OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 19 July 1995

The Council met at Nine o'clock

PRESENT

THE PRESIDENT
THE HONOURABLE SIR JOHN 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 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

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

THE HONOURABLE LEE CHEUK-YAN

ABSENT

THE HONOURABLE JAMES TO KUN-SUN

IN ATTENDANCE

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

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

MR RONALD JAMES BLAKE, J.P.
SECRETARY FOR WORKS

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

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

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

MR KWONG KI-CHI, J.P.
SECRETARY FOR THE TREASURY

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

MR DOMINIC WONG SHING-WAH, O.B.E., J.P.
SECRETARY FOR HOUSING

MR BOWEN LEUNG PO-WING, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

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

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

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.*
Merchant Shipping (Safety) (Musters and Training) (Amendment) Regulation 1995	316/95
Merchant Shipping (Safety) (Arrangements for Embarkation and Disembarkation of Pilots) Regulation	317/95
Merchant Shipping (Safety) (Carriage of Cargoes) Regulation	318/95
Merchant Shipping (Safety) (Grain) (Amendment) Regulation 1995	319/95
Merchant Shipping (Prevention and Control of Pollution) (Charges for Discharge of Polluting Waste) Regulation	320/95
Port Control (Cargo Working Areas) (Amendment) Regulation 1995	321/95
Official Languages (Alteration of Text) (Companies Ordinance) Order 1995	322/95
Statutes of the Chinese University of Hong Kong (Amendment) (No. 2) Statute 1995	323/95
Occupational Retirement Schemes (Amendment) Ordinance 1995 (53 of 1995) (Commencement) Notice 1995	324/95
Official Languages (Authentic Chinese Text) (Consumer Council Ordinance) Order	(C)50/95
Official Languages (Authentic Chinese Text) (Hong Kong Examinations Authority Ordinance) Order	(C)51/95
Official Languages (Authentic Chinese Text) (Companies Ordinance) Order	(C)52/95

Sessional Papers 1994-95

No.111 — Secretary for Home Affairs Incorporated
Statement of Accounts for the year ended 31 March 1994

No.112 — Clothing Industry Training Authority
Annual Report 1994

No.113 — Construction Industry Training Authority
1994 Annual Report

No.114 — Report of the Select Committee on
Kwun Lung Lau Landslip and Related Issues

No.115 — Hong Kong Export Credit Insurance Corporation
Annual Report for 1994-95

No.116 — The Seventh Annual Report of the Commissioner for
Administrative Complaints Hong Kong
June 1995

ADDRESS

Report of the Select Committee on Kwun Lung Lau Landslip and Related Issues

DR HUANG CHEN-YA (in Cantonese): Mr President, the Select Committee, set up by the Legislative Council on 12 October last year, to enquire into the Kwun Lung Lau landslip and related issues have completed their work. I would like to present the Report on behalf of the Select Committee.

On the evening of 23 July last year, a serious landslide occurred below Block D of Kwun Lung Lau, Western District. A masonry wall collapsed, and about 1 000 cubic metres of debris slided down from the slope and fell on the footpath below it, unfortunately killing five persons and injuring three others. Some 4 000 residents had to evacuate immediately. I believe many members of the public, as well as Members of this Council, still remember clearly the dangerous and desperate situation at that time.

The Select Committee are very much concerned about the cause of the landslide and the adequacy or otherwise of the contingency services provided in this incident. The Select Committee held 22 meetings, including five public hearings, met 34 witnesses and examined many written submissions and evidence. The purpose was to scrutinize matters relating to these concerns. The findings, conclusions and recommendations are in this Report. I would like to briefly report on a few major points.

First of all, I would like to deal with the cause of the landslide and, as many people might be concerned of, the question of responsibility. Professor MORGENSTERN, the Canadian expert appointed by the Government, and the Civil Engineering Department of the Hong Kong Government, published a technical investigation report on the cause of the landslide in November last year. The report pointed out that the landslide was caused by leakage of the foulwater drains and the stormwater drainage systems, which were respectively beneath and adjacent to the slope in question. A lot of rain water flowed into the slope through the defective underground stormwater drainage systems after days of heavy rain. The masonry wall, which was at the foot of the slope, was found to be only about 750 mm thick, and not about 4m as shown on the relevant Site Formation Plans. A wall so thin was unable to support the slope, and Professor MORGENSTERN has also pointed out that the potential problems of the slope and the masonry wall, that is the actual wall thickness and the leakage of the underground drainage systems, were foreseeable, in theory, at different stages.

