer the rather more simple approach of normally arranging the reprovisioning of any current uses which need to be retained, vacating the site and drawing up conditions for its alternative uses and putting those out for sale in the normal way, as we have already done; and I referred to this, for 12 sites in recent years. If however we were to find a case in which an arrangement for reprovisioning and the redevelopment of the site for private use could be put together in a reasonably short time, this would be done on the basis of competition and given the special requirements for reprovisioning I suspect that it would be done by competitive tender.

MR MAN SAI-CHEONG (in Cantonese): *Mr President, will the Administration inform this Council whether it would, while in increasing the supply of land in the urban areas, agree to the request made by some property developers and include the green belt in the auctions so as to increase land supply? Would the lungs of our city and the sitting-out areas for the public be thus sacrificed?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I am not aware without reference of any proposal that we should sacrifice green belt for sale sites. I personally would be very much against such a move.

DR SAMUEL WONG: *Mr President, could this Council be informed whether there are some pockets of land or blocks of old buildings within the setting known as the Financial Secretary Incorporated, and if so, would the Government entrust non-profit making bodies such as the Housing Society with the work of developing these resources to meet the urgent need?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I doubt whether I could slip that one to my incorporated colleague but I will try and answer it. I think that over the years because of previous pressures of the same sort that we are under today, we have looked very carefully at the Financial Secretary Incorporated's properties to see whether there is scope for their redevelopment. I believe that I could establish this by reference to records and in writing, but I believe that we have covered most of those opportunities already and that where they remain, they remain in the form of isolated individual flats or groups of flats in developments owned by other people.

MR EDWARD HO: *Mr President, I would first like to express my utter amazement that the Government does not have statistics on the total land area of government sites. It is like the Government not knowing how much reserves it has in its coffers. If the Government has not such statistics how can the CRUGS carry out its work? What does it do? What is the crux of CRUGS?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I do not think it would be proper for me to trade amazement this afternoon, but of course the simple answer is that CRUGS looks at sites as individual sites. It considers their under-utilization in the context of the local situation, which I mentioned earlier on, and the quantification of under-utilization or opportunities for redevelopment is very much a case for case issue and therefore this is why CRUGS examines each site carefully on its merits and does not, I think, generally seek to indulge in unnecessary quantification of massive figures of total under-utilization.

MR HENRY TANG: *Mr President, the Secretary has stated that there are 1.22 million sq m of government-owned residential property. Since the Task Force on Land Supply and Property Prices has considered the redevelopment of under-utilized government land as a potential source of residential land supply, and the Government is looking for ways to provide the private sector with more opportunities to supplement supply, does the Government believe that private sector assistance would be the quickest route to increase the supply of residential and non-residential accommodation?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I think I have tried to cover that in previous answers. Where a site is occupied by an existing government use, and in some cases it may be occupied by quarters but on an under-utilized basis, then we would in some cases seek to relocate the quarters so that the fuller residential potential could be realized. Our preference is for the simple approach where we reprovision the existing uses, obtain a cleared site and then put it in the hands of the private sector for full redevelopment. But it may be that in certain cases the reprovisioning work and the development of the then available site can be carried out by the same developer. As I pointed out, this is more complicated and sometimes much more time consuming than the straightforward approach. So we need to consider very carefully the options in each case.

MRS SELINA CHOW: *Given the task force's identification of the urgent need for the construction of additional units, and bearing in mind that a lot of the government sites do occupy very prime locations all over Hong Kong, would the Secretary please inform this Council whether the task force intends to take upon itself the task for removing those major obstacles mentioned in paragraph (b) of the reply and set a timetable for itself to achieve certain objectives in terms of increasing units by facilitating the co-operation between the Government and the private sector in developing these prime sites?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I can confirm that the task force is looking at some of the so-called under-utilized sites which have, on a preliminary assessment, the potential for relatively quick removal of current uses and redevelopment for more intensive residential use. The task force is doing this and it is trying to do it with as much expedition as possible.

MR RONALD ARCULLI: *I hope this question is not going to be as useless as the first one I asked. But be that as it may, I look forward to the reply from the Secretary and perhaps I will be the judge as to whether it is useful or not. On that basis, Mr President, I wonder whether the Administration is prepared to make available a copy of the report or the study of CRUG to this Council, so that we can then judge for ourselves the extent to which the Committee actually went into the details of everything?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, it is just possible that Members have it already, but I will check and, if not, I will try to make a copy available.

Restrictions on the procession to commemorate 'June 4'

5. MR SZETO WAH asked (in Cantonese): *During the procession organized by the All Hong Kong Alliance in Support of the Patriotic Pro-democracy Movement in China to commemorate the fifth anniversary of the June 4 Incident on 29 May this year, the police allowed only one representative of the procession to proceed to the entrance of the New China News Agency (NCNA) to hand in a letter and did not permit the laying of wreaths and banners in front of the entrance. Will the Government inform this Council of the legal basis, and the reasons, for the police imposing such restrictions on the activities of the participants of the procession?*

SECRETARY FOR SECURITY: Mr President, police action taken during the procession organized by the Alliance on 29 May was in accordance with section 10 of the Police Force Ordinance. This imposes a duty on the police to maintain public order.

The decision on the positioning of the banner and the wreath, as well as the limitation on the number of participants who could approach the entrance of the NCNA building, was made having regard to the prevailing circumstances, including the mood and size of the crowd. As with other incidents involving crowd control, the senior police officer on the ground takes appropriate action to strike the right balance between the freedom of the individual to express his views and the need to maintain peace and order.

MR SZETO WAH (in Cantonese): *Mr President, in view of the fact that the police found it necessary to take unprecedented action during the procession, will the Administration inform this Council of the differences between the mood and size of the crowd on that day and those on previous occasions?*

SECRETARY FOR SECURITY: Mr President, I do not think the action was in any way unprecedented. As regards the presentation of the petition, the limitation whereby one person only was allowed to proceed to present the petition was exactly the same as on previous occasions. As regards the other crowd control measures, there was an innovation which the police made on this occasion which was to erect an inner cordon of mill barriers immediately outside the entrance of the NCNA. The purpose of this was to allow pedestrians to be able to walk along the pavement instead of being forced on to the street.

MR LEE WING-TAT (in Cantonese): *Mr President, the Secretary said in his reply that the measures adopted this time was the same as on previous occasions, I do not think this is correct. I have participated in many demonstrations and petition presentations, perhaps well over a score of times, before I participated in the one mentioned today. Each time the police officers on duty would allow*

several representatives of the All Hong Kong Alliance in support of the Patriotic Pro-democracy Movement in China to proceed to the entrance to hand in a letter and to lay wreaths. The Secretary claimed that the arrangements on this occasion was exactly the same as on previous ones, is this a conclusion drawn by the Secretary himself or is it something relayed to him by the senior police officers concerned? Has the Secretary verified all the facts?

SECRETARY FOR SECURITY: Mr President, I do not think I said that it was exactly the same but what I did say and what I was advised by the police, who presumably know about this since they are the ones who impose the crowd control measures, is that it has been their normal practice on previous occasions when large crowds have gathered outside the NCNA to allow only one person from a group to go and present the petition.

As regards other measures, I have explained that the way the police organize the mill barriers for crowd control purposes was different on this occasion and there was a very good reason for that, it was to allow the free movement of pedestrian traffic.

PRESIDENT: Not answered, Mr LEE?

MR LEE WING-TAT (in Cantonese): *Mr President, if the Secretary thinks that the arrangement of allowing only one person to present the petition is the same as those adopted in the past, will he verify what he said and go through all the video-tapes that had been filmed over the years? In the past, each time some 20 persons were allowed to present the petition together, but this time only one person was allowed. Will the Secretary go through all the video-tapes filmed over the past six years to see how the past arrangement for petition presentation differs from this year's and then answer this Council in writing?*

SECRETARY FOR SECURITY: Mr President, I will certainly check again this point and give a written reply. (Annex II)

REV FUNG CHI-WOOD (in Cantonese): *Mr President, I was also present on that day. On that occasion, the police erected a cordon of mills barriers 3 feet outside the entrance of the NCNA, behind the barriers were ten odd policemen standing in combat readiness to keep the people off. Why should the police be so cautious? Is it because they feared that someone would dash into the NCNA or damage the main entrance, or are there some other reasons?*

SECRETARY FOR SECURITY: Mr President, I am told that the wreath and the banner were very large and it was the police assessment, given the circumstances at the time, that they would have created an obstruction if they had been placed at the entrance of the NCNA. Therefore, the police took the action they did to prevent obstruction.

MR WONG WAI-YIN (in Cantonese): *Mr President, over the past few years, similar incidents usually took place on 4 June. For this year's arrangement, the Secretary explained that the mood and size of the crowd had been taken into consideration. My question is: Will he confirm that in this year (or on 29 May), it was necessary for the police to take special action because the size and mood of the crowd was bigger and more heated than that in previous years. If not for this reason, why did the police adopt this measure; and is this action taken on the police's initiative or at the request of the NCNA?*

SECRETARY FOR SECURITY: Mr President, no, I cannot confirm either of the suggestions made in the question. I do not know whether the crowd was bigger or smaller and whether its mood was more or less heated. That is not the point. The point is that the police took the actions they did because it was in their judgement necessary to maintain order on the ground.

PRESIDENT: Not answered, Mr WONG?

MR WONG WAI-YIN (in Cantonese): *Mr President, the second part of my question is: Was the action taken on the police's initiative or at the request of the NCNA?*

SECRETARY FOR SECURITY: Mr President, the action was taken on the initiative of the police themselves. It is their responsibility.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, the presentation of petitions at the entrance of the Government House and that of the NCNA were dealt with in exactly the same manner by the police in the past, 20 representives would be allowed to proceed together to the entrance of the Government House or the NCNA, and one of them would then present the petition. This year, the security arrangement outside the NCNA was obviously more stringent than that for the Government House, as only one person was allowed to proceed to the entrance of the NCNA to present the petition while others were kept outside the mills barriers. I wish to ask the Administration to explain why different measures are adopted at the back door of the Government House and at the entrance of the NCNA; is it because the security at the entrance of the NCNA is more important than that at the Government House that the number of persons*

presenting the petition should be controlled? Moreover, on what legal basis that the police designated the entrance of the NCNA as a restricted area and cordoned off the petitioners (even if they have obtained the licence and will petition in a peaceful manner)?

PRESIDENT: Secretary, two questions.

SECRETARY FOR SECURITY: Mr President, I think the first part of the question has already been asked and I answered it. I do not think it is the case that normally 20 people are allowed to present petitions. However, I have undertaken to check that in respect of previous occasions and I will do so and give a written reply.

As regards the second part of the question, the area outside the NCNA is not a closed area and nobody has ever claimed that it is, but the police have taken the action they did, as I said in my main answer, in accordance with the Police Force Ordinance which requires them to maintain public order.

MR MARTIN LEE (in Cantonese): *Mr President, has the Administration noticed that from 4 June 1989 till now, nothing would ever happen if no mills barriers were erected at the entrance of the NCNA, but whenever something went amiss, it so happened that mills barriers were also erected on the spot. Will the Administration consider reviewing these measures?*

SECRETARY FOR SECURITY: Mr President, no I had not noticed that and I do not believe it is the case.

MR ALBERT CHAN (in Cantonese): *Mr President, the plans and measures prepared by the police for this year's "June 4" activities at the entrance of the NCNA were obviously more stringent than those taken in the past. Will the Administration inform this Council of the ways by which it could ensure that such new measures were solely implemented to cater for actual needs? Would there be any possibility that some individuals (including police officers) were using such kind of decision to demonstrate their loyalty to China or simply to please China? How is the Administration going to identify the real motive?*

SECRETARY FOR SECURITY: Mr President, I can only say that I completely refute the implication in this question. The police measures that are taken — I do not think there is any point in categorizing them as either stringent or non-stringent — are appropriate to the circumstances. The police have very great experience of handling crowds and always do so, in my view, tactfully and sensibly.

Children convicted of criminal offences

6. MR MARTIN LEE asked: *In view of the fact that Hong Kong is among only a handful of territories in the whole world where children as young as seven years of age may be found guilty of a criminal offence, will the Government inform this Council of:*

(a) the number of children aged between seven to 16 years against whom criminal proceedings were initiated in the last three years;

(b) the number of these children who were convicted of criminal offences in the same period;

(c) the number of children who were prosecuted or convicted in the same period because of their involvement in drug-related offences; and

(d) the number of children committed to custody in a place of detention for the same period?

SECRETARY FOR SECURITY: Mr President, the number of children aged between seven and 16 years who were charged with criminal offences in 1991 was 2 376; in 1992, it was 2 322; and in 1993, it was 2 233.

The number of children who were convicted of criminal offences in 1991 was 1 372; in 1992, it was 1 345; and in 1993, it was 1 305.

The number of children who were charged with drug-related offences in 1991 was 30, of whom 13 were convicted; in 1992, it was 22, of whom nine were convicted; and in 1993, it was 29 of whom 21 were convicted.

The number of children who received a custodial sentence in 1991 was 161; in 1992, it was 177; and in 1993, it was 166.

MR MARTIN LEE: *Mr President, will the Government consider raising the age of criminal responsibility from seven to at least 10 years which is the age for criminal responsibility applicable to the United Kingdom? And if not, why not?*

SECRETARY FOR SECURITY: Mr President, this is a question which we have considered from time to time in the past and we have asked for advice on this in the past from the Standing Committee on Young Offenders and from the Fight Crime Committee. The last major review was conducted in 1988 and the advice which we accepted was that the age should not be changed from seven. I appreciate that it is 10 in the United Kingdom but it is not necessarily more than seven in many other countries. There are arguments both for and against

raising the age. On balance we take the view that the arguments are in favour of retaining the age at seven years.

MR MARTIN LEE: *I asked if not, why not? And all the Secretary said was "on balance" we thought we should keep it like that; but what are the reasons?*

SECRETARY FOR SECURITY: Mr President, I will go into the reasons a bit more. First of all, there is evidence, even now, that criminal organizations do use children and young persons in the commission of crimes and we believe that raising the age might cause criminals to further exploit young people in the commission of crimes.

There is also the argument that the development of children, in both the physical and mental sense, is certainly as rapid or more rapid now than it has been in the past, and many children of seven years and above do know the difference between right and wrong and should be responsible for their actions.

But there is also the very important point that we do have provision in our law to protect children and section 15 of the Juvenile Offenders Ordinance in particular does enable children in these circumstances to be given care and protection. There could be, in some respects, a gap in the law if criminal responsibility was simply not available between the ages of seven and 10 for example, or 12.

MR ALFRED TSO (in Cantonese): *Mr President, I have recently come across a case in Tuen Mun in which a young person was robbed of a packet of cigarettes and property which was worth $25. Four young persons were prosecuted by the police for joint robbery. Will the Administration inform this Council whether there is any real need for it to institute criminal prosecutions so frequently? Has criminal prosecution been abused? Does the Administration have any better alternative to prosecution, such as counselling or other forms of assistance?*

SECRETARY FOR SECURITY: Mr President, perhaps what I should explain is that in fact the great majority of juvenile offenders below 10 years of age are not prosecuted. The great majority are actually dealt with under the Police Superintendent's Discretion Scheme, typically some 70% in the last three years. So it would only be in the rather extreme cases that a prosecution would be taken of someone under 10 years of age. That would depend upon the circumstances of the case. I do not think that it is an option that should necessarily be ruled out where it is considered to be the appropriate way to proceed. Robbery is a serious offence and must be treated as such.

MS ANNA WU: *Does the Secretary have the statistics for (a) through (d) for the age group 7 to 10 and whether he would be able to enlighten us on the nature of the offences involved and the sentences imposed in each case?*

SECRETARY FOR SECURITY: Mr President, I probably do have it but I cannot find it. I will give an answer in writing to that. (Annex III)

MR HENRY TANG: *Mr President, the Secretary said that there is evidence that criminals are using children for criminal activities and based on his answer it seems that less than 15% of the convicted children actually get a custodial sentence. So there is probably an even greater incentive for criminal elements to use children for criminal activity. Does the Government have any plans to cut down on the number of criminals using children for criminal activities simply because there is less chance that they will be convicted and even when they are convicted, they probably will not receive a custodial sentence?*

SECRETARY FOR SECURITY: Mr President, I think really one has to tackle the problem of children being exploited by normal action against criminals and particularly action against organized crime, and we have got a number of initiatives to take more effective action against organized crime, including the Organized and Serious Crimes Bill which I hope we shall see enacted this Session.

MR JIMMY McGREGOR: *Mr President, I think many Councillors will in fact feel rather sad that children of seven can be brought up on criminal charges and given custodial sentences, no matter what the background. Does Hong Kong's treatment of such children equate with that provided in advanced democratic countries which are guided by the rule of law and if so, which countries form the basis for this consideration?*

SECRETARY FOR SECURITY: Mr President, could I ask for clarification. Is the question asking whether our facilities for dealing with young offenders for trying to rehabilitate them equate with other western countries?

MR JIMMY McGREGOR: *Mr President, not for rehabilitation, for prosecution and detention. In other words the charges taken against children of seven years of age, for example, do these equate to legal charges which can be taken in developed countries which are guided by the rule of law, such as Britain and other countries, such as no doubt the United States, Canada and so on? How do we compare, Mr President, in the league in regard to the prosecution of young children?*

SECRETARY FOR SECURITY: Mr President, as I think I said in answer to a previous supplementary, from the information that we have available the minimum age for prosecution does vary from country to country. In Britain it is 10, in some other European countries it is eight or seven or 10 or sometimes 12. In Australia it varies from state to state. In some places it is 10 years old, in some places it is eight, in some places it is seven. There is a variation but certainly seven is not particularly unusual.

MR JIMMY McGREGOR: *Mr President, could I have clarification in writing please in regard to the list of developed countries that I am speaking about and those which have been mentioned here.* What is the actual age at which children can be prosecuted in a criminal court?

SECRETARY FOR SECURITY: Mr President, I will certainly try and provide some more information in writing if Mr McGREGOR will let me know what countries he is interested in. The ages I mentioned were precisely the minimum age for a criminal prosecution. (Annex IV)

MR JIMMY McGREGOR: *I would be happy to do that, Mr President.*

MR JAMES TO (in Cantonese): *Mr President, I wish to follow up Mr Henry TANG's question. We are concerned about children being exploited in the commission of crimes, but no particular distinction could be found among the sentences in relation to abetting adults, adolescents or children in the commission of crimes. Could Hong Kong's attitude towards various types of crimes be reflected in the precedents set by the judges?*

PRESIDENT: Have you understood the question, Secretary?

SECRETARY FOR SECURITY: Mr President, I think so. I assume that all the factors would be brought to the attention of the judge by the prosecution and would be taken into account by the judge. But I do not know what case Mr To is referring to. I think he is asking a hypothetical question here.

PRESIDENT: Clarify, Mr TO?

MR JAMES TO (in Cantonese): *Mr President, my question is whether the Secretary could provide a written reply concerning the front-line prosecutors' view towards the sentences imposed by the courts in cases of abetting adolescents and adults in the commission of various crimes (for example,*

serious crimes like robbery and trafficking in dangerous drugs). Do the prosecutors believe that those sentences could reflect a standard which is generally accepted?

SECRETARY FOR SECURITY: Mr President, I think I probably would like to ask the Attorney General whether he would come to my rescue here. Prosecution and bringing things to the attention of the court is really his responsibility rather than mine.

PRESIDENT: Attorney General, can you help?

ATTORNEY GENERAL: Mr President, I will be very happy to consider further Mr TO's question, but I would be very grateful if he would not mind reducing it to writing and direct us specifically to which areas of concern he has in mind. I would also remind him to, and I do not know if it is relevant, consider the provisions of the Administration of Justice Bill currently before this Council which deals with the treatment in some courts of young offenders who are jointly charged with adults.

Written Answers to Questions

Oxygen prices

7. DR HUANG CHEN-YA asked (in Chinese): *In view of the apparent higher prices of oxygen in Hong Kong as compared with those in the neighbouring territories, will the Government inform this Council:*

(a) of the annual expenditure of the Hospital Authority on the purchase of oxygen in the past two years;

(b) why the prices of oxygen in Hong Kong are higher than those in the neighbouring territories; and

(c) what measures are available to control the prices of oxygen so as to alleviate the community's burden in this respect?

SECRETARY FOR THE TREASURY: Mr President, the answers to the three questions are as follows.

(a) The Hospital Authority spent $15.3 million in 1992-93 and $18.5 million in 1993-94 on the purchase of oxygen.

(b) We do not know whether the price of oxygen is higher in Hong Kong than in neighbouring territories. We have no information on how much the suppliers of oxygen in those territories charge their local buyers. In any event, price comparisons are not meaningful without due regard to the terms of the contract and local conditions.

(c) We are confident that by careful product sourcing and evaluation, use of fair and open tendering procedures and skilful negotiations, we shall be able to obtain supplies of oxygen at reasonable prices that represent good value for money.

Smoking in airport arrivals hall

8. MR STEVEN POON asked (in Chinese): *While there are notices and broadcasts advising members of the public not to smoke in the Arrival Hall of Kai Tak Airport, the hall itself is not a statutory non-smoking area. Will the Government inform this Council:*

(a) which department is responsible for advising members of the public not to smoke in the hall and how effective such advice has been; and

(b) whether there is any plans to designate the hall as a statutory non-smoking area?

SECRETARY FOR ECONOMIC SERVICES: Mr President, the Civil Aviation Department (CAD) is responsible for the promotion of a smoke-free environment in public areas at Kai Tak Airport. Although areas within the passenger terminal building at Kai Tak are not currently designated as statutory non-smoking areas, the department has implemented administrative measures to discourage smoking in the terminal. These measures include the putting up of "No Smoking" notices and periodic announcements made on the public address system. CAD staff have observed that the voluntary response of the public has been encouraging and only a small minority appear to ignore the notices and announcements.

The Administration accepts the desirability of increasing the number of smoke-free areas in enclosed public places. The Director of Civil Aviation is therefore examining the feasibility of designating the Arrivals Hall and other public areas within the airport as statutory non-smoking areas under the Smoking (Public Health) Ordinance to enable the non-smoking majority of the public to enjoy a fresher indoor environment at Kai Tak.

Air time on RTHK programme 'Access'

9. MR STEVEN POON asked (in Chinese): *Will the Government inform this Council of the following:*

(a) apart from allowing officials of various government departments to explain government policies and measures on the Radio Television Hong Kong Programme "Access", how many times representatives of the Kowloon-Canton Railway Corporation, the Mass Transit Railway Corporation, the Land Development Corporation and other non-government organizations were invited respectively to appear on this programme to give presentations or explanations in the past two years; and

(b) what are the criteria for allocating air time to non-government organizations to appear on this programme?

SECRETARY FOR RECREATION AND CULTURE: Mr President, in the past two years, Radio Television Hong Kong (RTHK) has produced 208 "Access" programmes. On 76 of these occasions, representatives of non-government organizations were invited to give presentations or explanations on matters that fell within their purview. A breakdown of the organizations appearing in the programme in the past two years is as follows:

Organization	*Number of occasions appearing on "Access"*
1. Anti-cancer Society	1
2. China Light and Power	1
3. Hong Kong College of Cardiology	1
4. Hong Kong Council of Social Services	1
5. Hong Kong Medical Association	24
6. Hong Kong Society of Accountants	1
7. Kowloon-Canton Railway	9
8. Kowloon Motor Bus	5
9. Land Development Corporation	1
10. Law Society of Hong Kong	2
11. Light Rail	9
12. Liver Foundation	1
13. Mass Transit Railway	8
14. Motor Insurers' Bureau	1
15. Oi Kwan Social Services	1
16. Open Learning Institute	1
17. Red Cross	1
18. The Chinese University of Hong Kong	1
19. Town Gas	1
20. Vocational Training Council	6

There are no set criteria for allocating air time to any organization. The main aim of the programme is to provide a forum on television to explain matters of general concern to the public and to answer public queries. Enquiries and complaints sent in by members of the public are answered by representatives of the organizations concerned. The frequency with which an organization appears on the programme largely depends on the frequency and number of queries received concerning that organization's area of responsibility. For example, personal health and related matters have for some time been a popular topic in the programme. Given the large number of enquiries in this area, the representatives of the Hong Kong Medical Association have appeared most often on the "Access" programme.

On a few occasions, the programme would also allow for a presentation to be made by an organization to explain its work and service to the public. On such exceptional occasions, which account for about 10% of the programme's total air time, the content must be of sufficient public interest and concern to be aired.

Unauthorized alteration of layout plans in Kowloon Bay

10. MR FRED LI asked (in Chinese): *A number of owners of industrial buildings located in Kowloon Bay have altered the original layout plans without permission and have converted parking spaces for container trucks to private car parking spaces for hire or to storage space. In this connection, will the Government inform this Council of the following:*

(a) when did the District Lands Office find out such unauthorized alteration of layout plans in Kowloon Bay;

(b) how many inspections were carried out in that district by the staff of the District Lands Office over the past three years; and how often did they conduct such inspection on average;

(c) whether the District Lands Office has prosecuted any owners of industrial buildings for unauthorized alteration of layout plans; if so, how many prosecutions have been brought against such owners up to now; if not, what the reasons are; and

(d) whether the District Lands Office has any plans to recruit more staff in order to step up inspections and prosecutions in this area of work; and whether the Government has any long-term and short-term solutions to this problem?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

(a) The parking layout plans approved and lodged with the Government in the cases referred to have not been altered but either the owners or occupants of the buildings have carried out unauthorized alterations which are in conflict with the approved plans. The District Lands Officer for Kowloon East has received a number of complaints regarding such conversions, particularly in respect of car and lorry parking spaces.

(b) Separate statistics for the number of inspections of industrial parking areas within industrial buildings in the Kowloon Bay area are not available, but District Lands Office staff have carried out 1 120 inspections of industrial buildings within the Kowloon Bay and Kwun Tong industrial areas in the three-year period up to the end of May 1994. These inspections were initiated either as a result of complaints or as part of the continuing programme of enforcement against the misuse of parking spaces within industrial buildings agreed by the Kwun Tong District Board.

(c) Building owners cannot be prosecuted for breaches of lease conditions. Where a breach is discovered, a warning letter can be issued requiring a lot owner to correct the breach. If the breach is not corrected, the lot may be re-entered under the Crown Rights (Re-entry and Vesting Remedies) Ordinance. In the three-year period up to the end of May 1994, 132 warning letters related to breaches of lease conditions in industrial buildings in the Kowloon Bay and Kwun Tong area were issued. Of these, 36 related to parking spaces. In all these cases, the breaches have been corrected.

(d) The possible need to increase staff deployed on lease enforcement duties is kept under regular review having regard to other priorities. For the moment, the misuse of parking areas within industrial buildings in the Kowloon Bay area is being given sufficient priority under the enforcement programme agreed by the Kwun Tong District Board.

Population projections

11. MR ROGER LUK asked: *In the light of the trend of migration in recent years, particularly that of returning emigrants, will the Administration advise this Council whether the population projections made after the 1991 Census require revision, and whether there are plans to compile and publish formal migration statistics?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, there has indeed been relatively significant volatility in the migration situation over the last two to three years. Because of this, the Census and Statistics Department has decided to revise the previously published population projections, issued in mid-1992, by the end of this year.

In the Hong Kong situation it is sometimes difficult to identify a particular person as a migrant. Under the present system, Hong Kong permanent residents can travel in and out of Hong Kong on their identity cards and officials at immigration control points do not ask them about intended duration of absence from Hong Kong when they depart, or length of stay when they return. In fact, the purpose of trips need not be revealed at all. Hence, it is not possible to establish which traveller is actually an emigrant or a returning emigrant. Thus, the trend of net emigration of Hong Kong residents can only be estimated by the balance of departures against arrivals. Such statistics are published.

Regarding immigrants from China, there are statistics about arrivals. Should any of them subsequently leave Hong Kong, or travel in and out before they become permanent residents, the arrival-departure system would produce net figures.

Regarding foreign nationals, again only arrival-departure balances are available. For certain specific categories of people, for example, foreign domestic helpers and imported workers, separate sources also provide information on how many of them are in Hong Kong at specific points in time.

To assist the analysis of migration of Hong Kong residents, estimates are also made of the number of people who emigrate within different periods in time, based on statistics on visa applicants and applications for Certificates of No Criminal Conviction.

Given the above situation, it is not possible to quote some simple figures to state exactly how many migrants have come in and how many have gone out during a period of time. The analysis of the migration trend is complicated and various sets of statistics have to be studied concurrently.

Supplementary English Examination

12. MR TIK CHI-YUEN asked (in Chinese): *Will the Government inform this Council whether it is aware of the reasons for providing students of Chinese middle schools with a Supplementary English Examination at the Hong Kong Advanced Level Examination; whether such an arrangement will be implemented on a long-term basis; and whether the results attained at the Supplementary Examination are recognized by local tertiary institutions?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Intensive English Programme has been introduced by the Government since 1993 to provide special assistance to Form VI Chinese-medium students to meet the English Language entrance requirements of local tertiary institutions. It is one of the positive measures to encourage teaching and learning in secondary schools through the mother tongue.

The programme comprises a four-week post-Secondary VI course, and a six-week post-Secondary VII course leading to the Supplementary English Examination. The first post-secondary VI course was held in the summer of 1993. The first post-secondary VII course is now being held, followed by the Supplementary English Examination to be held in July this year. Local tertiary institutions have agreed that a pass in the Supplementary English Examination will be deemed as fulfilling the English Language requirement for admission to courses for which Grade E in the Use of English is normally required.

The Government intends to conduct an annual review of the programme and the Supplementary English Examination to assess whether there is a need for them to continue to be provided.

Frontier closed area

13. MR LAU WONG-FAT asked (in Chinese): *Will the Government inform this Council of the following:*

(a) whether it has reviewed the policy of designating border areas as the Frontier Closed Area and imposing curfew restriction in the Frontier Closed Area; if so, when the latest review was conducted;

(b) whether the scope of the review covered the question of whether such a policy is compatible with human rights and the international covenants on human rights; and

(c) what the outcome of the review was and, if its outcome was to maintain this policy, what the reasons were?

SECRETARY FOR SECURITY: Mr President, a review has recently been completed, and its recommendations are now being considered. The Government will be announcing the results shortly. The review has taken into account the need to balance individual rights and the need to combat illegal immigration.

Traffic congestion at Island Eastern Corridor

14. MR MARTIN LEE asked (in Chinese): *In view of the serious traffic congestion during peak hours at the Island Eastern Corridor near the passage to the Eastern Harbour Crossing, will the Government inform this Council what measures are being taken to improve the traffic network in the area?*

SECRETARY FOR TRANSPORT: Mr President, the average daily throughput at the Eastern Harbour Crossing is now 87 200 vehicles, compared with 77 700 vehicles a year ago. During the morning and evening peak hours, the average hourly throughput is 6 270 vehicles.

The congestion problem is mainly due to the design capacity (6 000 vehicles per hour) of the Eastern Harbour Crossing (EHC) being reached during the peak hours. When this happens, traffic queues inevitably build up from the tunnel portal and extend onto the carriageway of the Island Eastern Corridor (IEC). Traffic from North Point, via Man Hong Street slip road, has to merge with the tunnel bound traffic queue on the IEC, thus disrupting eastbound through traffic along the IEC. To relieve congestion at this point, the feasibility of only allowing buses from Man Hong Street slip road to weave into the middle lane of the IEC to head for the EHC is being explored. Other motorists will have to use a more circuitous route for access to the EHC, that is, via Lei King Wan and the IEC westbound approach or via the local road network. The longer-term plans are to provide an additional slip road along the IEC directly connecting the Man Hong Street slip road with the EHC.

In the meantime, the Transport Department has implemented traffic management measures to reduce the delay to Chai Wan bound traffic. In January 1994, the double white line marking on the IEC near the EHC tunnel approach was extended together with improvements to the directional signage. This has helped to segregate tunnel-bound traffic from through traffic. The Transport Department is considering whether the double white line marking should be further extended westwards, but this may lead to congestion in certain parts of the Causeway Bay area.

The ultimate solution has to await the completion of the Western Harbour Crossing to provide additional capacity for cross-harbour traffic as a whole.

Trade in prison labour goods

15. DR CONRAD LAM asked (in Chinese): *Will the Government inform this Council of:*

(a) whether any activities in connection with the trading, re-exporting and sale promotion of products manufactured by prisoners or

labour camp inmates of other countries have been found in the local market;

(b) whether such activities are illegal;

(c) whether special investigation has been made into products suspected of belonging to this category; and

(d) what effective measures are in force to stop the flow of such products into Hong Kong for sale or re-export?

SECRETARY FOR TRADE AND INDUSTRY: Mr President, Hong Kong's general policy on the export, re-export and import of goods is that, provided that there is no infringement of any Hong Kong law or any of our international obligations, goods can be traded freely. There is no Hong Kong law or international obligation which would prohibit the import or export of goods processed or manufactured in Hong Kong or elsewhere by prison labour.

The Honourable Member may wish to know that few countries maintain restrictions against trade in prison labour goods. In the case of the United States of America, only imports of such goods are prohibited and there is no prohibition against the exportation of such goods.

The Hong Kong Government does not keep track of trade in prison labour goods. There is therefore no information on whether such products have been found in the local market. Since trade in such goods is not prohibited in Hong Kong, the Government has not conducted any special investigations into such trade and does not maintain any measures to stop the flow of such products into Hong Kong for sale or re-export.

However, we do have a general policy of keeping our importers and exporters informed of the trade policies and regulations of our trading partners. In respect of prison labour goods, the Government has repeatedly informed our trading community that it understands that the United States laws prohibit the import of prison labour goods and that it is China's policy to prohibit the export of such goods.

Directorate equivalent posts in Hospital Authority

16. MR MICHAEL HO asked (in Chinese): *Will the Government inform this Council of the following:*

(a) the existing total number of posts in the Hospital Authority that are equivalent to directorate posts of the Civil Service, and what is the increase in comparison with the number of such posts when the Hospital Authority took over the control of the hospitals in 1991;

(b) the details of the number of such posts created in the various hospitals during the same period; and

(c) the means by which the creation of such posts is monitored by the Government?

SECRETARY FOR HEALTH AND WELFARE: Mr President, the existing total number of posts in the Hospital Authority that are equivalent to directorate posts of the Civil Service is 359, compared to 278 on 1 December 1991. The increase is the net effect of a reduction of two posts at the Head Office level and an addition of 83 posts at the hospital level.

The Hospital Authority was set up by statute to manage and develop the public hospital system, to advise the Government of the needs of the public for hospital services, and to enhance public participation and accountability. It is substantially funded from public revenue. Under the Hospital Authority Ordinance, the Director of Audit may conduct examinations on the economy and efficiency with which the Authority has expended resources in discharging its statutory functions. The Authority also publishes an annual Business Plan which sets out the proposed programmes and targets by which the public can monitor its performance. These safeguards aim to ensure that value for money is achieved by the Authority in conducting its activities.

The Hospital Authority Board is empowered to determine the remuneration and conditions of service of all employees working in the Authority, with the exception of the post of Chief Executive.

Development of beaches

17. MISS EMILY LAU asked (in Chinese): *Owing to the serious pollution of waters along the coast from Ting Kau to Castle Peak, many citizens are reluctant, and indeed should not, swim at the beaches there. Will the Government inform this Council whether there are plans to develop bathing beaches at other areas in the New Territories or outlying islands so as to provide the public with healthy and inexpensive recreational outlets during the hot summer?*

SECRETARY FOR RECREATION AND CULTURE: Mr President, at present, 30 gazetted beaches in the New Territories are managed by the Regional Council (RC). The Environmental Protection Department (EPD) monitors regularly the water quality at these 30 gazetted beaches.

Based on the findings of the EPD, the RC has resolved to open 27 of these 30 beaches in the current swimming season.

Thirteen of these 30 gazetted beaches are in Tsuen Wan and Tuen Mun. Ten of these are open for swimming in the current swimming season. The remaining three, viz Anglers' Beach, Old Cafeteria Beach and Castle Peak Beach, are closed because of the unsatisfactory water quality there.

Golden Beach, which is a new beach being developed in Tuen Mun, is scheduled for opening to the public in August this year. The RC always seeks to develop potential beaches in its area. A decision in this regard depends on a number of factors, such as accessibility, water quality, beach profile, water current, the size of the hinterland and the availability of infrastructure support.

Supervision over private specialized schools

18. MR CHEUNG MAN-KWONG asked (in Chinese): *An unregistered private specialized school which is alleged to be offering specialized courses without permission has continued to operate illegally even after the Consumer Council has censured it by name. Will the Government inform this Council:*

(a) whether the Education Department has submitted any relevant information and evidence to the legal Department for the purpose of considering the feasibility of taking legal proceedings against that school; if so, what the results are;

(b) if it has been decided not to institute prosecution in this case, what the reasons are;

(c) how many complaints about that school have been received and how the authorities concerned will handle these complaints; and

(d) what positive measures the authorities concerned will adopt to ensure effective supervision over the operation of private specialized schools?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

(a) and (b)

The private school in question is a registered school. In January this year, in the course of investigating complaints, staff of the Education Department discovered a number of irregularities in the school including the running of courses for which the approval of the Director of Education had not been obtained. A warning letter was issued and the school was given seven days to rectify the

irregularities. Simultaneously, legal advice was sought from the Attorney General's Chambers on whether prosecution might be instituted. The irregularities were duly rectified. No legal proceedings were instituted.

(c) A total of six complaints, including verbal complaints, had been received. These were fully investigated and followed up as described above.

(d) All private schools are required to comply with the provisions of the Education Ordinance and Regulations. This includes the registration of the schools, their managers and teachers with the Director of Education, as well as obtaining his prior approval before courses can be offered. Compliance is monitored through regular inspections by the Education Department school inspectors and investigations into complaints received. Any irregularity detected will continue to be dealt with promptly.

Hospital fund-raising activities

19. MR MICHAEL HO asked (in Chinese): *There has been an increase in the number of fund-raising and publicity activities organized by hospitals since the Hospital Authority took over the management of public hospitals, and some former government hospitals, such as Tuen Mun Hospital, Prince of Wales Hospital and so on. have successively organized activities like fund-raising film shows and concerts, exhibitions and open days. In this connection, will the Government inform this Council of the following:*

(a) the number of working hours spent by medical officers and nurses in organizing the following activities (please provide the details in respect of the two grades separately):

(i) Tuen Mun Hospital's fund-raising film show;

(ii) Prince of Wales Hospital's fund-raising concert;

(iii) Queen Elizabeth Hospital's Open Day;

(iv) Queen Mary Hospital's Open Day;

(v) Caritas Medical Centre's annual bazaar;

(vi) fund-raising activities of Tung Wah Group of Hospitals, Yan Chai Hospital and Pok Oi Hospital; and

(b) the types of work performed by the above-mentioned staff during the time spent in organizing such activities?

SECRETARY FOR HEALTH AND WELFARE: Mr President, fund-raising and publicity activities are important tools to foster a close partnership with the local community, and to impose a clear public image of the hospitals concerned. These activities are also part of the tradition established by many ex-subvented hospitals and represent joint efforts of the Hospital Governing Committees, Boards of Directors, local community groups and volunteers.

The specific fund-raising activities in question were organized by the hospital management staff with minimal involvement of frontline medical and nursing staff. As regards the Queen Elizabeth Hospital Open Day, the participation of medical and nursing staff was entirely voluntary. No similar activity was organized by Queen Mary Hospital except for the recent publicity exercise related to its nursing school. In both cases, the work involved consisted mainly of preparation of demonstration material on signboards.

PRESIDENT: I have given permission to Mr Andrew WONG, under Standing Order 17(4), to ask a question without full notice on the ground that it is of an urgent character and relates to a matter of public importance.

Oral Answer to Question

Validity of the Legislative Council proceedings

20. MR ANDREW WONG asked (in Cantonese): *As the current President of the Legislative Council was elected before the Great Seal had been affixed to the relevant Letters Patent or the issue of the associated Royal Instructions under the Queen's Sign Manual and Signet, doubts have been expressed regarding the validity of the election, the sittings called and presided over by the President so elected, and the legislation and resolutions passed by the Legislative Council since then. Although the Administration has intimated that procedural irregularity would not affect the validity of the President's election or any bills subsequently passed by the Legislative Council, some local legal experts have considered otherwise. In the circumstances, will the Government inform this Council if it intends to request Her Majesty's Government to legislate to put the validity of the proceedings of the Legislative Council since 19 February 1993 beyond doubt?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, we have reaffirmed with Her Majesty's Government (HMG) that although the two sets of amendments to the Letters Patent and the Royal Instructions were published in the Hong Kong Gazette before the residual formalities relating to them were completed, this would not have any effect on the validity of anything done in Hong Kong prior to the completion of the formalities.

At its meeting on 20 June, the Constitutional Development Panel of this Council suggested that there should be some form of retrospective legislation to put beyond all possible doubt the validity of the amendments. At the panel's request, the Administration have conveyed the suggestion to HMG and have asked for an urgent response. We will inform this Council of the outcome as early as we can.

MR ANDREW WONG (in Cantonese): *Mr President, at the Constitutional Development Panels's meeting held on this Monday, the Government said that it had repeatedly requested Her Majesty's Government (HMG) to confirm that the not yet completed formalities would not affect the validity of anything done in Hong Kong. I trust that the Government must have sought local legal advice before seeking clarifications from HMG. Will the Secretary inform this Council what sort of local legal advice did it get and was it different from that given by HMG; if so, in what ways are they different from each other?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, we have in the course of this exercise sought the advice of our Attorney General's Chambers and nothing in that advice, nor in the advice we received from HMG, gave us any cause for concern as to the validity of the amendments nor anything done under those amendments.

DR YEUNG SUM (in Cantonese): *Mr President, as the two sets of amendments to the Letters Patent and the Royal Instructions had been published in the Gazette before the residual formalities relating to them were completed, it might cast doubt on the validity of the 125 ordinances passed by Hong Kong's legislature after 19 February 1993. The Hong Kong Government and Her Majesty's Government have assured us time and again that there would not be any problem and told us not to worry, but I still would like to ask the Government: Why did it happen and who should be held responsible? Does the Government think that this incident would significantly affect the credibility of this Council as a legislature? I wish to express my infinite regret over this issue*.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I think at the Constitutional Development Panel meeting, my deputy has explained to the panel that the mistake was made at the London end, but nothing in that technical problem with the exercise would lead us to have any cause for concern about the validity of any acts performed as a result of those amendments. At the request of the panel we have duly conveyed Members' suggestion to put beyond doubt any questions about the validity of those acts and we now await a response from HMG.

PRESIDENT: Dr YEUNG Sum, not answered?

DR YEUNG SUM (in Cantonese): *Mr President, the Administration just repeated its reply. My question is: Why did it happen and who should be held responsible?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I thought I said in my answer which I repeated what was actually conveyed to the Constitutional Development Panel that this mistake as confirmed was at HMG's end.

MR MARTIN LEE: *Mr President, does the Government accept that no reassurance either from the Hong Kong Government or from Her Majesty's Government can bind our court and it is only our courts which can decide whether those laws are valid or not? And if so, how can the Government feel so secure before the courts have decided?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, obviously it is for the court to determine on any point of law which a member of the public or any party chooses to put before the court for determination. But on the basis of the advice that we received at Hong Kong's end as well as from HMG's lawyers, there is nothing that would lead us to have cause for concern about the validity of those amendments.

MISS EMILY LAU (in Cantonese): *Mr President, will the Government inform this Council whether it is true that the officials of the Constitutional Affairs Branch and the Attorney General's Chamber believed that HMG should take some remedial measures after the incident; and that they had no alternative but to accept HMG's instruction after being told by the latter not to worry about anything? Will the Secretary confirm that this was the case at that time?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I do not agree with that allegation. When the problem was pointed out, we obviously sought clarification from HMG and were assured that notwithstanding the technical hitch about the date of the instrument, there was no cause for concern and as a result this problem obviously was not taken further.

PRESIDENT: Yes, Miss LAU.

MISS EMILY LAU (in Cantonese): *Mr President, in order to prove that officials of the two departments concerned held different views and that I am not accusing Mr Nicholas NG of being a liar, could the Government table the relevant documents for Members' examination? We might then see why the officials requested twice to write to London for clarification, for if there be no cause for concern, I believe that they would not have requested twice to write to London for clarification. As such, will the Government make public the correspondence at the time for Members' examination so as to reveal the complete picture of the incident?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I am sure the Honourable Member is not suggesting that when a problem is discovered we should not take steps to clarify it — whether there is a problem and whether there is any follow-up action that needs to be taken. It is on that basis that we corresponded with HMG as to actually whether there was any problem and the answer given to us was that there was no problem. Now as regards the advice, the legal advice we received from the Attorney General's Chambers is obviously the advice to the Government and legal advice, as the Honourable Member well knows, is privileged.

MR RONALD ARCULLI: *Mr President, will the Secretary inform this Council whether the Government accepts the position that whatever assurances that come from Her Majesty's Government regarding the effectiveness of the amendments, that it would be better to reassure the people of Hong Kong, and indeed this Council, either to consider having some retrospective legislation or indeed the Government initiating proceedings in Hong Kong in court to test the validity of the Government's position, so as not to get ourselves into a panic should a private citizen in Hong Kong take the point before one of our courts and then one of our courts rules that it is in fact ineffective?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, it is indeed in that spirit that we conveyed the Constitutional Development Panel's suggestion to HMG. This is not to say that we ourselves have doubts on the advice that we have received all along. Mr President, I do not think we should pre-judge the views or the answer that we would get from HMG at this stage. We have impressed upon them for a speedy answer and I am sure it is forthcoming. I am also certain that whatever answer we get would certainly reassure Members and the general public and will put Members' hearts at ease.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, will the Secretary inform this Council whether this is the second mistake that the British Government or the Hong Kong Government has made? The first one concerned the appointment of the Executive Council. At that time, while the Commander-in-chief was still an ex officio Member of the Executive Council, the*

Administration abolished his seat with immediate effect. This was the first mistake committed. Will the Secretary confirm that?

PRESIDENT: I think you are going beyond the scope of the question and answer, Mr CHIM. Do you want to rephrase your question?

MR CHIM PUI-CHUNG: *No. (Laughter)*

MR JAMES TO (in Cantonese): *Mr President, I would like to follow up Mr Andrew WONG's question. Just now the Government did not reply the part as to whether the legal advice obtained locally is different from that given by HMG? The Government said in its reply just now that nothing in the advice received from HMG gave us any cause for concern. I would like to repeat Mr WONG's question, was there any difference between the two? Since the legal advice claimed that the conclusion might not necessarily cause one to win or lose the court case, I wish to know the exact wording used in the advice; did it say "a good chance of winning", "very unlikely that anything would happen", or "nothing is going to happen"? What sort of affirmative sentences were used in fact?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I really can only say that the advice we have got from our Attorney General's Chambers, and reinforced by the advice from London, does not give us any cause for concern as to whether the validity of the amendments would be called into question, nor the validity of any acts done as a result of those amendments. As the Honourable Member pointed out, maybe different lawyers would have different interpretations or different inferences as to how a particular situation should be looked upon, but overall the advice we got, reinforced by the advice we received from London, did not give us any cause for concern.

MS ANNA WU: *I assume that the validity of the President's position is now beyond doubt. Has the Secretary considered the possibility of having all laws under question reconfirmed by this Legislative Council?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, I am afraid I do not quite catch the implication of the Honourable Member's question, but I think in my answer I did say that there was no cause for concern on the validity of any acts performed as a result of those amendments. So obviously that would include, if Members would like to include them, all the legislative amendments that this Council has enacted since that date.

MS ANNA WU: *Mr President, I asked if the Secretary has considered the possibility of having a fresh bill put before the Legislative Council to confirm the validity of the past laws under question. That is one way of putting the matter beyond doubt. Could the Secretary answer whether he has so considered or not?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, the answer is no.

MR ANDREW WONG (in Cantonese): *Mr President, common sense tells us that an imperial edict without the royal seal and the signature is indeed a forged one. I believe that the pronouncement of a forged imperial edict has no validity. Is it true that the officials of the Constitutional Affairs Branch, out of their common sense, believed that the amendments were invalid and therefore sought clarification from HMG repeatedly?*

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, if Her Majesty were to give assent and if her Majesty were to approve the Royal Instructions and Letters Patent at the meeting of the Privy Council, I just fail to see how that could be a false order or decision of Her Majesty.

First Reading of Bills

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1994

SUPPLEMENTARY APPROPRIATION (1993-94) BILL 1994

COINAGE BILL

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

Second Reading of Bills

ROAD TRAFFIC (AMENDMENT) (NO. 2) 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) (No. 2) Bill 1994.

The Transport Advisory Committee (TAC) completed a review on various aspects of taxi policy in March this year. One particular problem area identified was the exceedingly high premiums paid for taxi licences. Taxi licences have been issued through public tender since 1964. Under existing legislation, all taxi licences are freely transferable. Holders have a perpetual operating right. These factors, coupled with the limited issue of new taxi licences, have contributed to the sharp rise and speculation in taxi licences in recent years.

To tackle this particular problem the TAC has recommended, *inter alia*, that there should be a 12-month restriction on the transferability of new taxi licences and a requirement that both the transferor and transferee of the licence must register the transaction in person. We propose to implement these proposals.

Clause 2 of the Bill seeks to empower the Commissioner for Transport to prohibit the transfer of the ownership of a newly licensed taxi for an initial period. To provide for flexibility, the exact period has not been specified in the Bill since, in future, it may be necessary to vary this period to enable the Commissioner to respond quickly to the market situation.

To ensure that the trade and all interested parties are made aware of this restriction, the Commissioner for Transport will specify the "period" in the tender documents inviting applications for new taxi licences. Such a restriction will also be endorsed in the Vehicle Registration Document for taxi so licensed.

Mr President, the Transport Panel of this Council has been consulted on the findings of the Taxi Policy Review. I must express my gratitude to Members for their support in principle of the measures that need to be taken, including the proposal now contained in the Bill before Council.

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

SUPPLEMENTARY APPROPRIATION (1993-94) BILL 1994

THE SECRETARY FOR THE TREASURY moved the Second Reading of: "A Bill to approve a supplementary appropriation to the service of the financial year which ended on 31 March 1994."

He said: Mr President, I move that the Supplementary Appropriation (1993-94) Bill be read the Second time.

Section 9 of the Public Finance Ordinance states that "If at the close of account of any financial year it is found that expenditure charged to any head is in excess of the sum appropriated for that head by an Appropriation Ordinance, the excess shall be included in a Supplementary Appropriation Bill which shall

be introduced into the Legislative Council as soon as practicable after the close of the financial year to which the excess expenditure relates".

The accounts for the financial year 1993-94 have been finalized by the Director of Accounting Services. The expenditure charged to 67 heads out of a total of 83 heads is in excess of the sum appropriated for those heads by the Appropriation Ordinance 1993. This is because sufficient offsetting savings could not be found within the heads concerned. In accordance with section 9 of the Public Finance Ordinance, this excess has been included in the Supplementary Appropriation (1993-94) Bill 1994 now before Members. The Bill seeks to give final legislative authority for the amount of supplementary provision approved in respect of particular heads of expenditure by the Finance Committee or under powers delegated by it.

The total net supplementary appropriation required in respect of the 67 heads of expenditure is $8,050.1 million. This excess is largely attributable to the implementation of the 1993 pay adjustment in respect of the Civil Service and government-subvented organizations. Other major contributing factors include the increased expenditure under the Comprehensive Social Security Assistance and Social Security Allowance Schemes and additional expenditure on pension payment.

The cost of the 1993 pay adjustment and pension increase had been anticipated in the 1993-94 estimates under the "Additional Commitments" subhead. Savings were also made in other subheads through continued tight control over public expenditure, and I would like to thank the controlling officers and others who have contributed to restraint. Because of these savings and the provision made for additional commitments, total expenditure for the year is within the sum appropriated in the Appropriation Ordinance 1993.

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

COINAGE BILL

THE SECRETARY FOR FINANCIAL SERVICES moved the Second Reading of: "A Bill to make provision for the issue of legal tender coins, to provide for matters relating to the demonetization of the one cent currency note and to provide for other related matters."

He said: Mr President, I move that the Coinage Bill be read a Second time.

The principal object of the Bill is to make provisions for the issue of legal tender coins in Hong Kong and to vest the authority for the issue of such coins in the Hong Kong Government. This is necessary because the relevant provisions are now stipulated in a United Kingdom Order in Council, which will cease to have effect on 1 July 1997. Opportunity is also taken to make provisions in connection with the demonetization of the one cent currency note.

In the United Kingdom, the issue of coins is regulated by the Coinage Act 1971. While the Act does not extend to Hong Kong, it regulates coins issued by the Royal Mint, including those in circulation in Hong Kong. The Hong Kong (Coinage) Orders 1936-1978 contain provisions governing matters such as the issue, demonetization and specification of legal tender coins.

Both the Joint Declaration and the Basic Law have specific provisions to vest the authority to issue Hong Kong currency in the Hong Kong Special Administrative Region Government. The enactment of a local Coinage Ordinance before 1997 to vest authority for issuing coins in the Hong Kong Government will therefore contribute to a smooth transition.

The Bill also seeks to make provisions in connection with the demonetization of the one cent currency note. Arrangements for demonetization are already set out in the Dollar and Subsidiary Currency Notes Ordinance, where the Director of Accounting Services shall pay from the General Revenue to persons who surrender the demonetized currency note an amount equal to their face value.

This raises a technical problem insofar as the demonetization of the one cent note is concerned because following its demonetization, the 10 cent coin would become the lowest denomination legal tender and hence it is not possible for the Government to pay to those who surrender one cent notes in multiples of less than 10. It is therefore proposed that where a holder surrenders only one to nine notes, the surrender value of those notes will be nil.

Clause 2 empowers the Governor in Council to authorize the issue of legal tender coins with such specifications and design as he thinks fit. It also specifies the amount for which specified coins are to be legal tender. The amounts are the same as those stated in the Hong Kong (Coinage) Orders 1936-1978. The clause also empowers the Governor in Council to make regulations for the treatment of any coin which has been dealt with in a manner prohibited by law.

Clause 6 provides for matters relating to the demonetization of the one cent note. The holder of one cent currency notes shall, on surrendering them to the Director of Accounting Services, be paid from the General Revenue an amount in legal tender equal to their face value, but only in respect of amounts in multiples of 10.

Mr President, the Bill is a straightforward piece of legislation to address an important issue. The enactment of the Bill will contribute to a smooth transition to 1997.

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

DUTIABLE COMMODITIES (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 27 April 1994

Question on Second Reading proposed.

MR PETER WONG: Mr President, the Bill before us deals with the remaining two items of the revenue measures proposed by the Financial Secretary in his 1994-95 Budget speech that needs to be implemented by legislative means. It seeks to increase the duty on hydrocarbon oils in line with inflation, and to replace the existing duties on alcoholic beverages with a completely ad valorem system of duties, to be calculated on a new basis, that is, on the price of the product at the point of delivery by the seller instead of the previous CIF price.

The Bill was introduced into this Council on 27 April. As it is also the subject of a Public Revenue Protection Order issued on and came into effect from 2 March this year, a decision on the Bill is therefore required before the expiry of the Order, that is, before 2 July 1994. It gives only two months for Members of this Council to examine the Bill after it was introduced into this Council on 27 April.

A Bills Committee was formed on 29 April to study the Bill. It has held five meetings and met representatives of the two local breweries and two interested organizations to receive their representations on the proposals in the Bill.

On the proposed increase of the duty rates of hydrocarbon oils, the Bills Committee accepts the Administration's explanation that the adjustment, which is in line with inflation, is necessary in order to maintain the real value of the fuel duty. The Bills Committee supports the proposed revision.

However, on the other proposal of the Bill, that is the new ad valorem duty system on alcoholic beverages, the views of Members of the Bills Committee are divided. No consensus, one way or the other, has been reached. In the circumstances, the Bills Committee has not come to a conclusion on this proposal. It, nevertheless, has reported in detail its deliberations and the different views and opinions expressed by the Administration, the representations and Members of the Bills Committee to the House Committee to facilitate the proposal to be fully debated at the Sitting today. I trust a number of my honourable colleagues will speak further on their views of this subject later on. The Honourable Simon IP has also given notice to move amendments to the Bill at the Committee Stage to restore the pre-existing duty system prior to 2 March 1994. Therefore, as the Chairman of the Bills Committee, I will now give an account of the principal issues that the Bills Committee has considered and leave the arguments, for and against the new system, to Members themselves.

As explained by the Administration, the main objectives of the new duty system are — simplification, equity, affordability and GATT compatibility. The main concerns of the Bills Committee are also closely related to these objectives.

They are:

(a) Whether the new system would put local manufacturers of alcoholic products in a disadvantageous position?

The two local breweries have put forward to the Bills Committee their strong objection to the new tax system. Their main argument is that their products would be subject to a different dutiable base with imported beer under the new system. It would create a disparity in duty which would result in a significant market advantage for imported beer because they would be paying duty based on a lesser amount of dutiable costs. This would not ensure a level playing field between importers and exporters as suggested by the Financial Secretary. The method of duty assessment is also complex and cumbersome in operation, and will entail extra accounting and administrative costs to local breweries.

The Administration however does not envisage a significant difference in the taxable values of imported and local beer because the system is based on the same definition of "normal price" for dutiable products in the Bill. The Administration has experience in operating a similar system for other products before and do not think it has difficulty to enforce the new system. The Administration considered that the problems encountered by the local breweries are only transitional and is confident that, once the valuation method is worked out, future exercises will be a straight-forward task.

Some Members of the Bills Committee however felt that the problems encountered by the local breweries will arise every time where there is a new item of expenditure incurred. A specific duty system is on the contrary more straight-forward.

(b) Whether the system is simple?

Some Members of the Bills Committee doubt the Administration's proposition that the new system is simpler than the former. It is because the taxable value of a product will be subject to a few complex definitions in the Bill and not simply the FOB value of the imported product. The Administration has also indicated that it may incur an additional amount of $1.2 million per annum for additional staff to enforce the new system.

The Administration argues that the broad framework of an ad valorem duty system has been in the Ordinance for a long time. Despite additional expenditure is anticipated in the enforcement front, mainly for verification of the declared price of the products, some savings are expected from certain supporting services, such as testing of alcoholic content, under the new system.

(c) Whether the new system would achieve equity and uphold the principle of affordability?

Some Members of the Bills Committee support the new system because it aims to remove the undue cross-subsidy of the more expensive products by the less expensive ones in terms of duty contribution and is in line with the consensus among the public gathered from informal surveys conducted by the Administration that the duty system should follow the principle that those who can afford to pay more should pay more. As a result, many items of the lower price range would attract duty lesser than before.

However, other Members are doubtful over the possibility of the new system in achieving these objectives because there is no intention for the Administration to regulate the price in the retail market. Therefore, there is no guarantee that the benefits of any duty reduction under the new system will be passed onto consumers.

(d) Whether the new system will provide impetus for smuggling?

Some Members of the Bills Committee share the view of the Liquor and Provision Importers Association that the new system, under which more expensive items, whilst attracting specially high duty, would provide impetus for smuggling. The Administration however does not consider that the new system has greatly changed the potential of the smuggling business. The law enforcement agencies will, nonetheless, keep the situation under close surveillance.

(e) Whether Hong Kong should adopt an ad valorem system when specific duty is indeed the system widely used in other countries?

Some Members of the Bills Committee are concerned that as specific duty is widely adopted by other countries and places like Singapore and Taiwan have in fact abandoned their ad valorem system not long ago, why Hong Kong should go against the norm.

The Administration however is of the view that different countries have different profiles of liquor consumption and production, and it is inappropriate to adopt another country's system regardless of Hong Kong. Furthermore, in most of the places, where specific duty

system is adopted, there is alongside a value-added tax or sales tax which itself is ad valorem.

(f) Whether the new system is compatible with the GATT principle?

Some Members of the Bills Committee are not in agreement with the view of the Administration that the new duty system is entirely consistent and compatible with Hong Kong's obligation under the GATT. They considered that the GATT concern is not only on identical products but also on like or substitutable products. While the new system removes the previous anomalies between the duty rates for European-type liquors and Chinese-type spirits, it creates another distinction between grape wine and other types of wine with similar alcoholic content, for example, rice wine, and the latter is given a duty advantage over the former.

Despite five meetings and having considered much information provided by the Administration, some Members of the Bills Committee have yet to be convinced that the proposed new duty system on alcoholic beverages should be supported. They hold the view that the proposal, which is so contentious, needs careful examination and should not have been introduced in the context of a budgetary proposal. Since the proposal is revenue-neutral and there is a deadline for a decision, the best way forward is to revert to the old system first and during the interim, the Administration should review the proposal. Conversely, some Members consider the proposal worthy of support. It has its own merits of simplicity and equity, and conforms to the view of the public that those who can afford to pay more should pay more.

I hope I have provided Members with an appropriate summary of the concerns considered by the Bills Committee on this issue and I urge my honourable colleagues and the Financial Secretary to throw more light on the above concerns in their subsequent speeches, so that a suitable conclusion could be reached by this Council after the debate.

Mr President, with these remarks, I support the resumption of the Second Reading of the Bill.

MR SIMON IP: Mr President, the new tax structure on alcoholic beverages was stated by the Financial Secretary to be revenue-neutral. I shall be moving an amendment during Committee stage. If that amendment succeeds, it will not have any revenue implications. This must be made plain from the outset.

The new tax structure on alcohol seemed at first glance as simple and equitable as the Financial Secretary made it out to be. But since the changes came into effect in March, almost no one whom I have spoken to, either on the Bills Committee or on the street, has anything positive to say about the new

system. Yet the Government continues to call the system "progressive", claiming that it reduces the tax burden on lower and middle-income households.

But just how progressive is it? To answer this question, we must determine the benefits to lower and middle-income consumers under the new system. Despite levy reductions on some popular beverages, there has been only a very marginal impact on retail prices, while the new taxes have caused prices on higher quality drinks to go through the roof.

The Consumer Council's most recent survey, conducted in May, shows that the extent of the benefits of the new system has been limited to an average reduction of 12 cents on popular rice wines. Beer has actually gone up in price, while higher-quality cognacs have seen very substantial price increases.

The Government can try to be progressive, but it cannot — and has rightly said that it will not — try to control the market. Its failure to achieve even modest progressive goals here is already evident. That is because reduction of duty is simply not the same as reduction of retail price. Consumers of low price products have not benefitted as was imagined by the Administration. Meanwhile, members of the sandwich class, many of whom have developed a taste for the finer things in life, as is their right, will have found that these little luxuries have been priced out of reach. The first rule of public finance is that the costs of any policy should not outweigh its benefits. That rule has been breached in this instance. Simply put, the new taxes hurt more than they help. This alone is reason enough to scrap the new system.

The confusing cocktail

The Financial Secretary called the old, mixed system of specific and *ad valorem* levies "a confusing cocktail." Thus, the stated aim of the new *ad valorem* taxation scheme was "simplicity and equity." But a majority of Members on the Bills Committee believe that neither simplicity nor equity have been achieved. Rather, the cocktail has become more confusing than ever before.

The fact is that all major trading nations levy specific taxes on alcohol. Specific taxes are based on content alone. They require a longer table of rates, but in practice they are fairly simple to administer. Determine the content, calculate the duty. There is no need to haggle over the value of product back in the country of export.

The Administration counters this point by arguing that in some countries, in addition to a specific excise duty, a general sales tax (GST) or value-added tax (VAT) is charged on an *ad valorem* basis. With 30%, 90% and 100% ad valorem taxes, one might wonder whether the Government is using the new taxes to the same end as other countries use their GSTs or VATs. But has Hong Kong not already rejected both a GST and a VAT? So this mention of GSTs and VATs is utterly irrelevant to the debate unless the Financial Secretary

wishes to acknowledge that he is seeking to introduce a GST through the back door.

What makes an *ad valorem* system more complicated is the need for precise calculations of the value of the commodity in question. Specific rates, though they require complex tables of tariffs, are actually simpler to administer because they involve flat rates based on alcohol content or volume. So, beer, for example, would be taxed by the hectolitre (100 litres) simply by adding a surcharge, not by calculating its value.

This problem of calculating value has generated tremendous opposition from local brewers San Miguel and Carlsberg. They feel that the new system discriminates against them in favour of overseas breweries. Under the new system, imported beverages are taxed at the ex-factory price, not on the CIF price. This means that importers can value their products without including shipping, insurance and other charges. Local brewers, however, include administrative, distribution, sales and promotion costs in determining the value of their products. These must be deducted in order to arrive at the taxable value of their products. After five meetings with the Government over the last three months, no agreement has been reached on these calculations. Complexity and confusion, not simplicity and clarity, have ruled the day.

Punitive, not progressive

It seems to me the new system is punitive, not progressive. Though the Government says it is not in the business of social engineering, it has not once substantiated the need for such astronomically high rates of taxation on consumer goods. Besides, an argument that drinking wine is a vice that should be punitively sanctioned through taxation would not stand up to scrutiny. That is because scientific evidence shows that a glass of wine each day has a salutary effect on one's health.

If it is to be pursued at all, social engineering through taxation should focus on the hidden costs of certain activities. In Hong Kong, there are really no visible hidden costs in alcohol consumption. We do not have a problem of widespread alcoholism, nor one of drunk driving.

Problems with the GATT

The Government continues to deny that the new system may entangle Hong Kong in a GATT dispute. I think they are ignoring the evidence. In 1987 the French won a similar GATT complaint against Japan. The GATT Panel's decision in that case, "did not exclude that there could be a 'directly competitive or substitutable' relationship between sake ..... and liquors imported from the EEC into Japan." The fact is that rice wines and grape wines compete directly for market share in Hong Kong. They should, therefore, be taxed similarly.

When we sit down to eat in a Chinese restaurant, we usually have a choice of traditional or Western beverages to enjoy with our meal. Sometimes we drink both and treat them as like or substitutable products. The properties of these products and their pattern of consumption are similar. Why, then, should one be taxed at 30% and the other at 90%? Would not, therefore, producers of grape wine have a justifiable cause for complaint and would not a GATT challenge have good prospects of success? It seems to me the answer to these questions is a resounding "yes."

Greater incentive for smugglers

The Government's thinking on smuggling seems to me to be entirely muddled. Yes, the effective duty on some products under the old system was 400%. But potential profits from smuggling Shaoxing rice wine hardly compare with the illicit gains to be had from XO, which now sells for about $600 less per bottle in China than it does in Hong Kong. Under the old system, the only serious price differences between Hong Kong and the mainland were on lower-end beverages. To make a significant profit before March, a smuggler would have had to fill a freighter with rice wine. Now, all he has to do is fill *a dai fei* with cognac. The returns are probably higher than those from stolen luxury cars.

Let me illustrate. A *dai fei* can hold one S-class Mercedes Benz, which occupies precisely 14.4 cubic meters of space. About 310 cases of Hennessy XO cognac fit in the same space. But while a stolen Mercedes might fetch several hundred thousand dollars on the mainland, a smuggler stands to make about $2.5 million on a single consignment of XO on a *dai fei* trip across Mirs Bay. To deny that this will create a temptation for smuggling, as the Administration has done, is to defy common sense.

In his lobbying prior to today's debate, the Secretary for the Treasury said he aimed to clear up some misinformation about smuggling and other related issues. Some Members were given figures about the price differentials on alcoholic beverages between Hong Kong and China. The Secretary, it seems, inadvertently engaged in misinformation himself, when he tried to show that price differences were not so significant as to give greater incentive to smugglers. The Secretary quoted prevailing retail prices in China, prices which include PRC duties on alcohol. But the industry has told me, the reality is that 95% of stocks in China are smuggled, and do not, therefore, pay PRC duties. Thus, the comparison of official retail prices is meaningless. Shenzhen might very well be likened to one big duty free shop when it comes to alcohol. The fact remains that price differentials are much greater than they were before. So big, in fact, a trade spokesperson told me, that a smuggler can stand to make about $1,400 profit per case of Remy VSOP, $8,000 on a case of Hennessy XO, and a whopping $61,500 on a case of Remy Martin Louis XIII.

Not meddling in the Budget

I reiterate that I am not advocating meddling in the budgetary process. The fact that this measure was introduced during the budget process, along with other revenue bills, should not lead Members to believe that this is a true revenue measure. The timing of its introduction is a tribute to the Government's mastery of the politics of confusion. In reality it is not a revenue measure, but simply a change in the structure of duties on alcohol. Whether the original Bill or my amendment carries, the overall effect on the revenue collected is nil.

Some Members will be persuaded to vote against my amendment or to abstain, believing that the budget process should remain firmly in the hands of the Government. I agree with the reasons but I reject the conclusion. The Dutiable Commodities (Amendment) Bill 1994 should not be confused with the budget process. It is entirely separate and should have been introduced separately.

MR HOWARD YOUNG: As representative of the tourism industry I, along with many other Members of this Chamber including the Honourable Martin BARROW, have received many representations from our constituents, particularly from the hotel industry. They, like myself, are genuinely concerned that this revenue-neutral measure will have an adverse impact on tourism into Hong Kong.

I tend to believe that tourists go to a destination for a variety of reasons and they do tend to compare the advantages and disadvantages of each destination product. It is widely known and said that tourists really come, or go anywhere, for the sake of four S's. One is the sun, the second is the sea and the third is the sand and the fourth S is shopping.

Now Hong Kong is regarded by many tourists to have sun which is too hot, sand beaches which are too crowded and of course our sea. We all talk about what state the water is in. But when it comes to shopping, that is 55% of Hong Kong tourism expenditure. When a tourist comes to Hong Kong, he, like many of us when we go abroad, compare attractiveness of shopping by looking at a small number of products. One is perfumes, the other is the taxi fare and the third is well-known brands of watches and the fourth is expensive drinks. Tourists do not compare the price of rice wine or cheap grape wines between different countries. They do compare many of the very well-known brands, which the Honourable Simon IP has mentioned. Now if a tourist comes from Singapore, where he has just ordered a brandy or fine wine, and he comes to a Hong Kong hotel and he finds that the price is very much higher, he automatically comes to the conclusion that everything else in Hong Kong is twice as expensive.

I have listened to the arguments in committee by the Government for *ad valorem*. I do believe that there is a lot of merit in *ad valorem* but when we look at the structure of what is being proposed, I believe it is not purely a matter of *ad valorem* versus specific because the actual percentage in each category of *ad valorem* is different. If it were the same percentage no matter what type of wine then I would be more easily convinced.

I also believe that there must be something wrong if on the one hand the Government says, "This whole thing is revenue-neutral" but then we have the wine dealers up in arms about it and we even have the hotel breweries, who are supposed to have duty reduced, up in arms about it.

So I would suggest that perhaps this year we can go along with the Honourable Simon IP's amendment and give the Government more time to rethink and see whether there is any better way of doing it and come back again next year with something that could, hopefully, since it is revenue-neutral, make everyone happy.

Now, as a person who today is with an airline and previously in travel but started a career in shipping, I do very much sympathize and understand the point Mr IP has just said about cargoes of Mercedes going up north and cognac coming down. A shipping company's nightmare is one-way traffic and a shipping company's paradise is return cargo. I do fear that if we have a system which gives great incentive for people to move cargo illegally in both directions and earn enormous profits, then that really does cause a problem.

Therefore, I am inclined to, at least for this year, go along with the Honourable Simon IP's amendment.

MR VINCENT CHENG: Mr President, I sympathize with my good friend, Mr Simon IP. I agree with what he said and I do not want to repeat the arguments.

There is no reason at all for the Government to make a bottle of good wine so expensive and impose such a punitive rate. Quite clearly the increase in price of good wine has gone beyond the principle of affordability. Indeed, what the Government has done is forcing people to shift to low quality liquor. Instead of drinking a bottle of XO in a traditional Chinese wedding or birthday banquet we are suggested to drink"九江雙蒸".

Perhaps government officials should set an example to show their genuine support for this new duty. Instead of serving wine during official banquets and lunches they should serve "廣東米酒" to their guests because tax on it has declined by 75%. I am sure the Government would love to do this to Members of this Council, not as a gesture of hospitality but rather to get even and settle some old debts.

Unfortunately for Mr IP I cannot give him my vote because the Bill is part of the Budget. I have always believed that a Budget should not be unstitched by the Legislative Council. We should accept it or reject it as one single package.

Mr President, I support Mr IP in spirit.

MR JAMES TIEN: Mr President, the Administration had wanted to propose an *ad valorem* duty scheme that would be simple, fair and affordable. The Government claims that the proposed scheme is simple because it treats all alcohol the same, that is, to assess various percentage of duty based on respective normal prices. It is fair because it applies the same scheme to all alcohol products. It is affordable because a lower value product would be levied a lower duty.

I do not question the Administration's motive but I do question whether the proposed scheme will actually achieve what it sets out to do and whether this is the best way to do it.

Specifically I would like to ask, is it really simple whether or not it creates unfair competition between local breweries and importers? And, is it the appropriate means to ensure affordability in the complex reality of the marketplace?

Mr President, is the proposed scheme simple? After three months of negotiation with local brewers, that is San Miguel and Carlsberg, only an approximate range of duty rate has been reached. The final figures have yet to be worked out. I believe the problem here is what constitutes a normal price on which duty is levied. In an effort to use a uniform system to simplify the present tax system, the Government has created an administrative nightmare, too complex and vague for implementation.

Is the proposed scheme fair? Though the Government has claimed the new system is fair because it is applicable to all products. Yet it has, however, created unfair competition between local brewers and importers. The duty between the two are assessed differently because some of the major cost components are dutiable for local products but not so for the imports. For instance, the assessable value of locally produced beer includes a range of costs related to freight and insurance for imported raw materials and packaging materials, which are excluded from imported beer. The inclusion of certain locally incurred marketing and sales expenses are still being negotiated, while these are all excluded from imported duty basis.

Is the proposed scheme the appropriate means to measure affordability? Duty reduction on lower price products does not necessarily benefit the man in the street. Neither producers nor wholesalers determine the market prices. Retailers do. For instance, producers have no influence on prices charged at

restaurants or bars, nor do they have much influence on supermarket prices. The Government says prices of certain liquors have already dropped. Yet, of the $41.51 duty reduction for a bottle of Bacardi rum, how much has the retail price dropped? I could tell Members that it will drop by an average of $4.50.

I believe the Government's *ad valorem* duty scheme proposal is complex, unfairly discriminates against local producers, and will have dubious benefits for the ultimate consumers.

Mr President, a responsive government is one that retracts a problematic proposal, even if temporarily, for further consultation before implementation. I hope the Hong Kong Government is responsive and will support the Honourable Simon IP's amendment thus enabling further consultation before implementation. Alternatives such as specific rates based on alcohol content should be considered. The smuggling issue from China and compatibility with GATT rules also has to be carefully discussed.

Mr President, with these remarks, the Liberal Party supports the amendment as proposed by the Honourable Simon IP.

DR HUANG CHEN-YA (in Cantonese): Mr President, the United Democrats of Hong Kong (UDHK) has considered the duties on alcoholic beverages from three aspects: Firstly, their influence on the public; secondly, their compatibility or otherwise with the GATT principle; and thirdly, their influence on local breweries.

Mr President, we know that the wines consumed by 89% of the public are in fact cheap wines. While the old duty system is retrogressive whereby those who drink cheaper wines have to pay more duty, the new system is progressive in that it requires those who can afford expensive wines to pay more. This is a very fair system. From the consumers' angle, as the duty on most of the alcoholic beverages will be reduced, this implies in fact that they will be paying less for such products. However, as Mr IP and Mr TIEN have pointed out, prices have risen instead of fallen, or fallen by just a very small margin. The problem stems not from the new system. It only reflects that some unscrupulous alcohol traders have regarded the tax reduction as an unexpected fortune and pocketed the duty balance instead of benefiting the consumers. The adoption of the new duty system can serve to reveal to the public the true faces of these unscrupulous traders, whereas a restoration of the old system will only help these traders disguise themselves and continue to erode consumers' interests. Moreover, the old system has constituted an import hindrance to wineries producing cheap wines because they have to pay the same duties as the expensive wines. Now under the new duty system, consumers can avail themselves of these cheaper but perhaps equally good wines. Some people have said that the new system will punish the connoiseurs. I think that such a proposition is a muddling of logic, equating expensive wines with high quality wines. In fact, we have found that some wines are expensive not because their

import prices are high; they are expensive because alcohol traders, exploiting consumers' worship of expensive goods, have set particularly high prices in order to reap profits several times of the costs. If Mr Simon IP really cares about the consumers and hopes that the prices of expensive wines will not increase too sharply, he should endeavour to make these traders show more sympathy for consumers and not to set the prices at such a high level. If the alcohol traders of Hong Kong do not want to see an influx of bootleg wines, all they have to do is to lower their profit margins so that the public will not have to pay so much for the wines. The wines available in Hong Kong should then not be so much more expensive than those in China. So what has it got to do with the old or new duty system?

From the consumers' point of view, the new system will be more beneficial to the majority of the public. We have no reason to disregard the fact that the majority will benefit and oppose the new system simply because a small number of people who like to drink expensive wines will have to pay more.

Secondly, on the GATT concern. The old duty system distinguishes between European-type liquors and Chinese-type spirits, which is clearly inconsistent with the GATT principle. The new system does not have such a problem. Some people have said that many other countries have adopted specific tax rather than *ad valorem* tax. However, if we look into the situation in more details, we will find that in addition to specific tax, those countries also levy value added tax, not solely a specific tax. Value added tax is also a kind of duty levied on an *ad valorem* basis. So when Mr IP said in his letter to us that other countries had adopted specific tax, he was in fact tactfully and conveniently holding back some of the facts and using the part to stand for the whole. The people of Hong Kong have for years opposed the introduction of a value added tax on an extensive basis. I wonder whether Mr IP wants us to retain specific tax for the rich and those who have a taste for expensive wines, and then introduce value added tax "via the back door".

Thirdly, on the two local breweries. They have complained that the new *ad valorem* duty will put their competitors at an advantageous position as far as competition is concerned because they will be paying an even lower duty. We surely understand that the *ad valorem* duties of imported and local beers are calculated at different points of the price chain. Such a difference has given rise to considerable controversies as local breweries worry that although the duty that they eventually have to pay may be reduced, the reduction will not be as much as that enjoyed by imported beer. But from the figures provided to us by the Administration, we find no evidence in support of such a worry, and these breweries have been unable to provide further information to substantiate their worry. Even if there are any technical defects in the existing method for the calculation of *ad valorem* duties, they can be rectified and should not constitute a reason for not adopting the *ad valorem* system. Despite the worry of the two local breweries that their competitiveness may be undermined by their generally higher costs compared with imported beer, these breweries, as we all know, have recently increased the prices of their products. The increase reveals that

they have in fact not worried about the possible usurpation of their market shares by cheap imported beer. The Administration has reduced the duties payable by alcohol traders by nearly 40%, but not only have they not passed the benefit arising from this reduction on to the consumers, they have instead increased the prices of their products, while pocketing entirely the benefit of the reduction. So if the old system is restored, they will have an even more plausible excuse to raise their prices further because the duties have increased! In these circumstances, I think that their arguments are in fact not convincing at all.

We certainly have to keep an interest in and care about our local breweries because not only have they invested in Hong Kong and provided job opportunities, but more importantly they have implemented a scheme for recycling beer bottles and cans, something which imported beers do not have, thereby protecting our environment. However, given our pursuit of free market economy, we simply cannot implement a duty system which particularly protects local enterprises and discriminate against imports, because it runs counter to the principle of a free market which we have always upheld in Hong Kong. As the new *ad valorem* system will give the public more opportunities and a wider choice of products, it will therefore benefit the consumers, enhance market competition and be favourable to the economy as a whole.

I can also see that the two local breweries have been given support in the form of grants of low-priced land by the Hong Kong Industrial Estates Corporation, and this has enabled San Miguel to earn a large profit recently by liquidating its fixed assets. So the UDHK does not think that we should shelve the proposal of *ad valorem* duty on alcoholic beverages because of the reasons put forward by the two local breweries.

However, we have to state our stance clearly:

First, as the local breweries have such a worry, we should categorically ask the Administration to find a reasonable and proper solution so that the calculation of the *ad valorem* duty payable by local breweries should be juggled technically, such that they will not be required to pay more than they are due. Likewise, the breweries of imported beers should not pay less than they are due. Even if the proposal is passed today, we will still follow up this matter.

Second, the Administration should expeditiously legislate to require all alcohol traders to operate a scheme for recycling bottles and cans. Currently, only the two local breweries have done so while the imported bottles and cans have been polluting our environment, and what is unacceptable is that the costs of disposing such garbage has been transferred onto the public. Hong Kong should therefore follow the practice of European countries in requiring all alcohol traders by way of legislation to take up the responsibility of environmental protection.

For the reasons given above, the UDHK will support this Bill and oppose the amendment by Mr Simon IP.

MR MARTIN LEE: Mr President, when a lawyer speaks on a subject close to his heart, or even closer perhaps to his palate like a bottle of *Petrus* — I got the brand name from the Honourable Andrew WONG — he could be passionately effective. But unlike my successor in the Legal Functional Constituency I do not go for what he calls the finer things of life and so I can speak, perhaps, a little more dispassionately.

If our lawyers could no longer afford expensive wines during meals because of the passage of this Bill, let me recommend to them an even better drink, which is clearly even more conducive to health — hot water with a twist of lemon. This drink is guaranteed non-taxable so long as Mr Donald TSANG remains Secretary for the Treasury because I understand this is his favourite drink.

Mr President, the United Democrats of Hong Kong and the Meeting Point will oppose Mr IP's amendment.

MR ANDREW WONG (in Cantonese): Mr President, the duties on alcoholic beverages have always been charged under a mixed system of ad valorem rate and specific rate. In his Budget speech made in March this year, the Financial Secretary, Sir Hamish MACLEOD, announced his reform of streamlining the duty system by placing it solely on an ad valorem basis. Despite the fact that the new ad valorem duty system has been the subject of a Public Revenue Protection Order issued at that time and has come into immediate effect for the time being, the reform of duty system has to be effected by amending the Dutiable Commodities Ordinance. Therefore, the relevant amendment Bill has to be deliberated and passed by this Council today. If the Bill cannot be passed within four months from the date the Order was issued, that is, if the Bill is not passed before July, the new system will have to be suspended from operation and the extra tax thus levied will have to be reimbursed.

The Financial Secretary claims that the new system is both simpler and more equitable than the old system. On the point of making the system simpler, the Financial Secretary has been absolutely correct. But it does not mean that there is no other even simpler systems with ever fewer shortcomings. On the point of equity, we have to look at what "equity" really means. The ad valorem duty system is of course simpler than the existing mixed system since, at least, one less component is involved. However, this has also illustrated that the specific duty system may also serve the same function of making the system simpler. In fact, specific duty is even simpler than ad valorem duty.

Firstly, to charge duties on an ad valorem basis involves the verification of the FOB (free on board) prices of the products, which is really more

complex than the procedure of testing alcohol content as is required under the specific duty system.

Secondly, the relationship between the brewers, exporters, importers and distributors forms a complex and intricate nexus which is capable of infinite variability. They have endless methods to evade tax. For this reason, charging specific duties on alcoholic beverages is favoured by countries all around the world. Japan and Taiwan switched to the specific duty system in 1989 and 1991 respectively.

Other dutiable commodities in Hong Kong, such as methyl alcohol (alcohol not for drinking purpose), hydrocarbons, hydrocarbon oils (diesel oil and gasoline) and tobacco, are all subjected to specific duties. Cosmetics, the commodity which used to be subject to ad valorem duty, had been excluded from the list of dutiable commodities. The first registration tax of vehicles, which is not within the ambit of the Dutiable Commodities Ordinance, is levied on an ad valorem basis, but the annual licence fees of vehicles happen to come under the specific duty system.

It is beyond doubt that the Government is emphasizing "equity", which means adhering to the "ability to pay" principle. From this point of view, the ad valorem duty system fulfils the quality of proportionality as required under this principle, and is more equitable than the specific duty system which is regressive in nature. However, we should think carefully whether we should work for the goal of making every tax item adhere to the principle of equity, or we should pursue the objective of bringing our overall revenue generally in line with this principle of equity (which means those who can pay more should proportionally pay more). The former goal is of course fair but is the latter objective not so? If we say that only the former goal is fair, then in what light are we going to view the levying of specific duties on such products as hydrocarbon oils, tobacco and methyl alcohol?

In fact, the objective of levying specific duties on the above dutiable items is "to discourage people from consuming these products by means of levying tax". In other words, the duties are levied for the purpose of discouraging people from using gasoline, driving and smoking. Only by adopting the specific duty system can this objective be attained because the ad valorem duty system can only provide impetus for people to switch to cheaper products. We can see from the above arguments that the point of equity is totally irrelevant here.

The new *ad valorem* duty system has other possible shortcomings. For example, will the local brewers move northward to the Mainland because the new system favours imported beer? Dr the Honourable HUANG Chen-ya said that the San Miguel Brewery sold a piece of land to a property developer, but does he know that the San Miguel Brewery has set up a brewery plant in Guangzhou and may have the beer forwarded to Hong Kong for sale in the future? Another shortcoming lies in the possible consequence of a massive influx of smuggled expensive wines and spirits to Hong Kong since the price of

the already expensive wines and spirits will go through the roof after the drastic tax increase. I do not want to go into the details, but just want to remind the Government and the Members that they have to rethink what sort of reforms they are now seeking. It is important to note that any reform to the tax system, just like the tax system for the first registration tax of vehicles, should not be put forward in the context of the Budget; therefore, I cannot agree with the Honourable Vincent CHENG's arguments. If the Government is trying to avail itself of the opportunity offered by the Budget in putting forward the reform proposal by the "back door", so to speak, I believe that the Honourable Vincent CHENG's earlier expression of support for the Honourable Simon IP "in spirit" should actually mean support "in spirits" for Mr IP.

With these remarks, I support the Second Reading of the Bill and support the amendment to be moved by the Honourable Simon IP.

MR FRED LI (in Cantonese): Mr President, my speech will be brief since some of the arguments I intended to put forward have already been covered by Dr the Honourable HUANG Chen-ya. I also sat on the Bills Committee.

The Honourable Andrew WONG just now mentioned the San Miguel Brewery. I would like to point out to him that the brewer has another brewery plant in Yuen Long Industrial Estate, so it is not likely for them to brew beer in Guangzhou and then ship the products back to Hong Kong for sale.

Many Members have touched upon the point that a duty system should be equitable and simple. In this context, let us look at the concrete examples given to us by the Government. (I think honourable colleagues, in particular the Honourable Simon IP, would have provided us with some more convincing examples.) An example cited by the Government is that in 1993, the best selling alcoholic beverage was the so-called low-priced grape wine retailing at $145 or less a bottle, which accounted for 89.3% of the total sales. Where this kind of grape wine is concerned, the proposed duty system, if endorsed, will bring down its price in the region of $15.7 to $22.1. These are the figures given by the Government. If there are Members who consider these figures falsified or unreliable, they may certainly refute these figures.

The new system calculates the duty payable on a per bottle basis. Take the more expensive red wine retailing at $300 a bottle as an example. Although its retail price is bound to go up under the new system, its sales in Hong Kong amount to only 1.3% of the total sales. Should we vote down the new system which imposes higher duty on such high-priced alcoholic beverages accounting for 1.3% of the total sales just for the benefit of a particular group of consumers at the expense of other consumers? I do not know who can afford the high-priced wine, but surely the man in the street is not among them. The Honourable Howard YOUNG mentioned that alcoholic beverages might be priced at exorbitant levels in local hotels. I wonder if this has anything to do with the new duty system. Price-setting is a fairly complicated matter. If the

duty on a particular type of wine is increased by $300 per bottle, will the hotels just mark up each bottle by $300? They may not set prices in such a way. They may increase the price by, say, $500 or even $600, so as to gratify drinkers' vanity by making them believe that they are consuming the finest wine. It has nothing to do with our duty system, does it not? Have we taken this point into consideration? I do not think prices for alcoholic beverage charged by hotel operators in their hotels are of any meaningful relevance. For this reason, I cannot agree at all with the proposition that if tourists are to be charged heavily for the alcoholic drinks they order at hotels, then our tourism will be badly hit.

Let us now look at the figures. In fact, many alcoholic beverages will experience a reduction in the duty payable. The Honourable Vincent CHENG has just suggested that the Government may serve Jiujiang rice wine to Members of this Council. To the best of my knowledge, the Government has never served red wine pricing at $300 or more to Members of this Council. I have not had the privilege. I am not sure if there are any Members who have received this sort of courteous treatment. The Government usually entertains us with red wine retailing at $100 or so a bottle. The Financial Secretary may, in his reply later, tell us whether he will entertain Members with high-priced red wine, but I am sure that he will not serve us with Jiujiang rice wine because it is usually used as seasoning or consummed as beverage among manual workers.

I have read the representations submitted by the two local breweries as well as the information furnished by the importers. The two local breweries will pay less duty than before under the new system. The point at issue, however, is that the new system will open the door to cheaper beer from abroad to compete with the products of the two local brewers. The local breweries are not complaining about the higher duty to be levied on them to the tune of 20 or 30 cents per can or bottle, but largely about the fact that imported beer may pay even less duties. However, looking at the issue from another perspective, that is, from the consumers' point of view, a more competitive market will bring overall benefits to the general public. I hold the view that the new duty system is more equitable in the sense that those who can afford expensive wine are required to pay more. I give my unreserved support for this principle.

Mr President, I support this new duty system and oppose the amendment to be moved by the Honourable Simon IP.

FINANCIAL SECRETARY: Mr President, I would like to begin by thanking the Honourable Peter WONG for what seems to me a very fair summary of the argument on both sides. I also listened with interest to Mr Simon IP's views and I took them seriously and would do my best to convert him to my view. The Dutiable Commodities (Amendment) Bill 1994 seeks to give effect to two proposals announced in this year's Budget:

- The first, of course is the *ad valorem* duty system for all alcoholic beverages;

- The second, the increase in duty on hydrocarbon oils by 8.5% in line with inflation.

The second proposal, I am thankful to say, seems to be by and large non-controversial. Legislative Council Members have generally accepted that failure to maintain the real value of fuel duty would aggravate congestion on our roads. The proposed reform of our alcohol duty system has generated however much discussion — I must say somewhat to my surprise rather more discussion than I would have expected in this Council and in the outsides. Some Members support the Administration's initiative in introducing what we see as a fairer and simpler duty system on alcohol. Quite a few, however, I recognize, oppose it for what I hope to convince Members are less than convincing reasons. I know that a number of Members have still to make their minds up so, I hope you will bear with me if I deal with the arguments at some length.

A progressive system

As I explained in my Budget speech, the new duty system was borne out of a desire for rationalization. It is not our intention to raise additional revenue under some guise of reform, nor my engaging in any sort of moral crusade against one particular type of drink and for another, not a moral issue at all. According to district feedback, the community at large favours a progressive duty system based on the principle of affordability; in other words, those who can afford to pay more should pay more. In the context of a tax on alcohol, the nearest we can get to this principle is that the more expensive products should bear at least a proportional share of the duty. The old duty system clearly fell short of such an expectation. More expensive products in fact paid a smaller percentage of duty relative to their values than cheaper products of the same type. In short, the average consumer suffered. This anomaly in my view called for an immediate rectification.

We are dealing here mainly with a question of fairness. The general public in Hong Kong feels that duty on alcohol is reasonable, and it is fair that those who can afford the finest wines, as someone has described them, should bear a fair share of the tax. The result of the reform proposed is that the tax burden will fall more equitably on our drinking population.

Duty reduction across the board

Under the new system, a broad range of cheaper alcoholic beverages will pay less duty. Some people have claimed that certain products which are subject to tight quality control during production, such as brandy and whisky, will be hard hit. This is not so. We conducted a study to assess the impact of the new system on the best-selling product in 1993 in each broad category, for example, brandy, whisky, vodka, rum, liqueurs, Chinese-type spirits, grape wines as well as beer, each of those. The results indicate that there will be duty reductions in every case, ranging from 6% to 75%. I repeat we are talking about the best-selling product in each of those categories. Overall, as another Member has

already pointed out, over 90% of the alcoholic products sold in Hong Kong will enjoy a duty reduction.

I am pleased to see some price reductions already, reflecting the effect of the new duty system. For those traders who have been less responsive, I shall not be too critical at this stage. It is possible that they are still selling old stock. Or more likely but they may be waiting for the proposed system to be made permanently into law before making a final decision on pricing. We are, in a sense, in the transitional phrase at the moment honestly this year. However, once the new system is formally established, the Administration will keep an eye on how the market reacts. We have also been encouraging the Consumer Council to monitor price trends for these products. I believe consumer power will, once the new system has been confirmed, ensure that the prices follow duties down for the majority of products. The industry itself keeps telling us this is a very competitive industry. If it is competitive then it is going to have to react to lower prices by some, if other ones have to follow suit or lose market share.

Duty increase for selective products

It is true that a minority of products will face a duty increase under the new system. But they are mostly found at the upper end of the market which caters to consumers of luxury products. The higher duty payable for these products results from the rectification of the unfairness which I referred to earlier under the old system. It is also a reflection of the consumers' ability to pay. Given the strong tendency of conspicuous consumption in Hong Kong, I do not envisage that the new duty system will significantly affect the sale of these expensive products.

Furthermore, these products represent minor fractions of the market. For example, in 1993 the quantity of still wine retailing at more than $145 a bottle — which is roughly the level of wine above which there is an increase in duty — consumed in Hong Kong took up only 10% of the total local still wine market. Of this, over 80% will face only a modest duty increase in the region of $10 to $20 a bottle. Those products with a steeper duty increase, say, previously retailing at above $180 a bottle, constitutes only 2.4% of the total still wine market in Hong Kong. The relatively bigger increases in the duty on XO brandy has been cited as another example. Yet, XO brandy, or perhaps I should say XO cognac, represents only 6% of all grades of brandy, even as a percentage of brandy, 6% and 0.08% of all alcoholic beverages, drunk in Hong Kong during 1993. These figures illustrate that these expensive drinks are reserved for the very few. With respect to the Honourable Howard YOUNG's arguments, I find it not very likely that tourists do not drink beer and moderately priced wine and only drink or largely drink or mainly drink the cognacs and the expensive wines. I also like in passing the tourists the advantages of the duty-free shops now and in the future.

Impact of the new system on beer

Beer has been particularly discussed because of course there has been a degree of lobbying on the issue which is entirely the industry's right. The two local breweries as well as some Members have expressed serious concern about the impact of the new system on that local industry. I can assure Members that such worries are not warranted. Indeed, as it happens the weighted average taxable value of local beer is in fact lower than that of imported beer, which makes it even less convincing to argue that the new system discriminates against local beer.

The Amendment Bill now before Members provides that the same valuation method and the same ad valorem duty rate apply to local and imported products without distinction. I can confirm, for the Honourable Dr HUANG, that we are always ready to have a dialogue with brewers if they think at any time this aim is not being achieved. We are not simply pursuing a detente; we are ready to discuss if problems emerge. The actual taxable values of individual products, that is to say beer products, will however vary according to their pricing strategies. This will in turn, of course, affect the amount of duty payable in dollar terms. Some cheaper imported beer will pay less duty than expensive local beer. But expensive imported products will pay more duty than cheaper types of local beer. This is, I hope, obvious. This is the essence of *ad valorem* duty.

The assessment of taxable values and the duty payable is a technical process, which the Customs and Excise Department carries out in accordance with our own law as well as internationally accepted valuation methods and procedures. Whether an item is taxable is to be determined by reference to law; it is not an arbitrary decision.

Since the implementation of the new system under the authority of the Public Revenue Protection Order 1994, the Administration has held a series of meetings with the two local breweries to clarify how the law will apply to local and imported beer. Regrettably, the two local breweries failed to reflect accurately our explanation in their submissions to Legislative Council Members. In essence, they have omitted certain taxable items from the dutiable basis of imported goods (for example, the sales, promotion, distribution and general administration costs incurred by the overseas manufacturer/exporter). It is thus inevitable that they have come to the wrong conclusion that the new system is unfair to them.

For beer drinkers, the new system should be good news. Except for a handful of premium imported beer in the top price range which will face a very slight duty increase, both imported and local beer will on average pay 40% to 50% less duty. And beer constitutes, I must say to my amazement, 87.5% of the total quantity of alcoholic beverages consumed in Hong Kong. In brief, the mass of consumers should benefit.

While the new system offers an opportunity for traders to pass on lower duty to consumers through price adjustments, it is of course up to individual traders to decide how this should be done. Some will pass on more, some are less. The market will become more competitive. It is ultimately for traders to adjust their pricing strategies in order to keep their market share. From the consumers' point of view, the more competitive the market the better.

If despite the duty reduction and the increasing market competition, the local breweries pocketed some or all of the duty reduction and pressed ahead to put up prices as they appeared to have done, naturally they would narrow their price advantage over imported products and lose their market shares in the long run or may be in the short run. The market disadvantage which they suffered as a consequence would be the result of their commercial decision and could not be blamed on the new duty system. We also note that one local brewery has adopted a consistent policy of maintaining higher prices than its competitors, so as to promote a "quality image". This is its right. But inevitably, higher wholesale prices will increase the taxable value on which duty is payable.

The introduction of *ad valorem* duty on beer will also open the local market to some very competitive products which become available in Hong Kong for the first time. Indeed there are signs that this has already happened. This is because the previous specific duty imposed a threshold below which it was not worthwhile to import certain cheaper products into Hong Kong. *Ad valorem* duty removes this barrier, and consumers will have the chance to try out some new products at very competitive prices. This might worry some traders who built up their business under the old system. To consumers, however, this should be welcome. Similarly, a new wind of competition is set to flow through the wine industry.

The two local breweries have claimed that the Customs and Excise Department will have difficulty in administering the new *ad valorem* duty system. They also argued, and indeed some Members argued that ad valorem duty was out of favour elsewhere in the world. We do not of course tend to follow the rest of them all with our taxation system for which we should be thankful. But anyway on this particular point I do not think it is absolutely quite right. While the concept of ad valorem duty may be new to our breweries, it has long history in our taxation system. Previously, *ad valorem* duty was applied to a wide range of alcoholic beverages and our previous duty on cosmetics was also charged on a fully *ad valorem* basis. There is no reason why an *ad valorem* duty cannot be applied to beer. The Customs and Excise Department is well placed to cope with an extension of ad valorem duty to the full range of alcoholic beverages.

To deal with one point raised by a Member, the Commissioner of Customs and Excise has in fact finalized the calculation of the taxable values of the products of local breweries. Those figures have been given to the breweries. I guess they are waiting the outcome of today's vote before confirming their agreement to those figures. We are aware that the success of our new system hinges on its credibility. Importers and local manufacturers must understand clearly that any attempts to abuse the new system can and will be detected. We shall ensure that the Customs and Excise Department has the resources to enforce the system effectively.

On the question of overseas experience, I am aware that a large number of countries charge specific duty on alcoholic beverages. But they combine it with either a sales tax or a value-added tax which is, of course, on an ad valorem basis. And with respect to the Honourable Simon IP, I do not see why this point is irrelevant. It is relevant to the argument which is put. They do charge an ad valorem tax on these products elsewhere. It happens to have a different name.

Consistency with the GATT principles

Some Members have raised questions about the compatibility of the new system with the GATT principles, referring in particular to a GATT panel finding in relation to Japan. First, to dispel misconception about that panel's findings, may I say the panel did not conclude that rice *sake* products were directly competitive or substitutable products in relation to the grape wines, distilled spirits or liquors imported from the EEC. What the panel did find was the higher internal tax in Japan on imported whisky and so on afforded protection to its domestic alcohol industry. But in our case, of course, we are not proposing anything of the sort. Our experts who deal with GATT issues on a day-to-day basis have given us clear advice, they gave it to us, of course, before I proposed the change, that the new ad valorem duty system for alcoholic beverages is entirely consistent and compatible with our obligations under the GATT. There is no discrimination according to source of origin. Nor is there any element of protection afforded to domestic production. For example, a bottle of French wine attracts the same rate of duty as a bottle from Australia or the United States. Rice wine produced in Hong Kong is taxed in the same manner as that imported from China and elsewhere.

New system will not lead to more smuggling

I appreciate Members' anxiety to ensure that we are not creating a new encouragement of smuggling because of course we have a problem with cigarettes and tobacco. And we look at that carefully again before we propose this new system. Although the effective duty on some products under the old system was over 400%, there was no large-scale smuggling of alcohol. It is difficult to argue that the new system — which will bring about, as I described, a reduction in duty on the great majority of products consumed in Hong Kong — can lead to more smuggling. I accept that there will be a significant increase

in duty payable on a minority of products. But many of that small group are products that would deteriorate significantly in the course of a smuggling operation. Consumers of such expensive products are generally wary of buying smuggled alcohol, given the deterioration during smuggling and the much greater risk of counterfeit goods. The case of cigarette smuggling does not therefore make a very good comparison. People are willing and fortunate to buy cigarettes from street stalls, canteens, small shops and the like. But I very much doubt if this is so for connoisseurs buying the best cognac or fine wine costing thousands of dollars a bottle. I would like to hear from many connoisseurs in this chamber who will be willing to do that. I am very much doubted.

Recycling of beverage containers

At the Bills Committee discussions, a Member has requested the Administration to consider imposing requirements on importers and local manufacturers of beer for the recycling of beer cans and bottles. I referred this request to the Secretary for Planning, Environment and Lands for sympathetic consideration in the context of the waste reduction study commissioned by the Environmental Protection Department. This study will examine all possible ways of minimizing and recycling waste. I understand that the results of the study will be available around July next year.

Conclusion

To conclude, there is in my view a compelling case for reform. The new system is easy to understand, fair, and will bring real benefits to consumers. The Honourable Simon IP's proposed Committee stage amendment will, if passed, restore the old system. This would perpetuate a less fair situation whereby expensive products would continue to pay a lower percentage of duty at the expense of buyers of cheaper products. Those who support the proposed amendment would also in effect be helping those traders who prefer a less competitive market at the expense of consumers' interests. I hope it is clear to Members that the better way forward is to agree to the new alcohol duty system and let in the fresh wind of competition and not to support the proposed amendments.

PRESIDENT: I understand that some Members have interests to declare, and I would just remind Members of the amended Standing Order 65(1) that a Member shall not vote upon any question whether in Council or in Committee in which he has a direct pecuniary interest.

MR RONALD ARCULLI: Mr President, I would like to declare that I have a direct pecuniary interest as a shareholder of a company which has an interest in wine dealing. So I shall not vote at the Second Reading (amendment), nor in Committee.

MR MARTIN BARROW: Mr President, I declare interest as a non-executive director of a company which has a minority interest in a distributor of wines and spirits.

MR HENRY TANG: Mr President, I wish to seek clarification on whether I could vote or not. I own a large amount of grape wine which, if the government Bill were passed, will increase greatly in value. *(Laughter)*

PRESIDENT: A direct pecuniary interest, as I understand it, is rather narrowly defined. I do not think you will be caught by that rule.

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).

CRIMINAL PROCEDURE (AMENDMENT) BILL 1993

Resumption of debate on Second Reading which was moved on 14 July 1993

Question on Second Reading proposed.

MR RONALD ARCULLI: Mr President, the Criminal Procedure (Amendment) Bill 1993 seeks to implement certain recommendations of the Report of the Law Reform Commission of Hong Kong on Bail in criminal proceedings relating to the admission of a person to bail by a court.

At present, persons accused of criminal offences have no statutory right to bail and there are no statutory provisions regulating the courts' discretion to grant or refuse bail. When exercising their discretion, the courts rely on common law principles. It is considered to be unsatisfactory in light of the enactment of the Hong Kong Bill of Rights Ordinance ("the BOR"). Article 5 of the BOR provides, among other things, that "no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law". It further provides that "it shall not be the general rule that persons awaiting trial shall be detained in custody".

The Bill creates a formal right to bail and codifies the existing practice. The Bill provides that bail may be refused only where the court considers there is an unacceptable risk that the accused person will:

(a) fail to surrender to custody as appointed; or

(b) commit an offence while on bail; or

(c) interfere with a witness, or pervert or obstruct the course of justice.

A Bills Committee of which I was elected Chairman was set up to study the Bill. The Bills Committee has held four meetings and the Administration has participated in three of them. The Bills Committee has also received written comments from the Law Society of Hong Kong and the Hong Kong Bar Association.

The Bills Committee deliberated at great length the views of the two professional bodies and discussion mainly focused on four areas, namely, the test for refusing bail, repeated applications for bail, procedure in bail proceedings and the power to bail convicted person.

Let me first turn to section 9G(1) which deals with the test for refusing bail.

The Bill provides that bail may be refused only where the court considers there is an unacceptable risk that the accused person will:

(a) fail to surrender to custody as appointed; or

(b) commit an offence while on bail; or

(c) interfere with a witness, or pervert or obstruct the course of justice.

The "unacceptable risk" test follows the position in Australia under the Bail Acts of Victoria and Queensland, which were enacted in 1977 and 1980 respectively. The Bar Association is of view that the proposed criterion of "unacceptable risk" may result in bail applications being determined on a subjective assessment of the risks. What is "unacceptable" to one judge may be acceptable to another. The result would be inconsistency of approach in different courts. The Bar Association prefers the test of "substantial grounds for believing ..... (for instance, that the accused person will fail to surrender to custody and so forth)" as provided in the English Bail Act. Judges would then have to justify their refusal of bail by pointing to those substantial facts and matters displacing the presumption of bail. Likewise using the "unacceptable risk" test judges will still have to justify any refusal because of the presumption of bail. Both tests appear to have worked reasonably well in the two countries mentioned.

The Administration however feels that the "unacceptable risk" test is a test of common sense reaction to a risk, not based purely on an estimate of chance whilst the test of "substantial grounds for believing" that a person will or might fail to answer his bail is considered inflexible in that it does not enable the court

to assess both the nature and the degree of risk in granting a person bail. For example, the one-in-ten chance that a suspect rapist will or might again whilst on bail commit rape might be regarded as an unacceptable risk. On the other hand whilst a higher chance of a pickpocket committing a further offence of pickpocketing whilst on bail might be regarded as an acceptable risk because he would otherwise not get bail if the court were using the "substantial ground" test as opposed to the unacceptable risk test. In contrast, the tests that speak in terms of belief, probability, possibility or likelihood fail to gauge or capture these realistic situations. The test of "substantial grounds for believing" might fail to recognize that a strong likelihood based on substantial grounds may be acceptable in some circumstances, while in others a much less strong likelihood will be unacceptable.

By a majority, the Bills Committee accepts the views of the Administration that the test should be "an unacceptable risk .....". Two Members expressed support for the "substantial grounds for believing" test and the Honourable Simon IP will move an amendment at the Committee stage to that effect.

The second area of discussion is on section 9G(11) regarding repeated bail applications.

The Bill adopts the approach of the Bail Act 1976. The defendant is given an unrestricted right to one bail application after the hearing at which bail is refused, and thereafter a court need not hear arguments as to fact or law which it has previously heard.

The Hong Kong Bar Association is however of the view that since the Bill represents a significant reform of the law on bail with a view to affirming the right to bail on a statutory basis, it would be appropriate to rationalize the law and remove the restriction on repeated applications in accordance with the views of the Law Reform Commission.

The Administration explained that the proposed new section 9G(11) does not prevent a defendant from making repeated applications for bail. In fact, the court is obliged to consider bail on every occasion that he appears before a court in connection with proceedings for the offence without the need for any application for bail. The provision merely gives the court a discretion, in certain circumstances, not to hear an argument it has already rejected.

The Administration also clarified that a similar restriction on multiple bail applications in the High Court has operated in Hong Kong since 1979 by virtue of section 12B of the Criminal Procedure Ordinance. The existing restriction on repeated bail applications, contained in section 12B of Cap 221, was held to be consistent with the Bill of Rights in a case of the High Court. Moreover, the rule that a defendant remanded on bail must generally be brought before a court at least every eight days is contained in section 79 of the Magistrates Ordinance (Cap. 227).

Members accepted the explanation offered by the Administration on the proposed section 9G(11).

The third area which the Bills Committee raised for discussion with the Administration is clause 9N(e) which states that in any bail proceedings "the Court may receive and take into account any other material or representations which it considers credible or trustworthy in the circumstances". The Law Society is of the view that if allegation were made in support of objection to bail (as distinct from evidence relating to the offence itself), the defendant should be entitled to test the allegations as this would help to prevent inappropriate objections.

The Administration considers that if cross-examination were allowed in bail applications, it could lead to very protracted proceedings which would not be beneficial to either the defendant or the prosecution. The Administration also explained that since the Bill creates a formal right to bail, the onus would be on the prosecution to produce materials which were credible or trustworthy for the consideration of the court. If the prosecution's submission was challenged, he would have to produce direct evidence to support his objection or the prosecution would run the risk of bail being granted. The defendant's position was therefore considered to be adequately protected. The Bills Committee accepted the Administration's view and agreed that it would be undesirable to have a "trial", so to speak, on a bail application.

The last area which the Bills Committee discussed in detail is section 83Z regarding the power to bail convicted person.

At present, the trial judge has no power to grant bail pending appeal to the Court of Appeal. The Bar Association suggests that amendments should be made to the District Court Ordinance and the Criminal Procedure Ordinance to empower a District Court judge and a High Court judge to grant bail pending appeal to the Court of Appeal.

The Administration pointed out that under section 83R of the Criminal Procedure Ordinance, the Court of Appeal may grant bail to a convicted person pending appeal and, under section 83Y(2)(e) of the same Ordinance, a single High Court judge may exercise that power on behalf of the Court of Appeal. The Administration considers that the present practice is satisfactory and stresses that the object of the Bill is to regulate the exercise of the court's discretion to grant bail and not to make changes to the jurisdiction of the courts to grant bail. The Administration further stresses that since the primary consideration in granting bail pending appeal would be the likelihood of success of the appeal, the Court of Appeal should be the most appropriate body to assess the likelihood of success of a particular appeal.

The Bills Committee sees the force of the argument put up by the Administration but requests the Administration to reconsider the Bar Association's comment in future reviews. The Administration undertakes to consult the Judiciary to obtain information on practical experience and will research into the practice of other jurisdictions with a view to preparing an information paper for follow-up discussion with the Administration of Justice and Legal Services Panel of this Council.

Mr President, with these remarks, I commend the Criminal Procedure (Amendment) Bill 1993 to Honourable Members.

MR SIMON IP: Mr President, I shall be brief as the Honourable Mr ARCULLI has already given a very full and comprehensive report on the deliberations of the Bills Committee and has read out to the Council the provisions of Article 5 of the Bill of Rights Ordinance.

Article 5 creates a presumption to bail and this Bill creates a statutory right to bail. The point of contention is the threshold for refusing bail as set out in clause 9G(1) of the bill. As drafted, clause 9G(1) provides that bail may be refused only where the court considers there is an unacceptable risk that the accused person will fail to surrender to custody as appointed, or commit an offence while on bail, or interfere with a witness, or pervert or obstruct the cause of justice.

This recommendation follows the position in Australia under the Bails Act of Victoria and Queensland. This formulation of the threshold is different from that applying in the United Kingdom where the test is substantial grounds for believing that the accused person would do any of the things I have mentioned. This is contained in the English Bail Act.

So far there are no authorities which define the terms "substantial grounds for believing" and "unacceptable risk". However, the Hong Kong Bar Association is of the view that since the Bill represents a significant reform of the law on bail, with a view to affirming the right to bail on a statutory basis, the test for refusing bail should be a strict one. In other words, the threshold for refusing bail should be high. In the Bar's opinion, if a person is to be denied bail there must be substantial grounds against bail being granted. Furthermore, "unacceptable risk" may result in bail applications being determined on a subjective assessment by judges of the risks and would depend more on personal judgment than concrete evidence of such risks.

Against the background of the presumption of innocence and the presumption to bail, no accused person should be denied his liberty pending his trial without substantial grounds backed up by facts and evidence. For these reasons, "substantial grounds for belief" is a better test than "unacceptable risk" and affords greater protection to the right of liberty. Thank you.

MR MARTIN LEE: Mr President, I have given notice that the United Democrats of Hong Kong and the Meeting Point will vote against Mr Simon IP's other amendment in relation to spirit. I want to make him happy by announcing now that the United Democrats of Hong Kong and the Meeting Point will be supporting this amendment of his in due course, if only to show that I do not always disagree with my successor.

But there is one point, Mr President, I would like to say a few words, and that is on the court's power, or lack of power, to emit a convicted person to bail in the district court and in the high court. Perhaps a lot of our members may not even know that a magistrate has the power to emit a convicted defendant to bail pending appeal. Now, of course, this power is lacking when a defendant is convicted and sentenced in the district court or in the high court. Of course we know that in the hierarchy of our courts the magistrates rank the lowest and yet, somehow, the legislature has seen fit to give this power to a convicting magistrate without giving the same power to a convicting district judge and a high court judge. So this is inconsistent as well as illogical.

The advantage in extending this power to the district court judge and the high court judge is obvious because such a judge would have known the case inside out because he has just convicted the man and so sentenced him. If an application is made to him soon thereafter, possibly even within the same day, the judge will have no difficulty in assessing whether or not this is a fitting case where bail ought to be emitted, albeit to a convicted criminal. And he will, of course, take into account the chances of success in the Court of Appeal or the shortness of the sentence so that if bail is not given a substantial portion of it, of the sentence would have been served, even if the appeal should turn out to be successful.

And, of course, it also saves money because very often it can be done even on the same day.

What I suggest, in fact, is not my suggestion, it is the Bar's suggestion. I understand it is not to replace the present power which is given to the Court of Appeal, which is exercised by a high court judge, exercising the power of the Court of Appeal. What I suggest is to extend this power, which is additional to the existing power, so that a convicted person may make an application first to the magistrate or the judge who has convicted him. Failing that he can then, of course, make another application to the Court of Appeal.

I therefore regret that this very obvious meritorious point has not been taken on board by the Bills Committee at this stage nor the Administration at this stage, and I urge the Government to bring legislation early next term so as to give the same power to our District Judges and High Court Judges which is presently enjoyed by our magistrates.

MRS MIRIAM LAU: In every bail application the court is required to weigh the importance of liberty to the accused against the importance of security to society. What should be the considerations before the court tilts the balance against the defendant? The Administration has proposed the unacceptable risk test recommended by the Law Reform Commission.

On the question of exceptions to bail, there is no uniformity among the common law jurisdictions. The United Kingdom adopted the formulation, which the Honourable Simon IP will later propose at the Committee stage, that is, the substantial grounds for believing test. Some parts of Australia adopted the unacceptable risk test and other parts of Australia and New Zealand adopted modified versions of these tests.

The Law Reform Commission in Hong Kong considered all these and concluded that the common sense test of unacceptable risk is the better choice. If the test of substantial grounds for believing is used, a magistrate who is satisfied that a defendant, if released, is likely to commit an offence, albeit a trivial one, may refuse bail. This is clearly not in the interest of the defendant. Conversely, a magistrate who cannot find substantial grounds for believing that the defendant will commit an offence whilst on bail but nevertheless feels, based on his judgment and experience, that there is a risk of such defendant committing a serious offence if released, will still have to grant bail to the defendant. This is clearly against the interests of our community. The unacceptable risks tests avoids such difficulties and gives more flexibility to the court when assessing the degree of risk in granting bail to the defendant.

When the Law Reform Commission considered the matter, it did consider the alternative test of substantial grounds for believing. However, the entire commission, except for one member, rejected it and instead recommended the unacceptable risk test. The Honourable Simon IP was a member of the Law Reform Commission at that time but I do not know whether he was the dissenting member.

Although in Hong Kong many of our laws and practices follow those in the United Kingdom for the apparent advantage of being able to follow precedents, it does not mean that we should do so blindly. We must be satisfied that such laws and practices have operated efficiently and effectively.

The system of granting bail in the United Kingdom has produced difficulties. Two police studies carried out in the United Kingdom in 1991 indicated that between 23% and 34% of persons on bail committed offences whilst on bail. These are alarming figures. So much so that the Home Office conducted a review of the bail bandits situation.

Although the substantial risk test remains unaltered, legislation is now being laid before parliament to restrict the right to bail in certain cases. I do not believe that we wish to land ourselves in the same difficulties as those encountered in the United Kingdom.

When granting bail the most important consideration is whether the defendant will abscond. Equally important is whether he will commit another offence or interfere with witnesses whilst on bail. It is for the court to judge and assess the chance of any of these events happening. To insist that the court must find substantial grounds for believing that the defendant would do so before involving the exceptions to bail may result in bail being granted to defendants in inappropriate cases. From the community's point of view, I prefer not to have to pay that price.

I understand that similar concerns have been expressed by some of the Honourable Simon IP's constituents, although apparently Mr IP is not persuaded.

Mr President, I support the Bill as it is and will oppose the Honourable Simon IP's proposed amendment.

ATTORNEY GENERAL: Mr President, after the intoxicating debate on the Dutiable Commodities (Amendment) Bill 1994, I return to the more sobering subject of bail. I am grateful to Mr Ronald ARCULLI and to his colleagues on the Bills Committee for their careful consideration of this important Bill. And I have listened carefully to the speeches made this afternoon on it. The speeches have brought out the importance of this Bill giving, as it does, for the first time a statutory right to bail — a right that underpins, as Mr ARCULLI and other speakers have pointed out, the right enshrined now in the Bill of Rights. But as has been pointed out, Mr President, this positive presumption in favour of bail is not intended to detract from the power of the court to withhold bail in appropriate circumstances. And perhaps, Mr President, I can say something about the points that have been made as to which should be the proper test for the courts to adopt in deciding that very important decision whether to refuse to grant bail. Mr President, we have heard the arguments falling down into two halves, the "unacceptable risk" test contained in the Bill or the "substantial grounds" test as advanced by the Bar and some Members this afternoon.

Criterion for withholding bail

Mr President, first of all, in the context of an application for bail, I do not think that it is helpful to talk in terms of a subjective test or an objective test. Unlike most court proceedings, in which the court is trying to establish what occurred in the past, in bail applications the court is seeking to predict what the accused will or may do if he is granted bail. That prediction inevitably involves a judgment about future action future action which cannot be proved by evidence. In forming that judgment the court may have regard to various factors set out in the proposed new section 9G(2) of the Criminal Procedure Ordinance contained in the Bill and there is a long list of factors to which the court must turn its mind. Those factors include factual information concerning the accused and the offence with which he is charged. In coming to a decision, therefore, the court will have regard to objectively verifiable facts, but must

make a prediction as to the future behaviour of the accused if he is granted bail. And that is true whether one applies the "unacceptable risk" test or the "substantial grounds" test.

Some emphasis has been laid, Mr President, on the fact that the "substantial grounds" test is derived from the English Bail Act and provides a greater degree of certainty, I do not myself see any reason to prefer a test in the English Act, simply because it is laid down in English law. The value of overseas precedents is, of course, accepted, but the "unacceptable risk" test, which is based, as Mr ARCULLI has pointed out, on legislation in Australia, is just as likely to produce jurisprudence of its own. Indeed, as Mrs LAU has pointed out, the application of the English law of bail has been a cause of some concern in recent years with the emergence of what are colourfully called "bail bandits". We have seen the figures for the very considerable number of people who committed offences whilst on bail and that has been a matter for some public concern in Hong Kong as being the subject to questions in this Council.

The third point that I would bring to the Council's attention is that I think there is a chance (I could not put it higher than that) the "substantial grounds" test might lead to bail being granted simply because the prosecution cannot produce evidence to establish that the accused person would abscond, would commit an evidence or would interfere with the course of justice. As I have said, future conduct can only be predicted, it cannot be proved by evidence. It would, in my view, be most unfortunate if bail were granted where there is an unacceptable risk that the defendant would abscond or commit an offence or interfere with the course of justice, but where there is no evidence to prove that he would do so.

The last point I will make on this particular aspect of the Bill concerns a matter that the Law Reform Commission pointed out in its report, and it is that the "substantial grounds" test is inflexible, in that it does not enable the court to assess both the nature and the degree of risk involved in granting a person bail. Under that test, that is, the "substantial grounds" test, the court must decide whether there are substantial grounds for believing that the accused would commit an offence, regardless of the nature of that offence. If I can repeat the example given by Mr ARCULLI because I think it goes to the very heart of what these points are all about. Is it right that a court should treat alike two persons, where there is an equal risk that one may commit an offence of pickpocketing and the other may commit a rape? The "unacceptable risk" test, on the other hand, requires the court to consider not only the likelihood of the accused offending, but also the nature of the offence he may commit. A court might therefore consider that there is an "unacceptable risk" that the result, one-in-ten chance, that the accused will commit a rape, but no "unacceptable risk" where there is a similar chance that he will go and pick somebody's pocket.

Mr President, the Law Reform Commission spent much time in the anxious consideration over this point and concluded that the "unacceptable risk" test was the right one. That is the view of the Administration. I have set out the

grounds for that belief and I would urge Members to follow the Administration in voting against the proposed Committee stage amendment.

Power of District Judges

Mr President, I turn to another matter and that is the question as to whether District Judges and High Court Judges should have the power to grant bail pending an appeal against conviction. Mr ARCULLI has set out some of the grounds why the Administration has not been persuaded about this. Suffice it to say that I have listened very carefully to the arguments put in this Council this afternoon and I will of course consider those arguments very carefully. I will re-examine that question and I am more than content to give an undertaking to come back to the Panel on the Administration of Justice and Legal Services when the Administration has reached a conclusion.

Finally, Mr President, I commend this Bill to this Council. It is an important Bill, one that plays its part in reinforcing the rule of law in Hong Kong.

Thank you, Mr President.

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

Bill read the Second time.

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

OFFICIAL LANGUAGES (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 1 June 1994

Question on Second Reading proposed.

MR ANDREW WONG (in Cantonese): Mr President, I support the principle of the Bill. The main purpose of this Bill is to implement the decision made by the House Committee of the Legislative Council in January 1994, which is to simplify and expedite the present authentication process of the Chinese text of ordinances which currently have only the English text available.

The existing provisions of the Official Languages Ordinance (Cap. 5) stipulate that the Legislative Council must play a so-called "active" role in these matters. It is provided that while the Governor may declare by way of an order the Chinese text of a certain ordinance as an authentic Chinese text, the draft text must be passed by the Legislative Council before it can be declared authentic. However, past experience shows that such an "active" process has

been unable to complete the text authentication of the Laws of Hong Kong speedily to meet the expectations of the general public. And in any event, the job cannot be completed in time before 1997. During the last three years, by adopting this active approach, only 16 ordinances or 283 pages of the English text has been authenticated, amounting to only 3% of all ordinances in need of translation or 1.3% of the total number of pages of the statutes. Since we have only three more years to complete this authentication exercise, there is therefore the need to adopt some measures to speed up the authentication process by 76 times.

In the light of this background, the Subcommittee on Authentic Chinese Texts has been discussing with the Administration for a solution since 1993. In January 1994, the Subcommittee proposed to the House Committee that the Official Languages Ordinance be amended to simpfily the Chinese text authentication process, thereby enabling the Governor in Council to make orders by way of subsidiary legislation to declare as authentic the draft text of the Chinese translation for the ordinances concerned. However, the Legislative Council will continue to play an active role in this process as it does now.

Mr President, I am glad to see that this Bill can be speedily submitted for consideration by this Council, and I am also happy to support the spirit of this Bill. I understand that the Administration has agreed in principle to expand the resources for the Legislative Council Secretariat to enable the Chinese text authentication exercise to be completed in time.

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

ATTORNEY GENERAL: Mr President, can I express my gratitude to Mr WONG and his colleagues on the Subcommittee on Authentic Chinese Texts for their very positive attitude taken towards the Bill and indeed the whole process, the historic process of producing a bilingual legislation.

As Mr WONG has pointed out, we have an immense task still ahead of us. With the passage of this Bill we will be able to speed up our work very considerably. and I am confident that the entire process will be completed on time.

Thank you, Mr President.

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

Bill read the Second time.

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

6.08 pm

PRESIDENT: We have got a very long agenda of Bills and Committee stage amendments. I will take a short break and suspend the sitting for 15 minutes.

6.35 pm

PRESIDENT: Council will resume.

NEW TERRITORIES LAND (EXEMPTION) BILL

Resumption of debate on Second Reading which was moved on 24 November 1993

Question on Second Reading proposed.

MR EDWARD HO: Mr President, the Bill before us has been a subject of public concern in the past few months. A lot of discussions took place, both inside and outside the Council, on the provisions of the Bill and the amendments to be proposed by the Secretary for Home Affairs later at the Committee stage. I am sure a number of my honourable colleagues will join me to speak in this debate.

The Bill was introduced into this Council in late November last year. The Bills Committee, which I chaired, was formed in the following December to study the Bill.

The Secretary for Home Affairs has clearly explained the purpose of this Bill at the Sitting on 24 November last year in moving the Second Reading of the Bill. In brief, it seeks to exempt all land in the New Territories which falls outside the scope of rural land as defined in clause 2 of the Bill from the application of Part II of the New Territories Ordinance (NTO), so that the general laws of Hong Kong about succession rights would apply to these land rather than Chinese customary law and practices on inheritance if the land has not been so exempted. This is to remove doubts about existing titles and the rights of succession to some 340 000 properties, which include private flats, Home Ownership Scheme developments in the new towns and commercial and industrial developments located on these non-rural land. The Bill also provides for owners to rural land, which will still be subject to the NTO, to apply for similar exemption on a voluntary basis. However, land held by customary land trusts, such as "tso" and "tong", will not be affected by this Bill.

Members of the Bills Committee have no dispute whatsoever over the provisions for exempting non-rural land from Part II of the NTO for the purposes mentioned earlier. They are also in agreement that land held in the name of customary trusts should not be included in the exemption in view of their unique and specific nature.

However, as regards the provisions for owners of rural land to apply for similar exemption on a voluntary basis, a number of Members of the Bills Committee do not consider that they are sufficient to fully remove the inhibition of women, including female indigenous residents, to inherit rural land when a holder of such land dies intestate because it still requires the owner of the land to apply for such exemption. Furthermore, statutes of Hong Kong affecting succession matters, such as the Probate and Administration Ordinance, the Intestates' Estates Ordinance and the Deceased's Family Maintenance Ordinance are also not applicable to non-exempt land in the New Territories. They consider that the Bill should be suitably amended to enable women to have equal opportunities with men under the law to inherit New Territories land.

Different proposals have been put forward by various Members of the Bills Committee to remove such inhibition. In January 1994, the Honourable Christine LOH submitted her proposal to amend clause 3 of the Bill to extend the scope of the general exemption in that clause to also cover rural land. It was then referred to the Administration for consideration. In March 1994, the Administration informed the Bills Committee that they saw no objection to the proposal because despite the fact that the purpose of the Bill was originally targetted mainly on non-rural land, it had been the Administration's intention to address the wider issue of customary succession to rural land in the New Territories separately. This approach won the support of most Members of the Bills Committee. At the request of the Bills Committee, the Administration undertook to examine in detail what consequential amendments to the Bill would be required.

While the Administration was still studying the consequential amendments necessary to implement the proposal, the subject had attracted much attention of the public including the indigenous residents of the New Territories. The Bills Committee has received written submissions from 84 concerned groups and individuals, and numerous signatures. It has also met three concerned groups, namely the Heung Yee Kuk, New Territories, the New Territories Female Indigenous Residents' Committee and a deputation from 10 women's associations, to directly receive their views.

On the proposed amendment to remove the inhibition of women to inherit rural land in the New Territories, the views received are not unanimous. A number of these submissions, including that from the Heung Yee Kuk, New Territories, oppose the amendment whereas the majority of them, including the other two deputations that the Bills Committee have met, support it.

The views of the Members of the Bills Committee on the amendment are not unanimous either. Some Members considered that the amendment would seriously affect the customs and ways of life of the indigenous communities. They proposed to defer consideration of the amendment after a full consultation or a referendum has been held to obtain the views of the indigenous residents. The Honourable Andrew WONG has also proposed to the Bills Committee an alternative amendment to the Bill, the purpose of which is to further restrict the

scope of application of the NTO to rural land held by indigenous residents only. However, the above proposals have not won the majority support of the Bills Committee. In this respect, I note that Mr Andrew WONG has given notice to move his alternative amendments to the Bill at the Committee stage despite that they do not have the support of the Bills Committee.

Given that the intention of the amendments is to remove the inhibition on women to inherit rural land in the New Territories when owners of such land die interstate, and not to affect the court's power to recognize and enforce Chinese custom in other proceedings relating to land in the New Territories — as such fear has also been expressed by the indigenous residents — the Administration has been very careful in working out the amendments. In May, the Honourable Mrs Miriam LAU suggested that such misconception could be avoided by deeming the exemption to apply to rural land for the purpose of succession only. The suggestion was accepted by the Administration. I trust the amendments to be moved by the Secretary for Home Affairs at the Committee stage later on would reflect clearly that the effect of the exemption applicable to rural land is for the purpose of entitlement to rural land in succession only. However, to allay the fears of the indigenous residents, I urge the Secretary to confirm once again that the amendments would not affect other customary rights related to land in the New Territories.

I must say that some Members of the Bills Committee still have reservations on the proposed amendments. However, it is the majority view of the Bills Committee that they should be supported.

With the above remarks, Mr President, I recommend to Members the Bill and the amendments to be proposed by the Secretary for Home Affairs at the Committee stage.

MR SZETO WAH (in Cantonese): Mr President, HUI Shi once asked ZHUANG Zhou, "As you are not a fish, how can you possibly know that the fish is happy?" This argument has very often been quoted in the debate over the right to land succession in the New Territories. Is the argument itself correct? Has it been quoted in the correct context?

The argument itself is correct. Why? It is because fishes are lower class animals which, I am afraid, do not have any sense of happiness, joyfulness, anger and sadness. So how can one possibly know if a fish is happy, joyful, angry or sad? Fishes have no language and can hardly communicate with its kind. Even if they had senses of happiness, joyfulness, anger and sadness, they would not be able to tell one another. We are not fishes. We are human beings, so how are we supposed to know that the fishes are happy?

Despite the correctness of the argument itself, it has nevertheless been wrongly quoted. Why? It is because we are human beings and not fishes. Being the wisest of all creatures, we have senses of happiness, joyfulness, anger

and sadness, and we can feel such emotions of another person. Our sympathetic quality has even enabled us to feel another person's emotions as if they are our own. So even though we are not those Jewish people some 50 years ago, but having watched *Schindler's List*, we cannot help feeling moved. Therefore, to quote HUI Shi's argument in opposing the New Territories women's claim to equal rights is to relegate human beings to lower class animals.

As far as the safeguarding of traditions is concerned, it depends on what sort of traditions they are. Let us look at a much more ancient tradition. In the primitive society at the dawn of human existence, one only knew that one had a mother, but not a father. The mother was the centre of the family, the highest authority in control of the allocation of all the fruits of production. The existing Chinese character "姓", which means surname, is in fact a combination of two characters, namely "女", meaning women, and "生", meaning giving birth. At that time, everyone took his or her mother's surname. This was the matriarchal society that human race had once undergone. If we are to safeguard traditions, should we revive the even more ancient matriarchal society with women having the highest authority?

During this dispute, some people have used physical as well as verbal violences. They have not only hit others with their fists, but also attacked others very vocally, threatening even to rape. Their deeds and words have been full of violence. The very mention of the word "rape" has let us see clearly their insult of women and the sordid spirits of certain people. Today when the 20th century is coming to its close, that someone should so shamelessly and overtly threaten to rape is indeed a shame on this modern international city of Hong Kong. Today, Members of this Council must use their vote to remove such a stigma on Hong Kong.

Mr President, I so submit.

MR ALLEN LEE (in Cantonese): Mr President, the Liberal Party has long advocated and supported equality of the two sexes. Both men and women should have equal succession rights and enjoy equal rights in, among others, family relations and social, economic and political fields. Such views are clearly laid down in our political platform. Mr President, in view of the uproar brought about by the New Territories Land (Exemption) Bill, the Government, when tabling the Bill in this Council, had assured that the Bill was aimed to dispel non-indigenous residents' worries with regard to the succession of properties in the New Territories, not directed at the rights of the indigenous residents. However, when Miss Chirstine LOH proposed an amendment seeking to extend the scope of exemption to cover all rural land, the Hong Kong Government supported the amendment without first consulting the indigenous residents' views, creating repugnance on the part of the indigenous residents and finally leading to the ugly scene we did not like to see.

In order to gauge the New Territories residents' worries, the Liberal Party had thrice visited the Heung Yee Kuk to discuss the matter with them. They generally held that such an amendment would have implications on the policies of their "Tso" and "Tong" and the male line of succession. The Liberal Party therefore looked into the issue in depth to find out how such worries could be dispelled by ensuring that the law, on the one hand, states clearly that men and women have equal succession rights and on the other hand, leaves the clan system in the New Territories intact. Finally, Mrs Miriam LAU proposed to amend the New Territories Land (Exemption) Ordinance in a way that men and women would have equal succession rights in respect of the inheritance of land in the New Territories while the "Tso" and "Tong" and indigenous residents' properties would be unaffected. The Government's amendment today is based on Mrs LAU's proposal. It is believed that the amendment will help allay the New Territories residents' worries.

Mr President, the biggest mistake the Hong Kong Government has committed in the whole incident is to change its policy all of a sudden without having made any prior consultations with those affected. This prastice is relatively rare in Hong Kong. How did this situation come about, which had almost led to a crisis? The Government must do some serious soul-searching about this. This is not the Government's common practice. A government should not do so, still less one which wants to make itself an open and enlightened government. I doubt if the Government had consulted the Executive Council prior to changing the policy. The last thing we do not want to see is a Hong Kong in a turmoil. Hong Kong people hope for a smooth transition. There are only three years to go before China resumes the sovereignty over Hong Kong. I am sure that it is not the wish of the Hong Kong people to see radical changes to be introducted at this moment. In this transitional period, we are very much in need of a prudent government.

Mr President, the Liberal Party supports the amendment.

MR TAM YIU-CHUNG (in Cantonese): Mr President, the Democratic Alliance for the Betterment of Hong Kong (DAB) has always been subscribing to the principle of gender equality. We have, in our political platform, called on the Government to promote the concept of sex equality, so as to offer further protection to women in terms of employment and social welfare. However, we also hold the view that a comprehensive programme is required to fight for equality between the sexes, including the cultivation of a concept of equality among the public through education and the enactment of legislation to enable the two sexes to enjoy equal status. We do not agree that the mere support or otherwise for today's amendment to the New Territories Land (Exemption) Bill is equivalent to the support or otherwise for the principle of gender equality.

The original intent of the Bill first tabled by the Government is to remove the doubts as to succession rights cherished by over 300 000 owners of properties on non-rural land. The DAB fully supports this original intent and

we do think that the resumption of debate on the Bill should not have been delayed until today. The amendment moved today seeks to extend the exemption from the application of the New Territories Ordinance (NTO) to succession rights with respect to rural land. This is an attempt to change the social customs of the indigenous population. Although the New Territories indigenous tradition of male line succession to land may appear obsolete and unreasonable in the eyes of urban dwellers, we should not disregard the indigenous population's wishes when no extensive consultation has ever been conducted, nor should we use the principle of gender equality — a principle no one can fault — to impose the concept onto the indigenous residents by legislative means. It is in fact an attempt to replace one culture with another.

Let me illustrate the point with a simple analogy. For the sake of being hygienic, we Chinese use chopsticks during meals while Indians are accustomed to using their hands, which is unhygienic and crude in our eyes. Does it mean that we have to enact law to the effect that all Indians are to use chopsticks, or should we make it mandatory for Chinese to use their hands? It is obviously not feasible since this is a difference over customs and traditions, having nothing to do with the issue of who is right or wrong.

Likewise, the objective of the New Territories indigenous residents passing land down the male line is to maintain the integrity of their clans, which is a kind of established and accepted social system. We modern urban dwellers may regard this practice obsolete, but the indigenous residents find that it is necessary to preserve the system. I believe the concepts and thinking of the indigenous residents will change with the passage of time and it is just a natural trend that such thinking will gradually be overtaken by newer concepts. In view of this, should we take the hasty move of enforcing the changes through the legislative process?

Mr President, it is understood that the New Territories Heung Yee Kuk does not insist that changes to their tradition of passing rural land down the male line are absolutely out of the question. What they are upholding is the necessity of conducting a full-scale consultation exercise since the relevant amendment bears upon the concept of clanship cherished by the indigenous population. Consultation would bring the indigenous residents round to the view of the urban dwellers, so that they may voluntarily give up their traditional customs, while the urban dwellers would also be put in a better position to appreciate the traditions of the indigenous population. In fact, the Honourable Christine LOH, who is the first among Members to propose the amendment, cannot but admit, after making a number of contacts with the New Territories indigenous residents, that the actual situation is much more complex than first perceived.

Mr President, the majority dominating the minority is not the essence of a truly democratic society. The key element of democracy lies in showing respect for the aspirations of the minority. The tradition of male line succession to land adopted by the indigenous population is their domestic affairs and is in no way

prejudicial to the interest of the rest of the population in Hong Kong. If we were to interfere with their domestic affairs through legislative measures or to change their value judgement by legislative means, would we be really solving the problem or would it be the best way out?

The Bill as amended will be passed today but it does not mean that the female indigenous residents can enjoy equal succession rights. On the contrary, the passage of the Bill will only backfire since it will compel the indigenous residents who are resistant to changing their traditions to make wills on their own or to make a will jointly.

Mr President, the DAB agrees that in presentday Hong Kong both sexes should enjoy equal succession rights to land. We once proposed an amendment to the Intestates' Estates Ordinance, so as to achieve the purpose of according equal succession rights to the two sexes. However, we at the same time respect the wish of most indigenous residents who do not want to change their traditions for the time being. Therefore, I will abstain from voting on the amendment moved by the Government today.

The Honourable Andrew WONG's proposed amendment seeks to restrict the scope of application of the NTO to New Territories rural land which is held by indigenous residents and has never been subjected to conveyances, and to New Territories land which is held by "tso" and "tong". It is, in my view, a gradual as well as progressive approach and I will support his amendment.

Mr President, I so submit.

MR FREDERICK FUNG (in Cantonese): Mr President, people of all sectors have expressed different views about the amendment of the New Territories Land (Exemption) Bill during the past few months. Since the amendment involves issues like equality of the sexes and the defending of traditions, the views are thus varied. However, the Hong Kong Association of Democracy and People's Livelihood (HKADPL), including myself, are of the view that under the general principle of upholding sexual equality, the custom of male-line succession of lands as provided for in the New Territories Ordinance is clearly out-of-date and anachronistic. It should be reviewed and repealed. Many rural organizations have stated that male-line succession is an established custom of the New Territories which is not to be changed, and that once it is changed the clan traditions of the New Territories would be destroyed. Others even asserted that should women be given equal rights of succession, they would be having an additional share of benefits than men. I find these arguments vulnerable and out-of-date. They are merely excuses for the male indigenous inhabitants to protect their personal interests from encroachment. Just look at the village houses in the New Territories and the life of the inhabitants, we can then see that acts of the so-called preservation of traditions and customs are scarce. Besides, should we insist on preserving traditions which are anachronistic and

irrational? If the answer is yes, then I think that this is a practice of preserving the outworn.

In fact, traditions should change with the times in order to cope with the developments of society. For example, according to ancient literatures, sons and daughters must observe the filial obligations of mourning for three years after a parent passed away. In this fast-paced modern community of ours, how many of us would observe such filial obligations for three years? Can we say that those who do not observe them for three years do not have filial love for their parents? If people are hidebound and stick to preserving the customs handed down from the past, then our community would become stagnant. Therefore traditions have to keep up with the pace of the community. If we were to preserve the outworn, we would only be left behind by history.

Many rural organizations have stood up for the cause of "protecting the village and defending the clans", and indicated that should women be given succession rights, it would open the door for people of other family names to intrude into villages previously of only one single family name. I find this argument questionable. Just which one of the many villages in the New Territories that really does not have any residents of other family names but homogeneously of one single family name? And how many villages of single family name are left now? If one flips through the property pages of a newspaper, one can easily find advertisements for sale and letting of village houses. People of other family names can intrude into the villages as long as they have the money. How much of the importance of the indigenous inhabitants' traditions is left? What value do they attach to them? In this capitalist commercial society of ours, housing has become a commodity freely traded on the market. There is nothing wrong with it as far as the capitalist free market is concerned. Why do villagers accept changes in the tradition but not the general trend of sexual equality? After all, information shows that the traditional Chinese village is not necessarily of a single family name. The insistence on preserving the tradition of having a single family name in one village is really an erroneous generalization.

In a nutshell, I think the reason why indigenous inhabitants strongly oppose the amendment is that male indigenous inhabitants want to protect their personal interests, unwilling to share with their sisters lands currently under their ownership or any land they may inherit in the future.

At his point, I would also like to look into the New Territories Ordinance to see what it is all about. In 1898, Britain and the then corrupt government of the Qing Dynasty signed the Convention between Great Britain and China Respecting an Extension of Hong Kong Territories which severed a large piece of land between the north of the Kolwoon Peninsula and the south of Shenzhen River and had it ceded to Britain, hence the name "New Territories". When the British army took over the New Territories, the village people who did not succumb to the ruling by foreigners organized themselves into a resistance against the British army. However, with the support of heavy firepower, the

British army succeeded in occupying the New Territories. Nevertheless, in order to strengthen its governing of the New Territories and to win the New Territories squires' recognition of the legitimacy of government, the Hong Kong Government offered privileges to them. The New Territories Ordnance was introduced under such circumstances.

On the face of it, the New Territories Ordinance is a token of the Hong Kong Government's respect for the traditions of the New Territories. But putting it bluntly, it is really the end product of the exchange of power between the Hong Kong Government and the squires of the New Territories. If the indigenous residents still harbour the thought of preserving the privileges granted by the coloncial power, then I should think that it is a shame in this 20th century community. The HKADPL, including myself, are hoping that when Hong Kong reverts to China in 1997, no longer a British colony, there would be no more so-called "indigenous residents". The New Territories Ordinance should then be repealed.

Someone pointed out that the introduction of the New Territories Land (Exmeption) Bill was meant to deliberately create antagonism between people of the urban and the rural areas. Since Hong Kong is only a small city, it is in fact increasingly impossible and unnecessary to delineate the city-dwellers and the villagers. Since we are all people of Hong Kong, we should be equally protected by the law. To say that the New Territories is different from the urban area, hence female villagers should have no protection by the law, is hidebound and no more than an unwillingness to face the reality. The functions of law in a community are not only to uphold justice and the principle of equality for all, but also to see to it that unreasonable traditions do not continue. To allow such traditions to continue runs counter to the spirit of modern law, a retrograde step of civilization.

Equality of the sexes has become an irreversible trend of the world. It is both out-of-date and inappropriate to deprive women of their land rights and to champion male hegemonism. Under Article 22 of the Hong Kong Bill of Rights Ordinance and Article 26 of the International Covenant on Civil and Political Rights, everyone is equal before the law and should be equally protected by the law and not to be discriminated against. Also, under the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, women should not be treated differently from men for the difference in sex. It is obvious therefore that safeguarding the equality of the sexes is the fitting principle of a civilized community. The exemption of rights to land succession from the application of the New Territories Ordinance is exactly an embodiment of this principle. I would like to ask Members here in this Council: Are we leading Hong Kong on the way towards a civilized community, or are we keeping it as a conservative and feudal society?

With these remarks, I support the amendment by the Secretary for Home Affairs.

MR ANDREW WONG (in Cantonese): Mr President, with your approval, I would like to ask Mr FUNG to clarify what he has said just now. He said, "in 1898, the corrupt government of the Qing Dynasty "ceded" a large piece of land between the north of Boundary Street and the south of Shenzhen River." I wonder if this piece of information is correct or not. If it is correct then we will have a very serious problem here. According to what Mr FUNG has said, the piece of land concerned should then be a piece of ceded territory, just like any other piece of land in Hong Kong.

PRESIDENT: Do you wish to elucidate, Mr FUNG?

MR FREDERICK FUNG (in Cantonese): Mr President, I would like to repeat that very part of my speech. I should day: In 1989, Britain and the then corrupt government of the Qing Dynasty signed the Convention between Great Britain and China Respecting an Extension of Hong Kong Territories. A large piece of land between the north of Boundary Street in Kowloon Peninsula and the south of Shenzhea River was "leased" to Britain.

MRS PEGGY LAM (in Cantonese): Mr President, the intention of the New Territories Land (Exemption) Bill is, as a matter of fact, to confer the rights of succession of land on 340 000 non-indigenous residents living in housing estates and private premises of the New Territories. In the early days of its deliberation of this Bill, the Bills Committee was reassured by the Administration that it wanted the Bill to be passed first and then would deal with other related matters later. However, not long afterwards, certain political parties and some Members of this Council made a demand that the issue concerning the rights of succession of female indigenous residents should be addressed together with the Bill and they subsequently moved an amendment to that effect. No sooner had the amendment been moved, the Administration supported it without prior consultation with the people of the New Territories, a departure from its usual practice. It is very bewildering. I think it is a great pity that the Administration's action has not only caused anxiety among the majority of indigenous residents of the New Territories, it has also been divisive and has engendered confrontations among different sectors of the community.

First of all, as a life-long champion of women's well-being and rights, I fully support equality between the sexes. This is also my stance on the issue of the rights of succession of New Territories land. As I have said in the Bills Committee formed to study the New Territories Land (Exemption) Bill and on many other occasions, we still have a long way ahead in our fight for women's rights of succession of land. There is no short-cut whatsoever. Our objective can only be attained step by step, through better communication with the parties concerned to promote understanding. More haste, not only less speed, but also more unnecessary fears, fragmentation and anxiety. The fastest and most direct route could be a wrong route which may do us more harm than good. Looking

back, one wonders whether the worries and troubles we have witnessed over the last few months are necessary.

Second, the problem of equal opportunities of succession between the sexes can be solved by amending the Intestates' Estates Ordinance. If section 11 is repealed, the rights of succession will be governed by the legislation and the court's discretionary power would be significantly reduced in respect of the handling of disputes over the titles in land in the New Territories. Indigenous female residents will then enjoy the same succession rights as their male counterparts to inherit New Territories land; the fears of non-indigenous residents of the New Territories concerning titles of land will be allayed while indigenous New Territories residents will be able to preserve their customary rights.

If the Administration had accepted my suggestion, the unhappy incident which took place outside the Legislative Council Building on 22 March would have been averted and the standoff between the two groups of protesters now outside the Council could also have been avoided.

Equality between the sexes is the common aim of Honourable Members as well as my own. To achieve this aim, why should we reject a workable suggestion which will not create social confrontations? I believe that if my suggestion had been accepted, not only could the public's uneasiness have been removed, but also our common aim would have been achieved.

Third, I strongly believe that the indigenous villagers of the New Territories are not unreasonable. To cite a concrete example, the Heung Yee Kuk has accepted the suggestion of the public (including myself) and the City and New Territories Administration; it has given up its customary practice which has been followed over many generations, and adopted a one man, one vote system for the election of village representatives with fixed terms of office. With this in mind, I think it is more advisable to introduce amendments to Ordinances which are more controversial in a gradual manner. If the Administration takes this approach, I am sure the New Territories Land (Exemption) Bill will be passed without creating any uproar among the indigenous residents of the New Territories.

I have been fighting hard for women's rights of succession and equality between the sexes over the last few decades. I certainly would support these causes. The Secretary for Home Affairs will later move amendments to the proposals which some Members of this Council and I have made. No matter what the voting result will be, I strongly urge the Administration to explain to the indigenous residents of the New Territories the real intention and purpose of the Bill. Any misunderstanding must be clarified so that the residents can appreciate the spirit of the Bill and accept it willingly.

Mr President, these are my remarks.

MR ALFRED TSO (in Cantonese): Mr President, first of all I have to declare that I am in full support of the principle of equal rights for men and women. However, in the course of realizing that abstract concept, whether modest reformation or radical legislation be adopted will lead to greatly different results. As the saying goes, "the wind that blows out candles kindles the fire".

Since the introduction of the New Territories Land (Exemption) Bill a few months ago, it has evoked much controversy in society. Unfortunately, the Bill with good intentions has been covered with a beautiful sugarcoating of "equality between the sexes". With the politicians' unscrupulous oral and written castigation on the existing system of the indigenous residents, together with the Administration's sudden change of stance, the Bill now tabled before us has already become highly politicized. If the Bill is passed today, it will result in division of clan society and incessant family conflicts among the indigenous residents. I am worried very much that Hong Kong people will be further disunited.

Regarding the present incident, the Administration's way of tackling the problem cannot be excused and its intention is dubious. As everyone may remember, the present incident was brought to light when the Housing Authority discovered that the application procedures for exemption from the Governor for Phases 1 to 14D of the Home Ownership Scheme in the New Territories had not been completed. As a result, the succession to property titles may be affected by the New Territories Ordinance, that is, the property can only be inherited along the male-line. According to the information that I obtained from the Housing Authority, in fact they discovered the flaw two years ago and proposed that the Administration should remedy it. However, the Administration did not take the problem seriously until the end of last year, when it suddenly disclosed the news with a lofty stance, causing immense anxiety among the affected residents. Why did the Administration not take immediate action to redress the problem when it knew about its existence long ago? Can the Administration provide us Members with a satisfactory reply?

If the Administration had admitted the mistake at first, it would not have been too late to mend. In order to dispel the worries of the 350 000 property owners of the Home Ownership Scheme and private housing in the new towns about the question of succession, Mr Michael SUEN, the Secretary for Home Affairs, stated on 13 October last year during the Legislative Council debate on this issue that the Administration would consider enacting legislation to solve the non-indigenous residents' problem with succession rights and it was hoped that the legislation work could be accomplished promptly. And for many times, the Administration emphasized that the new law would not affect the customary rights and interests of the indigenous residents. At that time, I strongly approved of that arrangement and hoped that the new law could be passed a soon as possible.

Nevertheless, Miss Christine LOH subsequently put forward an amendment to deal with the indigenous residents' succession rights at the same time. That amendment has deviated from the original intention of the Bill. Initially, the Administration was always urging the Members to pass the original Bill sooner. However, on 10 March this year, Mr Michael SUEN, the Secretary for Home Affairs, suddenly stated that the Administration had no objection to the amendment proposed by Miss Christine LOH. The Administration, changing its stance within a period as short as 10 odd days, is even more changeable than the weather.

I believe that Miss Christine LOH had good intentions in proposing the amendment. However, she only saw the aspect of striving for equality between the sexes and neglected the fact that we Chinese cherish our traditional culture and customs very much. Perhaps Miss Christine LOH started living independently abroad when she was young, and so she does not understand the traditional family concepts of the Chinese. The Chinese saying of "having support during youth and old age" is exactly the spirit of the campaign "protecting our village and defending our clans" waged by the indigenous residents now living in the New Territories. The reason for their strong opposition is the fear that the land and property in the villages will fall into the hands of people from other families under the present amendment, which will have ruthless impact on the tradition of the clan society. Therefore, I sincerely hope that Miss Christine LOH can understand the reasons behind the Chinese traditional thinking and avoid "doing bad things with good intentions".

Mr President, I believe that I am not an indigenous resident in the New Territories. For the time being, I can only trace the record of my family back to 1915 in the genealogy. However, I was born and brought up in Tuen Mun, so I have an in-depth understanding of the social and customary practices in the New Territories.

Owing to a lack of understanding, many people think that the traditional custom of the New Territories is a kind of old-fashioned ancestral and domestic discipline, which is no longer suitable to the present-day Hong Kong society. However, experts specializing in history and anthropology will know that the existing tradition in the New Territories, which can be retained to the present day after thousands and hundreds of years of tempering, definitely has its own value of existence. Dear Honourable Members of the Legislative Council, why are we legislating in haste to uproot these customary practices with an attitude of "breaking the four traditions", even before we have conducted detailed consultations and a thorough investigation? Have you ever thought about the impact this will have on the Chinese tradition? Will it benefit Hong Kong's prosperity and stability? Will it be fair to the indigenous residents?

In Tuen Mun district, where I was born and brought up, I did witness the area being developed from a remote township into a modern new town with more than 400 000 residents. By developing new towns, the Administration has made happy homes for the public and remarkably improved their living

environment. Nevertheless, everyone seems to have forgotten that most of the land for new town development was acquired by the Administration from the indigenous residents. Also because of the new town development and the social changes, the livelihood of many indigenous residents has been affected. Unfortunately, the contribution by and the impact on the indigenous residents in the new town development have not been recognized by honourable colleagues in this Council and some members of the public. On the contrary, they suffer from unfair treatment and political pounding and lashing. That situation has exactly reflected the dark side of politics.

The controversy evoked by the New Territories Land (Exemption) Bill has already led to internal division in the Hong Kong society, division between indigenous and non-indigenous residents, division between men and women, and even confrontation among our Members. Are these truly what we want? Politics can hurt people without leaving any wound. With the present situation being politicized, it is obvious that the Administration has added fuel to the confrontation in a planned manner. Then how is it different from "an accomplice"? If a government loves its people, it should devote itself to promoting unity among its people so that they will work together for social construction. But the Hong Kong Government is just going in the opposite direction. In addition, the Government's series of controversial proposals and actions have caused conflicts and commotions in the Hong Kong society. I would like to ask the Government what its motives are.

In the past, the Hong Kong Government enjoyed people's trust and support. The relationship between the government officials and the public was harmonious. It was because our Government scrupulously abided by its promise and was able to take good care of the interests and needs of all sectors of the society. However, in the present incident, the Government did an about-face. At the beginning, it claimed that the legislation was only concerned about the succession rights of the non-indigenous residents and would not affect the indigenous residents. However, when Miss Christine LOH put forward her amendment, the Government immediately changed stance and expressed its acceptance. Although eventually, the Government voluntarily introduced a compromising bill, this way of doing has actually greatly weakened the public's confidence in the Government. Hong Kong is now in the latter part of its transition period. If even the Government goes back on its words and fails to hold fast to its principles to defend against the attack from the unreasonable political powers, how can it obtain popular trust and support and lead the Hong Kong people towards 1997?

While our society is getting more and more political, some legislators and politicians may try to canvass for votes by misleading public opinions. They neglect the importance of maintaining social harmony and balance. Such kind of behaviour is indeed ignominious and I beg to differ. As members of the Hong Kong people, how can we entrust these politicians with the responsibility to administer the society, and how can the goal of "Hong Kong people ruling Hong Kong" be realized?

As a legislator, I believe that the purpose of legislation is to rectify those unreasonable, unfair and far-reaching problems in society. However, in the present incident, we did not see any strong reaction from the female indigenous residents. As regards the case of Ms CHENG Lai-sheung, which has been discussed by members of the public, her family members have already clarified publicly that it was only a dispute on fighting for legacy. At the same time, the Heung Yee Kuk has, for many times, called on those female indigenous residents being discriminated to complain and ask for assistance from the Kuk. But eventually not many substantial cases have been received. In view of this, in the community of indigenous residents, the male and female residents are actually living in harmony. Why should we destroy that harmonious relationship?

Mr President, I have already pointed out from the start that I absolutely support equality of the sexes. There exists the problem of different treatments to male and female among the customary practices of the indigenous residents. The Administration should thoroughly study the problem and widely consult the residents of their views so as to gradually improve the situation systematically. It should not try to force changes upon the system of the indigenous residents by hasty legislation under the pretext of solving the problem with succession rights of the Home Ownership Scheme flats in the New Territories. For the sake of stability of our Hong Kong society, I will vote against the Bill and the way the Administration handles this incident.

Mr President, these are my remarks.

MRS MIRIAM LAU: Mr President, equality between the sexes is not some empty slogan. Rather, it is a general principle which must be put into practice through concrete social actions. This Council has had quite a few rounds of debates on gender equality. Today's debate on the New Territories Land (Exemption) Bill is focused on the amendments which the Secretary for Home Affairs will move later at the Committee stage. The purpose of the amendments which embody the spirit of our previous debates is to remove the long-standing discrimination against women in terms of their rights of succession.

As I have said in the last debates, although the traditional customs adhered to by indigenous residents in the New Territories have their historical background, some of them should be amended in pace with the changes of our society, especially those which patently breach social justice.

It has been the Administration's policy to allow indigenous residents in the New Territories to deal with questions of succession of land by way of customary rules which are discriminatory against women. Policy can certainly be amended and, more importantly, inequitable policies should be amended as soon as possible. Nevertheless, the Administration should also take every possible measure to keep the ensuring social impact to a minimum. These measures include prior consultation and explanation, dialogues with those likely

to be affected and lobbying. Every precaution must also be taken to make sure that the proposed amendments would not encroach on areas outside their scope.

When this Bill was under examination before this Council, the Administration suddenly changed its stance and supported Miss Christine LOH's proposed amendment. The Administration obviously changed its policy. This aroused resentment among, the indigenous residents in the New Territories, resulting in serious social unrest. The whole episode highlighted the Administration's insufficient consultation, and poor communication, with the people affected prior to the change in its policy.

The Administration did obviously try to remedy the situation afterwards and sought to talk to the Heung Yee Kuk and the indigenous villagers. Like the way the Governor introduced his political reform package, however, the Administration took a high profile and declared its stance before trying to seek the views of those affected. Everyone knows what the result is going to be: It became even harder to find a way out of the deadlock.

I think that the Administration also has not been prudent enough in its dealing with matters concerning the scope of the amendments. The amendment moved by Miss Christine LOH, that is, the amendment to which the Administration expressed its support in March, is to exclude all rural land from the New Territories Land (Exemption) Bill. It is obviously intended to extend the scope of the Intestates' Estates Ordinance to cover rural land of the New Territories so as to enable women residents of the New Territories to enjoy equal rights of succession. However, it seems that the Administration has neither given sufficient thought as to whether the amendment would affect the indigenous residents' rights in other aspects, nor has it ever explored the possibility of introducing any other amendments which can achieve gender equality of the rights of succession in a more direct and effective way. The outrage expressed by the indigenous residents in anticipation of the likelihood that their rights would be affected is therefore understandable.

In early April, the Administration still insisted that Miss Christine LOH's amendment would form the basis of the amendments it was going to move but stated that it would add some clauses to retain certain rights in connection with rural land. However, the Administration's statement failed to ease the minds of the indigenous residents in the New Territories. I think the only way to allay their worries about the possible curtailment of their rights in other aspects is to narrow the scope of the amendments by adding clauses which specifically deal with the rights of succession of rural land. Towards the end of April, I put forward my idea to the Secretary for Home Affairs and the Secretary said that it was worth considering. The amendments which the Secretary for Home Affairs is going to move later today are entirely in line with the proposals which I made then. Hence the Liberal Party support the amendments.

It really does not matter who has put forward the proposed amendments. I have made my proposal because I think it would help solve the problem. I found it strange, however, that when the Administration announced towards the end of May that its amendments would be made in their present form, Miss Christine LOH suddenly said that this was the form of amendments that she had discussed earlier with the Secretary in March but had not been adopted then, if it was true, I am not sure why the Secretary said in April that my proposal was new to him, that he had not thought about it before and that it was worth considering.

If the Administration had already conceived some amendments in March which would have less impact on the rights of the indigenous residents, why did it shelve it then and instead adopt Miss Christine LOH's amendment which had wider implications and a greater impact on the rights of the indigenous residents? Anyway, I think the Administration should conduct a review on its approach towards making amendments to this Ordinance.

The indigenous residents in the New Territories are still dissatisfied with the amendments and have stated that they would demonstrate their protest by way of drafting a collective will. Yet they have taken no more violent action and instead staged their protests in a more peaceful way. Certainly, anyone has the right to decide on how to bequeath his estate and it is unlawful to encroach upon such right. For this reason, the indigenous residents undoubtedly have the right and freedom to decide whether to draft a collective will or an individual will to specify that their estates are to be bequeathed to male beneficiaries only. Their action, however, tells us that legislative means can only achieve equality between the sexes institutionally but cannot win the support of all with regard to its spirit.

In fact, equality between the sexes has something to do with one's mind. It is something which works through the mind. Legislative means alone can hardly change ingrained traditional thinking. Hence, it is necessary for the Administration to step up its efforts in public education expeditiously and to instil the concept of gender equality in people's mind so as to exert an imperceptible influence on their thinking and their attitude. It is only in this way that effective results can be achieved.

Mr President, with these remarks, I support the Bill and the amendments which the Secretary for Home Affairs is going to move later.

REV FUNG CHI-WOOD (in Cantonese): Mr President, on 13 October last year, a motion moved by me was carried in this Council. It urged the Government to proceed expeditiously with the relevant law reforms so as to ensure that both men and women are entitled to equal succession rights. The three Official Members abstained at that time. When the Administration first put forward this Bill, it did not intend to involve the female indigenous inhabitants. Now the

Administration seeks to amend the Bill to reinstate the succession rights of the female indigenous inhibitants. It is returning to the right track.

Today, outside this Council is a large group of opposers who say that succession rights are a matter for the indigenous inhabitants and that the majority of the indigenous inhabitants are against this amendment. However, they have forgotten the wish and expectations of the many people of our community. The majority of our community support this amendment. According to the opinion poll conducted by the Administration early this year, actually 96% of the public were in favour of this amendment, which is absolutely not a case for the urban inhabitants to force the rural inhabitants to change their ways of life or their customs. Instead, it is an amendment seeking to change things that are unfair and unjust. However, to make the changes, it is inevitable that some customs will be changed, but the main purpose of this amendment is to change things that are unfair and unjust. If rural customs should be so sacred and inviolable that nothing can be changed, how can our community make any progress? Is it not the case that the Heung Yee Kuk is in favour of "one person, one vote" in electing village representatives irrespective of their sexes?

It is suggested that there has not been sufficient consultation regarding this matter. I do not agree. As early as October last year there was a motion debate on this matter. There is one representative in this Council from the functional constituency of the Heung Yee Kuk, in addition to at least three other Members of this Council who are closely related to the Heung Yee Kuk. These Members should have understood the intention of this Council. Besides, this issue has been widely discussed recently.

In October last year, the Heung Yee Kuk should have known about this matter, and it is now already eight months. Naturally the longer the period of consultation the better because it will ease the tension. However, law enactment is something that cannot be stalled, therefore the crux of the problem is not that there is not sufficient consultation but that some people are still very unhappy about it. Yet, is this Council not going to amend outmoded or unfair legislation just because some people are still unhappy?

In fact, we can say that this amendment would only bring about modest change in the way of life of the indigenous inhabitants. Many indigenous inhabitants have already made allotment of their properties to their children during their lifetimes. If someone does not want to leave his property to his wife or daughters, he can make a will after the legislation. It really has no practical effect on individuals. However, for one who is for this amendment and affectionate towards his wife or daughters, he no longer has to worry that his wife or daughters will be deprived of his estate. Also, if someone has only daughters but no sons, he needs not worry any more that his estate will be taken over by a relative of the same clan after he dies, and his wife and daughters are left with no estate at all. Does anyone wish to see such a thing happen?

Someone has suggested that this amendment would lead to the disintegration of rural clans and cessation of their life style. This serious "charge" is a wrong allegation. Just as other people point out, small houses in many villages have either been sold or let to non-indigenous people who are of other family names. In some villages, non-indigenous people outnumber the indigenous inhabitants. If this is seen as the disintegration of the clans, then it has in fact begun already, not from the time when this ordinance is amended. It is the indigenous inhabitants themselves who have given the push that led to the collapse of the clans. With the development of the community, some people move from the urban area to the New Territories and live in the rural area. On the other hand, some people of the rural area have moved to the urban area. This is a common and accepted phenomenon. As to whether or not village people are willing to live in the same place and whether they want to preserve the clan tradition, it is up to the individual villagers to decide. People of other family names moving in does not necessarily mean that the indigenous villagers would be driven out, since they can choose to stay on. Even when people of other family names come in, it will only build up the population of the village. How could the clan tradition crumble because of that? Must it be that only by having people of entirely the same family name live at the same place that the clan tradition can be guaranteed? If people of different family names move in, the villagers can stay on instead of moving out. How can this affect the traditional lifestyle of the clans?

Mr President, someone has commented that the proposal to change the succession rights of the sexes is put forward by a Member not living in the rural areas. He said, "This is none of your business. Why should you initiate this change?" In fact, it is the indigenous inhabitants themselves who want to change. Who are these people? They are those female indigenous inhabitants who are discontented with the unfair treatment they get and expressly demand this. Some of them are even victims of this unfair institution. Many a time they have put forward their complaints to the Administration as well as to Members of this Council. How can we turn a deaf ear to their grievances? Though their voice is weak, it is a poignant voice. They want to get back fairness for them. Are we going to sit back and look on in the face of these unfair and unjust matters?

Since 1991 when Members of this Council were elected afresh, Members have been striving to promote equality of the sexes, and the Subcommittee on Women's Affairs was set up, which has held meetings from time to time to discuss issues on women's affairs. Two motions were carried in this Council for the United Nations Convention on the Elimination of All Forms of Discrimination Against Women to be introduced and the Subcommittee on Women's Affairs to be set up. And the Administration's response was to publish the Green Paper on Equal Opportunities for Women and Men at the end of last year to consult the public. It was recently decided that the United Nations Convention on the Elimination of All Forms of Discrimination against Women be introduced and the Equal Opportunities Commission be set up. For many years Members of this Council have been endeavouring to promote the

equality of the sexes so as to get rid of discrimination against women. Should we just sit back and look on, should we pull punches on this most obvious and most serious problem of discrimination against women — the problem concerning the indigenous women's rights of succession, which is also the very problem involved in the amendment bill to be carried by this Council today — then would we not be marring our work in the past?

This amendment bill being carried today will be the milestone of a step forward for the equality of the sexes in Hong Kong. This step will of course be very difficult. Members of this Council have encountered immense counteraction and are under great pressure. We all know that the reason is very simple. The institution in connection with the succession by indigenous women has existed for so long and the interests involved are so great that nobody dare to challenge it in the past. Today, we need the courage to make in this Council a decision that is fair and categorical.

In October last year this Council passed a motion to urge the Government to make law reforms so as to ensure that both men and women are entitled to equal succession rights. At that time I congratulated the Anti-Discrimination Committee of the Indigenous Women of the New Territories (which has changed its name recently) formed by female indigenous inhabitants. Today, after eight months, I congratulate them once again because they have made a big step forward towards success. The members of this organization are now in the public gallery to listen to our discussion. They are fighting not just for themselves but also for all female indigenous inhabitants the rights that they deserve and are entitled to.

The United Democrats of Hong Kong and the Meeting Point are in staunch support of the amendment to be moved by the Administration later on to return to the female indigenous inhabitants their succession rights. I so submit.

MRS ELSIE TU: Mr President, I shall be as usual very brief.

For many years I have been involved in seeking equal rights for women, including New Territories women, but I deplore the method by which the Government's amendment has been introduced. One can only say the Government has behaved like a bull in a china shop.

The amendments which Mr Andrew WONG will move later offer a reasonable and progressive approach to the subject. Mr WONG has asked for action on his proposals on the New Territories Ordinance in six months. I think that is a constructive way to restore harmony and achieve the same result.

Mr President, I shall support Mr WONG's amendment and abstain on the Government's amendment.

MR LAU WONG-FAT (in Cantonese): Mr President, originally I have prepared a five-page speech. However, having listened to the comments made by the several major political parties and some of our honourable colleagues, I realize that it is pointless to put forward my argument. It would be just a waste of time.

Since the the New Territories Land (Exemption) Bill was introduced in this Council, the Heung Yee Kuk and the villagers of the New Territories have indeed tried various means to voice their discontent and make known their wishes. Yet, the Government and the authorities concerned have turned a deaf ear to these voices. History will judge the Government for this irresponsible policy with no regard to the life and death of its people.

In any case, the villagers of the New Territories will stick to their original position and will never accept any legislation and policy impose on them which will arbitrarily change their traditions.

Yesterday, I filed a petition with the court on behalf of the indigenous villagers. We hope, by taking this matter to court, we would be able to see justice done.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, the legislation in Hong Kong can be amended. In fact, any ordinance can be amended. I would like to criticize the three mistakes made by the Government in the handling of the New Territories Land (Exemption) Bill.

Firstly, the Government has exaggerated the problem of discrimination. Why does the Bill have to be linked to the issue of equality between men and women? I think that one should not discuss the Bill in terms of "equality between the sexes". The Bill is merely on the New Territories women's right of succession to land. These women are actually not treated unequally. In fact, they are equal in other respects. Many of them may even often bully their husbands.

Secondly, the Government has played with the public opinion of the New Territories. Had the Government not intended to listen to the public opinion, it should not have called on the indigenous residents to express their views and told them to speak up if they did not agree to the Bill. As a result, the indigenous residents denounced the Government and held demonstrations. Some even slept in the streets in protest. However, the Government turned a deaf ear to their protests. What was the Government really up to? It played with public opinion.

Thirdly, the Government is indecisive. It is indecisive because its policy is vacillated. I wonder if the Government is performing a magic show. A responsible government which can uphold social stability should, of course,

listen to the public opinion and act according to circumstances. However, the fact is that the Government is indecisive.

The Government must definitely review these three mistakes.

Mr President, with regard to the issue of equality between men and women in Hong Kong, I personally think that they are absolutely equal. Why do I think so? May I ask the gentlemen here, who will have the guts to bully a woman? No matter what sex a person is, the most important thing is whether he or she is a capable person. Now, among all of us here, who holds the highest rank in the Government? It is the Madam Chief Secretary. It seems that she outranks us, the Legislative Council Members.

Moreover, I would like to cite the findings of a public opinion survey as an example. (I normally do not believe in public opinion surveys, but after all, I have to cite the findings of this particular survey.) This survey finds that the most popular Legislative Council Members are two ladies who are the most diligent Members. Therefore, it is simply absurd to say that there is inequality between men and women.

Mr President, today we are talking about the succession right of the women in the New Territories. I understand that in a traditional Chinese family, when a daughter gets married, she gets a large dowry. People generally judge how much a daughter is loved by her parents by the amount of dowry she gets. The dowry is a share of the family's possession. In the old days, the dowry of a girl from a wealthy family even includes a coffin. We must see that such things do happen. It is surely not an exaggeration.

Let us now make a simple analysis. Suppose that a father of two daughters and two sons has $10 million. When his two daughters get married, he gives each of them a dowry of $1 million. The father then has $8 million left. One day he dies intestate and under the present amendment Bill, his four children have the right to have a share of his estate and so each child gets $2 million. However, actually each of the two daughters gets a total of $3 million, which is more than what each son gets. Though this is a hypothesis, it shows that men and women certainly are not unequal.

A retired High Court judge has once said that there is absolutely no equality between men and women in Hong Kong. I personally take exception to that. However, the fact is that many objective factors exist in this issue. Families are made up of men and women, and so is a society (though a neuter gender now emerges). I hope with all my heart that men and women will respect each other and work together to bring about progress in society.

Nor should we take it for granted that everything is good in the advanced countries. We must see that, even in the United States, after a woman has got married, she has to use her husband's surname. Does this mean there is inequality? Why does a married man not use his wife's surname? Furthermore,

many people support the present amendment Bill. What surnames are they using, their fathers' or their mothers'?

We must give serious consideration to the amendment Bill. Many indigenous residents are now protesting outside. Of course, I believe that this Council will pass the amendment Bill and that their protests will be futile. However, in any case, we have to consider balancing the interests of the whole society. There is no existing provision to forbid the indigenous residents of the new Territories to make wills, leaving their estates or parts thereof to their daughters. In fact, some of the indigenous residents do make wills but the present amendment Bill spells it out more clearly. Is this good or bad? Actually, it does not matter. We should handle the issue calmly and reasonably. We should not politicalize the issue and use it to gain political capital. I believe that even if political capital can be gained this way, it will be very marginal. It is not worthwhile if it may sometimes make people wonder whether it is "whisky" or "soda".

Mr President, Hong Kong will face the transition of sovereignty in 1997 in three years' time, therefore, it is all the more important that now people from different sectors should have confidence in the "One country, Two systems" concept and the Basic Law. We should stand fast at our posts and face the challenges from all directions. The pressure is very great indeed. Under such circumstances, we should not stir up unnecessary and meaningless arguments, class struggles or social conflicts. The most important thing is that we should face our common problems together. If there is a problem, we should work together rationally like parents and children, brothers and sisters in order to find a solution. Our families and society will become seriously divided if there are confrontations, attempts to gain political capital and the switching of the issue to the equality between men and women.

I believe that the amendment Bill will be supported and passed. I hope that the indigenous residents of the New Territories outside this Council will calmly accept the fact. We should all work together to find a remedy. Though they have said that they will never accept this fact, they will have to accept it when tomorrow comes. The Heung Yee Kuk has talked about making a collective will or other arrangements to uphold inheritance along the male line, I think no government official, Legislative Council Member and member of the public should interfere. We hope that the Heung Yee Kuk will continue its dialogue with the Government on various matters.

The Government should learn a lesson from this incident. I believe that it has already given a big headache to Mr SUEN. Nevertheless, we must face the facts. I also hope that Members of this Council will not use "equality between men and women" to gain more votes. In fact, the women in Hong Kong should be very proud and fortunate because Hong Kong is ruled by Her Majesty's Government. As a matter of fact, feminism in Hong Kong goes even farther than that in the so-called democratic countries in Europe and America. Therefore, I do not want to hear any more argument on "equality between men

and women". We should encourage women to fight for other matters and to work closely with their husbands to create a better tomorrow.

Mr President, I will abstain from voting.

MR WONG WAI-YIN (in Cantonese): Mr President, towards the end of last year, the Housing Authority acknowledged publicly that the New Territories Ordinance applies to all land in the New Territories. This means that if an owner of land or property in the New Territories dies intestate, the land or property will be inherited by his male relatives as the female are denied succession rights. The Housing Authority also admitted its negligence that, when building Home Ownership Scheme housing in the New Territories in the past, it did not apply for exemption from the New Territories Ordinance. The Housing Authority's announcement aroused widespread concern in the community. In response to this, the Government hastily drafted the New Territories Land (Exemption) Bill, which is a legislative attempt to exempt all non-rural land in the New Territories from the New Territories Ordinance. This exemption will be retrospective, recognizing the legitimacy of all past applications of the sexually neutral provisions of the Intestate's Estate Ordinance to estates located in the new towns.

The original intent of the New Territories Land (Exemption) Bill is to confine the issue to one of the administrative technicalities. In fact the New Territories Ordinance protects traditions and customs. It statutorily solidifies inequality between men and women and hinders social development and social progress. It has long been frowned upon by members of the public.

It is simply impossible to discuss the New Territories Land (Exemption) Bill without mentioning that the indigenous women in the New Territories have been deprived of their succession rights. Hence Members of this Council have asked not only for the enactment of the New Territories Land (Exemption) Bill but also for amendment to those provisions of the New Territories Ordinance which deprive women of their succession rights. They hoped that the Government would announce an appropriate amendment plan and a timetable for carrying it out. Regrettably, the Government failed to give a positive response after all this time. Hence Miss Christine LOH was compelled to move an amendment to the New Territories Land (Exemption) Bill which would exempt rural land as well from the New Territories Ordinance. The Members' active responses are all because of the Government's negative attitude. The Meeting Point has supported her amendment from the beginning.

Should the Government support or oppose the amendment? How will the Government vote when Miss LOH's motion is tabled at the Legislative Council? Will it dare to vote against it? I believe that the Government will not vote against it as it will have to risk being accused of violating the principle of equality between men and women. Therefore, the Government has to support the amendment.

When the Government has voiced support for the amendment, the Heung Yee Kuk and the rural forces reacted with unexpected vehemence to the New Territories Land (Exemption) Bill, which is only a few pages thick. I just want to talk about a few incidents here. On 22 March, during its discussion of the New Territories Land (Exemption) Bill, the Legislative Council met with members of the Heung Yee Kuk and listened to their comments on Miss LOH's amendment. Nearly 1 000 opponents of the amendment demonstrated outside the Legislative Council Building. Shouting foul words, they threatened to use force against the scores of supporters of the amendment who were also at the scene. The supporters were representatives of the indigenous women's groups, of other women's groups and the General Alliance against Discrimination. The Meeting Point deeply regrets the incident in which some indigenous inhabitants of the New Territories resorted to the use of force for resolving differences of opinion. Worse yet, some of our honourable colleagues were assaulted and injured.

Inside the Legislative Council, many say that they strongly support equality between men and women. Nobody says that he is against such equality. However, we heard a man by the surname of KAN saying, "There will never be equality between men and women." He even declared, "Might, yes. Right, no." In the demonstration that day, I saw that many indigenous young men of the New Territories were staying in the background as they incited the old women in front to charge at and assault the supporters of the amendment. That was a shameful thing to do. Why did they not voice the protests themselves but incited the elderly to act instead? What would happen if the elderly had tumbled and fallen? Did the young men consider the consequences?

The Heung Yee Kuk chairman said that day, "The villagers have come to the Legislative Council spontaneously." Regrettably, this Mr KAN contradicted the chairman. He said, "No. We have come at the call of the Heung Yee Kuk." So the Heung Yee Kuk did not even have the guts to assume responsibility for the incident. What kind of responsibility will it be good for?

I do not want to say any more about what happened that day. I want to talk about something else. The Legislative Council made arrangements for our honourable colleagues to tour the villages in the New Territories on 26 March, so as to find out about the lives of women in the New Territories. The incident of 22 March caused a great shock. Some colleagues had at first agreed to take part in the tour, including Miss Emily LAU and Mrs Peggy LAM. In the wake of the 22 March incident, however, they wanted to back out. They gave two reasons. Firstly, they said that they were afraid that there might be riots and disturbances. This was an insult to the indigenous inhabitants of the New Territories. Some indigenous inhabitants told the media that they would welcome our visits to the enclosed villages in the New Territories. We did not believe that the indigenous inhabitants would not welcome us. Those who said that the indigenous inhabitants would cause trouble were only betraying the unhealthy state of their own minds. What they did was no less than insulting the indigenous inhabitants. Secondly, the two honourable colleagues said that they

did not want the Government to waste resources by deploying too much police force. But then Mr LAU Wong-fat said, "I will go with you. It will be all right." Thereupon, the two colleagues changed their minds again. In fact, arrangements had been made for the police to maintain public order that day. The Meeting Point and the United Democrats of Hong Kong have some criticisms to make. Why did the particular colleagues dare to go after Mr LAU Wong-fat had given them reassurance? Some people say, "LAU Wong-fat is the law in the New Territories. There is no other law." Is this true? To a certain extent some villagers in the New Territories might become even more arrogant. They would think that only they, and not the Government or the police, could vouch for the safety of our colleagues and others. What logic is that? It is not quite absurd?

Later, when we visited the Heung Yee Kuk, Miss LAU made a suggestion which was very disappointing to us. She suggested that there should be a referendum for the indigenous inhabitants of the New Territories — please note that she said only "the indigenous inhabitants of the New Territories" — to decide whether the amendment would be accepted. What kind of a referendum would that be? Miss LAU is in favour of direct election of all legislators. Yet she has suggested an undemocratic referendum for a selected group. Why? I have done a lot of thinking about this but still do not have the answer.

8.00 pm

PRESIDENT: Sorry to interrupt you, Mr WONG. It is now eight o'clock and under Standing Order 8(2) the Council should adjourn.

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

Question proposed, put and agreed to.

MR WONG WAI-YIN (in Cantonese): When we met the Heung Yee Kuk members, one of them, a lady, said, "Sir, you are not a fish. How can you understand the joy of a fish?" Mr SZETO Wah has already talked about this at length. I do not want to repeat. Just now, I heard Mr TAM Yiu-chung cite an analogy. He said that, compared with the Indians, who eat with their bare hands, Chinese, who eat with chopsticks, are more hygienic. He said that, still, we cannot make law to stop Indians from eating with their bare hands. Of course, we do not have the power to change the laws of other countries. However, suppose that only Chinese men are allowed to use chopsticks and that Chinese women are allowed only to use their bare hands even if they prefer using chopsticks. (Of course, if the women themselves prefer to eat with their bare hands, there will be no problem.) In such a case, we will have inequality.

When we support the amendment, we are really supporting equal opportunities for men and women.

Mr CHIM Pui-chung advanced an argument just now. He said that the number of women occupying certain high positions is a sign of equality between men and women. What kind of logic is that? It is fallacy. I do not want to waste time on refuting his fallacy. I just want to say that, because some indigenous women want to have succession rights we should give the indigenous women such a chance. Why not? Colleagues from the Heung Yee Kuk have given two reasons for opposing the amendment.

First, the continuity of the surname-based clan system. But, as we have been stressing all the time, over 20% of the small houses for indigenous inhabitants have been sold to people who are not indigenous inhabitants. If the Heung Yee Kuk and the villagers really respect the surname-based clan system, they should ban the sale of those small houses to all except indigenous inhabitants, many of whom do not have their own houses yet. What is even worse, many indigenous inhabitants sell their rights to build small houses to big developers for gain even before they are built. How can the continuity of the surname-based clan system be maintained under this circumstance?

Second, the amendment's incompatibility with the Basic Law. The Basic Law gives assurance that the customs of the New Territories will remain unchanged for 50 years. Many of our customs and laws should be changed as society advances. Why must we swear to defend irrational and inequitable things?

Many indigenous inhabitants of the New Territories simply do not understand the amendment in question. Actually, the amendment will not significantly affect their interests. Here, we want to criticize the Government for failing to do enough to educate the public and to promote the amendment. I hope that, after the New Territories Land (Exemption) Bill is passed, the Government will work harder in this respect.

Mr President, to achieve the goal of equality between men and women, all sectors of the society have to endeavour and put it into actual practice, including assurance from the law, support by public policy and public education on social consciousness. Abolishing the discriminatory provisions of law is only the basic requirement to safeguard and respect human rights. Hong Kong is a prosperous and progressive metropolis. The fact that the indigenous women of the New Territories are still being openly discriminated against is disgrace for the people of Hong Kong. We call for appropriate amendments to the New Territories Ordinance and the Intestate's Estate Ordinance so that they will be more compatible with the Bills of Rights Ordinance and the principle of equality between men and women. Of course, we are not so naive as to think that discrimination against women will disappear when the discriminatory provisions of law are deleted. In fact, the unruly behaviour of some indigenous inhabitants of the New Territories outside the Legislative Council the other day showed

their total disregard for the dignity and rights of women. It takes time and requires education to change the underlying feudal thinking gradually. The passage of the amendment, if it is passed, will not stop those with feudal thinking, those who favour men over women, from making wills to leaving their estates to male offsprings only. This explains why we need to work harder in the areas of public policy and cultural education. The law should safeguard civil rights. It must never be indifferent to signs of inequality.

Mr President, finally, the Meeting Point and UDHK want to use this opportunity to extend their regards to those indigenous women of the New Territories who refuse to suffer silently under the oppressive feudal system and who are brave enough to fight for the legitimate rights and interests of women.

Mr President, I so submit. The Meeting Point and UDHK fully support the principle of equality between men and women.

MISS CHRISTINE LOH (in Cantonese): Mr President, I believe it will be encouraging if this Bill and the amendments to other related Ordinances to be proposed by the Government could be passed without a hitch. These amendments together will repeal one extremely inequitable provision that has existed in Hong Kong for years, under which indigenous women do not have the land succession rights enjoyed by other Hong Kong people. Subsequent to the passage of the amendments, all Hong Kong people, men or women, indigenous residents or non-indigenous residents, will thus have equal land succession rights before the law. Mr President, such rights are fair and just.

It is unfortunate that we had to wait all the way till 1994, now on the eve of the 21st century, before the repeal can be made. Perhaps we ought to apologize to those women who had been discriminated against. That the repeal being postponed to the present is, I believe, due to several reasons, one of which is the strong objection from the Heung Yee Kuk over the years against any amendments to the Ordinance. Studies conducted by the Government in the 1970s and 1980s showed that a rectification of the situation was called for. Yet no actual action was taken. Perhaps many Members have forgotten already that in the legislative year 1990-91, when the Bill of Rights Bill was under discussion in this Council, the Heung Yee Kuk had asked legislators whether the custom of male-line succession would be exempted from the jurisdiction of the Bill of Rights Bill. I have gone through the record or proceedings and found that the legislators appeared to be not in support of such opinion. However, it turned out that the Heung Yee Kuk did not have to do any lobbying because the Government subsequently decided to narrow down the scope of the Bill of Rights Bill, making it inapplicable to matters concerning relationships between private parties.

Let me turn to the Government. As I mentioned just now, the Government conducted some unpublished studies in the 1970s and 1980s and subsequently produced some reports, which concluded that the New Territories customs — in particular, about indigenous women having no succession rights — should be rectified. But what had kept the Government from rectifying the situation? Of course, the Government had laid itself open to severe criticism for its inaction All I would like to point out is that, judging from its past performance, the Government has been very indecisive.

Perhaps we should look ahead rather than keep looking back. But I am afraid that in our fight for women's rights, history would repeat itself. Let me give an example. It has been put forward by the Heung Yee Kuk, as Mr Alfred TSO has also spoken of that point in his speech, that they do not dispute the sacredness of equality of men and women. But let us not forget that what is now at issue is a matter of customs, not equality between the sexes. About 10 days ago, Mr Michael SUEN spoke of the Equal Opportunities Bill and Anti-discrimination Bill in a press conference. He disclosed that the Government would draw up legislation which might have some bearing on matters concerning people's marital status and pregnancy. Many journalists sought clarification from him immediately and asked whether he thought that such issues had nothing to do with sex. Mr SUEN replied that such issues were unrelated to sex. We can see from this that the Government looks at the question of women's status from some very conservative points of view. Therefore, I hope that, to keep pace with our way forward and to fight for women's rights, the Government should review its relevant policy. It should not be indecisive as it was in the past, nor should it consider promotion of women's interests not worth its while.

Now I would like to respond to some honourable colleagues' remarks they made just now. With regard to Mr TAM Yiu-chung's points, as Mr WONG Wai-yin has already responded, I am not going to go over the same grounds again. I would like to respond to Mr Alfred TSO's arguments. He queried the wisdom of effecting the changes through legislation. He also thought that the whole episode appeared to be very divisive in the context of the local community. I am of the view that legislation is necessary because without the support of law, if the customs in question are being abused, then the indigenous women, I am afraid, will not have any strong support to back them up. Therefore it is necessary to introduce legislation. That is precisely why we are here to pass the Bill today.

Besides, many people said that Christine LOH had spent a long time studying abroad and that she did not quite understand the history of Hong Kong as well as the Chinese customs. To this, my response is that many other colleagues in the Legislative Council had studied abroad for a period longer than I had.

Some said they knew little about my family background. My mother told me that her family has resided in Hong Kong for five generations, which is, I believe, a very long time. On this particular point, perhaps some male colleagues might claim that the maternal side of a family history cannot be cited as an example. (*Laughter*)

Anyway, I would only like to repeat this. It is heart-rending to see how the indigenous women — some of them are in the public gallery today — have been discriminated against. We do not want to see other women being subject to the same plight. For this reason, we have to introduce legislation to rectify the situation and it is also on account of this reason that the legislation is introduced. This is not what some regard as "a family dispute". Under some circumstances, such "a family dispute" is stemmed from the fact that women are discriminated against because men abuse their power. I do not want to go on any longer on this. I hope honourable colleagues will vote for the Government's amendment.

MRS SELINA CHOW (in Cantonese): Mr President, the Liberal Party has never compromised over the principle of sexual equality, neither have we compromised over our plea to seek the legislation of the equal succession rights for both sexes. Certainly, we have expressed our regret during the course of the whole episode because we love Hong Kong, which is characterized by its peaceful and harmonious environment, mutual understanding and respect for traditional customs and different aspirations. In the process of examining the Bill, we have seen something which all of us are loath to see, such as some violent scenes. Some Members also mentioned them just now. I believe all of us would find the scuffles very disgusting when we saw them on the television. However, if one gives some thoughts to this matter, I believe one can understand what have led to such situations and who are responsible for them. It is not difficult for one to have the answers. Of course, those who have resorted to the use of force are wrong in their approach. We should tell them categorically that their approach is wrong. I believe they might have realized that it was wrong for them to use force. However, they might also have been of the view that they adopted such an approach just because they thought they were being cornered and they had to protect their own skin.

The way the Government handled this matter is, in fact, open to question. If we have to change a long-established custom which is intertwined with the culture of the entire local community, prudent actions must be taken. However, the Government has not done so. For this reason, I think the Government should be blamed.

In view of the strong reaction from some sectors of the public, we, the Liberal Party, thought that one has to lend an ear to their case, be it right or wrong. As such, we decided to revisit the Heung Yee Kuk to understand more about their problems. Northwithstanding our visits, I can tell honourable colleagues that we, from beginning to end, have not abandoned our own principle. At our first meeting, we told them we would support equal

succession rights for men and women. At our last meeting, we reiterated our position that we would support equal succession rights for men and women.

Just now some colleagues (certainly our male colleagues) came to the custom of male-line succession. I have this to say, my name is CHOW LIANG Shuk-yee and people address me as Mrs CHOW. "CHOW" is not my maiden name. I followed the tradition and took my husband's surname "CHOW". "CHOW" is my husband's family name and all his family members are also surnamed "CHOW". One's surname is not for sale. Yet, land in the New Territories, which can be succeeded by males only, can be put on sale. In this context, succession is more than a custom; it is a right as well. When it comes to rights, no one should be discriminated against.

Just now Mr WONG Wai-yin said that men and women should have equal opportunities. It is, in fact, a kind of right instead of opportunity, a right which all women should enjoy in the same manner as their opposite sex. Here I would relate to you an incident which has impressed me deeply. We paid an official visit to the New Territories the other day. When Mr LAU Wong-fat welcomed us, he calmly told the crowd that "we must persuade people through reasoning". I believe he meant to say that to us, the visiting Legislative Council Members, as well as the on-looking villagers. I admired this utterance very much. His words mean that violence carries no conviction which should be achieved through reasoning. After all, since male-line succession to land excluding the females completely is neither justifiable nor equitable, it does not have people's support.

Given that we are dealing with a deep-seated custom, it is very naive and simple-minded for one to suppose that the amendments will be wholeheartedly accepted once having gone through the necessary legislative procedure. We have now learned that some people intend to show their protest by drawing up a will together which is contrary to the spirit of the amendments. No one can forbid them to do so. I am afraid, if they make good their words, we will be unable to achieve our objectives. We, after all, have to persuade them through reasoning by way of lobbying, education and persuasion. It is hoped that people in local communities which are male dominated can understand why we (not only women fighting for their own right but also people, men or women, in the whole community at large) have to strive for the ultimate objective of ensuring equality for everyone.

Just now we heard some metaphors. I find them completely irrelevant. For instance, some talked about "chopsticks and hands". Such a metaphor in fact has nothing to do with what we are discussing. If we adopt some moderate approaches and, as far as possible, persuade others through reasoning, we will be able to bring the people concerned round to our point of view. However, an honourable colleague queried, "If so, why is legislation still called for? Do not go ahead with the necessary legislation! Rather you should spend your time on persuading the indigenous residents one by one because you are in the right." Yet, we cannot do so. The Government and the Legislative Council have to

uphold justice. Where justice is not upheld, we have to rectify the situation through legal means. It may take a bit more time and a bit more patience to do so. Still, we have to hold the line.

Mrs Peggy LAM put forward a motion in 1993, proposing the extension of the Convention on the Elimination of All Forms of Discrimination Against Women to Hong Kong. I remember that at that time she also brought up matters concerning land in the New Territories. I recall that Mrs Miriam LAU stated our position clearly in the debate. She also pointed out the need to carry out reform through, among others, legislation and administrative means. For this reason, where the matter before us is concerned, we are not merely trying to introduce amendments because in fact we have known too well that there is such a need. Yet, as we have in Hong Kong a so-called executive-led government, we should leave it to the Government to take the initiative. Meanwhile, a short while ago the Government decided against taking rash actions and said that more time was needed to introduce reform step by step. But the decision was later overturned as sudden as it was made when the Government, like awaking from a dream changed its mind again and thought that reform must be introduced immediately. Members in this Council have been made lost in a fog and have become very confused. Anyhow, I am sure, reasoning should eventually get the upper hand.

In this debate today, I support the amendments without any reservation. I am also happy to see that the issue of equal succession rights for both sexes be set right today.

MR LEE WING-TAT (in Cantonese): Mr President, I speak to support the resumption of the Second Reading debate of the New Territories Land (Exemption) Bill. The purpose of the Bill is to amend the New Territories Ordinance so that if a person dies intestate, his male and female descendants will have the same rights of succession. This is a realization of the principle of equality between men and women and this is a step forward for the indigenous residents of the New Territories.

In view of the social development, education standards of the people, information development and urbanization of the rural area, the Bill does not bring about any unreasonable and earth-shaking change. The only change is that it will break one of the many shackles imposed on the female indigenous residents for nearly 100 years so that these women can enjoy certain degree of equality. I think that there will still be a long way to go before the female indigenous residents become completely independent and free.

Mr President, when the Heung Yee Kuk opposed Miss Christine LOH's amendment and the Government's present amendment, it announced a clearly worded objective: "Protect the village and defend the clan." I am afraid that this objective is misleading and alarming. The Bill does not empower anybody to use illegal or forcible means to seize land belonging to the indigenous resident.

Nor does the Bill empower anybody except the indigenous residents or their legatees to come into possession of such land. Under the proposed provisions of the amendment Bill, most of the land belonging to the indigenous residents will still remain in the possession of the male or female indigenous residents. How can one say that the land and home of the indigenous residents will be seized? Unless the Heung Yee Kuk regards the female indigenous residents as invaders, once they have the right to share the land, their villages and clans will come to an end. However, such thinking is extremely feudalistic and reflects the sort of extreme discrimination of the Heung Yee Kuk against the female indigenous residents.

Mr President, in fact, the Heung Yee Kuk and some indigenous residents today oppose the Bill not out of any noble feeling to "protect the village and defend the clan". They do so just to protect the unreasonable interests now enjoyed by a small number of people of influence. The only reason why the Heung Yee Kuk is reacting so vehemently in words and action to this incident is its fear that the general public of Hong Kong, after their query on the succession rights to land, will go on to query the other unreasonable rights enjoyed by the Heung Yee Kuk and some indigenous residents, such as the right to small house grant and the right to land burial. They are afraid that these rights will be queried and challenged.

Mr President, the sharing of land by the female indigenous residents will not destroy the villages and clans. On the contrary, those influential indigenous residents have over the decades co-operated with the property developers of Hong Kong and developed the land belonging to the indigenous residents and then sold it to non-indigenous people, or they sold the small houses or the right to small house grants to non-indigenous people. I think they are the ones who have affected the cohesive life-style of the clan. In fact, I am really interested to know how much land is owned by the Heung Yee Kuk members, the village chiefs and other people of influence in the New Territories. How often have they co-operated with the property developers over the past and how much land and how many small houses and small house grants have they sold? How much money have they received? I believe that it is a lot. Therefore, these people are the ones who have seriously affected the cohesive life style of the clan tradition.

In discussions with the Heung Yee Kuk members, I have asked them why the Heung Yee Kuk does not ask the Government for a total ban on the sale of rural land to non-indigenous people. Every time, they were speechless. The reason is simple. My question infringed on their interests. So they usually sidetracked the subject.

Mr President, "protect the village and defend the clan" is just a pretext. It sounds morally just. In fact, it is an unfair means to deprive the female indigenous residents of their rights.

Mr President, during the deliberations of the Bill, many honourable colleagues stuck to the principle and refused to yield to the vice elements, verbal

abuse, threats or even violence. Nevertheless, when a momentous issue has arisen, there are bound to be people who will shy away from the challenge or become disoriented.

If, as Chairman of the Heung Yee Kuk, Mr LAU Wong-fat had bravely faced the challenge in this incident and led the Heung Yee Kuk members and the villagers to welcome the realization of the principle of equality between men and women, he would have won the praise of the general public. Unfortunately, Chairman LAU did not do so. Instead, he led the villagers to go against the trend. I wonder whether some villagers have been misled by some leaders and stubbornly insisted on interpreting the amendment Bill as intending to seize the indigenous residents' homes and properties. Such incitement and widening of the conflict should be criticized.

Chairman LAU and the Heung Yee Kuk have repeatedly said that even if the Bill is passed, they would ask the Chinese Government to repeal the Ordinance after 1997. I think that such an open invitation to Beijing's interference in Hong Kong's affairs will violate the principles of Hong Kong people ruling Hong Kong and a high degree of autonomy. Such action will make those individuals and groups with direct access to Beijing ignore Hong Kong's public opinion and rely on Beijing's influence to solve Hong Kong's internal problems. Chairman LAU, do you think that this will be a blessing to the people of Hong Kong?

I have heard recently that the Heung Yee Kuk wants to help the villagers make a collective will so that the rights of inheritance will be along the male line. I would not like to see any villager make such a will under duress from his village or any organized bodies. If anybody does so under duress, he does so against his own free will.

Mr President, Mr Andrew WONG is a respected scholar. However, this time we are disappointed. He is strongly against the amendment to the Government's original Bill. I cannot make head or tail of his intention. Mr WONG always says that Miss Christine LOH's and the Government's amendments to the Bill is a crude way to change the traditions and customs of the villagers. However, Mr WONG has never mentioned anything about the fact that the female indigenous residents have been crudely treated for many years by unreasonable traditions and unreasonable shackles. Therefore, I would like to ask Mr WONG: Whose side are you on, the oppressor or the oppressed?

Mr President, Mr TAM Yiu-chung cited an example of people eating with their hands or chopsticks. I agree that we should not make any law to force people to eat with chopsticks. Every person is welcome to eat in whatever way he likes. We should not restrict his freedom. However, the issue of the succession rights to land of the indigenous residents of the New Territories is not the same as the issue of eating with hands or chopsticks. The difference is that a person eating with his hands or chopsticks does not affect the freedom or

the rights of other people. Since the present proposed amendment affects the rights of some people, we have made it a legislative issue. Mr TAM has said that it is a "domestic matter". There are many kinds of domestic matters. Watching television is a domestic matter and watching the World Cup is also a domestic matter. But suppose a parent beats a child with a cane, then with a club and then ties him with a chain. Can we still say that this is a domestic matter?

Mr President, lastly, I would like to comment on some strange behaviour and opinions of Miss Emily LAU, whom I respect. After the assault incident of 22 April, the Legislative Council discussed whether a planned visit to the villages should be held on Saturday as scheduled. Miss LAU at first said that she would not participate. Then, after the Heung Yee Kuk Chairman, Mr LAU Wong-fat, said that he would participate, she said that she, too, would participate. Miss LAU's changing her mind in this manner gave people the impression — note that I use the word "impression" — that Mr LAU's protection emboldened her to visit the places where indigenous residents live. It has very bad social repercussions. People will ask: How dare the general public visit the villages without thinking twice if Miss LAU, a brave Legislative Council Member with steadfast democratic principles, is afraid to go there until Mr LAU affords her protection? More importantly, women living in the closed villages lead their life in the village every day. If they know that even the courageous Miss LAU is afraid, how can they find the courage to stand up and righteously express their different opinions in front of the public and their village representatives? This shows that influence means everything and a person of influence can disregard the law and is above the law.

At a meeting to exchange views with the Heung Yee Kuk, Miss LAU proposed that a referendum should be held among all the indigenous residents. This proposal, in my opinion, is wrong. It actually defeats the legislative intent of the Bill. Human rights are basic rights. In many cases, they protect the rights of the minorities. Issues relating to human rights cannot simply be addressed by a referendum. If issues relating to human rights, such as the capital punishment issue and the Vietnamese boat people issue, are put to a referendum, the certain outcome will be that capital punishment should be restored and that the Vietnamese boat people should be towed in their boats into international waters. The process of holding a referendum takes a long time. I believe that, if there is to be a referendum, the present Bill will not be enacted even by the end of this year.

Mr President, I hope that the amendment Bill will be passed today. This will be an achievement of the past year's hard work and the steadfastness of our brothers and sisters who support equality between men and women. I have observed a few things in this incident and I would like to share them with my honourable colleagues and I hope that you will reflect on them. In every social movement or social issue, there are bound to be people who work better and are more dedicated and hardworking, while some others are just mediocre. Later, a few individuals will become the principal characters of the social movement or

social issue. It is a common phenomenon. In the movement for democracy, the democrats, Mr Martin LEE and Mr SZETO Wah, as well as Miss Emily LAU, whom I respect, are such characters. They have gradually become the principal characters of the movement. However, this does not mean that others have no roles to play. We all share one ideal. Only when we work together and carry out our own duties: only when we are united and support each other, can we have the chance to achieve a common goal. The enactment of today's Bill will not be due to any particular individual. It will be due to the concerted efforts of the many courageous female indigenous residents, women's groups, political parties and democratic groups and individuals.

Mr President, I would like to say one thing from the bottom of my heart. One does not have to be the center or the principal character of everything. If one cares too much about whether he is at a primary or secondary position, he will easily get out of line and become strange in behaviour and speech.

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

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, today I would like to respond to some points and to give my personal views.

First of all, I would like to respond to the Honourable TAM Yiu-chung's comments. Mr TAM claimed that the support or otherwise for the amendment to the New Territories Land (Exemption) Bill was not equivalent to the support or otherwise for the principle of gender equality. In so saying, he was only evading the question. It is plain that there are many different aspects embodied within the concept of gender equality. The single issue of equal succession rights between the sexes is of course not the whole idea of gender equality, but just one of the components. Mr TAM was dodging the issue by not supporting this component of sex equality. He said he would abstain, and yet in the same breath he claimed to be a supporter of gender equality.

In fact, it is a bit like double-dealing, that is, trying to gain the reputation of upholding sex equality without making any efforts or paying any price. Is it too perfect a strategy? If Mr TAM is not a fellow supporter of empty slogans, he should realize the ideal of gender equality by supporting the amendment to the Bill today. To realize this ideal, one should speak for the badly-humiliated women in the New Territories where male dominance over female is prevalent and, in the spirit of upholding justice, should support the amendment to the Bill today, thereby according equal succession rights to both sexes. I do not think that dodging the issue is an effective solution, neither is abstaining from voting. One is being too clever by half, attempting to please everyone else while having to heed the advice of the Chinese side. Sometimes the loss outweighs the gains because in this process, one will put aside one's principle and put justice out of one's mind.

Mr TAM also said that it was not easy to change social customs. Of course it is not easy. The analogy of chopsticks and hands, which has been used by many people earlier, points out that we should not force others to use either chopsticks or hands when having their meals. This analogy is misleading because to eat with either chopsticks or hands is just a means of taking in food. It does not matter at all. But there comes the problem if we allow only men to eat but not women. According to the Chinese side, to have food to eat means human rights. Would it not be an infringement upon the human rights of women if they were not allowed to eat? Applying this case to the succession to land, that is, if we allow only male members of the community to succeed to property while women are denied this succession right, how can we say that we are practising sex equality? We should not mix up a matter of principle with a matter of technicality. Using chopsticks or hands is a technical issue but equal succession rights between the sexes is a matter of principle. Mr TAM's attempt of mixing up the issue by blurring the picture is also an evasion. There is no point in so doing.

Mr TAM then came to the conclusion that the spirit of a democratic society is respect for the minority. It is only half-correct because at the time when we are respecting the minority, we should not allow the minority group to classify their people into noble and humble classes in terms of their sex, nor should we tolerate the minority group allowing their male members to enjoy special privileges while the women are deprived of their basic human rights, including equal succession rights. A democratic society has to respect the minority but it should not be used as a pretext to connive at the enjoyment of prerogatives and to suppress human rights. Otherwise, it will only bring shame on democracy.

The Honourable Alfred TSO said that the amendment to the Bill was tantamount to the campaign of "eradicating the four olds", that is to say, uprooting the traditions. He implies in this argument that those who support equal succession rights between the sexes are Red Guards in the Cultural Revolution. There were numerous old traditions in China. Take the foot-binding custom for women in old China as an example. This notorious tradition brought life-long agony to women. If someone suggests that women be freed from the custom of foot-binding, is it an attempt to "eradicate the old customs", or is it "uprooting the traditions"? Whether or not a tradition should be abandoned lies in whether there are reasons in doing so and whether it is right or wrong to do so. Clinging to obsolete traditions will only subject women to continuous injustice and they will forever be haunted by the spectre of traditions, having no chance to see light or the end of the tunnel.

Mr TSO also said that the amendment has been intensely politicized, dividing the indigenous community, polarizing men and women as well as splitting up the Councillors, and harmony is no longer maintained in the New Territories.

Mr President, the ultimate aim of striving for gender equality is to rationalize and humanize our society, so that people are not classified into two classes and human rights are not categorized into two grades by reference to sex or geographical locality. This is a very humanized advancement. If the prerogatives enjoyed by men are built upon the agony and grievances of women, what is the use of having such a "society" with such "harmony" in such a "geographical locality"?

Mr President, each of us has a mother, most probably a wife (of course I am talking about men) or even daughters. When we are enjoying and supporting the prerogatives of men, how can we face our mothers, wives and children with complete peace of mind? How can we not suffer from the twinge of conscience?

I remember that the Honourable LAU Wong-fat made a very impressive remark on the television, which goes like this: "Words of truth at all times firmly stood." I would like to add one more sentence after it: "Words of truth at all times firmly stood, grace of ease at my heart firmly rooted." After making this speech, my heart is really at ease. I am sure I will have a sound sleep tonight.

MR ALBERT CHAN (in Cantonese): Mr President, I speak in support of the amendments to the New Territories Land (Exemption) Bill and the amendments by the Secretary for Home Affairs. The New Territories Land (Exemption) Bill will enable women in the New Territories to enjoy equal succession rights with men. Members of this Council, or members of a legislature, should have felt happy and encouraged to amend an outdated and unfair piece of legislation, but I have not experienced such sentiments during this legislative process because the principle of equality between men and women, a principle which seemingly should have everybody's support, has been opposed and obstructed by many members of the community including some Members of this Council.

Having been a district board member in the New Territories for 10 years, I do know a little bit about the New Territories as my constituency — New Territories South — has covered nearly one third of the land of the New Territories. It is within expectation that a number of male inhabitants in the New Territories will oppose this amendment because I have seen how the male inhabitants brutally and unfairly treated the female inhabitants in many walled villages in Tsuen Wan and the outlying islands. However, what surprises me somehow is that some female indigenous inhabitants are also opposing the amendment. This reminds me of what Mr YIN Haiguang said about the Chinese society being one of slave mentality. I believe that this honourable scholar must have some reasons to support his research, otherwise he would not have said that without any supporting reasons. I think that the Government has to continue to step up its efforts in education on democracy in Hong Kong in the future.

Many Members of the United Democrats of Hong Kong and the Meeting Point have already talked about the reasons for supporting the amendments to the Bill, so I will not be repeating them. I only want to talk about some of my feelings because I have taken part in the entire process of the Bill's scrutiny, have held meetings with many women groups, and have visited some of the villages in the New Territories and discussed the problem with the inhabitants there.

I would first like to talk about what Dr TANG Siu-tong said last week when querying Miss Christine LOH about "one living in the barbarians' lands will not have his heart in the Han camp". Mr Alfred TSO has also said just now that Miss LOH, having grown up abroad, does not quite understand the Hong Kong situation. I wonder what these two Members have got to say about the situation that male indigenous inhabitants who were born overseas can have succession rights and small house entitlement. The principal aim of the amendments to the New Territories Land (Exemption) Bill is to allow Hong Kong women, that is, women of the Han race, to have equal succession rights with men. However, it is not those proclaiming themselves as "having their hearts in the Han camp" who have showed concern about and supported this amendment, but a Miss Christine LOH, said to have grown up abroad. What is in fact the meaning of "having one's heart in the Han camp"? I have asked Mr SZETO Wah what "Han camp" means. He told me that "Han camp" means the imperial family of the Han Dynasty. What point is there now in 1994 in saying "having one's heart in the imperial family of the Han Dynasty"? Does it mean a desire to revive the rule of the Han Dynasty? Nor do I know what the point is now of restoring the Han Dynasty. Is it because the indigenous inhabitants of a certain village in the New Territories have relations with the Han throne, or that there is, among these inhabitants, an heir to the throne who is the descendant of the imperial family of the Han Dynasty? However, if one is to restore the Han Dynasty, then one should not support the Ching Dynasty. I remember when I was small, I read it in the books that people wanted to "overthrow the Ching Dynasty and restore the Ming Dynasty", because the Ching Dynasty did not belong to the traditional or mainstream ancestries of the Chinese race. Some people, especially those from the Heung Yee Kuk, have called for the preservation of customs. But what they wish to preserve are customs under Ching law. How can one in support of the Ching Code possibly have his heart in the "Han camp"? Perhaps, Dr TANG Siu-tong, who is living in Hong Kong, has his heart in the Ching Dynasty. Should that really be the case, Dr TANG may well shave his head and start braiding his hair tomorrow in order to support the Ching Code and Ching customs.

Mr President, I would now like to turn to the pressures and hardships faced by women of the walled villages. Many female indigenous inhabitants have, in the many meetings with Members of this Council, complained to us in tears about their hardships. I was also saddened by their complaints. Members who have listened to the tearful complaints of the female indigenous inhabitants must have lost their conscience if they still oppose today's amendment. In the last few months, we have seen the brutalities of many male indigenous

inhabitants. Mr SZETO Wah has just now talked about some of them. That the male indigenous inhabitants can overtly say and do something so brutal now in 1994 when society is governed by the rule of law has made me wonder what oppressions the female inhabitants might have met with in the last century or so when the walled villages were dominated by male inhabitants. Members of this Council have come under so much pressure over the last few months that some of them have somehow changed their stance. Mr LEE Wing-tat and Mr WONG Wai-yin have already talked about this point, so I will not be repeating it. If Members of this Council, sitting comfortably in this air-conditioned Chamber, should change their stance simply because of the pressure from some comments expressed, one can imagine how great have been the pains suffered by the female indigenous inhabitants under the oppressions and persecutions by the male inhabitants in the dark years of the last century or so.

There is another point which I would like to make and which several Members have mentioned, that is, the notion of "protecting one's village and clan". I find this notion very satirical. As I understand it, in many indigenous village in the New Territories, quite a number of the houses have already been sold, many through the arrangements by the village heads or village representatives.

Many village heads, especially those of the villages in Tsuen Wan, do not live in the villages, despite their capacities as heads or representatives. I have recently asked some officers of the Lands Department about the sale of resite houses. As Mr WONG Wai-yin has said just now, about 20% of them have been sold. Some officers of the Lands Department have even told me in private that in the resite villages in Sai Kung and Tsuen Wan, around 80% of the titles of the houses there have been transferred. In such circumstances, how are these villagers supposed to "protect their village and clan"? Such title transfers of resite houses have been arranged by male title holders. Up till now, because of the small house entitlement provisions, the titles of all resite houses are possessed by male indigenous inhabitants. Those who sell these properties and genuinely damage the clan traditions of the villages are exactly those male inhabitants proclaiming to "protect their village and clan".

Mr President, 83 years have elapsed since the 1911 Revolution, but there are still people who want to retain the customs in the Ching Code. I am distressed and disappointed. Many people have said that they are supportive of equality between the sexes. But when it comes to taking actions, that is, amending this Bill, some of these same people have said that they will abstain from voting, while some others voting against the amendment. To use the analogy drawn by Mr LEE Wing-tat earlier on, these people are suffering from a split between their minds and actions. I hope that these Members can conscientiously ask themselves whether they are genuinely in support of equality between men and women, and whether they know what equality between men and women is. These Members who have said that they are supportive of equality between men and women but are voting against today's amendment are just like an autistic child whom I met when I was working as a social worker.

This child would sit there swaying from side to side for hours. When you talked to him, he would tell you that he had just been to many different places and done many things, but in fact we could see clearly by his side that he had just sat there swaying in the past several hours. I hope that those Members who have expressed their support to equality between men and women but are voting against today's amendment can think about what has caused the split between their minds and actions. What illness are they suffering? I also hope that those Members who are medical practitioners can give us an answer.

DR TANG SIU-TONG (in Cantonese): Mr President, today is the 14th day of the fifth moon according to the lunar calendar. It is mid-summer. The Dragon Boat Festival has just passed. It is also the time to commemorate QU Yuan's tragic suicide by drowning himself in the Miluo River. To the 700 000 indigenous residents of the New Territories today is a dark day too, for might is about to prevail over right.

Outside the Legislative Council building, nearly 1 000 people are staging a sit-in in protest against the New Territories Land (Exemption) Bill introduced by the Government. I share their anger and anguish. I am human and I have feelings. Just as Mr SZETO Wah has said just now, human beings have feelings. As to the distorted interpretation of the saying by someone that "as one were not the fish, how can one experience the joy of the fish?", I feel that what he did was a rape of the wisdom of our ancient sages. If verbal threat of rape is considered to be a crime, then what about mental rape?

As Mr Alfred TSO noted a moment ago, the Housing Authority committed an act of administrative negligence when developing Home Ownership Scheme (HOS) housing in the New Territories, with the result that women's rights of succession to more than 300 000 HOS housing units were not recognized. Instead of admitting its negligence, the Housing Authority is now trying to divert people's attention to elsewhere by raising the issue of equality between men and women and pointing up the flaws of the New Territories Ordinance. Aided and abetted by the Government, some people with ulterior political motives are flaunting the banner of democracy and freedom and shouting the slogan of fairness, justice and equality, with an aim to attack the age-old fine tradition of the clan system which has a history of over a century in Hong Kong. Their purpose is to disturb the peace in the countryside. Theirs is an insidious way to achieve a disguised ignoble end.

The Government at first intended to introduce a Bill to solve the problem of land succession for the 300 000 property owners in the New Territories. There is nothing wrong with that objective. The Government also said then that it would not support any amendments to the Bill. Alas, while these words are still fresh in our memory, the Government has made an about-face. Who can stand such bad faith? The Government's credibility has gone down the drain. Must officials be chameleons? I pity the Secretary for Home Affairs. He already lost face over the amendments to the New Territories Ordinance. Now

he has been given another slap in the face over the amendment to do away with discrimination. I wonder how many more blows he can take.

Last week, when this Council was debating town planning, somebody said that the public must be consulted even on the use of the uninhabited land in the new towns. Today, however, the 700 000 indigenous residents of the New Territories are denied the right to make decisions for themselves concerning the disposal of the land on which they are living. Where is justice? This is actually an attempt to manipulate public opinion. Still, I want to remind the Government of a Chinese saying: "If people support you because they admire your virtue, you are a popular ruler. If people support you because they dread your power, you are a tyrant."

As Mr TAM Yiu-chung noted a moment ago, it is impractical to legislate changes in customs and traditions. Hong Kong will return to China's embrace after 30 June 1997 and will then remain unchanged for 50 years. Hong Kong can count on this for no other reason than that assurances have been given in the Sino-British Joint Declaration and the Basic Law. The Basic Law clearly lays down the rights and interests of the indigenous residents of the New Territories. Those in favour of the amendments to the Bill before us are deliberately taking this opportunity to lash out against the Basic Law. I deeply regret this. Honourable colleagues, Hong Kong is lucky enough to be guided in the "one country, two systems" concept. Thanks to this concept, our present life style will continue for another 50 years. If we haphazardly introduce China's laws to Hong Kong without careful planning, thus creating a "one country, one system" situation, this will really be bad for the people of Hong Kong. Therefore, I hope that honourable colleagues would think twice before casting their votes.

We are now only three years and eight days (not months) from Hong Kong's return to China on 30 June 1997. Yet the Government has gone back on its words and is now trying, through this Council, to change a thousand-year-old custom practised by the indigenous residents of the New Territories. As Mr TSO noted, the motive is very clear. I am afraid, however, that no amount of lobbying can change the Government's mind. To make matters worse, some people are fanning the flames. Why do they have to do so? This situation reminds me that a poet once said, "The bean in the pot asks the beanstalk burning in the stove: Why do you want to hurt me so badly?" It is no wonder that the voices of discontent of the indigenous residents of the New Territories never go away. Their anger and anguish are obvious in their facial expressions and from their words and actions.

Just now, some Members have said that the Heung Yee Kuk is more powerful than the police. The Heung Yee Kuk is flattered. The fact that so many people respond to the Kuk's call is a manifestation of the solidarity of the clansmen. We are grateful to Mr WONG Wai-yin for thinking so highly of the Heung Yee Kuk.

Miss Christine LOH just now talked poignantly of her personal background. I want to tell her, "A good son does not mind whether he can inherit any land from his father. A good daughter does not mind what kind of dowry her father gives her." I hope that Miss LOH will draw inspiration from this. *(Laughter)*

On a previous occasion, I said in my speech, "Lady Zhaojun was married off to a chieftain of a tribe in barbarian territory. How many people in such plight could still cherish the Han court?" Afterwards, seeing me in the lift, Mr Albert CHAN asked me what the quote meant. But just now he said he had already asked Mr SZETO Wah about its meaning. Mr SZETO, being so erudite, had certainly told him what I meant. However, I have some words for Mr CHAN and I hope that he will think about it. These words are: "ZHUANG Xi, after rising to prominence, wanted to share his joy with his clansmen in his faraway home town." I hope that he will go home and look up the meaning. That is to say, we in the New Territories .....

MR ALBERT CHAN: Can I ask Dr TANG to elucidate what he means by what he has just said?

PRESIDENT: It is up to you, Dr TANG.

DR TANG SIU-TONG: I do not want to say any more.

DR TANG SIU-TONG (in Cantonese): Mr Albert CHAN noted just now that many of us New Territories people were born and brought up in foreign countries. He asked why we came back. Actually, we simply follow some Chinese traditions and customs. We may be very rich or very successful abroad. Yet, when we grow old, we return to our home place. The saying is: "Return to one's home town when one is rich and successful." Even if we are not rich or successful, we still return to our home town, because that is where our roots are.

Mr President, the Bill is intended to undermine the solidarity of the clans in the New Territories and to undermine the ancestral rural traditions. Its enactment will have major repercussions for the residents of the New Territories. It will give rise to endless disputes. It will also bring about many domestic disputes and pit people living in urban areas against those in rural areas. Stability and prosperity in the run up to 1997 will be affected. Therefore, I urge honourable colleagues to think twice before they cast their votes.

Mr President, these are my remarks. I oppose any motion to change the traditions and customs of us indigenous residents of the New Territories through strong-arm tactics.

MR ANDREW WONG (in Cantonese):

Background

Mr President, the New Territories Land (Exemption) Bill seeks to clarify the ambit of the 1910 New Territories Ordinance (Cap. 97). It specifies that the Ordinance shall not be applicable to properties or Home Ownership Scheme flats in the new towns, and shall only be applicable to (1) New Territories rural land and (2) New Territories land owned by "Tso" or "Tong." This is the original intent of the Government when it first introduced the Bill. It had my full support.

The Honourable Christine LOH, Peggy LAM and Miriam LAU have vied to move amendments to the Bill, to make the New Territories Ordinance applicable to all New Territories lands except the properties owned by "Tso" or "Tong."

These amendments are strongly and firmly opposed by the Heung Yee Kuk and large numbers of indigenous inhabitants, male and female alike. The Government not only did not oppose the amendments, but rather went back on its words and volunteered to consolidate all these amendments, to be moved in the name of the Government for amending the Bill introduced by the Government itself. There are indications that the Heung Yee Kuk and many indigenous inhabitants of the New Territories are prepared to take various actions, which may or may not be peaceful, to fight to the end. I do not support violence. However, in the final analysis, it seems that their actions are occasioned by the Government.

Mr President, I do not intend to refute the honourable colleagues' arguments one by one. Nor do I intend to respond to the abusive, sarcastic and smearing words of the colleague who spoke just now. I just want to move an alternative amendment to the Bill, and I hope that my amendment will be considered seriously and be endorsed.

The purpose of my alternative amendment is to further clarify that the New Territories Ordinance (Cap. 97) shall be applicable to (1) New Territories rural land still owned by indigenous inhabitants and (2) New Territories land owned by "Tso", or "Tong" formed by indigenous inhabitants. I believe my amendment provides a reasonable interpretation of the original intent of Cap. 97, the original intent of the Administration when formulating the Ordinance in 1910.

My amendment is a modification of section 9 of the New Territories Leases (Extension) Ordinance (Cap. 150). It is the simplest amendment. The amendment that I am now moving only expounds the simple wording of clauses 2 and 5.

(1) Redefine the term "rural land", so that it can be interpreted as land owned by villagers descending through the male line. This is the wording used in section 9 of the New Territories Leases (Extension) Ordinance and in Annex III of the Sino-British Joint Declaration.

(2) Add into the clause the wording of section 9 of the New Territories Leases (Extension) Ordinance as well as their interpretations.

(3) Delete subsection (2) of the clause and substitute by another provision to provide that, if at any time rural land is conveyed to a person who is not an indigenous inhabitant and a legal successor in the male line, such land shall cease to be regarded as "rural land" even if the land is later conveyed to an indigenous inhabitant; and

(4) Add a subsection (3) to the clause, to provide that in any proceedings as to whether or not the land is rural land, a certificate issued by the Director of Lands shall constitute a convincing proof.

The above four points amends clause 2. I also propose to amend clause 5 to clarify that the New Territories Ordinance is applicable only to the "Tso" or "Tong" formed by indigenous inhabitants. If at any time non-indigenous villagers join these "Tso" or "Tong" the New Territories Ordinance will no longer apply.

Mr President, in moving the alternative amendment, my purpose is not to achieve full equality between the two sexes in the succession to New Territories lands. I do not intend to repeat the arguments that I have made before. (1) Treating men and women differently does not necessarily constitute discrimination. (2) Treating men and women differently is not a violation of the International Covenant on Civil and Political Rights or the Bill of Rights Ordinance. (3) Treating men and women differently is a reasonable arrangement in this particular case to maintain the clan system or the family system of the indigenous inhabitants. This is because most of the properties owned by the indigenous inhabitants are not registered in the names of "Tso" or "Tong."

A few nights ago, I attended the show "Michael HUI keeps you company" (Miss LOH was also present). Michael said that the Pope cannot be a woman. According to the doctrine of Catholicism, women cannot become fathers or priests. In the light of the arguments presented by the Councillors, the Roman Catholic Church clearly violates the principle of equality between men and women. But I believe that the practice of the Roman Catholic Church has its own rationale.

Although my amendment may not bring about total equality between men and women in their rights of succession to rural land, it will restrict the application of the New Territories Ordinance (Cap. 97) to a limited area of well-defined land, owned by a group of well-defined people who are limited in number. Also, my amendment will ensure that the land to which the New Territories Ordinance applies will become less and less as time passes. My amendment will offer another choice to attaining the same purpose other than taking the initiative to apply for exemption and to make a will.

Further reform

Mr President, I would like to make a further proposal. I think that, if the Bill is amended as I proposed and is enacted, the Government should expeditiously (for instance, within six months) consider amending the New Territories Ordinance (Cap. 97), so as to retain by legislation the customary rights now enjoyed by female indigenous inhabitants.

My initial thought is to add a Part III to the New Territories Ordinance, empowering the courts to enforce the customary rights of female indigenous inhabitants. This is because although female indigenous inhabitants are entitled to these rights under the existing customary law, they are often deprived of such rights by male indigenous inhabitants. The amended Ordinance will empower the courts to enforce the entitled rights of female indigenous inhabitants, which include the right to receive alimony and the right to get dowry. These rights of women as well as the inheritance right of New Territories rural land and other obligations should be consolidated into a new set of Rules (not the Qing Code or the "different practices in different villages"). This new set of Rules must be endorsed by the Heung Yee Kuk and the Secretary for Home Affairs, and the latter has the final power to have it enacted. In addition, section 13 of the New Territories Ordinance should be amended as appropriate, so that the Rules may be adopted to solving disputes over the problem of succession to New Territories land.

As the Rules will be applicable uniformly to all villages in the New Territories, the situation of "different practices in different villages" will be eliminated. Therefore, consideration should be given to incorporating into the Rules all other rights which are not presently enjoyed by all female indigenous inhabitants, such as the right to "share the roast pork" and the right to "share the proceeds from communal property".

Furthermore, the Administration should amend or delete section 17 of the New Territories Ordinance, section 75 of the Probate and Administration Ordinance (Cap. 10) and section 11 of the Intestate's Estate Ordinance (Cap. 73) if such need arises, so as to delete all provisions which deprive female indigenous inhabitants of their rights.

I ask my honourable colleagues to give serious consideration to my further proposal and to support it.

Conclusion

Mr President, it is undoubtedly our common goal to seek perfection, yet whenever I think or pray about this, the words of David HUME invariably come to my mind. In the 16th works, of his collected works, he says, "..... it is always good for us to know, in everything that we do, where perfection stops. For this enables us to make things, for instance, the structure or form of government, as near perfect as possible through mild changes and reforms which do not hit society too hard." The ideal of equality between men and women can also be handled in such a manner. Hong Kong has lately been compared to a living plant. If this plant is sick, should we treat it or uproot it altogether?

Mr President, with an earnest heart, I support the resumption of the Second Reading of the Bill. In addition, I implore my respectable colleagues to look farther ahead, to oppose the amendments moved by the Government and to support the more reasonable amendments that I have moved.

MR JAMES TO (in Cantonese): Mr President, I shall not repeat the many suggestions made by Members just now. As we have promised Mr Andrew WONG on the Bills Committee to respond to his amendment, I would now avail myself of this opportunity to express some of our opinions.

Mr Andrew WONG thinks that his amendment would generate progressive changes. He thinks that the problem of the rights of succession will go away as long as indigenous residents continue to sell their land and property. There will come a time when the succession rights, which entails bequeathing land only to male heirs according to the long-established custom, will sooner or later become a non-issue.

In fact, according to the New Territories Ordinance which was enacted in 1910, indigenous villagers can choose to bequeath land by drawing up a will, that is, to opt out of the common practice, instead of following the long-established custom. I think it is excusable that people in 1910 bequeathed their property in line with the long-established custom. However, as gender equality has become a social norm nowadays, people should handle the question of succession rights in the light of this norm.

If the law is a reflection of our social norms, then it should provide for succession of land in the New Territories, in cases where a person dies intestate, by his offspring, male or female.

Afterall, 1910 is a long, long time ago. Even the clan system in traditional Chinese society has since undergone radical changes, much more so for a modernized city like Hong Kong.

I think Mr WONG's proposal of writing all the established custom in relation to women's social status into the law regressive. Enacting legislation to maintain the custom relating to the provision of dowry, for example, will not in any way help to advance our society.

Besides, Mr WONG's suggestion that any amendments to the law in relation to the custom and rights for that matter should only be made after securing the consent from the Heung Yee Kuk and the Secretary for Home Affairs is actually a proposal to hand certain powers to the Secretary for Home Affairs and the Heung Yee Kuk. I must point out that it should be the legislature to decide whether the rights of the people should be expanded or curtailed, not the Heung Yee Kuk or the Secretary for Home Affairs.

SECRETARY FOR HOME AFFAIRS: Mr President, I am most grateful to the Honourable Edward HO and his colleagues on the "Bills Committee to Study the New Territories Land (Exemption) Bill" for their advice and the valuable time they have spent in examining the Bill.

The New Territories Land (Exemption) Bill was introduced into this Council last November mainly to address the very strong public concerns expressed then, particularly by non-indigenous owners of land and property in the New Territories, about the effect of the application of the New Territories Ordinance on succession to their land or property. Briefly, section 13 of the New Territories Ordinance provides that the court shall have power to recognize and enforce any Chinese custom or customary right in any proceedings in relation to land in the New Territories. The public was concerned that should an owner of land or property in the New Territories die intestate, succession to the land or property would be dealt with in accordance with Chinese custom, that is, male-line succession only. Government recognized the very genuine concern expressed by the public on this issue and hence the introduction of the New Territories Land (Exemption) Bill.

However, in December 1993 this Council passed a motion urging the Government to, *inter alia*, make efforts in promoting equality between the sexes and to introduce the United Nation's Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) into Hong Kong as soon as possible. In January this year, after the conclusion of the consultation exercise on the Green Paper on Equal Opportunities for Women and Men, the Administration received some 1 100 submissions. More than 90% of these called for the introduction of legislation to remove the inhibition on female succession to land or property in the New Territories in case an owner dies intestate. Furthermore, as some Members have pointed out, in October last year this Council already passed by a large majority a motion urging the Government to ensure equality of succession rights through legislative means.

Against this background, it is understandable that Members of the Bills Committee sought to address the wider issue of providing for gender equality in the inheritance of land in the New Territories in the context of this Bill. It is also against this background that the Administration, having taken note of the views of the community as expressed through the Green Paper consultation and through Members of the Bills Committee in this regard, decided to respond positively to the proposal made by the Honourable Christine LOH to extend the original scope of exemption under the Bill to cover rural land as well.

In coming to a final decision in this regard, the Administration very carefully took into account the very strong reactions of the Heung Yee Kuk and New Territories villagers on the question of equal intestate succession rights between the sexes. Members of this Council and myself held many meetings with the Kuk and its members to explain the clear and specific intention behind the proposal. As a result of these meetings and briefings, there should be no misunderstanding on anyone's mind that the proposal is not intended to force indigenous villagers to bequeath their land or property to daughters only, or to sons and daughters equally. The intention is simply to provide for an equal opportunity for women to succeed to land or property in the New Territories if the owner dies intestate. This can be achieved by the extension of the application of the Probate and Administration Ordinance, the Intestates' Estates Ordinance and the Deceased's Family Maintenance Ordinance to land in the New Territories. Villagers wishing to pass their land or property to their male heirs can of course do so through the making of a will.

The Kuk and indigenous villagers in the New Territories are also concerned that other customary rights might also be adversely affected. I have come to appreciate the extent and depth of this concern in my various meetings with the Kuk and the New Territories villagers. However, their fear is not well-founded as the Bill does not give rise to any such effects. The Committee stage amendments which I will move later this afternoon have been specifically drafted to deal with land succession only, thus retaining the effect of section 13 of the New Territories Ordinance in proceedings other than land succession matters.

I would also like to take this opportunity to reiterate that the Administration has no intention of changing other customary rights currently enjoyed by indigenous villagers. Let me be more specific. The rates exemption for village houses occupied by indigenous villagers and their immediate family members is provided for in the Rating Ordinance (Cap. 116). The rent concession for rural holdings held by indigenous villagers is provided for in the New Territories Lease (Extension) Ordinance (Cap. 150). The Administration has no plan to amend the relevant provisions in these Ordinances to change the *status quo*. Other customary rights which are part of the Government's established policies will likewise remain unaffected. For example, indigenous villagers and locally based fishermen would continue to be allowed to be buried in the New Territories within certain approved areas outside gazetted cemeteries. As regards the small house policy, it is an issue of great concern to

the New Territories indigenous villagers and there are different dimensions to this policy, with implications about land and housing. In this regard, we need to exercise caution so as not to be precipitated into action against that policy simply by the proposed extension of CEDAW into Hong Kong. The Administration will need to give a thorough and urgent examination of this complex policy issue so as to find a way of dealing with this matter which would be acceptable to all parties concerned and without compromising the principle of gender equality. With this in mind, we have already indicated that we intend to seek the agreement of our sovereign powers to reserve under CEDAW the right to maintain the *status quo* for the time being.

In the course of studying the Bill by the Bills Committee, the Honourable Christine LOH, Peggy LAM, Miriam LAU and Anna WU have either proposed amendments to the Bill or made suggestions on the way to address the issue of customary succession. I am most grateful to them for their valuable contributions. The Committee stage amendments which I will move later take into consideration all their suggestions. The Bill, together with the Committee stage amendments, will provide for women to have the same rights to inherit land or property in the New Territories in the absence of a will, as in other parts of Hong Kong.

Mr President, I recommend the Bill to Honourable Members.

Question on Second Reading of Bill put.

Voice vote taken.

DR TANG SIU-TONG: I call for a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote?

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

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Martin LEE, Mr PANG Chunhoi, Mr SZETO Wah, Mr Andrew WONG, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr

Simon IP, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr Henry TANG, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK and Mr James TIEN voted for the motion.

Dr Philip WONG and Dr TANG Siu-tong voted against the motion.

Mr TAM Yiu-chung and Mr CHIM Pui-chung abstained.

THE PRESIDENT announced that there were 48 votes in favour of the motion and two votes against it. He therefore declared that the motion was carried.

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).

PLACES OF PUBLIC ENTERTAINMENT (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 25 May 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).

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 1994

Resumption of debate on Second Reading which was moved on 25 May 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).

PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) (NO. 2) BILL 1994

Resumption of debate on Second Reading which was moved on 25 May 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).

REGIONAL COUNCIL (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 25 May 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).

URBAN COUNCIL (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 25 May 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).

CRIMES (AMENDMENT) BILL 1994

Resumption of debate on Second Reading which was moved on 1 June 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).

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1994

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

Question on Second Reading proposed.

MR ANDREW WONG: Mr President, the Bills Committee is in support of the basic principles of the Bill, which aim at enhancing the effectiveness of the Corrupt and Illegal Practices Ordinance. Members were nevertheless concerned about the practical application of the proposed provisions and have highlighted examples to ascertain whether the provisions would meet the intended objective. I shall mention briefly some of these examples.

First, on the proposed section 16(1B) which provides for "honest belief" to be a defence regarding a person's statement about a candidate, Members cited a possible scenario in which a person distributes copies of newspaper cuttings containing false information about a candidate, and claims that he believes the press statements are true accounts of the candidate. On this, the Administration advised that the proposed section 16(1) would be sufficient to catch such a person. It will be open to the defendant to use the honest belief provision as his defence, although it will be for the court to decide whether such defence is sustainable.

A second example involves the proposed section 19(3A) regarding performance reports of incumbent candidates. It is proposed in the Bill that any performance reports published by an incumbent Legislative Council, municipal council, or district board member running for a seat in the same tier of representative government he is currently serving, and which are distributed during the period from the commencement of nomination of candidates up to the election day, should automatically be regarded as election material and count towards the incumbent's election expenses.

Members pointed out that an incumbent of more than one tier of representative government may publish performance reports during the specified period in his capacity as member of another tier of representative government. On the other hand, a candidate other than incumbent may publish promotion materials in the name of a district organization, and it is uncertain as to whether these would count towards the candidate's election expenses.

The Administration explained that the proposed section 19(3A) is a balance between the need for an incumbent to be accountable to his constituency and not giving him unfair advantage over other candidates. Any published materials to promote or procure candidacy should count towards election expenses, irrespective of whether they are published in the name of district organizations or during the specified period. In case of election petition, each case will have to be decided by the court in the light of individual circumstances.

Members further enquired whether the proposed section 19(3A) would be able to cover the situation in which an incumbent candidate publishes or distributes performance reports before he is formally nominated. The Administration advised that the proposed section is a deeming provision which applies to materials published or distributed between the dates for nomination of candidates and the election day. Hence an individual cannot avoid the provision by spending heavily up until he is nominated but nevertheless delaying his nomination until, say, the last possible day.

On the proposed amendment to section 26(c) which would allow an agent or other person to apply for exemption from liabilities of illegal practice on behalf of another person, Members expressed the view that the individual making the application should first obtain the consent of, or inform, that other person. In response, the Administration advised that there is already sufficient safeguard against abuse by the requirement of notice. Besides, a person who may be affected by the judgement of the court can always apply to be joined as a party to the proceedings to protect his own interests.

In the course of deliberation, Members sought clarification from the Administration on whether anonymous donations are permissible under section 29(2) of the Ordinance. On research into past records, the Administration confirmed that donations under $500 can be anonymous, whereas donations exceeding $500 would have to be declared with the names and addresses of donors as required in the statutory declaration forms and receipts. This requirement takes into account the express view of the Council taken back in 1991. Amendments will be made by the Administration at the Committee stage to put beyond doubt the legislative intent.

Members also raised concern about the treating provision in section 7 and enquired why no reference is included regarding the maximum meal expenses per head. The Administration explained that the essence of section 7 is not the amount of expenses involved, but whether the activity is "corruptly" provided.

Hence sumptuous meals to voluntary workers will be caught by the section if the meal is for the purpose of obtaining their votes, even if the expenditure has been declared as election expenses.

In the light of concerns raised by Members, the Administration will also be making some technical amendments to the Bill. Subject to these Committee stage amendments, Mr President, I support the Bill.

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).

LEVERAGED FOREIGN EXCHANGE TRADING BILL

Resumption of debate on Second Reading which was moved on 14 July 1993

Question on Second Reading proposed.

MR LAU WAH-SUM: Mr President, the Leveraged Foreign Exchange Trading Bill seeks to introduce a legal framework for the regulation of dealings in leveraged foreign exchange contracts in Hong Kong.

At present, companies offering leveraged foreign exchange contracts to retail investors are not subject to any form of government regulation. Under the existing practice, a client need only lodge a margin deposit with the company at a small proportion of the full contract value for the purchase or sale of a foreign currency. Such a contract, because of its leveraged nature, can result in high profit or severe losses on liquidation.

There have been frequent complaints from investors about malpractices by these companies. Malpractices, coupled with bad management, have led to the collapse of some of these companies, resulting in a number of investors losing their life savings. These malpractices could involve criminal offences and civil liabilities. However, it is difficult to prove that these companies have dishonestly or recklessly traded the client's account.

The Bill was introduced into this Council on 14 July 1993. A Bills Committee of 13 Members was formed and commenced scrutiny of the Bill on 3 November 1993. Altogether, we held 15 meetings, including nine with the Administration. We considered submissions from the trade, the legal and accounting professions and other interested organizations and met their representatives. We visited some foreign exchange trading companies. We also scrutinized the rules made under the Bill. As Chairman of the Bills Committee,

I would like to take this opportunity to thank my honourable colleagues in the Committee for the time and effort they put in the discussion, the Administration for their co-operation, the interested organizations for submitting their views and taking part in our deliberations and the staff of the Legislative Council Secretariat for their hard work in servicing the Committee.

Mr President, before I come to the main points discussed by the Committee, I would like to report first on the views expressed by Members on the objective of the Bill.

The Committee noted that the objective of the Bill, as supplemented by rules, is to offer adequate protection to investors in view of widespread complaints and malpractices in the market by regulating the retail end of the leveraged foreign exchange trading business. To achieve this objective, the Bill introduces a licensing scheme and at the same time, imposes a number of stringent requirements on leveraged foreign exchange traders. These attracted a lot of criticisms from the trade. However, having discussed in detail these stringent requirements together with the heavy penalties, which form the basis of the regulatory framework, the majority of the Members considered that they are reasonable and necessary to provide the requisite protection to investors.

Nevertheless, one Member expressed reservation that the Bill in its current form will not be able to achieve the above objective but will only encourage traders to take positions and act as principals to deal with their clients. In his opinion, there should be an exchange market where traders would only act as agents for their clients. Other Members agreed that this should be the long-term solution.

Now, I would like to elaborate on the three main issues discussed by the Committee. Firstly, the segregated trust account requirement. Some organizations expressed concern on the requirement for traders to pay clients' money into segregated trust accounts. They considered it unreasonable not to allow clients' money in segregated trust accounts to be used for operational purposes. The Administration explained that the rationale for this requirement is to protect and preserve clients' assets. It is the rule for all securities and futures trading in well regulated markets. Once the rule is broken, by allowing the trader to have access to such funds for its own operational requirements or for cross-financing other clients' trades, the protection afforded to the clients, particularly in the event of bankruptcy or liquidation, would be eroded. The majority of the Members were satisfied with the Administration's explanation.

The second major issue is the penalty system. Some organizations considered the level of maximum fine and custodial sentence as laid down in the Bill to be too high as compared with that in other odinances, such as the Banking Ordinance, the Securities Ordinance and the Commodities Trading Ordinance. The Administration explained that the level of penalty is intended to reflect the amount of risk faced by investors. Bearing in mind the seriousness of the complaints lodged in the past against leveraged foreign exchange traders,

it is necessary to have an effective penalty system against offences in order to achieve the deterrent effect. The Committee agreed with the level of penalty proposed.

Some organizations were concerned that the concept of collective responsibility contravenes the Bill of Rights (BOR). The Bill contains three types of collective responsibility clauses: those rendering all directors liable for offences committed by a licensed trader, which must be a company; those rendering all directors liable for offences committed by a director with intent to defraud; and those rendering all directors liable for offences committed by a director without intent to defraud.

The Committee accepted that directors should be held responsible for the acts of the companies which they control. The first type of clauses meets the criteria for justifiable strict and vicarious liability which, coupled with the due diligence defence, would survive BOR scrutiny. However, the second and third types of clauses are related to the dishonesty of individuals and should not impose vicarious liability. It would be fine if it could be proved that the other directors were parties to dishonest conduct, but the other directors should not be assumed to have consented to a single director's dishonesty. The Committee therefore agreed to delete the second and third types of clauses from the Bill. The Administration will propose amendments at the Committee stage.

The third major issue of concern is the financial resources requirement. Some organizations considered the minimum paid up share capital of $30 million and the liquid capital of $25 million as laid down in the Financial Resources Rules to be too high. The gross position limit set as 60 times the liquid capital and the net position limit set at $20 million for triggering off the 5% risk adjustment are impracticable and would unduly restrict the business of licensed traders. The Administration explained that as the risks inherent in leveraged foreign exchange trading are more significant than is the case with other financial service activities, the financial resources requirement will have to be set at a level higher than that currently applicable to securities and futures dealers. The substantial base capital requirement is to provide a cushion of assets to handle the risks involved. The actual liquid capital would be used to set a limit on gross open positions that a licensed trader may have, to ensure that he has sufficient funds to handle the level of activity involved. A gross position limit for 60 times the liquid capital will enable a licensed trader maintaining the minimum liquid capital requirement of $25 million to hold aggregate gross positions of $1,500 million. Counterparty risk is catered for by requiring margin from a client before he is allowed to trade, at the rates of 5% as initial margin and 4% as maintenance margin. These rates are based on studies of daily price fluctuations in actively traded currencies. In regard to position risk, it is considered that the minimum actual liquid capital requirement is sufficient to cover the licensed trader's net position up to $20 million. Exposures arising from net open positions above this level will attract additional capital requirement at 5% on the excess of the aggregate of the net positions to ensure that the trader is adequately capitalized to undertake such a level of activities.

Although the $20 million net position limit is considered by some organizations to be on the low side, the Administration explained that it is not prudent to allow licensed traders maintaining a minimum liquid capital to hold large net positions in view of the risk involved. However, if a trader comes up with additional liquid capital at the rate of 5%, as in the case of the margin required to be deposited by a client, it will be able to hold additional net positions at 20 times the additional liquid capital figure. After discussion, Members accepted that, for the sake of prudent risk management and protection of investors, there is a need for stringent financial resources requirement.

Finally, some organizations raised the point that there is in existence a class of "introducing brokers" who act purely as agents and do not take positions in their day-to-day business. As such, they should be subject to a separate set of financial resources requirement, such as lower capital requirement, having regard to their different risk profile. The Administration agreed to include in the Financial Resources Rules a definition for "introducing broker" and to adjust the level of financial resources requirement for this class of brokers accordingly. The Committee was satisfied that the concern was properly addressed.

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

MR ROGER LUK: Mr President, I am sure many of us have seen the motion picture Top Gun. We all admire Maverick for his incredible manoeuvres of the F-14 Tomcat, jet fighter. We also feel sorry when one fatal mistake during a training session cost Maverick the life of his partner, "Goose".

Like the manoeuvring of the Tomcat in dog-fights, foreign exchange trading is both risky and sophisticated. It is risky because positions are always mismatched; it is sophisticated because the forex market responds to too many factors too quickly. Leveraged forex trading is even riskier and more sophisticated. The lever would break if the load is too heavy to lift.

Forex trading is a "zero-sum" game as one player's gain is another player's loss. It is, therefore, a game for the professionals and leveraged trading is virtually a game for "top guns", the most sophisticated professionals. It is indeed astonishing to find so many people see themselves as "Maverick" and have never thought that they could well be another "Goose".

Forex trading has three types of inherent risks: first, currency risk arising from mismatched positions in assets and liabilities, including forwards and other derivatives; second, credit risk arising from the default by the counterparty before delivery of an exchange contract; and third, settlement risk arising from the failure of the counterparty to deliver at the time of settlement. Leveraged foreign exchange trading multiplies these risks. The Bill tabled today for resumption of Second Reading debate seeks to impose strict operational discipline on the business of leveraged forex trading with a view to eliminating

unscrupulous practices, and to ensure that those non-bank traders are capable of meeting their obligations to their retail customers.

Comparing with the provisions in this Bill, the corresponding supervisory regime applicable to authorized institutions under the Banking Ordinance is equally if not more stringent. Authorized institutions have to limit their overnight non-US dollar open positions in any single currency or in aggregate to 5% of the capital base. For those with adequate expertise and controls, an open position in aggregate up to 15% of the capital base and that in any single currency up to 10% may be allowed. Moreover, there must be an effective internal control system for authorization of transactions, maintenance of records and monitoring of the inherent risks. Furthermore, the credit risk of forward contracts in terms of the replacement cost is subject to capital adequacy requirements. All these regulatory requirements are to ensure that authorized institutions would not take on excessive foreign exchange exposures inproportionate to their capital bases.

Some years ago, RTHK produced a documentary on the global forex market, featuring a day in the life of a forex dealer with a leading United States bank in Hong Kong, his counterpart with a British clearing bank in London and a private banker for high-net-worth individuals in New York. This documentary traces the dealing activities of the sterling desks of these two international banks and the private banker in the global forex market simultaneously. I cannot recall who won and who lost on that particular day but the results do not matter. There are no ever winners in forex trading; there are only ever losers. Incidentally, I was told a couple of years later that the two forex dealers had left the profession and the private banker had gone bust. I suggest RTHK to rerun this documentary to remind the public how unpredictable and brutal the forex market is.

Mr President, there is no better description of the inherent risks in leverage forex trading than a Chinese idiom, "One wrong move would cost you the game". Although this Bill would provide essential protections against unscrupulous traders, consumers should always think twice before participating in this game. No fortune is heaven sent.

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

DR HUANG CHEN-YA (in Cantonese): Mr President, for years there have been incessant public complaints about frauds perpetrated by forex companies and the heavy losses incurred. Last year alone, the total amount involved exceeded $100 million and during the first half of January this year, the Government received 10 complaints with the amounts involved ranging from several tens of thousand dollars to a million dollars. This underscores the need that leveraged forex trading must be put under proper control to ensure that the public will not be hoodwinked by unscrupulous traders. The United Democrats fully support the passage of the Leveraged Foreign Exchange Trading Bill so that a

regulatory framework can be laid down as soon as possible to introduce order into the unregulated leveraged forex trading and to afford a greater measure of protection to the public.

During our deliberation of the Bill, we have taken into consideration whether or not the legislation would be too draconian as to stifle leveraged forex trading. That there are so many amendments made to this Bill today evinces that while this Council has tried to fully safeguard the interests of the public, it has also taken into account the traders business interests. I firmly believe that the decisions we have made are appropriate, which help to remove all unscrupulous practices, thus making the trade a lot healthier and capable of providing better services to the public. But this does not mean that the Government has no more roles to play in this respect and can wash its hands of this matter. This Bill merely reduces the risks of being swindled on the part of the investors, not eliminate all such risks, nor indeed removing the risks involved in forex trading. Therefore we have the views as follows:

First, the Government should continue to publicize the risks involved in various investment activities, making the public aware of all kinds of fraudulent practices so that preventive measures can be taken. The Government should in particular remind the public of the considerable risks relating to discretionary account.

Secondly, the Government should study how to help forex companies to strengthen their internal control mainly because an overwhelming majority of such companies are dealing as the counterparties of their clients. Consideration should also be given as to how to install some "stop-loss mechanism" with an aim to reduce the occurrence of cases where clients suffer losses due to the improper management of the forex companies.

Thirdly, the Government should explore the possibility of introducing to the local market from abroad a liability system which is applicable to investment consultants. Under such a system, investment consultants ought to take on some legal liability when it comes to the provision of appropriate and proper investment advice to their clients with whom they have trust relationship. For instance, they should not let those with limited financial means, like orphans, widows, the retired and so forth deal in leveraged foreign exchange trading or else they shall legally be liable to their clients' losses.

Fourthly, the Government should consider the idea of setting up a central forex trading market. With the establishment of such a market, settlement risks and risks posed by one's counterparty will be reduced and forex quotations will be made transparent as well. All of this will ensure that forex trading in Hong Kong would become even more stable and sophisticated.

With these remarks, the United Democrats support the motion.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, we have already wasted a lot of time on amendments to the Leveraged Foreign Exchange Trading Bill. I suggest that we should focus our attention on the following three questions:

First, will the Bill achieve its legislative purpose? Second, is the Bill too draconian? Third, is the power of the regulatory body excessive and should it be balanced?

Concerning the first question, our legislative purpose is of course to protect members of the public, including investors participating in leveraged foreign exchange trading. Many people engage in foreign exchange trading but do not understand what "leveraged" means. To put it simply, leveraged trading is trading on margin, trading to make a big gain relative to capital. Leveraged foreign exchange trading has been going on for a long time. This shows that it has its role to play and is necessary in the financial market. At present, there are two major kinds of leveraged foreign exchange trading. One is operated by private companies, and the other is operated by banks. Many of the private companies operate their business in an unscrupulous manner. After taking the clients' deposits, they close down their businesses and abscond with the money. Can the Bill actually serve the purpose of protecting the interests of the clients? The answer is that it will not achieve this purpose after taking into account the following two factors:

First, price quotation. Many companies engaging in leveraged foreign exchange trading base their price quotation on prices in the foreign markets according to wire service reports or other sources. At any given time, the prices quoted by different companies differ. The client will probably end up buying at the high end and selling at the low end of the price range. In any case, it is the client who is being exploited. If the Bill is enacted, the foreign exchange trading company and its clients will be gambling against each other, in view of the fact that Hong Kong does not have a gambling law. Is this the spirit of the Bill? The enactment of the Bill will not help to solve these two major problems. In other words, a client would still gamble against his agent.

Second, an agent always has an advantage over his client. He can take advantage of any price difference. If these two problems cannot be solved, the Bill, though enacted, can only cope with the existing situation. As such, it is far from perfect.

The second question is whether the Bill is too draconian. As I have said, leveraged foreign exchange trading has had a long history. It is viable, however one looks at it. If it is viable, there will be people engaging in it as a business. Thus, the $30 million deposit requirement will drive many people out of business. To stay in business, they are certain to take advantage of loopholes in the law. This is a potential source of trouble. For instance, a trader who has received a trading order may have it filled abroad. How can this be stopped? Therefore, the problem will remain. We should understand that the purpose of law should be to protect the interests of all parties and not to drive people out of

business. We know that, because leveraged foreign exchange trading has existed for a long time, it must have served society's needs in a balanced manner. If the law is too strict, the clients' need to trade will ultimately be serviced by the banks. This is contrary to the *(laissez-faire)* policy which Hong Kong has all along been practising.

The third question concerns the monitoring body — the Securities and Futures Commission (SFC). The SFC has been given extensive power already. If the Bill is enacted, only a small number of companies will be able to survive. Inevitably, they will be subject to the daily inspection of the SFC. The SFC now has a staff of over 200. In order to monitor the leveraged foreign exchange trading, it will strengthen its establishment by recruiting 50 more officers. Naturally, these additional staff members will focus their attention on these companies. They will inspect the companies every day just to show how powerful the SFC is. Therefore, I worry for those engaging in this business.

Mr President, if precautionary measures can be taken before the Bill is enacted, future development will be more balanced. This is better than taking remedial steps after the problems surface. As I have only one vote in the Bills Committee, I have not been able to convince my honourable colleagues. Of course, none of us is qualified to speak for leveraged foreign exchange trading. We are just taking the first step. I am not its spokesman. (I may or may not be its spokesman later.) Perhaps I will not even run for a Legislative Council seat. Therefore, Mr. President, I really hope that the Bill, when enacted, will better protect the interest of all parties.

Mr President, as the Bill will not achieve its desired purpose as I mentioned, I cannot support it. Given that my objection will only have a marginal effect, I can only say that I am sorry.

SECRETARY FOR FINANCIAL SERVICES: Mr President, I am most grateful to the Honourable LAU Wah-sum and other Members of the Bills Committee for the careful consideration given to the Leveraged Foreign Exchange Trading Bill and for a number of improvements proposed. The fact that 15 meetings of the Bills Committee have had to be convened since November last year is a testimony to the complicated nature of this Bill and the diversity of interests involved. I am pleased to note from the statements by Mr Roger LUK and Dr HUANG Chen-ya that there is recognition in this Council of the importance of this proposed legislation and the need to regulate urgently in this area.

The Bill seeks to introduce a framework for regulating the business of leveraged foreign exchange trading. During the past few years, frequent complaints have been received as mentioned by Dr HUANG, from retail investors about the sudden closure of some forex investment companies and about dubious trading practices adopted by some unscrupulous traders. These have caused investors substantial financial losses and, in some cases, their hard-earned life savings. To tackle the problem, it is necessary to stipulate a

statutory licensing requirement for companies involved in such business and for their representatives. Other requirements, for the continuous compliance by licence holders, are also proposed. The system contemplated is modelled on that for the securities and futures markets. The Securities and Futures Commission (SFC) will take up the regulatory responsibilities.

After the Bill was published in July 1993, a number of representations were made by parties concerned, including from those in the trade and from some investors. The Government has agreed with the Bills Committee to adopt some of these suggestions and these are reflected in the amendments which I will be moving today. The Bills Committee, in vetting the Bill, also deliberated on a number of important issues. And I would now like to deal with four of these areas.

Purpose of the Bill

The first issue related to the purpose of the Bill. It has been suggested, and the point was echoed by Mr CHIM Pui-chung tonight, that the Government, in licensing leveraged foreign exchange traders, is encouraging traders and their clients to "gamble" on foreign exchange contracts. This is certainly not the case. I have pointed out, in my speech on the introduction of the Bill into this Council, that a leveraged foreign exchange contract can be a legitimate investment vehicle, but the nature of these contracts and the volatility of the foreign exchange market call for tight regulation. The Government, in introducing the proposed framework, is not creating any new market nor is it encouraging investors to deal in such contracts. The Bill merely seeks to provide a more regulated and orderly environment for the investing public. The approach of licensing leveraged foreign exchange traders and their representatives is being pursued only after taking into account the views of parties concerned before the drafting of the Bill. The alternative of not allowing any such leveraged forex trading outside the banking system would deprive investors of an avenue for an investment which is itself legitimate. This was not considered an acceptable option and was therefore discarded.

But Members might wish to note that the Hong Kong Futures Exchange Limited is currently exploring the feasibility of introducing exchange rate products. If this materializes, it would help to address one of the criticisms against the leveraged foreign exchange market, namely the absence of a centralized place of trading which in turn results in a lack of market transparency, in particular about the quotation of prices by traders.

Exemptions

The second area of concern related to the scope of exemption. Some submissions alleged that the proposed framework, and that Mr CHIM Pui-chung again mentioned this point, will give an unfair advantage to authorized institutions under the Banking Ordinance since they are exempted from the application of the Bill. We have explained to the Bills Committee, and I should

reiterate here, that the rationale for exempting authorized institutions, as stated by Mr Roger LUK, is that they are subject to the supervision of the Hong Kong Monetary Authority. There is no reason to subject them to double regulation as far as leveraged foreign exchange trading is concerned. The different business nature and risk profile of a leveraged foreign exchange trader and an authorized institution also make it inappropriate to compare the two sets of regulation.

We also received a number of suggestions to revise the various exemption clauses. Some of the recommendations have been taken on board in the amendments I will be moving.

Collective responsibility clauses

The third important issue considered was collective responsibility clauses. Such clauses impose liabilities on all directors, and shadow directors, for an offence committed by the company concerned or by a fellow director. Having considered the comments expressed in various submissions and in the light of further legal opinion on the matter, it has been agreed with the Bills Committee that those clauses which render directors and shadow directors liable for offences committed by a fellow director should be taken out from the Bill. The other type of collective responsibility clauses, that is, those imposing liabilities on directors for an offence committed by the company, are considered perfectly acceptable and necessary and will therefore remain in the Bill.

Financial resources requirements

The last major area of concern related to the requirements on the financial strength of licensed traders. Such requirements are not contained in the Bill. They will be stipulated in rules to be made by the SFC as subsidiary legislation. The Bills Committee has vetted the draft rules and suggested some amendments which have been agreed to. It would not be appropriate for me to go into too much detail at this stage but the main principle behind the various requirements is that licensed traders should maintain sufficient financial resources to meet the risk they face in engaging in leveraged foreign exchange trading.

Mr President, Mr CHIM Pui-chung has claimed that the requirements of this Bill are too draconian. It is necessary, Mr President, to stipulate stringent financial resources requirements to ensure that licensed traders have sufficient financial strength to meet the risk they face on a continuous basis. The requirements proposed by the SFC are carefully worked out, having taken into account the risk profile of a licensed trader and the historical volatility of a foreign exchange market. We do not believe that such requirements will kill the trade. As regards the requirement to pay clients' money into a segregated trust account, this is based on the important principle of assets segregation, which means that clients' money will not be mixed up with assets of the traders, and become difficult to trace in case anything goes wrong. This principle cannot be compromised.

Mr President, subject to the passage of this Bill, the Administration and the SFC will arrange briefings for traders about the operation of these financial resources requirements. I will not repeat the details here because a very full and accurate description of the system has just been given by the Chairman of the Bills Committee, the Honourable LAU Wah-sum.

As I have already indicated, the Government has agreed to a number of amendments either suggested by the Bills Committee or put forward in the various submissions on the Bill from other sources. These are definitely improvements to the framework.

Mr President, with these remarks, I commend the Bill to Members.

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

Bill read the Second time.

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

Committee Stage of Bills

Council went into Committee.

DUTIABLE COMMODITIES (AMENDMENT) BILL 1994

Clause 1 was agreed to.

Clauses 2 to 4

MR SIMON IP: Mr Chairman, I move that the clauses 2 to 4 be amended as set out in the paper circulated to Members. The Financial Secretary and I have agreed that we will not make any further speeches unless severely provoked. *(Laughter)*

Proposed amendments

Clause 2

That clause 2 be amended, by deleting the clause.

Clause 3

That clause 3 be amended, by deleting the clause.

Clause 4

That clause 4 be amended, by deleting the subclause.

Question on the amendments put.

Voice vote taken.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: I will just remind Members that the question for the Committee is whether clauses 2 to 4 of the Dutiable Commodities (Amendment) Bill 1994 be amended as proposed by Mr Simon IP.

CHAIRMAN: We appear to be one short of the head count. I am sorry. Yes. Are there any queries? If not, the results will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr Andrew WONG, Mr Edward HO, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Simon IP, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr James TIEN voted for the amendments.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO Wah, Mr TAM Yiu-chung, Mrs Peggy LAM, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH and Mr Roger LUK voted against the amendments.

Dr David LI and Mr CHIM Pui-chung abstained.

THE CHAIRMAN announced that there were 19 votes in favour of the amendments and 30 votes against them. He therefore declared that the amendments were negatived.

Clauses 2 to 4 were agreed to.

CRIMINAL PROCEDURE (AMENDMENT) BILL 1993

Clauses 1 and 3 to 11 were agreed to.

Clause 2

MR SIMON IP: Mr Chairman, I move that clause 2 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 2

That clause 2 be amended, in the proposed section 9G(1), by deleting "is an unacceptable risk" and substituting "are substantial grounds for believing".

Question on the amendment put.

Voice vote taken.

CHAIRMAN: Council will proceed to a division.

CHAIRMAN: Will Members please proceed to vote?

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

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mrs Peggy LAM, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, 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 Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH and Mr Roger LUK voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr PANG Chun-hoi, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr CHIM Pui-chung, Miss Emily LAU, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong and Mr James TIEN voted against the amendment.

Mr TAM Yiu-chung and Mr Eric LI abstained.

THE CHAIRMAN announced that there were 27 votes in favour of the amendment and 22 votes against it. He therefore declared that the amendment was carried.

Question on clause 2, as amended, proposed, put and agreed to.

OFFICIAL LANGUAGES (AMENDMENT) BILL 1994

Clauses 1 to 4 were agreed to.

NEW TERRITORIES LAND (EXEMPTION) BILL

Clauses 1 and 4 were agreed to.

Clause 2

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 2 be amended as set out under my name in the paper circulated to Members.

Part III of the Bill enables individual owners of rural land to apply for exemption from Part II of the New Territories Ordinance. As I will propose later in this Committee stage to amend clause 3 to provide for blanket exemption for rural land for the purpose of succession, Part III is no longer required. The definition of "owner" is deleted from clause 2(1) as the term does not appear in the Bill following the repeal of Part III.

Mr Chairman, I beg to move.

Proposed amendment

Clause 2

That clause 2(1) be amended, by deleting the definition "owner".

Question on the amendment proposed put and agreed to.

MR ANDREW WONG (in Cantonese): Mr Chairman, I move a further amendment to clause 2. I beg to avail myself of this opportunity to read out my amendment so that it will go into the record of proceedings and people will be able to make a judgment by themselves whether, in comparison with other amendments, it is a more reasonable amendment.

That clause 2 be amended —

(a) in subclause (1), by deleting the definition "rural land" and substituting —

"rural land"（農村地）means land in the New Territories which is held by an indigenous villager or its lawful successor and is the subject of a Crown lease of an old schedule lot, village lot, small house or similar rural holding.".

(b) by deleting subclause (2) and substituting —

"(2) For the purpose of the definition "rural land"（農村地）in subsection (1) the expressions "indigenous villager", "lawful successor", "old schedule lot", "village lot", "small house" and "similar rural holding" have the meanings respectively assigned to them under section 9(3) of the New Territories Leases (Extension) Ordinance (Cap. 150).".

(c) by adding —

"(3) If at any time rural land is conveyed to a person who is not an indigenous villager or a lawful successor, in the male line, to such indigenous villagers after 30 June 1984, such land shall cease to be rural land for the purposes of this Ordinance, whether or not the land is thereafter conveyed to a person who is an indigenous villager or such a successor.

(4) Where any question arises in any proceedings as to whether or not the land is rural land, a certificate purporting to be signed by the Director of Lands stating any fact relating to that question shall be admissible in evidence on its mere production and shall be conclusive evidence of that fact.".

Mr Chairman, I think such a minor amendment will enable the indigenous residents to retain their customary way of succession and when an indigenous villager dies intestate, the way how to dispoe of the land he held would be clearly defined. Under the amended law, the land in question would decrease in size over time. I think it is necessary to keep the customary arrangements as this is the only way the indigenous residents in the New Territories of the same clans can continue to hold their ancestral land even if some of their fellow indigenous villagers die intestate. I would like to point out this. A principle which is generally followed when legislation is drafted regarding succession in cases where a person dies intestate is that the person's estate will be dealt with according to the way how he would have dealt with it if he had had the time to make a will. Meanwhile, I personally think that if an indigenous resident in the New Territories is to make a will, generally speaking, he would ensure his land to be succeeded according to the customary way as mentioned above. It is a

custom among the indigenous villagers in the New Territories that they opt to make no will. Here I am not suggesting that a new set of legislation has to be enacted to require the indigenous residents in the New Territories to make a will. Rather I would only like to see the existing arrangements be retained so that land held by the indigenous villagers in the New Territories who die intestate without having sought the necessary exemption or made it known that they would bequeath their land to those who are not indigenous villagers would be disposed of in line with the long-established custom practiced in the New Territories.

Mr Chairman, with these remarks, I move the amendments.

Proposed amendment

Clause 2

That clause 2 be further amended —

(a) in subclause (1), by deleting the definition "rural land" and substituting -

""rural land"（農村地）means land in the New Territories which is held by an indigenous villager or its lawful successor and is the subject of a Crown lease of an old schedule lot, village lot, small house or similar rural holding.".

(b) by deleting subclause (2) and substituting -

"(2) For the purpose of the definition "rural land"（農村地）in subsection (1) the expressions "indigenous villager", "lawful successor", "old schedule lot", "village lot", "small house" and "similar rural holding" have the meanings respectively assigned to them under section 9(3) of the New Territories Leases (Extension) Ordinance (Cap. 150).".

(c) by adding -

"(3) If at any time rural land is conveyed to a person who is not an indigenous villagers or a lawful successor, in the male line, to such indigenous villagers after 30 June 1984, such land shall cease to be rural land for the purposes of this Ordinance, whether or not the land is thereafter conveyed to a person who is an indigenous villager or such a successor.

(4) Where any question arises in any proceedings as to whether or not the land is rural land, a certificate purporting to be signed by the Director of Lands stating any fact relating to

that question shall be admissable in evidence on its mere production and shall be conclusive evidence of that fact.".

Question on the amendment proposed.

CHAIRMAN: I would just remind Members that as we have had a very full debate on the principles of the Bill, Committee stage amendment speeches ought to be relevant and avoid tedious repetition.

MR JAMES TO (in Cantonese): Mr President, Mr Andrew WONG's point of view as expressed just now was, if someone died intestate, then his estate should be dealt with according to the way that he would have disposed of it, and that this should be the principle of the legislation. I oppose this view. I think if a man died intestate, then we could assume that his property should return to the community in general, but the law should allow that he can elect the way by which his estate should be inherited.

This is a basic difference in perception, as much as a difference academically or in terms of reasoning. For this reason, I oppose his amendment.

MR ANDREW WONG (in Cantonese): Mr President, I would like to thank Mr James TO for his different point of view. I think we should legislate with an open mind, rather than making whatever law we like. The criterion is very simple. When we deal with areas outside the New Territories, provisions regarding devolution of intestacy should apply. But if it is about the land owned by indigenous inhabitants of the New Territories, we should treat these people as an ethnic minority and we therefore need to find out how they would have made their wills should they have made one. My point is that the existing custom already observes the devolution of intestacy. I therefore hope that we need not make some major amendments, or perhaps we could introduce a new piece of legislation stipulating that Chinese custom should be enforced in cases of intestates' estates of New Territories inhabitants, that is, the provision invocable by the court under section 13 of the existing New Territories Ordinance. Also, it should be stated more clearly that when indigenous inhabitants sell their land to non-indigenous residents, or that when indigenous inhabitants apply for an exemption or if they in their wills, devolve their land to people of other family names, then custom will not apply to the land under devolution of intestacy and these cases should be dealt with according to the intestates' estates provisions. This is my point of view and I hope that Members will support it.

Question on the amendment put and was negatived.

Question on clause 2, as amended by the Secretary for Home Affairs, put and agreed to.

Heading of Part II and clause 3

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the Heading of Part II and clause 3 be amended as set out under my name in the paper circulated to Members.

The phrase "other than rural land" is deleted from the Heading of Part II of the Bill. This amendment is a technical refinement.

Clause 3 is amended in order to:

(i) exempt non-rural land in the New Territories from the application of Part II of the New Territories Ordinance with effect from the date of the relevant land grant; and

(ii) exempt rural land in the New Territories from Part II of the New Territories Ordinance for the purpose of succession only with effect from the commencement of the Bill.

Mr Chairman, I beg to move.

Proposed amendments

Part II

That Part II be amended, in the heading, by deleting "OTHER THAN RURAL LAND".

Clause 3

That clause 3 be amended, by deleting the clause and substituting —

"3. Exemption of land from Part II of the New Territories Ordinance (Cap. 97)

Subject to sections 4 to 6, any land in the New Territories of the description mentioned in section 7(2) and (3) of the New Territories Ordinance (Cap. 97) shall -

(a) from the commencement of this Ordinance, in the case of rural land, not being land exempted by the Governor under that section from Part II of that Ordinance, be deemed for the purpose of

entitlement to rural land in succession, and only for that purpose, to be exempt under that section from Part II of that Ordinance; and

(b) from the date of the grant of the Crown lease, in the case of any land other than rural land, not being land exempted by the Governor under that section from Part II of that ordinance, be deemed for any purpose, to have always been exempt under that section from Part II of that Ordinance.".

Question on the amendments proposed, put and agreed to.

Question on Part II and clause 3, as amended, proposed, put and agreed to.

Clause 5

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 5 be amended as set out under my name in the paper circulated to Members.

Clause 5 is amended to clarify, for the avoidance of any doubt, that the Probate and Administration Ordinance, the Intestates' Estates Ordinance and the Deceased's Family Maintenance Ordinance have no application to land held in the name of any clan, family or "tong".

Mr Chairman, I beg to move.

Proposed amendment

Clause 5

That clause 5 be amended —

(a) by renumbering the clause as clause 5(1).

(b) by adding -

"(2) The Probate and Administration Ordinance (Cap. 10), the Intestates' Estates Ordinance (Cap. 73) and the Deceased's Family Maintenance Ordinance (Cap. 129) shall not apply to proceedings in respect of or in relation to land in the New Territories held in the name of any clan, family or t'ong.".

Question on the amendment proposed, put and agreed to.

Question on clause 5, as amended, proposed, put and agreed to.

CHAIRMAN: Mr Andrew WONG, as the Secretary for Home Affairs's amendment has been agreed, your amendment cannot proceed in its present form. Would you like to seek leave to alter the terms of your amendment?

MR ANDREW WONG (in Cantonese): Mr President, since my colleagues have already voted in favour of the amendment moved by the Secretary for Home Affairs, it would be pointless for me to move any amendment to clause 5. Nevertheless, I still wish to read it out for record purpose. My proposed amendment is: "Section 3 shall apply to land in the New Territories held in the name of any such clan family or t'ong whose membership does not consist entirely of indigenous villagers from the commencement of this Ordinance."

Mr President, I will not move this amendment.

CHAIRMAN: You are therefore withdrawing the amendment, Mr WONG.

Part III

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the part III in the Bill be deleted.

As the amendment to clause 3 provides blanket exemption for rural land from the application of Part II of the New Territories Ordinance for the purpose of succession, Part III, which enables individual owners of rural land to seek exemption from Part II of that Ordinance, is no longer required and is repealed.

Mr Chairman, I beg to move.

Proposed amendment

Part III

That the Bill be amended, by deleting Part III.

Question on the deletion proposed, put and agreed to.

New clause 6	Saving for jurisdiction in land matters
New clause 7	Provision relating to section 75 of the Probate and Administration Ordinance (Cap. 10)

New clause 8	Provision relating to section 11 of the Intestates' Estates Ordinance (Cap. 73)
New clause 9	Provision relating to section 2 of the Deceased's Family Maintenance Ordinance (Cap. 129)
Heading of New Part III	MISCELLANEOUS Consequential Amendments New Territories Ordinance
New clause 10	High Court or the District Court may enforce Chinese customs
New clause 11	Registration of successors to deceased landholder where no probate granted
New clause 12	Transitional provision

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

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new clauses 6, 7, 8 and 9, the Heading of new Part III and new clauses 10, 11 and 12 as set out under my name in the paper circulated to Members be read the Second time.

New clause 6 is a saving provision to preserve, for the sake of clarity, the jurisdiction of the District Court and High Court over New Territories land matters.

New clauses 7, 8 and 9 provide that the Probate and Administration Ordinance, the Intestates' Estates Ordinance and the Deceased's Family Maintenance Ordinance shall be applicable to land exempted under clause 3 of this Bill.

New clause 10 is a consequential amendment to section 13 of the New Territories Ordinance. The purpose is to specify, for the avoidance of doubt, that for the purpose of succession to land, the Probate and Administration Ordinance, the Intestates' Estates Ordinance and the Deceased's Family Maintenance Ordinance shall prevail over the New Territories Ordinance.

New clause 11 repeals section 17 of the New Territories Ordinance. This repeal is a consequential amendment.

New clause 12 provides for transitional arrangements. It allows succession to rural land held in the name of a deceased person registered in accordance with the New Territories Ordinance at the commencement of the Bill to be processed in accordance with section 17 of the New Territories Ordinance as if that section has not been repealed. It also provides for the retention of the courts' power to recognize and enforce any Chinese custom or customary right in relation to proceedings concerning the exercise of those powers under section 17 affecting such land, and deems such land to be land exempted from Part II of the New Territories Ordinance upon the registration of a person entitled to such land in succession.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new clauses 6, 7, 8 and 9, Heading of new Part III and new clauses 10, 11, and 12 be added to the Bill.

Proposed additions

New clauses 6, 7, 8 and 9, Heading of new Part III and new clauses 10, 11 and 12

That the Bill be amended, by adding —

"6. Saving for jurisdiction in land matters

Nothing in section 3 shall affect the jurisdiction conferred on the High Court and the District Court under or by virtue of section 12 of the New Territories Ordinance (Cap. 97).

7. Provision relating to section 75 of the Probate and Administration Ordinance (Cap. 10)

For the purposes of section 75 of the Probate and Administration Ordinance (Cap. 10), land to which Part II of the New Territories Ordinance (Cap. 97) applies, not being land already so exempted by the

Governor, shall be deemed to be land exempted from that Part by the Governor under section 7(2) or (3) of that Ordinance.

8. Provision relating to section 11 of the Intestates' Estates Ordinance (Cap. 73)

For the purposes of section 11 of the Intestates' Estates Ordinance (Cap. 73), land to which Part II of the New Territories Ordinance (Cap. 97) applies, not being land already so exempted by the Governor, shall be deemed to be land exempted from that Part by the Governor under section 7(2) or (3) of that Ordinance.

9. Provision relating to section 2 of the Deceased's Family Maintenance Ordinance (Cap. 129)

For the purposes of the definition "net estate" in section 2 of the Deceased's Family Maintenance Ordinance (Cap. 129), land to which Part II of the New Territories Ordinance (Cap. 97) applies, not being land already so exempted by the Governor, shall be deemed to be land exempted from that Part by the Governor under section 7(2) or (3) of that Ordinance.

PART III

MISCELLANEOUS

Consequential Amendments

New Territories Ordinance

10. High Court or the District Court may enforce Chinese customs

Section 13 of the New Territories Ordinance (Cap. 97) is amended -

(a) by renumbering it as section 13(1);

(b) in subsection (1), by repealing "In" and substituting "Subject to subjection (2), in";

(c) by adding -

"(2) In subsection (1), "proceedings" does not include proceedings in respect of or in relation to the Probate and Administration Ordinance (Cap. 10), the Intestates' Estates Ordinance (Cap. 73) or the Deceased's Family Maintenance Ordinance (Cap. 129).".

11. Registration of successors to deceased landholder where no probate granted

Section 17 is repealed.

12. Transitional provision

Where, at the commencement of this Ordinance, rural land is held in the name of a deceased person registered in accordance with the New Territories Ordinance (Cap. 97) otherwise than as a manager, if no grant of probate or administration of the estate of the deceased is made by the High Court within 3 months after the death of that person then, notwithstanding sections 3(a), 10(c) and 11 of this Ordinance -

(a) the Secretary for Home Affairs may exercise the powers conferred on him under section 17 of the New Territories Ordinance (Cap. 97) in respect of any person who may be entitled to that rural land in succession to the deceased person as if section 17 of that Ordinance had not been repealed;

(b) in any proceedings in the High Court or the District Court concerning the exercise by the Secretary for Home Affairs of those powers in relation to that rural land, the court shall have power to recognize and enforce any Chinese custom or customary right affecting that rural land as if section 13(2) had not been added to that Ordinance; and

(c) on the registration of the name of the person entitled to that rural land in succession to the deceased person being effected by the Secretary for Home Affairs under section 17 of that Ordinance, that rural land shall, for the purpose of entitlement to rural land in succession and only for that purpose, be deemed to be land exempted from Part II of that Ordinance by the Governor under section 7(2) or (3) of that Ordinance.".

Question on the additions of the new clauses and Heading of new Part III proposed, put and agreed to.

PLACES OF PUBLIC ENTERTAINMENT (AMENDMENT) BILL 1994

Clauses 1 to 5 were agreed to.

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 1994

Clauses 1 to 4 were agreed to.

PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) (NO. 2) BILL 1994

Clauses 1 to 42 were agreed to.

REGIONAL COUNCIL (AMENDMENT) BILL 1994

Clauses 1 to 2 were agreed to.

URBAN COUNCIL (AMENDMENT) BILL 1994

Clauses 1 and 2 were agreed to.

CRIMES (AMENDMENT) BILL 1994

Clauses 1 and 2 were agreed to.

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1994

Clauses 1, 3, 5, 7 to 12, 14, 15, 17 and 18 were agreed to.

Clauses 2, 4, 6, 13 and 16

ATTORNEY GENERAL: Mr Chairman, if you would accept the temporary stand-in, I move that clauses 2, 4, 6, 13 and 16 be amended as set out in the paper circulated to Members.

Proposed amendments

Clause 2

That clause 2 be amended, by deleting the clause and substituting —

"2. Interpretation

Section 2 of the Corrupt and Illegal Practices Ordinance (Cap. 288) is amended -

(a) in the definition of "election expenses" by repealing", his election agent";

(b) by repealing the definition of "voter".".

Clause 4

That clause 4 be amended, in the proposed section 5(1) —

(a) in paragraph (a) -

(i) by deleting "to a voter" and substituting "to a person";

(ii) by deleting "of a voter" and substituting "of another person";

(iii) by deleting "that voter's" and substituting "that person's";

(b) in paragraph (b) by deleting "any voter" and substituting "another person".

Clause 6

That clause 6 be amended —

(a) by adding -

"(aa) in subsection (1) by repealing "voter" and subtituting "person";".

(b) in paragraph (b), by deleting "voter" and substituting "person".

Clause 13

That clause 13(d) be amended, in the proposed definition of "incumbent candidate", in paragraph (c), by deleting "member of the Legislative Council" and substituting —

> "serving member of the Legislative Council or person who was a member of the Legislative Council immediately prior to its dissolution".

Clause 16

That clause 16 be amended, by adding before paragraph (a) —

> "(aa) by adding -
>
> > "(2B) Any donation of $500 or more which is not accompanied by sufficient detail so as to identify and locate the donor shall not be retained but shall be disposed of in accordance with section 8B(2)(b)(iii).";".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 4, 6, 13 and 16, as amended, proposed, put and agreed to.

LEVERAGED FOREIGN EXCHANGE TRADING BILL

Clauses 1, 3, 4, 6, 16, 20, 24, 25, 31, 32, 34, 37, 42, 45, 46, 52, 53, 56, 63, 66 to 68 and 71 were agreed to.

Clauses 2, 5, 7 to 15, 17 to 19, 21 to 23, 26 to 30, 33, 35, 36, 38 to 41, 43, 44, 47 to 51, 54, 55, 57 to 62, 64, 65, 69, 70, 72 and 73

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

Some of the amendments are minor or technical in nature. For example, the term "officer" was used at various places in the Bill but its meaning is unclear. Depending on the context, it is now replaced by more specific terms such as "employee", "shadow director" and "person involved in the management of the company" or, where necessary, it has been deleted. A number of textual changes to the Chinese version of the Bill are also introduced. Some arise from the standardization of the Chinese translation of terms since the Bill was drafted. An example is the revision to clause 2(1).

Clause 2(1) is also amended to incorporate several new definitions. Some are consequential upon other changes to the Bill such as "specified debt securities" satisfying the "qualifying credit rating" criteria which will form the basis of a new exemption clause. The Securities and Futures Commission can specify, in the Schedule to the Bill, credit ratings for this purpose and clause 2(3) is amended to reflect this power.

Clause 2 also promulgates the exemptions available. Changes to several paragraphs are necessary to clarify and, where appropriate, expand the scope of exemption. As I have mentioned, a new exemption is introduced for transactions ancillary or incidental to the trading of specified debt securities. Such transactions are legitimate hedging tools against exchange rate risk. A definition for "related corporation" is also added.

Clause 7(10) is amended to clarify the scope of rules to be made by the Securities and Futures Commission for the operation of tribunals under an Arbitration Panel to be appointed to hear disputes between licensed traders and their clients.

Clause 10(3) is deleted. It was a collective responsibility clause which sought to impose liabilities on all directors for an offence committed by a fellow director. As explained during the resumption of Second Reading debate, concerns were expressed about such clauses and, it is agreed to delete them throughout the Bill. On the other hand, collective responsibility clauses which render directors liable for an offence committed by their company would remain and the scope of such clauses would be extended to cover "shadow director".

Clause 12(10) is added to provide immunity for self-incriminatory answers given by a person in response to questions raised during an inquiry conducted by the Securities and Futures Commission under that section.

Clause 17(2) is amended to spell out clearly the scope of Financial Resources Rules to be made by the Securities and Futures Commission. The Rules will stipulate requirements on financial resources to be maintained by licensed traders.

Clause 18(2) currently stipulates that failure by a licensed trader to maintain the necessary financial resources should be an affence. The Bills Committee considered that this is not necessary since clause 19 already provides for an offence for a licensed trader's failure to notify the Securities and Futures Commission of its inability to maintain such financial resources. The Administration agreed to delete clause 18(2).

Under clause 21, textual changes to subclause (4) are introduced to provide clearly that wilfully damaging records, whether legible or illegible, should be an offence.

Clause 22 is amended to require a licensed trader to prepare statements of account in addition to contract notes for its clients. This is to assist investors in keeping track of the profits or losses incurred.

Clause 28 requires a licensed trader to notify the Securities and Futures Commission of a change of auditors. The original formulation covers only auditors appointed under the Bill. The scope is expanded to auditors appointed under the Companies Ordinance who may not be the same as those appointed under the Bill.

The Bills Committee suggested some textual changes to clause 29 regarding the requirement for a licensed trader to prepare financial statements showing a true and fair view. The Administration agreed to such changes.

Textual changes are introduced for clause 30. A new paragraph is also added to require an auditor appointed under the Bill to notify the Securities and Futures Commission where his appointment is terminated.

Clause 38 prohibits the hawking of business. The provision was based on the concept of "call from place to place" which is considered too vague. This is now replaced by the idea of "unsolicited calls". The scope of exemption from the prohibition is at the same time expanded to cover calls to existing clients and other professionals such as securities dealers, commodities dealers and money lenders.

Clause 55(1)(d) would have allowed an appeal to be made to the Securities and Futures Appeals Panel against a reprimand issued by the Securities and Futures Commission. This runs against the existing practice for the securities and futures market and this paragraph is deleted.

Clause 65 provides a "reasonable diligence" defence to directors and officers of a licensed trader caught by the collective responsibility clauses. Now that those clauses imposing liabilities on all directors for an offence committed by a fellow director are deleted, the reasonable diligence defence should be revised accordingly. The term "officer" in this context is replaced by "shadow director".

Clause 72 is amended to set out in greater detail the scope of rules to be made by the Securities and Futures Commission under the Bill.

Clause 73 is amended to clarify that existing traders who applied for a licence during the grace period will have to cease business once their applications are rejected even if they lodge an appeal under the Bill. This is to protect the interests of investors.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2(1) be amended —

(a) by deleting the definition "recognized stock exchange" and substituting -

""recognized stock exchange"（獲承認證券交易所）means a stock exchange specified in Part II of the Schedule;".

(b) by adding -

""auditor"（核數師）means a professional accountant registered and holding a practising certificate under the Professional Accountants Ordinance (Cap. 50);

"client"（客戶）does not include a recognized counterparty;

"corporation"（法團）has the meaning assigned to it in section 2 of the Commodities Trading Ordinance (Cap. 250);

"qualifying credit rating"（合資格信貸評級）means -

(a) a credit rating specified in Part III of the Schedule; or

(b) any credit rating which, in the opinion of the Commission, is equivalent to any credit rating so specified;

"recognized counterparty"（獲承認對手方）means -

(a) an authorized institution within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);

(b) in relation to any particular transaction conducted by a licensed leveraged foreign exchange trader ("the initial transaction"), another licensed leveraged foreign exchange trader not being a related corporation of the licensed leveraged foreign exchange trader which conducted the initial transaction; or

(c) an institution designated in writing by the Commission as a recognized counterparty;

"shadow director"（幕後董事）means a person in accordance with whose directions or instructions the directors of a company are accustomed to act but a person shall not be considered to be a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

"specified debt securities"（指明的債務證券）means debenture stock, loan stock, debentures, bonds, notes, indexed bonds, convertible debt securities, bonds with warrants, non-interest bearing debt securities and other securities or instruments acknowledging, evidencing or creating indebtedness -

(a) which are issued or guaranteed by the Government of Hong Kong; or

(b) which are issued by an issuer that has a qualifying credit rating in respect of any of its debt instruments; or

(c) which are issued by any other issuer as may be approved by the Commission in writing in any particular case.".

That clause 2(1) be amended, in the definition of "leveraged foreign exchange trading, in paragraph (c), by deleting "酌情的" and substituting "酌情決定的".

That clause 2(2) be amended —

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

"(f) that is a contract executed on a recognized futures exchange by or through a commodities dealer registered under Part IV of the Commodities Trading Ordinance (Cap. 250) or is wholly ancillary or incidental to one or more than one such contract or a series of such contracts;".

(b) by deleting paragraphs (h) and (i) and substituting -

"(h) that is a transaction executed on a recognized stock exchange by or through a securities dealer registered under Part VI of the Securities Ordinance (Cap. 333)

or is wholly ancillary or incidental to one or more than one such transaction or a series of such transactions;

(i) that is a transaction in units or shares respectively of a unit trust or mutual fund authorized by the Commission under section 15 of the Securities Ordinance (Cap. 333);

(ia) that is wholly ancillary or incidental to one or more than one transaction in specified debt securities or a series of such transactions; or".

That clause 2(3) be amended, by adding ""qualifying credit rating"," after "definitions".

That clause 2 be amended, by adding —

"(4) For the purposes of subsection (2)(b), the expression "limited company" （有限公司） includes -

(a) an overseas company within the meaning of section 332 of the Companies Ordinance (Cap. 32);

(b) a partnership;

(c) a public body within the meaning of section 2(1) of the Prevention of Bribery Ordinance (Cap. 201);

(d) a multilateral agency within the meaning of section 2(1) of the Protection of Investors Ordinance (Cap. 335).

(5) For the purposes of the expression "related corporation" in this Ordinance -

(a) when an individual -

(i) controls the composition of the board of directors of one or more corporations;

(ii) controls more than half of the voting power of one or more corporations; or

(iii) holds more than half of the issued share capital of one or more corporations (excluding any part which carries no right to participate beyond a specified amount on a distribution of either profits or capital),

the corporations which he controls as mentioned in subparagraphs (i) and (ii) or of which he holds more than half of the issued share capital and each of their subsidiaries, are regarded as related corporations of each other;

(b) two or more corporations are, for the purposes of this Ordinance, regarded as related corporations of each other if one of them -

(i) is the holding company of the other;

(ii) is a subsidiary of the other; or

(iii) is a subsidiary of the holding company of the other;

(c) for the purposes of paragraphs (a) and (b), a corporation is, subject to paragraph (d), a subsidiary of another corporation ("the parent corporation") if -

(i) the parent corporation -

(A) controls the composition of its board of directors;

(B) controls more than half of its voting power; or

(C) holds more than half of its issued share capital (excluding any part which carries no right to participate beyond a specified amount on a distribution of either profits or capital); or

(ii) it is a subsidiary of any corporation which is the parent corporation's subsidiary;

(d) for the purposes of this subsection, the composition of a corporation's board of directors shall be deemed to be controlled by an individual or another corporation if that individual or other corporation (as the case may be) by the exercise of some power exercisable by him or it, without the consent or concurrence of any other person, can appoint or remove all or a majority of the directors, and for the purposes of this provision, that individual and each corporation shall be deemed to have power to appoint or remove a director if -

(i) a person cannot be appointed as a director without the exercise in his favour by that individual or other corporation of such a power; or

(ii) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation;

(e) in determining whether one corporation is a subsidiary of another corporation -

(i) any shares held or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;

(ii) subject to subparagraphs (iii) and (iv), any shares held or power exercisable -

(A) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or

(B) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity, shall be treated as held or exercisable by that other corporation;

(iii) any shares held or power exercisable by any person by virtue of the provisions of any debenture of the first-mentioned corporation or of a trust deed for securing any issue of any such debenture shall be disregarded; and

(iv) any shares held or power exercisable by, or by a nominee for, that other corporation or its subsidiary (not being held or exercisable as mentioned in subparagraph (iii)) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is exercisable as aforesaid by way of security only for the purposes of a transaction entered into in the ordinary course of that business.".

Clause 5

That clause 5 be amended —

(a) in subclause (1)(b), by deleting", officer".

(b) in subclause (2), by deleting "officer,".

(c) in subclause (3), by deleting "officer" in each place where it occurs and substituting "shadow director".

Clause 7

That clause 7 be amended —

(a) in subclause (2), by deleting "may" and substituting "shall".

(b) in subclause (10)(b), by adding "arbitration" before "panel".

(c) by deleting subclause (10)(c) and substituting -

"(c) the appointment from the arbitration panel of a tribunal to hear any dispute between the licence holder and any client and the constitution and composition of such tribunal;".

(d) in subclause (10), by adding -

"(ea) the Commission, for the purpose of exercising its functions under any Ordinance, to make use of any findings made by a tribunal;

(eb) the exercise of any discretion by any person under or by virtue of such rules;".

That clause 7(9)(a) be amended, by deleting "申述的" and substituting "合理的陳詞".

That clause 7(10)(d) be amended, by deleting "有關費用" and substituting "訟費".

Clause 8

That clause 8 be amended, by deleting paragraph (b)(ii) and substituting —

"(ii) nominate at least one director who will actively participate in and who will be responsible for the supervision of that business to be the responsible director of the limited company.".

Clause 9

That clause 9 be amended —

(a) in subclause (1), by deleting "and officers" and substituting", shadow directors and other persons concerned in the management".

(b) in subclause (2)(b)(iii), by deleting "or officer" in both places where it occurs and substituting", shadow director or other person concerned in the management".

Clause 10

That clause 10 be amended, by deleting subclause (3).

Clause 11

That clause 11 be amended, in subclause (2)(e), by deleting "officers" and substituting "other persons concerned in the management of the limited company".

Clause 12

That clause 12 be amended —

(a) by deleting "officer" in each place where it occurs and substituting "other person concerned in the management".

(b) by deleting subclause (2) and substituting -

"(2) Where the Commission is making inquiry under subsection (1) and has reason to suspect that any licence holder or other person concerned in the management of the limited company whom the inquiry concerns -

(a) has not provided such information as is referred to in subsection (1)(a);

(b) is or has been guilty of any misconduct; or

(c) is not a fit and proper person to remain licensed or, as the case may be, to be a director or to be concerned in the management of a licensed leveraged foreign exchange trader,

the Commission may require the licence holder or such other person to supply the Commission with such information as the Commission may reasonably require.".

(c) by deleting subclause (4).

(d) by adding -

"(10) A person shall be obliged to answer questions put to him under this section by the Commission, but if the answers might tend to incriminate him, and he so claims before answering the question, neither the question nor the answer shall be admissible in evidence against him in criminal proceedings other than proceedings for an offence under subsection (3) or section 36 of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the answer; the Commission shall, before asking any question under this section, inform the person being questioned of the limitation imposed by this subsection in respect of the admissibility in evidence of the question and any answer given.".

That clause 12(1)(c) be amended, by adding "基於其他情況" before "他是否".

That clause 12(8)(c) be amended, by deleting "影響或相當可能會影響" and substituting "有損或相當可能會有損".

Clause 13

That clause 13(1) be amended, by deleting "認爲持牌人看來" and substituting "覺得持牌人".

That clause 13(4) be amended, by deleting "影響" and substituting "損害".

Clause 14

That clause 14(7) be amended, by deleting "officer" in both places where it occurs and substituting "shadow director".

Clause 15

That clause 15(1) be amended, by adding "設立及" before "備存".

That clause 15(2)(c) be amended, by deleting "宜載有或適用" and substituting "適宜載有或有利".

SClause 17

That clause 17(2) be amended —

(a) by deleting "Financial" and substituting "Without prejudice to the generality of subsection (1), financial".

(b) by adding -

"(ba) for the purposes of paragraph (b), provide for the approval by the Commission of any type of financial transaction, instrument or currency in connection with the calculation of any type of asset or liability of licensed leveraged foreign exchange traders;

(bb) impose different requirements in relation to financial resources and scope of business for different classes or descriptions of licensed leveraged foreign exchange traders as may be specified in the rules;".

That clause 17(2)(c) be amended, by deleting "備有或維持" and substituting "備有及維持".

Clause 18

That clause 18 be amended, by deleting subclause (2).

That clause 18(1) be amended, by deleting "所規定" and substituting "所可規定".

Clause 19

That clause 19 be amended —

(a) in subclause (3), by deleting "officer" and substituting "employee".

(b) in subclause (4), by deleting "officer" in each place where it occurs and substituting "shadow director".

Clause 21

That clause 21 be amended —

(a) in subclause (2), by deleting "place in Hong Kong as may be" and substituting "place as may be".

(b) by adding -

"(2A) Records required to be kept by a licensed leveraged foreign exchange trader in accordance with this section may be kept either by making entries in a bound book or by recording or storing the relevant matters in any other manner, and anything so entered, recorded or stored shall be deemed to have been effected by, or with the authority of, the licensed leveraged foreign exchange trader.".

(c) in subclause (3), by deleting "officer" in each place where it occurs and substituting "shadow director".

(d) by deleting subclause (4) and substituting -

"(4) If, in any records kept in accordance with this section, a person wilfully -

(a) enters, records or stores, or causes to be entered, recorded or stored, in any manner whatsoever any matter that he knows to be false or misleading in a material particular;

(b) destroys, removes or falsifies, or causes to be destroyed, removed or falsified, any matter that is entered, recorded or stored; or

(c) fails to enter, record or store any matter with intent to falsify the records or any part of the records intended to be compiled from that matter,

he commits an offence and is liable -

(i) on conviction upon indictment to a fine of $200,000 and in addition in the case of an individual person, to imprisonment for 2 years; or

(ii) on summary conviction to a fine of $50,000 and in addition in the case of an individual person, to imprisonment for 6 months.".

(e) in subclause (5), by deleting "officer" and substituting "employee".

(f) by deleting subclause (6).

Clause 22

That clause 22 be amended —

(a) by deleting the section heading and substituting -

"Preparation and production of contract notes and statements of account".

(b) in subclause (1), by deleting "which complies" and substituting "and a statement of account which comply".

(c) by deleting subclause (2) and substituting -

"(2) Subject to subsection (3), a licensed leveraged foreign exchange trader shall, on being requested to do so by a client -

(a) provide the client with a copy of any contract note and statement of account relating to the transaction; and

(b) if the Commission on the application of the client so directs, make available for inspection by the client, at all reasonable times, the licensed leveraged foreign exchange trader's copy of the contract note and statement of account.".

(d) in subclause (3)(a), by adding "or statement of account" after "note".

(e) in subclause (4), by deleting "officer" in each place where it occurs and substituting "shadow director".

Clause 23

That clause 23 be amended —

(a) in subclause (10), by deleting "officer" in both places where it occurs and substituting "shadow director".

(b) in subclause (11), by deleting "officer" and substituting "employee".

(c) by deleting subclause (12).

That clause 23(4)(a) be amended, by adding "持牌" after "減去佣金及".

That clause 23(4)(b) be amended, by deleting "爲客戶或" and substituting "代客戶或".

That clause 23(4)(c) be amended, by deleting "另有協議" and substituting "有相悖的協議".

That clause 23(6)(a) be amended, in the Chinese text, by deleting paragraph (a) and substituting -

"(a) 該等數額已支付予委托有關的持牌槓桿式外匯買賣商持有該等數額的客戶爲止；".

That clause 23(6)(c) be amended, by deleting "持牌".

That clause 23 be amended, by deleting "而若有包括客戶款項的數額按照第(5)(b)款" and substituting "而若有某數額是按照第(5)(b)款的規定連同客戶款項".

That clause 23(7) be amended, by deleting everything after "要求，" and substituting "將根據本條所維持的每一個獨立的信託戶口的收支，與銀行結單及送交各客戶的表單，進行對帳".

That clause 23(8)(b) be amended, by deleting "從何人" and substituting "爲何人".

That clause 23(9) be amended, by deleting "爲客戶或" and substituting "代客戶或".

Clause 26

That clause 26(1)(b) be amended, by deleting "並非在該日期" and substituting "在該日期尚未".

Clause 27

That clause 27 be amended —

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

"(a) he is a director or employee of the licensed leveraged foreign exchange trader or is in the employment of any such director; or".

(b) in subclause (4), by deleting "officer" in each place where it occurs and substituting "shadow director".

That clause 27(3) be amended, by deleting "或名稱"

Clause 28

That clause 28 be amended —

(a) by deleting subclause (1) and substituting -

"(1) A licensed leveraged foreign exchange trader shall immediately give written notice to the Commission if -

(a) it decides to remove or replace an auditor appointed under section 27;

(b) a person appointed under section 27 to be auditor ceases to be such auditor otherwise than in consequence of a decision referred to in paragraph (a); or

(c) it -

(i) proposes to give notice to its shareholders of an ordinary resolution removing an auditor appointed under section 131 of the Companies Ordinance (Cap. 32) before the expiration of his term of office; or

(ii) gives notice to its shareholders of an ordinary resolution replacing an auditor so appointed under that section at the expiration of his term of office with another auditor.".

(b) in subclause (2), by deleting "officer" in each place where it occurs and substituting "shadow director".

Clause 29

That clause 29 be amended —

(a) by deleting subclause (1) and substituting -

"(1) A licensed leveraged foreign exchange trader shall -

(a) in respect of the financial year beginning before and ending after the day on which this section commences or the day on which it is granted a licence under section 7, whichever is the later day; and

(b) in respect of each subsequent financial year,

prepare a profit and loss account and a balance sheet made up to the last day of the financial year which shall show a true and fair view and contain such information as may be prescribed by rules made by the Commission under section 72 for the purposes of this section and shall cause those documents to be lodged with the Commission not later than 4 months after the end of the financial year, together with an auditor's report which shall express opinions on such matters as may also be prescribed by such rules.".

(b) in subclause (2), by deleting "true and fair profit and loss account and a balance sheet made up to the date of such cessation" and substituting "profit and loss account and a balance sheet made up to the date of such cessation which shall show a true and fair view".

(c) in subclauses (5) and (6), by deleting "officer" in each place where it occurs and substituting "shadow director".

(d) in subclause (7), by deleting "officer" and substituting "employee".

(e) by deleting subclause (8).

That clause 29(3) be amended, by deleting "須予延長" and substituting "需予延長".

Clause 30

That clause 30 be amended, by deleting subclause (2) and substituting —

"(2) An auditor appointed under section 27 shall immediately give written notice to the Commission if -

(a) his appointment is terminated;

(b) he resigns;

(c) he decides not to seek reappointment; or

(d) he decides to include any qualification in his report on the licensed leveraged foreign exchange trader's accounts.".

Clause 33

That clause 33(1) be amended, by adding "該買賣商爲其或代其" before "買入或售出".

Clause 35

That clause 35 be amended —

(a) in subclause (1)(a) and (b), by deleting "officers,".

(b) in subclause (1)(e), by deleting", except the examination of any person on oath,".

(c) in subclause (3), by deleting "officer" and substituting "employee".

(d) by deleting subclause (4).

Clause 36

That clause 36 be amended, by deleting subclause (4).

Clause 38

That clause 38 be amended —

(a) by deleting the section heading and substituting "**Unsolicited calls**".

(b) by deleting subclause (1) and substituting -

"(1) Subject to subsection (2), a person shall not during or as a consequence of an unsolicited call -

(a) make or offer to make with any person -

(i) an agreement for or with a view to having that other person purchase or sell a leveraged foreign exchange trading contract; or

(ii) an agreement the purpose or pretended purpose of which is to secure a profit to that other person from a leveraged foreign exchange trading contract; or

(b) induce or attempt to induce any other person to enter into any agreement referred to in paragraph (a),

whether or not in making an unsolicited call he does so on his own behalf or otherwise or does any other act or thing.".

(c) by deleting subclause (2)(a)(i) and substituting -

"(i) he makes a call to an existing client or to another person who is a banker, solicitor, professional accountant, securities dealer, investment adviser, commodities dealer, commodities trading adviser, money lender, licensed leveraged foreign exchange trader or a licensed representative; and".

(d) by deleting subclause (2)(b) and substituting -

"(b) calls made in compliance with rules made by the Commission under section 72 for the purposes of this section.".

(e) by deleting subclause (4).

(f) by deleting subclause (5) and substituting -

"(5) In this section -

"call"（造訪）includes a visit in person and a communication by cable, facsimile, post, telegram, telephone or telex;

"commodities dealer"(商品交易商)has the meaning assigned to "dealer" in section 2 of the Commodities Trading Ordinance (Cap. 250);

"commodities trading adviser"(商品交易顧問)has the meaning assigned to "commodity trading adviser" in section 2 of the Commodities Trading Ordinance (Cap. 250);

"existing client"(原有客戶)means a client who has entered into a client agreement in accordance with rules made by the Commission under section 72;

"investment adviser"(投資顧問)has the meaning assigned to it in section 2 of the Securities Ordinance (Cap. 333);

"money lender"(放債人) has the meaning assigned to it in section 2 of the Money Lenders Ordinance (Cap. 163);

"securities dealer"(證券交易商) has the meaning assigned to "dealer" in section 2 of the Securities Ordinance (Cap. 333);

"unsolicited call"(未獲邀約的造訪)does not include a call that is made at the express invitation of the person called upon and for this purpose, the provision by that person of a telephone number or an address does not, of itself, constitute an express invitation to call that person.".

Clause 39

That clause 39 be amended, by deleting subclause (3).

Clause 40

That clause 40 be amended —

(a) in subclauses (1)(c)(ii) and (2) (b), by deleting "as defined in section 4 of the Securities Ordinance (Cap. 333)".

(b) in subclause (9), by deleting "officer" and substituting "employee".

(c) by deleting subclause (10).

That clause 40(2)(d) be amended, by deleting "擁有" and substituting "管有".

That clause 40(3) be amended, by deleting "爲查閱" and substituting "爲取用".

Clause 41

That clause 41 be amended —

(a) by deleting subclause (2).

(b) by deleting subclause (3) and substituting -

"(3) Where a requirement is made under subsection (1), a person who -

(a) without reasonable excuse fails to disclose to the Commission or any person so authorized information required to be disclosed under that subsection and which is in his possession or under his control; or

(b) furnishes to the Commission in purported compliance with the requirement information which he knows to be false or misleading in a material particular,

commits an offence and is liable -

(i) on conviction upon indictment to a fine of $200,000 and in addition in the case of an individual person, to imprisonment for 1 year; or

(ii) on summary conviction to a fine of $50,000 and in addition in the case of an individual person, to imprisonment for 6 months.".

(c) in subclause (4), by deleting "officer" and substituting "employee".

(d) by deleting subclause (5).

Clause 43

That clause 43 be amended —

(a) in subclause (13), by deleting "officer" and substituting "employee".

(b) by deleting subclause (14).

That clause 43(1)(a) be amended, by deleting“有人犯” and substituting“有人可能犯了”.

That clause 43(6) be amended, by adding“可能” after“有關答案”.

That clause 43(9) be amended, by deleting“調查員可向，但如證監會有所指示，則必須” and substituting“調查員可（但如證監會有所指示則必須）”.

That clause 43(11) be amended, by deleting“任何規定” and substituting“任何條文”.

That clause 43(11)(b) be amended, by deleting“證實” and substituting“證明”.

That clause 43(15)(b) be amended, by deleting“確信” and substituting“信納”.

Clause 44

That clause 44 be amended, by adding —

“(3) In this section “licensed leveraged foreign exchange trader”（持牌槓桿式外匯買賣商）includes a representative.”.

Clause 47

That clause 47(1) be amended, by deleting“證明” and substituting“顯示出”.

Clause 48

That clause 48(1) be amended, by deleting“必須認爲” and substituting“必須覺得”.

Clause 49

That clause 49 be amended, by deleting“在符合第 48 條的規定下” and substituting“在不抵觸第 48 條的條文下”.

Clause 50

That clause 50 be amended, by deleting“在第 48 條的規限下” and substituting“在不抵觸第 48 條的條文下”.

That clause 50(a) be amended, by adding“外匯” after“槓桿式”.

Clause 51

That clause 5(1) be amended —

(a) by deleting“在第 48 條的規限下” and substituting“在不抵觸第 48 條的條文下”.

(b) by deleting“認爲” and substituting“覺得”.

Clause 54

That clause 54 be amended, by deleting“認爲” and substituting“覺得”.

Clause 55

That clause 55 be amended, by deleting subclause (1)(d).

That clause 55(1)(e) be amended, by deleting“證監會已發給牌照並在其後” and substituting“證監會在發給牌照後”.

That clause 55(1)(f) be amended, by deleting“證監會已發給牌照並在其後” and substituting“證監會在發給牌照後”.

Clause 57

That clause 57 be amended, by adding after “and 56” —

“and under any rules made by the Commission under section 72(1)(e)”.

Clause 58

That clause 58 be amended, by deleting“認爲” and substituting“覺得”.

Clause 59

That clause 59 be amended —

(a) by deleting“認爲” and substituting“覺得”.

(b) by deleting“適用於該呈請書，猶如它適用於債權人所提交的呈請書一樣” and substituting“與它適用於債權人所提交的呈請書般，適用於該呈請書”.

Clause 60

That clause 60(b) be amended, by deleting "or an officer".

Clause 61

That clause 61(3) be amended, by deleting "身爲律師（包括大律師）" and substituting "身爲執業的律師".

That clause 61(4) be amended —

(a) by deleting "如律師（包括大律師）" and substituting "如執業的律師".

(b) by deleting "律師（包括大律師）" and substituting "身爲執業的律師".

Clause 62

That clause 62(2)(e) be amended, by deleting "確實有(d)(i)或(ii)段所提及的理由" and substituting "(d)(i)或(ii)段所提及的理由已具備".

Clause 64

That clause 64(1) be amended, by deleting "猶如可循簡易程序審理的罪行般" and substituting "作爲可循簡易程序審理的罪行".

Clause 65

That clause 65 be amended, by deleting subclause (1) and substituting —

"(1) In any proceedings against a director or a shadow director of a licensed leveraged foreign exchange trader for an offence under section 5(3), 14(7), 19(4), 21(3), 22(4), 23(10), 27(4), 28(2), 29(5), 29(6) or 29A(6), it shall be a defence for that director or shadow director to show that -

(a) he did not know and had no reason to suspect the existence of any of the circumstances giving rise to the offence; and

(b) he could not, by the exercise of reasonable supervision and reasonable

diligence, have prevented those circumstances arising.".

Clause 69

That clause 69 be amended, by adding "leveraged" after "for".

Clause 70

That clause 70(1) be amended, by deleting "亦屬" and substituting "須屬".

Clause 72

That clause 72 be amended —

(a) by deleting subclause (1)(c) and substituting -

"(c) prescribing the appropriate standards of conduct in relation to the business of leveraged foreign exchange trading for licence holders, including prescribing rules which -

(i) prohibit the use of misleading or deceptive advertisements or impose conditions for the use of advertisements;

(ii) require a licensed leveraged foreign exchange trader to file any proposed standard form of agreement with a client with the Commission before that form can be used in entering into legal relations with clients;

(iii) allow for the exercise of discretion by any person pursuant to such standards of conduct;".

(b) by deleting subclause (1)(e) and substituting -

"(e) providing for appeals to the Panel against decisions of the Commission made under rules made under this section;

(f) any matter for which provision for rules is made in this Ordinance.".

(c) in subclause (2), by deleting "Rules" and substituting "Without affecting the liability of any person to any penalty prescribed for the commission of an offence under this Ordinance, rules".

Clause 73

That clause 73 be amended —

(a) by adding -

"(4) An appeal under section 55 or 56 shall not affect the operation of this section.".

(b) by deleting everything after clause 73 and substituting -

"74. Power to specify forms

The Commission may, by notice in the Gazette, specify the form of application for licensing and of any notice, certificate, report, return or other document required for the purposes of this Ordinance.

75. Power to publish guidelines

The Commission may, for the guidance of licence holders, prepare and cause to be published in the Gazette guidelines setting out principles, procedures and standards for and in relation to leveraged foreign exchange trading.

76. Consequence of a failure to comply with guidelines

A failure by a licence holder to comply with the requirements of any guideline published under section 75 shall not of itself create any right of action by any other party to any contract or arrangement for leveraged foreign exchange trading to which that licence holder is a party; but any such failure may be grounds for the Commission to make inquiry under section 12 as to whether or not any licence holder is a fit and proper person to remain licensed or, as the case may be, to be a director or other person concerned in the management of a licensed leveraged foreign exchange trader.

Consequential Amendments
Securities and Futures Commission Ordinance

77. Constitution of Appeals Panel

Section 18(2)(b) of the Securities and Futures Commission Ordinance (Cap. 24) is repealed and the following substituted -

"(b) such number of members whom he considers suitable for appointment as members who are not directors or employees of the Commission.".

Protection of Investors Ordinance

78. Offence to issue advertisements and documents relating to investments in certain cases

Section 4(2) of the Protection of Investors Ordinance (Cap. 335) is amended by adding -

"(fd) the issue of any advertisement made in respect of leveraged foreign exchange trading, where the advertisement and the issue thereof comply with the rules, if any, of the Commission governing advertising of leveraged foreign exchange trading;".

That clause 73(2)(e) be amended, by deleting "認爲" and substituting "覺得".

That clause 73(3) be amended, by adding "人" after "任何".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 5, 7 to 15, 17 to 19, 21 to 23, 26 to 30, 33, 35, 36, 38 to 41, 43, 44, 47 to 51, 54, 55, 57 to 62, 64, 65, 69, 70, 72 and 73, as amended, proposed, put and agreed to.

Clause 74 and Heading before it

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that clause 74 and Heading before it in the Bill be deleted.

Proposed amendment

That the Bill be amended, by deleting clause 74 and Heading before it.

Question on the deletion proposed, put and agreed to.

New clause 29A	Publication of audited balance sheet, etc.
New clause 74	Power to specify forms
New clause 75	Power to publish guidelines
New clause 76	Consequence of a failure to comply with guidelines
Heading before new clause 77	Consequential Amendments Securities and Futures Commission Ordinance
New clause 77	Constitution of Appeals Panel
Heading before new clause 78	Protection of Investors Ordinance
New clause 78	Offence to issue advertisements and documents relating to investments in certain cases

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

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clauses 29A, 74, 75, 76, Heading before new clause 77, new clause 77, Heading before new clause 78 and new clause 78 as set out in the paper circulated to Members be read the Second time.

New clause 29A provides, *inter alia*, that a licensed trader shall, not later than four months after the close of each financial year, publish in one English and one Chinese newspaper in Hong Kong a copy of its audited balance sheet for that year, a copy of the profit and loss account together with an auditor's report, the full and correct names of its directors or shadow directors, and the full and correct names of its subsidiaries. Such documents should also be lodged with the Securities and Futures Commission. This is intended to improve the transparency of the financial strength of licensed leveraged foreign exchange traders. Similar requirements exist under the Banking Ordinance in respect of Authorized Institutions.

New clause 74 seeks to introduce a power for the Securities and Futures Commission to specify, by notice in the Gazette, forms to be used under the Bill. In the absence of this power, such forms, which are for routine or administrative matters, will have to be made as subsidiary legislation.

New clause 75 empowers the Securities and Futures Commission to promulgate guidelines regarding the conduct of licence holders. These

guidelines will set out principles, procedures and standards to be observed by traders and representatives. Such principles, procedures and standards cannot be defined or measured with the requisite degree of precision for their promulgation in subsidiary legislation. In relation to this, new clause 76 provides that a breach of the guidelines published under new clause 75 would not create any right of legal action as in the case of a breach of subsidiary legislation but may attract an inquiry by the Securities and Futures Commission under clause 12 of the Bill regarding the fitness and properness of the licence holders concerned.

New clause 77 repeats the original clause 74 in the Bill. It introduces a consequential amendment to the Securities and Futures Commission Ordinance in order to remove the restriction on the size of the Securities and Futures Appeals Panel which will receive appeals arising from this Bill.

New clause 78 introduces a consequential amendment to the Protection of Investors Ordinance to allow the publication of advertisement by licensed traders where such advertisement complies with rules made for that purpose under the Bill.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clauses 29A, 74, 75, 76, Heading before new clause 77, new clause 77, Heading before new clause 78 and new clause 78 be added to the Bill.

Proposed additions

New clauses 29A, 74, 75, 76, Heading before new clause 77, new clause 77, Heading before new clause 78 and new clause 78

That the Bill be amended, by adding —

"29A. Publication of audited balance sheet, etc.

(1) Every licensed leveraged foreign exchange trader shall, not later than 4 months after the close of each financial year, publish in one English language daily newspaper and one Chinese language daily newspaper, each of which shall be a newspaper circulating in Hong Kong -

(a) a copy of its audited annual balance sheet for that year, and any notes thereon, a copy of the profit and loss account and a copy of the report of the auditor made pursuant to any rules made by the Commission under section 72;

(b) the full and correct names of all persons who are directors or shadow directors for the time being of the licensed leveraged foreign exchange trader;

(c) the full and correct names of all subsidiaries for the time being of the licensed leveraged foreign exchange trader,

and shall thereafter exhibit them throughout the year in a conspicuous position in its principal place of business and any other place where it carries on business together with a copy of the report of the directors laid before it in general meeting in accordance with section 129D(1) of Companies Ordinance (Cap. 32).

(2) A copy of each of the documents referred to in subsection (1) shall be lodged with the Commission by the licensed leveraged foreign exchange trader, prior to first exhibition thereof under subsection (1), with a list of the names of all companies of which, for the time being, its directors and shadow directors are also directors or shadow directors.

(3) Notwithstanding subsection (1) or (2), the period within which the documents referred to in those subsections are required to be published may be extended by the Commission for such period as it thinks fit where an application for the extension is made by the licensed leveraged foreign exchange trader and the Commission is satisfied that there are special reasons for requiring the extension.

(4) An extension under subsection (3) may be allowed subject to such conditions, if any, as the Commission thinks fit to impose.

(5) The Commission may require any licensed leveraged foreign exchange trader to submit such further information as it may think necessary for the proper understanding of the balance sheet and profit and loss account sent by it under subsection (2); and such information shall be submitted within such period and in such manner as the Commission may require.

(6) If a licensed leveraged foreign exchange trader trader contravenes subsection (1) or (2), the licensed leveraged foreign exchanged and every director or shadow director of it commit an offence and each is liable -

(a) on conviction upon indictment to a fine of $200,000 and in addition in the case of every such director or shadow director, to imprisonment for 1 year; or

(b) on summary conviction to a fine of $50,000 and in addition in the case of every such director or shadow director, to imprisonment for 6 months.

(7) Any director or employee of a licensed leveraged foreign exchange trader who, with intent to defraud, causes or allows a contravention by the licensed leveraged foreign exchange trader of this section commits an offence and is liable -

(a) on conviction upon indictment to a fine of $1,000,000 and to imprisonment for 7 years; or

(b) on summary conviction to a fine of $100,000 and to imprisonment for 6 months.".

"74. Power to specify forms

The Commission may, by notice in the Gazette, specify the form of application for licensing and of any notice, certificate, report, return or other document required for the purposes of this Ordinance.

75. Power to publish guidelines

The Commission may, for the guidance of licence holders, prepare and cause to be published in the Gazette guidelines setting out principles, procedures and standards for and in relation to leveraged foreign exchange trading.

76. Consequence of a failure to comply with guidelines

A failure by a licence holder to comply with the requirements of any guideline published under section 75 shall not of itself create any right of action by any other party to any contract or arrangement for leveraged foreign exchange trading to which that licence holder is a party; but any such failure may be grounds for the Commission to make inquiry under section 12 as to whether or not any licence holder is a fit and proper person to remain licensed or, as the case may be, to be a director or other person concerned in the management of a licensed leveraged foreign exchange trader.

Consequential Amendments
Securities and Futures Commission Ordinance

77. Constitution of Appeals Panel

Section 18(2)(b) of the Securities and Futures Commission Ordinance (Cap. 24) is repealed and the following substituted -

"(b) such number of members whom he considers suitable for appointment as members who are not directors or employees of the Commission.".

Protection of Investors Ordinance

78. Offence to issue advertisements and documents relating to investments in certain cases

Section 4(2) of the Protection of Investors Ordinance (Cap. 335) is amended by adding -

"(fd) the issue of any advertisement made in respect of leveraged foreign exchange trading, where the advertisement and the issue thereof comply with the rules, if any, of the Commission governing advertising of leveraged foreign exchange trading;"."

Question on the addition of the new clauses, Heading before new clause 77 and Heading before new clause 78 proposed, put and agreed to.

Schedule

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

A new part is added to the Schedule on "Credit Ratings". A new exemption under the Bill is introduced for foreign exchange transaction ancillary or incidental to the trading of "specified debt securities" satisfying certain qualifying credit rating requirements. The Securities and Futures Commission will promulgate the credit ratings for this purpose in the new Part III of the schedule.

Mr Chairman, I beg to move.

Proposed amendment

Schedule

"SCHEDULE [s. 2]

PART I

RECOGNIZED FUTURES EXCHANGES

PART II

RECOGNIZED STOCK EXCHANGES

PART III

CREDIT RATING".

Question on the amendment proposed, put and agreed to.

Question on the Schedule, as amended, proposed, put and agreed to.

Long title

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

The amendment seeks to revise the Chinese translation of the term "regulate" in the long title.

Mr Chairman, I beg to move.

Proposed amendment

Long title

That long title be amended, by deleting "管制" and substituting "規管".

Question on the amendment proposed, put and agreed to.

Question on the long title, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

CRIMINAL PROCEDURE (AMENDMENT) BILL 1993

NEW TERRITORIES LAND (EXEMPTION) BILL

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1994 and

LEVERAGED FOREIGN EXCHANGE TRADING BILL

had passed through Committee with amendments and the

DUTIABLE COMMODITIES (AMENDMENT) BILL 1994

OFFICIAL LANGUAGES (AMENDMENT) BILL 1994

PLACES OF PUBLIC ENTERTAINMENT (AMENDMENT) BILL 1994

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 1994

PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) (NO. 2) BILL 1994

REGIONAL COUNCIL (AMENDMENT) BILL 1994

URBAN COUNCIL (AMENDMENT) BILL 1994 and

CRIMES (AMENDMENT) BILL 1994

had passed through Committee without amendment. He moved the Third Reading of the Bills.

PRESIDENT: I will take the New Territories Land (Exemption) Bill separately from the other 11 Bills. The question is that the following 11 Bills be read the Third time and do pass:

DUTIABLE COMMODITIES (AMENDMENT) BILL 1994

CRIMINAL PROCEDURE (AMENDMENT) BILL 1993

CORRUPT AND ILLEGAL PRACTICES (AMENDMENT) BILL 1994

LEVERAGED FOREIGN EXCHANGE TRADING BILL

OFFICIAL LANGUAGES (AMENDMENT) BILL 1994

PLACES OF PUBLIC ENTERTAINMENT (AMENDMENT) BILL 1994

DUTIABLE COMMODITIES (AMENDMENT) (NO. 2) BILL 1994

PUBLIC HEALTH AND MUNICIPAL SERVICES (AMENDMENT) NO. 2) BILL 1994

REGIONAL COUNCIL (AMENDMENT) BILL 1994

URBAN COUNCIL (AMENDMENT) BILL 1994 and

CRIMES (AMENDMENT) BILL 1994

Question on the Third Reading of the 11 Bills put and agreed to.

Bills read the Third time and passed.

PRESIDENT: The question is that the following Bill be read the Third time and do pass:

NEW TERRITORIES LAND (EXEMPTION) BILL

Question on the Third Reading of the New Territories Land (Exemption) Bill put.

Voice vote taken.

MR ANDREW WONG: May I claim a division please, Mr President?

PRESIDENT: Council will proceed to a division.

PRESIDENT: Just to remind Members that Mr Andrew WONG has called for a division on whether the New Territories Land (Exemption) Bill be read the Third time and do pass. Will Members please proceed to vote.

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

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr PANG Chun-hoi, Mr SZETO

Wah, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mr Peter WONG, Mr Albert CHAN, Mr Vincent CHENG, Mr Moses CHENG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LAU Chin-shek, Miss Emily LAU, 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, Mr Roger LUK, Ms Anna WU and Mr James TIEN voted for the motion.

Mr Andrew WONG and Dr TANG Siu-tong voted against the motion.

Mr TAM Yiu-chung, Mrs Elsie TU and Mr CHIM Pui-chung abstained.

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

Bill read the Third time and passed.

Private Member's Motions

PRESIDENT: I have accepted the recommendations of the House Committee as to time limits on speeches for the motion debates this evening and Members were informed by circular on 17 June. The movers of the motions will have 15 minutes for their speeches including their replies; other Members will have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR ANDREW WONG moved the following motion:

> "That section 2 of the Maximum Scale of Election Expenses (District Boards) Order 1994, published as Legal Notice No. 285 of 1994 and laid on the table of the Legislative Council on 25 May 1994, be amended by repealing "$60,000" and substituting "$45,000"."

MR ANDREW WONG: Mr President, I move the motion standing in my name in the Order Paper.

Section 13(i) of the Corrupt and Legal Practices Ordinance imparts the Governor in Council to prescribe the limits on election expenses which may be

incurred by or on behalf of a candidate running for election for a seat in the district boards, the municipal councils and the Legislative Council.

The current expense limit of $30,000 for district board elections was set up in 1990 and was based on various basic expenditure items that were commonly employed by candidates in their campaigning activities. Since then the costs for all expenditure items have gone up substantially due to inflation. Additionally, as civic elections become more keenly contested the expenditure items used by candidates in future elections are expected to increase in both variety and quantity.

Based on the updated costs of these expenditure items — and assuming there will be candidates contesting in the district board constituency with the largest population, that is, Tin Ping constituency in the North District with a population of about 24 000 people, an estimated electorate of about 9 800 people — the Administration has consented an order on 20 May 1994 increasing the maximum limit of election expenses for the September 1994 district board elections from $30,000 to $60,000.

The Administration has given a briefing on the subject to Members of the Constitutional Development Panel. Subsequently, at a House Committee meeting on 27 May 1994, Members agreed that a subcommittee should be formed to study the order in detail. The subcommittee, of which I was elected chairman, held one meeting with the Administration to discuss in detail the basis for increasing the expense limit. The Administration explained that the principle adopted in working out the new election expense limit was that the limit should provide a level playing field for all candidates. That is, that the limit must not be so low as to place unreasonable restriction on election activities, nor so high as to deter less well-off candidates from standing.

In arriving at a new ceiling of $60,000, the Administration drew up a list of expenditure items commonly used by candidates. Having regard to returns on election expenses submitted by past candidates as well as assessment by district offices and staff of the Registration and Electoral Office, a total of 16 items were identified.

However, taking into account of the fact that in 1994 district boards would have smaller and all single seat constituencies with smaller electorate size, the subcommittee is of the view that the expenses allowed for some of the items are on the high side, for example, the estimated quantities of banners, placards and posters, and so on, and that in practice some items are not usually required, such as additional mailing expenses and envelopes.

Members have put forward two sets of alternative calculations. The sum of both come to approximately $45,000. The first one uses 1991 expenses level, that is $30,000 as a base and adds on an amount arising from a cumulative inflation rate of 46.4% plus three new items which Members consider to be items commonly used by candidates.

The other set of calculations put forward is based on reduction in the proposed quantity of banners, placards and posters to a level similar to those set for 1991. Envelopes and mailing expenses are considered not necessary and are excluded from the calculation.

During the discussion, Members also proposed for the consideration of the Administration, that as the subject of election expenses is of a controversial nature it would be more appropriate for the Boundary and Election Commission to make the necessary order after informal consultation with Members and various political parties. The Administration agreed to review the existing arrangement as to which subsidiary legislation ought to rest with the Boundary and Election Commission and which the Governor in Council — the principle being that the former dealt with matters of operation, whilst the latter, policy. At the end of the discussion the subcommittee reached a consensus view that a maximum scale of election expenses for the September 1994 district board elections should be prescribed at $45,000.

On behalf of all Members of the subcommittee, I move the motion that section 2 of the Maximum Scale of Election Expenses (District Boards Order 1994), published as legal notice number 285 of 1994 and laid on the table of the Legislative Council on 25 May 1994 be amended by repealing $60,000 and substituting $45,000.

Mr President, I beg to move.

Question on the motion proposed.

SECRETARY FOR CONSTITUTIONAL AFFAIRS: Mr President, there has been much discussion both inside and outside this Council on the Administration's proposal to increase the election expense limit for the 1994 district board elections from $30,000 to $60,000. I would like to take the opportunity to restate and clarify the Administration's position.

First on principles. In setting the election expense limits for past elections of our three tiers of representative institutions we have always followed two guiding principles. First, the ceiling must not be so low as to place unreasonable restriction on election activities, nor so high as to deter less well-off candidates from standing. Second, the limit should provide a level playing field for all candidates, in particular it must not be so low so that new-comers are placed at a disadvantageous position, bearing in mind that unlike those with the backup of political parties, they cannot achieve any economy of scale and have to spend relatively more to publicize and promote themselves.

Over the years, these two principles have helped ensure that our elections are open and fair. We have therefore followed these same principles in revising the election expenses limit for the forthcoming district board elections. They

are, I would argue, also the yardsticks against which any other proposed ceiling should be measured.

Let me now turn to methodology. In calculating the ceiling three components are involved. The first component is expenditure items. These are items which are commonly used by election candidates as derived from returns on election expenses submitted by past candidates as well as assessment by officers who are closely involved in the electoral process. As campaigning activities grow in sophistication the variety of common expenditure items also increases. Thus we have included in our calculations 16 items, six of which — such as public meetings, identity card for campaign agents and travelling expenses — are new additions this time round.

The second component is the estimated unit cost for each of the expenditure items. The figures were arrived at by inviting quotations from private sector suppliers. Five quotations were obtained for each item. The average of the quotations was then taken as the unit cost of the item.

The final component is the estimated quantity required for each expenditure item. Here the figures were again derived on the basis of returns from past candidates plus assessment by the relevant government departments. I should perhaps add that in so doing, we have fully taken into account the effect of smaller constituencies and smaller electoral sizes for the 1994 district boards on the one hand, and the effect of more keenly contested elections on the other.

I hope the above explanation clearly demonstrates that the $60,000 ceiling has not been arbitrarily set. Rather, it is the outcome of a thorough process of objective analysis based on actual experience and informal assessment.

Mr President, we have carefully studied the Legislative Council subcommittee's proposal to set the ceiling at a lower level of $45,000. Our judgment is that whilst this ceiling would not cause undue difficulties to the electioneering activities of candidates or materially affect the election results, it does not fully reflect the actual needs of candidates. For example, it has not taken into account a number of expenditure items which are now commonly used in election campaigns.

Having regard to orders, and while we understand the reasons of the Legislative Council subcommittee for proposing a lower limit, the Administration's view remains that the $60,000 ceiling is equitable and provides a sound basis for open and fair elections.

Thank you, Mr President.

Question on motion put and agreed to.

THE LEGISLATIVE COUNCIL COMMISSION ORDINANCE

MRS ELSIE TU moved the following motion:

"That with effect from 22 June 1994 the following shall apply to the determination of membership of The Legislative Council Commission, the election of members thereof and their terms of office:

Membership

1. The number of members referred to in section 4(1)(e) of the Ordinance shall be 8.

Manner of election

2. The first election of members referred to in section 4(1)(e) of the Ordinance shall be held at a sitting of the House Committee in October 1994, the date of which ("election date") shall be appointed by the House Committee.

3. The Legislative Council Secretariat shall issue to the Members of the Legislative Council other than *ex officio* members, 10 days before the election date, a circular inviting nominations to be made in a nomination form issued by the Secretary General.

4. Each nomination form shall be for the nomination of one member and shall be signed by one member as the proposer, one member as the seconder, and by the nominee member to signify his consent to the nomination.

5. Duly completed nomination forms shall be delivered to the Legislative Council Secretariat at least three days before the election date.

6. In cases where the number of nominations received by the Legislative Council Secretariat is less than the number referred to in paragraph 1, further nominations shall be called for and received at the House Committee sitting held under paragraph 2; such nominations shall be proposed by one member and seconded by another, with the proposed nominee signifying his consent to the nomination.

7. In cases where the number of nominations received under paragraphs 5 and 6 is less than or equal to the number referred to in paragraph 1, the Chairman of the House Committee shall declare the nominees duly elected.

8. In cases where the number of nominations received under paragraphs 5 and 6 is more than number referred to in paragraph 1, a poll shall be taken at the House Committee sitting held under paragraph 2; voting at which shall be by secret ballot and counted in accordance with the simple or relative majority system of election (otherwise known as "first-past-the-post" system of election).

9. In cases where a nominee would have been elected but for there being one or more other nominees having been given the same number of votes, a separate poll shall be taken in respect of that nominee and the other such nominee or nominees in accordance with the system or election mentioned in paragraph 8.

Terms of Office

10. The terms of office of members elected under section 4(1)(e) shall be one year or until the next dissolution of the Legislative Council, whichever is the earlier."

MRS ELSIE TU: Mr President, I move the motion standing in my name on the Order Paper.

As stated in section 4(1) and (2) of the Legislative Council Commission Ordinance, the Commission shall consist of, in addition to the President of the Legislative Council and the Chairman and Deputy Chairman of the House Committee of the Council, not more than eight members elected in such manner as the Council may determine, by and from amongst Members of the Council, other than the *ex officio* Members.

In addition, in accordance with section 5(3) of the Ordinance, the terms of office of members elected shall be such period not exceeding one year as the Council may determine at the time of the election.

I would like to highlight the main proposals with regard to the manner of election of members of the commission and their terms of office:

(a) Eight members shall be elected to the commission at a House Committee meeting to be held in October 1994 for a term of one year, subject to the date of dissolution of the Council in 1995;

(b) A circular shall be issued by the Legislative Council's secretariat 10 days before the election calling for written nominations. Each nomination shall be proposed by one Member and seconded by another. Nominations must reach the secretariat at least three days before the election;

(c) If there are more than eight nominations, voting shall be conducted by secret ballot and counted in accordance with the simple or relative majority system of election;

(d) If there is a tie between some candidates, the second and subsequent rounds of voting shall also be conducted by secret ballot; and

(e) If the number of written nominations is less than eight, nominations may be called from the floor at the meeting of the House Committee at which the election is conducted.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

DISCLOSURE OF INFORMATION BY PUBLIC TRANSPORT COMPANIES UPON APPLICATION FOR FARE INCREASE

MRS MIRIAM LAU moved the following motion:

"That this Council urges the Government to ensure that public transport companies, when applying for a fare increase, will make public all relevant data and information, including the computation of the rate of increase and its breakdown, details of the proposed fare increase, operation position of the company (including information pertaining to the profit and loss of each route), the rate of increase in costs and details of service improvement and development programmes, so that the public will have adequate information to judge whether the fare increase is reasonable and acceptable; and requests the Executive Council to take into full account public opinion when approving a fare increase."

MRS MIRIAM LAU (in Cantonese): Mr President, I move the motion standing in my name in the Order Paper.

The Governor undertook in his 1993 policy address that the Government would require all public utility and transport companies to enhance their transparency by disclosing to the public more financial information and more information pertaining to their operation position. A few weeks ago, the Secretary for Economic Services submitted an interim report covering this issue to the Legislative Council Panel on Economic Services and Public Utilities and pointed out that there were already six public utility companies which satisfied the Government's requirements in this regard. The Government is now negotiating with another eleven companies (except the China Motor Bus Company (CMB))and good progress is being made. It is expected that the negotiations will be concluded after two or three months.

Now that, apart from CMB, a majority of companies have already indicated their willingness to disclose information pertaining to their operation position, then why do we still have to debate it today? Is today's debate only targeted at CMB? This is not the case. The disclosure of information is of course important but the timing of disclosure is even more important. If a company is willing to disclose information of its operation but the information is not provided along with its application for fare increase, the public cannot judge whether the fare increase sought is reasonable or not. As far as the public is concerned, it is of course most desirable to understand more about the operation of a public utility company, but after all, the issue that the public feels most concerned with is how much the fare will be rising. Take the Kowloon Motor Bus Company (KMB) as an example. When it applied for a fare increase in December last year, the public only knew that the rate of increase it asked for was 19.6%. The only information available to the public was the KMB annual report for the year ended December 1992 while the public was totally ignorant of the operation position of KMB in 1993. Owing to this lack of information, the public reacted strongly to KMB's request for fare increase. In February this year, the representatives of KMB provided information on and the grounds for its fare increase to the Legislative Council Panel on Transport. However it was still reluctant to disclose information in a number of aspects, such as the breakdown of operating costs and the rate of increase of individual items. Although KMB has been responsive to the Government's call for increased transparency by publishing in this month a publication entitled *More About KMB*. The publication contained information which Legislative Councillors had asked for but which KMB had refused to disclose. However, the decision on KMB's fare increase was made at the end of March. And thus the information, which would otherwise have had good reference value if available when KMB had first applied for fare increase, was already devoid of value from effluxion of time.

Mr President, this year's fare increase for most public transport companies have been generally finalized. Although we will be debating the fare increase of Hong Kong Ferry next week, yet there are some interesting things to note if we would look back on how the companies applied for fare increases. The Mass Transit Railway (MTR) fare rises this year are lower than the inflation rate, but the company explicitly states that fare increases will be effected on a yearly basis and the rate of increase will be pegged to the inflation rate. The Hong Kong Ferry seeks to effect an increase covering two years in one go, reiterating that they will still be suffering from deficits despite the fare increase. The Kowloon-Canton Railway (KCR) earns acclaim from the public by declaring no fare increase this year. In the hope that the Government may at least meet them halfway, KMB and CMB employ the strategy of proposing hefty fare increases. Although different companies have different tactics to apply for fare increases, there is something in common — insufficient information is disclosed for the public to judge whether or not the fare increase is reasonable. In addition, the nature and the depth of information provided by the companies also differ from one to another. This is one of the reasons I move the motion.

The level of fares of public transport services has a direct impact on the livelihood of the public. The Liberal Party holds the view that it is beyond reproach for the public utility companies to seek reasonable returns, but the Liberal Party opposes any unreasonable fare increases demanded by the companies. The general public has the right to know and should be provided with the opportunity to judge whether or not the increase is reasonable. In particular, in this year, the rate of increases demanded by KMB and CMB have far exceeded the inflation rate. It is thus necessary for the companies to provide more information and to give more detailed explanation to prove that the rate of increase is fair and equitable.

Mr President, the series of decisions on transport fare increases made this year have set the transport companies against the public. The companies have aroused strong public opposition by not disclosing sufficient information. The ultimate rate of fare increase is usually below the companies' expected rate while the public grumbles because they do not understand the reasons behind the fare increase due to a lack of information. Eventually, both sides are discontented due to a lack of mutual understanding and acceptance — a scenario which we do not want to see.

I will now devote some time to discussing the shortcomings which are common to all public transport companies in their provision of information. Firstly, what we are concerned most is of course the rate of increase proposed by these companies. Most companies just give a general percentage increase. When it comes to the breakdown of information, such as the items covered by the rate of increase (for example, the rate of increase of operating costs and the improvement of services) and the computation of these breakdown items, the companies either make a fleeting mention or just give an analysis in logical terms but not substantiated by concrete data. Among the many companies, KMB has, under pressure from the Councillors, provided quite complete information, but some information is still being withheld and the computation formulae are not given for many of the data. CMB seems to be deep in their dream and still thinking that they are protected by the Profit Control Scheme. Thus they are continuing to calculate the rate of fare increase on the basis of net fixed assets. They insist that only by increasing the fare by 19.1% can a 9% rate of return on their net fixed assets be attained. Due to this very basic difference over the computation of the rate of increase, CMB has nothing to say in reply when asked about the breakdown of the proposed rate of 19.1%.

The second shortcoming concerns the details of the proposed fare increase. The above-mentioned percentage increase is usually the weighted averaged increase. This provides a considerable grey area for the companies to manoeuvre in by applying different rates of increase on different routes and generating glaring discrepancies between the rates of increases of different routes, that is to say, the fares of some routes remain unchanged while some others are subject to hefty fare increases. Take KMB as an example. The Executive Council approved an average increase of 12.9%. Over 200 out of the 300 routes have had a fare increase of over 15%, while 30-odd routes have had

an increase of 20% or above. Only about 40% of the routes have had their fares either frozen or increased by 12.9% or below. KMB has been criticized for drastically increasing the fares of profit-making routes while the fares of loss-incurring routes are either frozen or subject to a minimum rate of increase, so as to balance the general rate of increase. It is therefore suspected that KMB is playing tricks. If it is not playing tricks, it then owes the public an explanation. The question is that the details of fare increases are not provided when the companies apply for fare increase, which renders the public unable to know in advance the rate of fare increase of each individual route or each group of routes.

The third point relates to the operation position of the company. This is an important yardstick to judge the reasonableness of the fare increase. If the company is in a sound operation position but still seeks to increase the fares, more convincing rationales are therefore necessary. If the company is not operating well, fare increase is still not something that should be taken for granted. The public has the right to scrutinize as to whether the poor operation position is a result of inefficient management or due to other reasons, and consideration will also be given to the efforts made by the company in improving its operation position.

The fourth point concerns the rate of increase in operating costs. This is an important component in the rate of fare increase. Operating costs are the main expenditure of a company. In the case of a public transport company, its operating costs include the expenditure on staff costs, spare parts, fuels, maintenance and depreciation. We understand that higher operating costs will reduce the profits of the companies. Since operating costs include all sorts of expenditure items and the weight of each item differs, we must understand the variation of each operating item if we were to consider the rate of fare increase from the operation point of view. It is strange that most companies are especially sensitive when our Members request information in this respect. Although KMB is willing to list out the main items of its operating costs, it still refuses to disclose the rate of increase of each individual item. CMB even regards such information as commercial secrets, fearing that the disclosure of information may put itself in a disadvantageous position if its rival (probably the Citybus) is able to gain access to the information. Some companies even fear that the disclosure of more information may produce adverse effects on their share prices. I believe they are over-cautious. I cannot figure out why the components of operating costs and their rate of increase constitute sensitive information and cannot be made public, nor do I believe the information on fuel expenditure adjustment, staff wages rises and the increase or reduction of maintenance expenditure will have the slightest impact on the share price of a company. However, such information is of paramount importance to enable the public to judge whether the fare increase is reasonable or not.

The fifth point is about the details of service improvement and development programmes. This year, KMB, CMB, and Hong Kong Ferry are requesting higher rates of increase on this ground. With rising living standards in Hong Kong, I believe most members of the public will not mind paying a bit more by way of fare in exchange for better transport services, so long as they provide value for money. However, the cost of better services should not be passed wholly onto the public because service improvement should be regarded as a kind of long-term investment which will necessarily enhance competitiveness and attract more commuters, thereby increasing income. Since these companies still ask the commuters to bear part of the expenditure for service improvement, the public therefore is entitled to know the details of service improvement and development programmes. We want to be provided with concrete suggestions, substantive data and information as to the amount of the relevant expenditure. The public is not in a position to know which areas or which routes will have substantive improvement just by listening to those general descriptions and vague commitments, such as increased frequency, increased mileage, the construction of more bus shelters, the development of new routes, and so on. The public also has no way to judge whether it is appropriate or reasonable to incorporate these components into the proposed rate of increase.

Lastly, I would like to talk about the role of the Government in regard to the applications for fare increases by the public transport companies. Under the existing system, all transport companies are subject to different forms of supervision. Although MTRC and KCRC have the sole discretion to fix their own fares, they have to submit information to the Transport Advisory Committee (TAC) and to inform the Executive Council. The applications for fare increases by other transport companies have to be scrutinized by TAC and approved by the Executive Council, except for the Hong Kong Ferry whose fare increase applications have to be endorsed by this Council. During the process of deliberation, the Transport Branch has to furnish information and make recommendations to TAC and the Executive Council. The information thus submitted includes the so-called "commercial secrets" which the public is denied access to. Therefore, the Transport Branch is very influential over the rate of fare increase. The Government has all along been telling the public that when deciding on the rate of increase of public transport fares, it will consider many factors, including the operation position, the rate of increase of operating costs, the quality of service, service improvements, development programmes, public acceptability and the impact of the increase on inflation rate and so on. As an accountable government, it should ensure that the public transport companies will provide all information pertaining to these factors, so as to facilitate the public's judgement. When approving the fare increase, the Executive Council should take into full account the views of the public. Take the fare increase of KMB as an example. The 12.9% increase approved by the Executive Council is obviously higher than the generally intended and acceptable rate. Of course, the Government may be privy to some commercial secrets or commercially sensitive information which is unknown to the public and the Executive Council may have fixed the rate by making reference to such information. Whatever is

the truth, the Government has the responsibility to explain to the public in clear terms the reasons for approving a rate higher than the generally intended rate. Yesterday, the Executive Council gave approval to CMB to raise fares by 9.8%. CMB is the worst company when it comes to the provision of information. Therefore the public is not in a position to comment on the reasonableness of the fare increase. Although the approved rate of fare increase for CMB is much lower than the company's requested level, the Government still owes the public a clear explanation as to how the decision on the fare increase was arrived at and whether, in arriving at the decision, the interests of the general public have been protected.

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

Question on the motion proposed.

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

MR WONG WAI-YIN (in Cantonese): Madam Deputy, due to time constriant, I shall highlight the main points of my prepared speech.

The motion proposed by Mrs Miriam LAU today calls on all public transport companies to make public all their relevant information and data for members of the public to judge whether their moved fare increases are reasonable. This motion is moved because apart from the three railway companies which are public enterprises, all the other public transport companies in Hong Kong are private enterprises operating under franchise granted by the Government.

Operating with franchise is monopoly in disguise, be it monopolistic in terms of district services, routes or business. In the absence of a competitive market where supply and demand are brought into play, operators will be tempted to increase fares arbitrarily. Consumers can do nothing about it. In respect of indispensable services such as public transport, commuters can only lower their relative consumption level but not stop consumption completely, if and when fare increases are slapped on by operators whimsically. For passengers from low-income families or residing in new towns, who have to take long daily journeys, the effects are particularly obvious and more serious. Having said that, we appreciate that it is acceptable to have monopoly in a free market because for certain trades which require enormous investment with long recoupment period or which require a comparatively large scale of production in order to be able to operate effectively, they will not be able to reap a profit if they do not monopolize the market. Take transportation as an example. If free competitions were to be encouraged, it is likely that operators will only provide services in areas or routes where there is large passenger volume and they can make hugh profits; remote districts or sparsely-populated areas will be ignored because, to provide services in such areas, operators will have to bear a heavy

financial burden. We recognize the necessity for public utilities such as public transport to have a measure of monopoly. However, it must be ensured that operators make their reasonable profits not at the expense of commuters' interests. The Meeting Point has stated that the demerit of monopoly is its stifling of competition. Where there is no competition, operators can charge exorbitant prices at whim. With a view to safeguarding commuters' interests, all public transport companies must make public all relevant information and data upon application for fare increase so that the public have sufficient information to gauge whether the increase is reasonable and acceptable.

Currently, the Government monitors monopolized operations through schemes of control in terms of the operators' profit and price. Profit control is based on the fixed assets a monopolistic concern has made, which means that the larger the size of the asset, the higher the profit allowed whereas price control is based on the cost, which means that the larger the size of the cost, the higher the price allowed. In this connection, to ensure that the fares are set at a reasonable level, it is necessary to guarantee that public transport companies will not add anything which has nothing to do with the services provided to commuters to their fixed assets so that the companies will not be able to use it as a pretext for fare increases. Also it must be guranteed that fares would not be raised on the excuse of a higher cost incurred as a result of poor management. In order to enable the public to determine whether a proposed fare increase is justified, a public transport company ought to release the details relating to the proposed fare increase and the company's operation. But, to give real protection to public interests, the Government must play a greater role of regulating franchised operators. This preventive regulatory strategy could ensure that public interests would be served without doing serious harm to the fundamental interests of franchised operators. This strategy may take the form as follows: The Government and a franchised operator can jointly appoint, under the terms and conditions of the franchise, a third party to be the utility's permanent management consultant which provides objective and impartial advice and suggestions for the Government's and the operator's consideration and discussion before implementation; the government departments concerned are to monitor the progress of the implementation in accordance with some established procedures. But, the strengthened regulatory role of the Government is based on one presumption, that is, the Government is able to uphold commuters' interests and this can be achieved through the consolidation of the channels and system through which commuters' opinions are collected.

The Meeting Point suggests that the Government may consider following the example of other countries to set up various users' bodies for statutory utilities with public funds to reflect users' needs and interests. At present, as a matter of fact, there is only one such body, namely the Transport Advisory Committee (TAC), which is responsible for monitoring public transport companies. The role of TAC, however, is relatively confusing. It is concurrently both an adviser to the Government and a policy-making body. To make matters worse, its members are appointed by the Government which is not democratically elected. Therefore we consider TAC incapable of discharging

the regulatory responsibilities. The Meeting Point suggests that a permanent statutory users' body should be set up for each of the respective utilities. It should comprise elected Members, professionals, consumers and so forth. Their terms of reference should be to provide utilities with opinions in various aspects, such as the levels of charges and fares, service quality and so on. Public utilities should provide these users' bodies with sufficient and ample information for discussion purpose.

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

REV FUNG CHI-WOOD (in Cantonese): Madam Deputy, for the past few years, inflation has been hovering at a high level. Both the public and this Council have been at pains to try to stop the two bus companies and the two railway corporations from drastically increasing their fares, since the increases will only add fuel to the runaway inflation. However, the Administration, in most cases, has tended to throw its weight behind their fare increase proposals and this partiality is particularly conspicuous in cases concerning the two bus operators. It seems that the public can only grin and bear such unreasonable fare increases.

The fare increases of the two bus companies over the past 10 years have been higher than the inflation rate over the same period. Against this background, this Council moved and passed a motion this year that the rate of bus fare increase must not be higher than the inflation rate. Yet the Executive Council turned a blind eye to this motion. As a matter of fact, the fare increase by KMB is particularly unreasonable. To rectify this situation, I think, the request for the disclosure of information should only be our primary objective. This Council should take one step further and fight for a change so that the entire fare-setting process about which the public has been kept in the dark could become more transparent and responsive to public views and the deliberation process of the Transport Advisory Committee and relevant information papers should also be made public. This is the best way to enhance the public's understanding of the way fare increase applications are handled. I therefore urge the Administration to give some serious consideration to this suggestion.

From the two rounds of fare increase of KMB, we have learned a hard lesson that the public transport companies could misinform the public and this Council about the hikes simply by withholding some information about their fare increases. For example, the Executive Council approved KMB an average rate of increase of 12.9%, but on the day when the fares were raised, most commuters taking bus rides in Kowloon and the New Territories found that, with the exception of the air-conditioned buses, the fares for most routes went up at a rate higher than the so-called "average rate of increase". We learn from this episode that when the public transport companies apply for fare increases in the future, they should be required to make available information pertaining to details of their proposed fare increases, including the average rate of increase

and the different rates of increase with regard to individual routes, so as to enable the public to have a clear idea about the increases and to make a reasonable judgement by themselves. Other information that should also be disclosed includes the public operators' development programmes for the coming few years, their service reviews and service improvement studies for the previous financial year, their directors' fees, any delpetion of their reserve funds, findings of opinion polls among commuters about their services and fare levels, any cost-reduction measures and so forth.

With these remarks, I support the motion.

THE PRESIDENT resumed the Chair.

SECRETARY FOR TRANSPORT: Mr President, let me say from the very outset that the Administration fully supports the spirit of the motion put forward by the Honourable Miriam LAU, namely that public transport companies should disclose all relevant data and information when seeking increases in fares.

The main providers of public transport services in Hong Kong are the private franchise operators and the two railway corporations. Every day over 10 million passenger trips are made. Public accountability is indeed required to protect the interest of commuters.

It would be totally unfounded and wrong for anyone to think that up to now nothing has been done either on the part of the transport operators or the Administration to provide information. However, the need for fuller disclosure of information is recognized. As Mrs LAU has pointed out, the Governor, in his opening address last October, announced the Government's intention to ask all utilities and public transport companies to adopt new standards of disclosure on their financial and operational activities. And indeed earlier this month the Economic Services and Public Utilities Panel of this Council was fully briefed on the steps that have been taken. Admittedly, some companies have been more responsive so far than others.

Let me illustrate what happens on the public transport front. The initiative to seek fare increases rests with the company. It has to provide the necessary financial and operational information in support of its application. In brief, such information must include the rate of fare increase applied for; the proposed new fares on individual routes and route groups; detailed breakdown of operating costs covering wages, repairs and maintenance expenses; patronage and revenue forecasts; service improvement and future development programmes as well as other supporting and supplementary information. Such data, once received, will be carefully assessed by the Administration. The financial monitoring unit of the Economic Services Branch examines the financial information in respect of operating costs whereas the Transport

Department will scrutinize the patronage and revenue forecasts, service improvement proposals and other operational information. Transport Branch co-ordinates the exercise and indeed plays a major role taking overall policy considerations into account before making any recommendation. The Administration will then go through the process of briefing the Legislative Council Panel on Transport, seeking advice from the Transport Advisory Committee and then approval from the Executive Council.

In the first half of 1994, we have dealt with the fare increase applications from the Kowloon Motor Bus (KMB) Company, the China Motor Bus (CMB) Company and the Hong Kong and Yaumati Ferry Company Limited. These operators were invited to present and argue their cases to and before the panel. For example, the information given to the Transport Panel covered the composition in increase of operating costs including contingency provisions for third party insurance claims; patronage forecasts; performance standards and productivity; financial performance in past years and service development programmes. When necessary, the Administration supplements the information provided by these operators.

However, it should be recognized that certain information is either unsuitable for public disclosure or not really required. Let me cite some examples. Firstly, commercially sensitive information. Although detailed forecasts of future revenue costs and profits is made available to the Government, such information cannot be revealed publicly because most operators are publicly listed companies. But we will certainly look again at this aspect to try to limit information that really needs to be kept confidential.

Secondly, profits and loss figures on individual routes. Transport operators understandably are reluctant to divulge such information to their competitors. From the Administration's point of view, it has always been the practice to assess fare increase applications on an across-the-board basis rather than on a route-by-route basis. Franchise operators are required to operate both profitable and unprofitable routes, thus a degree of cross-subsidization is unavoidable.

The point made by the Honourable Miriam LAU regarding the range of increases for different routes, many of which were above the weighted average, is pertinent but perhaps more so in percentage rather than in actual monetary terms. The Administration will certainly bear in mind this point in future exercises.

Thirdly, an analysis of apportioning the rate of increase to specific elements of operating costs. We believe that this is the wrong approach. What is important is that the forecast revenue needs to be adequate to cover operating costs and yield a reasonable return to the operator.

I hope I have demonstrated that a great deal of information is in fact already provided. The outcome of the applications for fare increases sought this year by KMB and CMB vividly illustrate the meticulous vetting undertaken by the Administration. Although KMB and CMB sought 19.6% and 19.1% increases in fares, their applications were substantially slashed with the actual increases being limited to 12.9% and 9.8% respectively.

The Honourable WONG Wai-yin referred to franchise operators having a monopoly. This is not necessarily the case and neither does it mean that the operators do not have any constraints. For example, there is now competition on many island bus routes and legislation is in the pipeline to impose stiff financial penalties for non-performance. Regarding Mr WONG's suggestion for a third party to monitor the performance of bus companies and other operators, as well as applications for increases in fares, as he has pointed out, we have the Transport Advisory Committee. It is independent and impartial, and I do not necessarily think that with elected representatives its advice would necessarily be any better. It has got to be borne in mind that transport is a very good platform for electioneering. Also, we have the district boards and of course, feedback from the Legislative Transport Panel. Their views are taken very, very seriously.

The Honourable Miriam LAU also requested that the Executive Council should take full account of public opinion when approving a fare increase; and this is done. In making our recommendations to the Executive Council the Administration has to provide the views of the Legislative Council Transport Panel, an assessment of public opinion based on representation made by individuals, district boards and other community organizations and reports in the media. And also we provide the likely impact of proposed fare increases.

There is no reason to doubt or question that the Executive Council carefully weighs up public opinion in its deliberations of all fare increase applications. For example, the Executive Council's concern is illustrated by its directive to the Administration to examine how proceeds from the sale of depot sites can be taken into account in determining future fare increases.

Mr President, at the end of the day we must be accountable to the public and to do this, I agree that as much data as possible should be disclosed. The Administration and the transport operators will continue to meet to pursue this objective to see how best the existing arrangements can be enhanced. But it must be recognized that transport operators have a legitimate reason in not disclosing commercially sensitive information.

With these remarks, Mr President, the Administration supports the motion. Thank you.

PRESIDENT: Mrs Miriam LAU, do you wish to reply? You have three minutes and 20 seconds.

MRS MIRIAM LAU (in Cantonese): Mr President, I am grateful to Mr WONG Wai-yin and Rev FUNG Chi-wood for their speeches. There are some other Members who intended to speak. They are Mr Jimmy McGREGOR, Mrs Peggy LAM, Mr Frederick FUNG, Mr LEE Wing-tat, Mr Moses CHENG and Mr Steven POON. However, since it is indeed very late now, I requested them not to speak on this motion. Although they did not have the opportunity to speak, I thank them anyway.

Mr President, my motion today has not been subject to any amendment or politicization, a rare case of motion recently. I should like to thank Members in this regard. This indicates that Members are unanimous in delivering a clear message to the Administration, which is, we are not satisfied with the information provided by public transport companies whether in terms of quality or quantity, and we hope that improvement can be made. I am glad to hear the Secretary for Transport say just now that the Administration would support this motion, and would also examine and review the definition of "commercial secrets". I hope that the Administration can get down to the work as soon as possible, and I also hope that we need not argue again about what insufficient information public transport companies have provided.

Mr President, to the public transport companies, being frank to the public is their best guarantee for public support. If they try to evade the public by fair means or foul and deny the public access to the information, it will only have adverse effects. If the public can have a better understanding of the companies and the reasons for fare increases, I think the voices opposing the increases would diminish as a result.

Question on the motion put and agreed to.

RATE OF RETURN OF THE MASS TRANSIT RAILWAY CORPORATION

MR LAU CHIN-SHEK moved the following motion:

"That this Council urges the Government to request the Mass Transit Railway Corporation:

(a) to explain the necessity of its plan to set the overall average internal rate of return at 10 per cent over a period of 40 years and its effect on future fare increases; and

(b) to consider abolishing its current policy of adjusting fares annually on the basis of the inflation rate, so as to safeguard the interest of passengers."

MR LAU CHIN SHEK (in Cantonese): Mr President, I move the motion as set out under my name in the Order Paper.

The important role of the MTR

Without a doubt, the Mass Transit Railway (MTR) has become Hong Kong's most important mode of public transport. On weekdays during the month of December 1993, it carried an average of nearly 2.4 million passengers per day, an increase of 6% as compared to the same period in 1992. Although at present, the MTR has a passenger volume still less than that of Kowloon Motor Bus (KMB), yet being the most efficient mass transit carrier in the urban areas, it has undoubtedly become a major mode of transport for the majority of people. The bus, on the other hand, has become a subsidiary mode of transport. Looking ahead, patronage under the existing system of the MTR will have an annual increase of 3% to 4%. In the near future, the MTR system will be further expanded, covering the development of the Airport Railway and the Tseung Kwan O line.

Fare increase has great impact on people's livelihood

With the growing importance of the MTR in our mass transit system, the demand for MTR service has been on the increase. The MTR has now become a daily necessity for most people. For this reason, whether MTR fares are reasonable or not greatly affects people's livelihood. Regrettably, since the operation of the MTR in 1980, its fares have increased every year. Generally speaking, the start of accumulated increase has been closely linked to inflation and for several years, the rates of fare increase were even higher than inflation. As MTR fares take up an increasingly higher proportion in people's total traffic expenses, the policy of annual inflation-linked fare increase will undoubtedly push up the inflation rate and add to the burden of the people. The persistently high inflation rate over the past years have already burdened the general public with a high cost of living. Yet the Mass Transit Railway Corporation (MTRC) takes no heed of people's livelihood and keeps on raising its fares year after year to link to the high inflation rate. This is really outrageous!

Among all the public transport corporations in Hong Kong, the MTRC is the only one that, as a rule, raises its fares each year at a rate linked to inflation and higher than those of the Kowloon-Canton Railway Corporation (KCRC), which operates a similar mass transit system. What makes people more angry is that the MTRC has autonomy in increasing fares and is not subject to public monitoring at all. Some people even think that the reason why the MTRC raises fares annually with no regard for people's livelihood is that the Corporation has something secure to rely on.

In the past, the MTRC had to raise fares annually because it was heavily in debt. A large proportion of the annual expenditure was used to pay interests and other financial expenses, which took up more than 50% of its revenue. However, with an expansion of its scale, the MTRC is now making a profit instead of a loss, and its net profit has been on the increase. It is anticipated that, by 1996, the MTRC's cumulative loss will be levelled off. Furthermore, with an increase in revenue, the proportion of the annual interest payment to the total revenue of the Corporation will drop. It is anticipated that the MTRC will pay off all its debts by the year 2001.

Annual fare increases simply unwarranted

In fact, the operating position of the MTRC has been improving since 1991. The Corporation can still have a surplus even without counting its profits from property development. Its net profit rose sharply from $67 million in 1991 to $735 million in 1993. For 1993 alone, the net profit had a sharp increase of 82% as compared to that of 1992. By the end of 1993, the ratio of the MTRC's loan to its equity dropped sharply from 2.3:1 to 1.7:1, signifying that the financial position of the MTRC has been very strong.

The MTR is one of the few mass transit carriers which has a significant increase in passenger volume each year. Therefore, in consideration of its projected growth in revenue and its stable financial condition, I think that the MTRC absolutely has no reason to keep or raising its fares each year. Even if it must increase its fares, the rate of increase can be much lower than inflation.

Rate of return creates pressure to raise fares

Why then does the MTRC insist on having annual increases in line with inflation despite its very satisfactory financial projection? According to the explanations provided by the MTRC to the Legislative Council Panel on Transport in late March this year, the Corporation's policy of annual fare increase in line with inflation serves two purposes: apart from coping with the rising operating costs and servicing the debts, it also enables the Corporation to attain its internal rate of return. The MTRC hopes to attain an annual 10% rate of return on its total investment over a 40-year period from the day the railway commenced operation (that is, in 1980). (About $30 billion has so far been invested in the three lines of the MTR.)

In view of the present financial position and the projected development of the MTRC, the rising operating costs and repayment of debt should exert little pressure on the Corporation to raise fares. The major pressure for fare increase should come from the internal rate of return. As the MTRC can only dispose of its cumulative losses by 1996, its shareholders can only have a return in real terms 17 years after the commencement of operation of the MTR. In other words, the company will try to make up for all of its expected 40-year investment return in the next 23 years. Obviously, this rate of return will exert great pressure on future fare increase.

High rate of return pushes up fares

If the MTRC were merely a private business company, one would have nothing to say about its internal rate of return. But the MTRC is a major mass transit carrier which has great impact on people's livelihood; and as the Government is the only shareholder of the Corporation, the MTRC is regarded as a public body which has to undertake a social obligation to safeguard people's livelihood. More important still, among all other public transport corporations in Hong Kong, the MTRC and the KCRC are the only two corporations which can enjoy autonomy in adjusting fares. Therefore, we have all the reasons to find out if the MTRC's rate of return will unreasonably push up fares to the detriment of the public

MTRC's rate of return open to question

When the MTRC first announced the 10% internal rate of return, the rationale was to provide its shareholder (the Government) with a reasonable return. Recently, however, a spokesman for the MTRC stressed that the purpose of setting an internal rate of return was to maintain the real asset value of the MTR and enable the Corporation to improve services and develop new lines without putting in additional investment. No matter what the real rationale is, I think there are areas of to be queried.

Technically speaking, it is doubtful whether the service life of the MTR should be set at 40 years. In fact, the main investment on constructing the MTR system is spent on building tunnels and stations, as well as laying tracks and so on. These facilities surely have a service life far longer than 40-years. All that is needed is routine maintenance. If the MTR's service life is far longer than 40 years, it is unnecessary to set an annual 10% rate of return over a 40-year period even if we want to maintain the real asset value of the MTR system. In fact, according to the MTRC's latest financial forecast, if no new lines are developed, the Corporation will have as much as $18 billion liquid cash by the year 2010, prior to the payment of dividends, which is close to the gross revenue of the Corporation for that year.

Another point worth noting is that the financial forecasts tend to understate the Corporation's net profit potential. Take the year 1993 as an example. The forecast at the beginning of that year was merely a net profit of $461 million. Yet the actual net profit at the end of the year was as high as $735 million, 60% higher than the original estimate!

More important still, as far as principles are concerned, investment return should not be the sole factor of consideration when the Government invested in the MTR. The construction of the MTR can bring about great social benefits (as it can improve traffic conditions, promote the development of new towns, enhance work efficiency, and in turn increase productivity, improve people's quality of life and lower the public's transport expenses). Therefore, there is no reason why the Government should regard financing the MTR as a kind of

investment and demand a monetary return. The Government should consider how public money is spent in terms of the social benefits brought about by the MTR. It is precisely for this reason that I strongly oppose to the Government's receiving dividends from the MTRC. I think that the money should be retained by the MTRC to improve its services and relieve the pressure to raise fares. By the same token, when the MTRC is to launch a major service improvement project or to develop a new line, the Government has an obligation to inject additional capital into the MTRC. The MTRC should not squeez its present passengers to obtain additional capital.

Review rate of return and scrap the annual fare increase policy

Therefore, I urge the MTRC to explain why it is necessary to set the internal rate of return at an average of 10% a year over a 40-year period, and what effects this will have on future fare increases. I further request that the Government hold discussions with the MTRC to review comprehensively whether this internal rate of return should be scrapped to avoid pressure on fare increase. More important still, I think that the MTRC should immediately scrap its policy of annual inflation-linked fare increase. In this way, the MTRC will become a public body which really looks after the needs of the people.

As the sole shareholder of the MTRC, the Government should have the final say on the internal rate of return and the fare increase policy. I hope that the Administration will, in its later speech, inform this Council whether it has played a role in setting the MTRC's internal rate of return, whether it concurs with their rate of return and has requested the Corporation to pay dividends to the Government. If the Government really cares for people's livelihood and wants the MTRC to reinvest its future profits for the benefit of the passengers, it should announce today that it will not receive dividends from the MTRC, so that members of the public will have a clear picture of the Government's policy direction.

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

Question on the motion proposed.

MR EDWARD HO: Mr President, I first declare my interest as a member of the Managing Board of the Mass Transit Railway Corporation (MTRC). Mr President, over 2 million people travel on the Mass Transit Railway (MTR) every day. What does that mean? It means that a very large proportion of our population prefer travelling on the MTR more than other modes of public transport, because it is the surest way of getting to one's destination on time and in relative comfort. I say "relative" because the popularity of the MTR means that at rush hours, the congestion on the train can be quite uncomfortable. Thus, the MTR is a victim of its own success.

Because so many people travel on the MTR each day, it has also become a natural target for politicians to try to shoot at. The law of the jungle in politics is: the bigger the target the easier the game. Hence, it is now the third time that the running of the MTR is debated in this Council in the last 17 months. The debate today is not whether the MTR has been run successfully. The record speaks for itself: operationally and financially, the MTR has been amongst the few most successful in the world.

Though not in so many words, the debate today is whether the MTR should give up its principles of being run on a prudent commercial basis, which it is required to do by legislation passed in this Council. If this is what Mr LAU Chin-shek and his colleagues in the United Democrats wish, let them say so loud and clear. If indeed Mr LAU and company wish that the MTR were to be transformed into a government-subsidized loss-making railway, of which there are many examples in the world, then let them say so as well. For then we would at least have a more meaningful debate to pass the time of the evening. At first my text said "afternoon". It is evening. I guess it is morning.

As it is, we have today, with the MTRC, a splendid example for the rest of the world on how a public transport system can operate on prudent commercial principles and offer the prospect to the community of maintaining and improving its service for the customer, adding improvements and adding expansions with little recourse to funds available to the rest of the community for other projects or social course.

If we really care for the welfare of our community, we should doubly ensure that a public transport system can be self-financed in the long run. Public transport is a business. As in any other business, there must be adequate return on net assets employed. To put it simply, there must be at least an adequate return for the investor so that the original principal can be repaid over time.

Like any other well-run business, it would be imprudent that projects would be funded entirely out of equity. This would place an unnecessary restraint on expansion and development. In a government-owned enterprise, it would also mean that resources for other government projects would be affected. This should be simple enough to be understood. If there were borrowings, then the return must give confidence to the lenders that the debts can be serviced. A retirement of debt can only come from profit and profit can only come from an adequate margin of revenue over cost and that usually means the maintenance of revenue in real terms.

Mr President, for those of us who have a pre-conceived agenda, they will not be interested to hear how a good government-owned public transport should be run, nor how that would benefit our community. I do not agree with what Mr LAU Chin-shek has said, nor the spirit behind his motion, but since his motion only calls for the Government to request the MTRC to consider what he has said, the Liberal Party has decided not to oppose his motion.

MR JIMMY McGREGOR: Mr President, I am not sure, to be frank, that this motion is necessary. Except, perhaps, that it gives Councillors the opportunity to say what they think about the Mass Transit Railway (MTR), its record of service to the Hong Kong public, its record of efficiency as a people mover and its contribution to the economic well-being of Hong Kong. I have no doubt that the Government, together with the MTRC, can quite easily explain and justify the 10% average internal rate of return.

Most people recognize that this is a major transport system which must operate on a sound commercial basis and must be able to generate sufficient funds from passengers to service debts, to maintain a high standard of safety, comfort, travelling efficiency and provide a reasonable return to investors who are, partly through the Government, the public themselves.

This is a transport system that is vital to Hong Kong's economy given the huge and growing number of passengers it carries every day. In such a material place as Hong Kong the speed of movement of our working population is directly related to the efficiency of our business and other activities. The MTR is one of the most efficient railways in the world and it must continue to maintain that proud record. Consider for a moment the situation that would arise if the MTR had to stop running for a day or two. Imagine the chaos and the economic losses that would result.

We are already talking about and planning for the extension of the MTR to the new airport. There is a clear need for further expansion to broaden the catchment areas for MTRC passengers. Our roads will never be able to cope with the traffic expansion now being experienced and likely to continue until, and unless, we, for example, introduce electronic road pricing. Increasingly, therefore, our travelling population will depend upon the railways, the Kowloon-Canton Railway Corporation (KCRC) and the MTR, but within the city only the MTRC.

I can see no objection to part (a) of the motion but I am very strongly opposed to the general concept set out in part (b). The current policy of adjusting fares to cover at least the inflation rate seems to me a sound and desirable practice if the MTR is to be run on commercial lines under normal commercial criteria. In fact, this is a principle which I have always felt should be the basis for government fees and charges, quite apart from the MTRC. If such a policy is not followed, it will be entirely possible that the financial viability of the MTR will be quickly and adversely affected, with sudden and substantial increases in fares becoming necessary every few years, with the inevitable screams of anguish from the public and, of course, from this Council.

The MTR is a commercial operation and should be run on sound commercial principles. It is highly efficient and financially viable. It should be encouraged to remain so. I am opposed to part (b) of the motion and will therefore vote against it.

MR VINCENT CHENG: Mr President, I cannot remember how many times we have debated on the Mass Transit Railway (MTR) in this Council. If this Council could not find a better topic for debate we should allow ourselves to go home early.

Mr LAU's motion effectively calls for a subsidized MTR service when clearly there is no need nor desirability to do so. MTR fares are among the lowest in the world when measured against people's income. The corporation provides good quality service. It has the best rating in financial markets at a time when many public transport bodies in the world are struggling at the brink of bankruptcy. Why should we want to change a policy which has produced such excellent results?

I do not see why MTR should not adjust fare according to the rate of inflation unless Mr LAU believes that the salaries of MTR workers should not be adjusted to compensate at least for inflation. If not, I would like to hear from Mr LAU where the new money could come from.

Mr LAU asks the MTR to explain the necessity of setting an internal rate of return. This is a legitimate request because most people do not have any knowledge of managing finances. I would urge Government to explain the concept in the simplest possible way so that people can understand. I would, however, like to reassure Mr LAU that there is nothing sinister about this concept. It is a standard yardstick used in the commercial world to manage finances and projects.

The internal rate of return is to retain the real value of a capital investment and at the same time provides investors with a reward for the risk undertaken. In MTR's case, the return on investment is to allow MTR sufficient revenue to maintain, upgrade and expand the system. At the same time, it allows MTR to repay its creditors interest at market rates.

Without a positive rate of return, the MTRC would not be able to maintain good quality service, nor would it be able to borrow cheaply to expand the service. The 10% internal rate of return is not high, particularly in periods of rising interest rates and high inflation.

Mr President, MTRC is a public body. It is owned by the people of Hong Kong. It is therefore reasonable for the people of Hong Kong to expect the MTRC management to manage the project efficiently and produce a reasonable return. To ask the MTRC to allow prices to fall below inflation and not to preserve the real value of capital is irresponsible financial management. It would turn a success story, well admired and respected by the world, into a financial shambles. There is no shortage of such unfortunate examples — London Transport and New York Underground. We certainly do not want to see the MTR joining the ranks of these unfortunate public bodies.

Mr President, I oppose the motion.

MR ROGER LUK: Mr President, the debate today is not on the desirable rate of return for MTRC. Neither is it on the desirable arrangements for the periodic revision of the train fares. This debate is on the old question of the role of the Government in the provision of utility services through public corporations.

The MTRC is established for the principal purpose of constructing and operating, on prudential commercial principles, a mass transit railway system having regard to the reasonable requirements of the public transport of Hong Kong.

Prudent commercial principles mean, in financial terms, to plan, justify and obtain sufficient revenue over time from commuters, on existing and additional assets:

- to cover costs incurred in providing the service and maintaining and improving the assets;

- to secure, service and retire an appropriate level of debt; and

- to reward the shareholders at a level commensurate with risk and expectation.

An effective and efficient business is always the one which makes an adequate return on net assets employed. Such a return is necessary to provide for the business to obtain an optimal financial arrangement combining equity and debts. An adequate return on net assets employed afford to cover for this.

Yet, net operating surplus can only come from adequate margin of revenue over cost. An adequate margin of revenue over cost can only be achieved by keeping the increase in revenue in pace with costs. In this respect, it is essential that the value of revenue in real terms is maintained.

The foundation of prudential commercial principles is “user pays”. Unless the Government seeks to recover operating costs as well as a proper rate of return on the capital employed in the MTRC from commuters, they would be subsidized by public purse. A target return is thus simply a reflection of the cost of capital which could have been otherwise used in other investments or a provision of other services to the community.

There is no hard and fast rule on a reasonable rate of return. It all depends on the prevailing interest rate and the investment risk involved. It is however generally accepted that investments should achieve a rate of return higher than inflation to generate real returns. As such, a rate of return between 7% and 15% is expected under the prevailing investment climate.

Fare fixing is a complex issue. While the cost is an important consideration, the overriding factor is always affordability of users and the value for money. MTR fares only constitute an insignificant proportion of the

monthly expenditure budget of households. The daily patronage of the railway of almost 2.5 million is a demonstration of the value for money of the MTRC.

An inflation related fare adjustment strategy is an equitable and effective means of ensuring that the nominal value of revenue would cover costs of capital, operation and maintenance and for improvement, servicing debt and providing a reasonable return to shareholders.

Mr President, Hong Kong is proud of our MTR. We have set a splendid example for the rest of the world on how a public transport system can operate on prudent commercial principles and offer the prospect to the community of maintaining and improving its service for its commuters, adding improvements and adding extensions with little recourse to the public funds available to the rest of the community for other projects.

The deterioration experienced on many public transport systems throughout the world, as quoted by the Honourable Vincent CHENG, is a sober reminder of the failure to keep revenue in line with expenditure to the extent that the whole infrastructure is incapable of supporting demand and providing an efficient reliable, safe and secure system.

I am sure none of us want to see our MTR becoming such a deteriorating system. I am sure none of us want to see our MTRC becoming a publicly subsidized system.

Mr President, as the Honourable Edward HO pointed out earlier, this is the third debate on the operation and management of the MTRC in the last 17 months. The criticisms of existing arrangements are unfounded whilst the arguments supporting their soundness are loud and clear. I sincerely hope that this is the last debate on this thoroughly explored subject for the remaining term of this Council.

With these remarks, Mr President, I cannot support the motion.

SECRETARY FOR THE TREASURY: Mr President, I propose, with your consent, to share the duty of replying to this motion on behalf of the Government with my colleague, the Secretary for Transport.

I wish to discuss with Members why it is important to accept the concept of a return on the public's investment in the MTR. In that context, I shall explain why the interests of passengers are better served not only by low fares, but also by quality of service, by regular renewal of the existing railway system as it ages, and by expansion to meet new demands.

Our law requires the MTRC to operate according to prudent commercial principles. Put it simply: the MTRC should seek a return, because it should gain the resources from within the revenues of the existing system to allow it, at today's prices, to maintain, upgrade and expand the system.

It is important to look forward to the future. Provided that MTR can maintain its fares at a level which achieves a reasonable rate of return, it will have available the resources to keep the system clean, efficient, safe and growing to meet future service needs, more or less regardless of the Government's financial position in the future.

If we let fares fall in real terms, or fail to obtain a return, then the Government of the future will face having to pump in funds for the renewal and development of the system, when it would prefer to use the money for something else, or it might simply not be able to afford to do so. Another important reason for maintaining fares in real terms and obtaining a return is that Hong Kong public can benefit enormously from the MTRC's ability to borrow money at low rates of interest. What money the MTRC cannot borrow to fund new railway developments has either got to be made up in higher fares, or in more money or concessions from the owner, that is, the Hong Kong public.

I am sure Members will realize that a business cannot borrow money effectively and cheaply if it cannot even maintain its revenue in real terms. What is more: lenders look for adequate cover for debt servicing, which in effect involves a safety margin in the borrower's profitability represented by the rate of return to the owner. They can rely on this safety margin in case the economics of the business deteriorates, and they reflect that extra degree of comfort in lower interest rates.

Most Members are well travelled. Any railway system which is allowed to degenerate is more than just a source of dissatisfaction to passengers: it gradually becomes a real threat in terms of safety, security and stability of fares.

The position reached in the case of the London Underground is illustrative of what can go wrong. In the 1960s and 1970s those in control of railway investment and pricing strategies in Britain were under strong social pressure to maintain low fares, and to ignore prudent commercial principles. This story can be told about similar railways in the United States and elsewhere.

By the late eighties, the condition of the London Underground deteriorated to a point where it could not continue to operate safely and efficiently without major renewal. But by that time passengers could not afford the sort of major fare increases that the authorities would need to meet a major upgrading, and parts of the system had become so worn out that there was little chance of attracting private investment to fund improvements.

I am not trying to boast at the expense of the London Underground system — and I know that valiant efforts are now under way to try to upgrade it — but we have to be aware of this sort of danger, and to make sure we do not fall into the same sort of trap at a time when we are trying to pay more attention to meeting public expectations of more services at a lower cost.

Our MTR is probably the best in the world. Most of the rest of the world seem to think so, anyway. One of its unique features is that it operates without a subsidy, and is capable of providing a real return to the owner, the people of Hong Kong. Not even the railway systems in Tokyo achieve that.

I understand that the MTRC has already taken the initiative to start explaining to Members the rationale behind their policy of setting a rate of return of 10% over a 40-year period. As you will be aware, the corporation has been through a long period of capital expansion and is only now clearing the debt raised to fund previous expansion phases. New capital expansion for the Airport Railway and relief for the Nathan Road Corridor will start soon, and with it the MTRC will have to raise new debt. Not surprisingly we have not sought a dividend from them and we have not set a formal dividend policy for them. Instead, with the support of the Government as shareholder, the corporation has set out at least to preserve the level of interest that the public would expect to receive on their capital invested over so many years. This will assure that the value of our investment is preserved in real terms, as well as providing the minimum level of interest cover required by lenders — both past and future.

The corporation will continue its efforts to provide Members with the details underlying this policy.

For this, the price will be that passengers should continue to pay in real terms the fares they are paying today. To put it in other words, they should readily accept fare increases in line with inflation, because this will enable our MTR to grow to meet its needs in the future. Our MTRC is not an expensive system to travel on. It is certainly extraordinarily good value for money.

The motion calls on us to ask the MTRC to explain the rationale behind the setting of the average internal rate of return. I have done this very briefly, and the MTRC will explain in detail later.

As to the latter part of the proposition in the motion — that the MTRC should be asked to consider abolishing regular fare increases in line with inflation — I have tried to explain by analogy with the problems in other metro railway systems why that in fact does not serve the best interests of the passengers or the public at large. I feel bound then, Mr President, to invite Members to consider encouraging the MTRC to continue its prudent commercial principle and continue to maintain its fares levels in real terms, so as to safeguard the interest of passengers.

The debate going on all around us about subsidized state enterprises must be familiar to Members. From the steppes of Mongolia to the mountains of Albania, governments who for decades have taken subsidized state enterprises as a matter of faith are now moving towards true commercial operation. This is a very odd time for Hong Kong — of all places — to think of moving in the opposite direction.

In that note, Mr President, I regretfully oppose the motion, while accepting the spirit of the first part of it.

SECRETARY FOR TRANSPORT: Mr President, the Honourable LAU Chin-shek has been extremely persistent in his pleas to seek the monitoring of MTRC fares.

As some Members have pointed out, this is the third motion debate he has proposed within the last 17 months. On the other hand, my predecessors and I have been equally consistent in explaining the Administration's approach and policies. The simple home truth that must be underlined and reiterated is the Government's fundamental policy that all our public transport services should be run without subsidy. This philosophy has served us well and, I am convinced, will continue to benefit the travelling public in the years ahead.

Because this subject has been debated several times, invariably many of the arguments and counter arguments advanced today may have a ring of familiarity around them. During the last motion debate on this subject I explained at length why we must continue to allow the MTRC to determine their fares in keeping with prudent commercial principles. May I refer Members to my response of 12 January which is contained in the Hansard records. Rather than reiterate all these arguments, let me try to focus on this subject from a slightly different perspective.

In broad terms, in meeting the corporation's financial plans until the end of the century, revenue from fares is essential to meet three basic components of expenditure: annual operating costs, service improvements and asset replacement in the existing system, and interest payments and repayment of outstanding debts. My colleague, the Secretary for the Treasury, has dealt with aspects pertaining to MTRC's equity and debts and long-term investment expansion programmes. I shall therefore elaborate on the two other aspects I have outlined.

Operating costs include staff salaries and related expenses, electricity charges and rates, repairs and maintenance and other administrative overheads. These are unavoidable costs which have to be incurred but the corporation will continue to make every effort to achieve savings. For example, the recent introduction of a chopper control system on the MTR has enabled traction energy to be saved by as much as 50%.

As regards service improvements, the corporation will be spending $8 billion on service improvements over the next seven years. The programme includes over $5 billion on improving the frequency of train services, air conditioning and communication systems; $830 million on environmental improvements such as noise reduction measures; some $700 million on station facilities and system management; and a similar amount on asset repairs and replacement. All these measures will enhance the efficiency of the service and will benefit commuters.

Revenue from fares are essential to cover operating expenses and the planned service improvements. Mr LAU Chin-shek has asked the MTRC to explain its financial plans and policies to achieve this. I wholeheartedly support this. The MTRC also fully recognize and accept that being a public corporation they have to be open and accountable. They continue to explore ways and means to enhance this. In the 1994 fare increase exercise the corporation made a detailed presentation to the Legislative Council Transport Panel and the TAC in February explaining the background and the rationale for its financial strategy and fare policy.

Passenger survey results and feedback from passenger liaison groups concerning fares were also presented and the corporation took into account the views of the Legislative Council Transport Panel, the TAC and results from the independent passenger surveys before finalizing its proposals for its fare increase.

The corporation's approach goes beyond just trying to justify its fare structure. It was the first major public transport operator to set performance targets and publish its performance regularly. Such targets cover train reliability, peak-hour train performance, ticket reliability and escalator availability. Such performance pledges demonstrate their accountability and the MTRC deserve credit for their willingness to share information with the public and be receptive to their views.

The Honourable LAU Chin-shek has requested that the MTRC should abolish its current policy of annually adjusting fares so as to safeguard the interest of passengers. I entirely accept and agree that the interest of passengers must be safeguarded, but in the Administration's view it is precisely for this reason that regular fare increases are essential. MTRC's are affordable. By keeping the increase below the rate of inflation over past years commuters in practice have had to pay no more in real terms. It should not be forgotten that often, as a package to cushion fare increases, concessions have also been introduced, for example, for the elderly and students as well as for travel during off-peak hours.

It must be more sensible to go for small, incremental increases in fares, to reserve and earmark funds for ongoing and projected expenses, maintenance and service improvements rather than ignore all this and be faced with substantial expenditure that has to be financed from scratch when problems

arise. Other railway systems have failed because insufficient resources have been earmarked in good time which in turn has resulted in those systems running down and then breaking down.

We need to look ahead and invest in the system for the future. The community does this in other walks of life and it is equally essential to do so in respect of our public transport services. The MTRC knows its business well. The MTR is one of the most efficient and successful railways in the world because it is run on prudent commercial principles. It would be suicidal to interfere by attempting to tie the corporation's hands. The corporation has not abused its financial autonomy in raising fares. On the contrary, it has demonstrated that it is fully conscious of its civic responsibilities.

The MTRC has demonstrated its openness and public accountability and in fact, continue to step up their efforts in this direction. The Administration welcomes and encourages this. The Administration firmly believes that regular, modest fare increases are essential to safeguard both the efficient operation of the mass transit system and the interests of commuters.

The Honourable Edward HO, Jimmy McGREGOR, Vincent CHENG and Roger LUK have advanced persuasive arguments and facts to explain why the MTRC must be allowed to continue to operate on prudent commercial principles. The Administration is most grateful for their support.

It would indeed be sad if other Members, who in fact accept the very valid reasons which have been put forward to safeguard and maintain the MTRC's financial autonomy, nonetheless vote in favour of the second part of Mr LAU's motion simply because of its wording, asking the MTRC to consider changing its approach on fare adjustments. The Administration does not support the second part of Mr LAU's motion, that the MTRC should abandon its current practice relating to adjustments in fares.

Thank you, Mr President.

PRESIDENT: Mr LAU Chin-shek, do you wish to reply? You have five minutes and six seconds out of your original 15 minutes.

MR LAU CHIN-SHEK (in Cantonese): I have no dispute over the success of the MTR. When we talk about the factors attributable to the success of the MTR, we must not lose sight of the fact that there are indeed a number of unique local characteristics which are not found in the transport systems in other countries. The favourable conditions in the local context include a high population density, a relatively small service area and simple alignments. Also, with the backing of the Government, the MTR is given the right to develop properties atop the MTR stations and it is free from competition with other modes of public transport since competition is restricted by the Government. I have never in my speech

requested the Government to subsidize the MTR and I wonder why some Members have that misconception.

The MTR estimated that its profit would be $461 million; however, when its profit reached $735 million, it still sought to increase fares in line with the prevailing inflation rate. Why is it the case? In fact, it is the MTR which has been fueling inflation but it declares that the fare increase is to catch up with inflation. It is evident that the MTR is trying to fool the public! I am not saying that the MTR should not be allowed to raise its fares. My point is that the increase has to be reasonable. Some Members asked me whether I am advocating that pay rise should not be indexed to inflation. I believe that is beyond the scope of our discussion which is about the fare increase of the MTR. Meanwhile, the Government states that the rate of return or the prudent commercial principles must be maintained in order to secure credit. But I think, to secure credit, the most important point lies in the increase in the patronage and the Government's backing. Here is an example to support my point. A Japanese bank has lowered the credit rating of the MTR not because of anything such as the rate of return, but the 1997 issue.

This is not the first time that I strive for the monitoring of the fare levels of the MTR. My fight for monitoring the MTR in terms of its fare levels can be traced back to as many as over 10 years ago. At that time, the MTR refused to disclose to me any information I requested on the ground that I was not representative enough. Against this background, it is really beyond me why some Members would criticize my moving of this motion as seeking to win political mileage. I must tell Honourable Members that I am determined to continue my fight in this Council for proper monitoring of the MTR until this matter is satisfactorily settled.

We have been debating far into the night. I am grateful to all those Members who remain, whether or not they spoke in this debate, in this Chamber. Although I do not entirely agree with the opinions of some Members, anyway, I am grateful to them for their remarks.

Question on the motion put.

Voice vote taken.

MR LAU CHIN-SHEK: I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Will Members please proceed to vote?

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

Mr Allen LEE, Mrs Selina CHOW, Mr SZETO Wah, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Mr LAU Chin-shek, Mr LEE Wing-tat, Mr Fred LI, Dr YEUNG Sum, Mr Howard YOUNG and Mr WONG Wai-yin voted for the motion.

The Chief Secretary, the Attorney General, the Financial Secretary, Dr David LI, Mr Andrew WONG, Mrs Peggy LAM, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Vincent CHENG, Mr Marvin CHEUNG, Mr Eric LI and Mr Roger LUK voted against the motion.

THE PRESIDENT announced that there were 16 votes in favour of the motion and 12 votes against it. He therefore declared that the motion was carried.

Private Member's Bill

First Reading of Bill

UNIVERSITY OF HONG KONG (AMENDMENT) BILL 1994

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

Second Reading of Bill

UNIVERSITY OF HONG KONG (AMENDMENT) BILL 1994

DR DAVID LI moved the Second Reading of: "A Bill to amend the University of Hong Kong Ordinance."

DR DAVID LI: Mr President, I believe this Bill to be uncontroversial and I therefore move that the Bill be read a Second time.

The purposes of this private Bill are to empower The University of Hong Kong to deprive persons of degrees, diplomas, certificates and other academic distinctions conferred or awarded by it.

The purpose of the amendment to the Ordinance is because there is some doubt as to whether the relevant statutes relating to the conferment of degrees also contain the power to deprive a person of a degree or other awards. Accordingly, the university wishes to remove any uncertainty in respect of

action taken by it by providing that the statutory power of depriving a person of a degree or other award may be lawfully exercised, if necessary.

Mr President, I beg to move.

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

Adjournment and Next Sitting

PRESIDENT: In accordance with Standing Orders I now adjourn the Council until 9.00 am on Wednesday, 29 June 1994.

Adjourned accordingly at fifteen minutes to One o'clock, 23 June 1994.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Official Languages (Amendment) Bill 1994, Interpretation and General Clauses Ordinance. The Legislative Council Commission Ordinance, Supplementary Appropriation (1993-94) Bill 1994, Coinage Bill, New Territories Land (Exemption) Bill and Leveraged Foreign Exchange Trading Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

WRITTEN ANSWERS

Annex I

Written answer by the Secretary for Planning, Environment and Lands to Mr Ronald ARCULLI's supplementary question to Question 4

As the Secretary for Planning, Environment and Lands pointed out at the sitting on 22 June, there are real practical difficulties in providing the information requested. Some of the sites occupied by the Government are undoubtedly under-utilized by present day standards, though they were invariably originally designed to make optimum use of the land at the time of construction. The extent of under-utilization varies from case to case. Moreover, under-utilization has to be measured against what can realistically be built on the site upon redevelopment. This requires detailed consideration of constraints such as planning considerations, traffic impact, and so on. It is therefore impossible to supply a concrete answer to Mr ARCULLI question until the development parameters of under-utilized government sites have been studied and agreed.

Notwithstanding the above, the Administration is conscious of the under-utilization of government sites. A committee on Redevelopment of Under-developed Government Sites has looked at the redevelopment parameters for some 40 government sites. A consultancy study on five of these sites has been recently completed, and the recommendations are now being considered by the Administration.

Annex II

Written answer by the Secretary for Security to Mr LEE Wing-tat's supplementary question to Question 5

While there is no precise record of police practices over the last six years, I am assured that in allowing only one person to present the petition to the New China News Agency on 29 May, there was no departure from the usual arrangements made in such circumstances.

WRITTEN ANSWERS — *Continued*

Annex III

Written answer by the Secretary for Security to Ms Anna WU's supplementary question to Question 6

The number of children aged from seven to 10 years who were charged with criminal offences in 1991 was 45; in 1992, it was 32; and in 1993, it was 31.

The number of children aged from seven to 10 years who were convicted of criminal offences in 1991 was nine; in 1992, it was five; and in 1993, it was four.

The number of children aged from seven to 10 years who were charged with drug-related offences in both 1991 and 1992 was zero; and in 1993, it was one and he was acquitted.

No children aged from seven to 10 years received a custodial sentence in a prison, a Training Centre, a Detention Centre or a Drug Addiction Treatment Centre in 1991 to 1993. Details of the sentences imposed are at Annex A.

The nature of the offences that children aged from seven to 10 years were charged with in 1991 to 1993 is at Annex B.

Annex A

Sentences imposed on children aged from seven to 10 years in 1991-1993

	Year		
Sentence	*1991*	*1992*	*1993*
Probation Order	5	1	0
Detention Order	2	1	1
Bound-Over/Conditional Discharge	1	0	0
Caution/Absolute Discharge	1	2	2
Fine	0	1	1
TOTAL	9	5	4

WRITTEN ANSWERS — *Continued*

Annex B

Nature of Offences that children aged
from seven to 10 years were charged with in 1991-1993

Offence	*Year* *1991*	*1992*	*1993*
Indecent assault	2(1)	0	0
Robberies	9(2)	4(1)	2
Arson	0	0	1
Burglary (with breaking)	9(1)	0	3
Burglary (without breaking)	0	1	2
Theft (pickpocketing)	0	1	0
Theft (snatching)	0	0	1(1)
Theft (shop theft)	10	15(2)	13(2)
Theft from vehicle	1	1	0
Taking conveyance without authority	0	0	1
Theft from construction site	1	0	0
Other miscellaneous thefts	9(5)	6(1)	5(1)
Handling stolen goods	0	1	1
Trafficking in dangerous drugs	0	0	1
Criminal damage	1	1	0
Object dropped from height	1	2(1)	0
Going equipped for stealing	0	0	1
Unlawful possession	2	0	0
TOTAL	45(9)	32(5)	31(4)

* ( ) denotes number of offences convicted

Annex IV

Written answer by the Secretary for Securty to Mr Jimmy McGREGOR's supplementary question to Question 6

The required information on the age under which a child cannot be guilty of a criminal offence is as follows:

WRITTEN ANSWERS — *Continued*

Country	*Age under which a child cannot be guilty of an offence*
AUSTRALIA	
New South Wales	10
Queensland	10
South Australia	10
Victoria	8
Western Australia	7
CANADA	12
UNITED KINGDOM	
England and Wales	10[1]
FRANCE	13[2]
GERMANY	13[3]
ITALY	14
JAPAN	14
NEW ZEALAND	10
SWEDEN	15
UNITED STATES	14-15[4]

1 The Children and Young Persons Act 1969 was repealed by the Criminal Justice Act 1991, with effect from October 1992. The current position, therefore, in the United Kingdom is that there is a conclusive presumption that no child under the age of 10 years can be guilty of a criminal offence. A child between the age of 10 and 14 cannot be convicted, unless it is proved not only that the child did the act in circumstances which would involve an adult in criminal liability, but also that he knew that he was doing wrong. The provision under the Children and Young Persons Act 1969 in respect of the prohibition of criminal proceedings for all offences other than homicide committed by children under 14 is, therefore, no longer relevant. This brings the United Kingdom more into line with other places.

WRITTEN ANSWERS — *Continued*

2 In France, the age of penal responsibility is 13 although there is provision for the detaining of children under that age until educational measures can be taken in respect of them.

3 In Germany, a child may be charged with a criminal offence only when he reaches 14.

4 In the United States, the minimum age of criminal responsibility ranges from 14 to 15 years of age as the penal code of individual states varies enormously. The figure in the table is given as an example only.