Based on the analysis of Professor MORGENSTERN, the Select Committee carefully considered the role and responsibility of the different parties concerned at different stages. The Select Committee have found that several factors had to combine for this landslide to occur. However, there were shortcomings, in varying degrees, in the different parties concerned.

We have to begin from 1965 in order to understand the chain of events. In 1965, preparation was in hand for the construction of Kwun Lung Lau. The Authorized Person submitted relevant Site Formation Plans to the Building Authority. The wall was shown in solid lines on the Site Formation Plans as a stepped-back masonry wall, with a thickness scaled to be about 4m. Unfortunately, as revealed from later events, the Plans were used at a number of stages as the basis to assess the stability of the slope and the masonry wall in question. The inaccurate information regarding the wall thickness affected the judgment of the parties concerned, thus leading to inaccurate assessment of the stability of the slope and the masonry wall. The Select Committee consider that the Authorized Person was seriously at fault in providing such incorrect and misleading information to the Building Authority. The Building Authority did not ask for verification of an important piece of information on the Plans before approval and thereby perpetuated the error thereon regarding the wall thickness.

In 1987, the Geotechnical Engineering Office carried out a Stage 1 Study for the masonry wall, which was aimed to determine whether a detailed stability study was required. The Site Formation Plans submitted and approved in 1965 were used as the basis of this Stage 1 Study. The study concluded that the wall was in good condition and that no further study was required. Unfortunately, as events had proved, this was an inaccurate assessment. The Select Committee consider that the Geotechnical Engineering Office had the duty to ensure the reliability of the information and methodology for assessing slope stability. However, they relied on an old drawing which had been submitted more than 20

years before and allowed unverified information thereon to be used in this Stage 1 Study, thus leading to an inaccurate assessment of the stability of the slope and the wall and preventing early detection of their potential problems.

In the same year, the Geotechnical Engineering Office regarded the risk category of the masonry wall from "high" to "low to moderate" in accordance with the risk categorization system when the squatters beneath the wall was cleared in March. The Select Committee consider that a wall such as the one in question, which was close to a footpath and might affect the structural integrity of the buildings nearby in case of collapse, should justifiably be a cause for greater concern. The fact that the wall was downgraded to a "low to moderate" risk category could have reduced the degree of alertness of all parties concerned regarding the stability of the wall and the consequence of its failure.

The Select Committee consider that the Geotechnical Engineering Office has the duty to put in place a reliable and effective landslip prevention system. This incident has revealed weaknesses in the system. The Geotechnical Engineering Office has also fallen short of public expectation.

In fact, since 1982, the Hong Kong Housing Society has been engaging Consultants for advice regarding stability and maintenance of slopes at Kwun Lung Lau. The Select Committee have found that the works respectively performed by the two Consultants' firms were mainly visual inspections and detection of surface defects. The Consultants did not conduct investigations or detailed stability analysis for the slope. The Select Committee have found no evidence that the Consultants ever advised the Housing Society so as to forewarn it that the works which were done might not be sufficient to ensure the safety of the slope; nor did they advise the Housing Society of the importance of monitoring the subsurface drainage systems in relation to the stability of the slope. The Select Committee consider that if the Housing Society had been given such advice, and unless the Housing Society had refused to carry out any resulting necessary works, it would have been possible for some, if not all, of the potential problems of the slope to have been detected. The Select Committee consider that, in this incident, the Consultants had failed to adopt a more insightful and critical approach in advising their client for the purpose of meeting the overall objective of landslip prevention.

Regarding the Hong Kong Housing Society, the Select Committee have found no evidence that it did not properly discharge its responsibility as regards engaging consultants and responding to their advice. The Select Committee have, however, found that the Housing Society did not properly keep all relevant reports and records relating to the slopes at Kwun Lung Lau. The Select Committee consider that this was not a good practice; the Housing Society, being the owner of the slopes, should keep all relevant documents in-house in future.

Mr President, landslides may seriously affect our life and property. It is therefore not unreasonable to expect a high degree of care and attention from all parties concerned who have a duty to ensure slope safety. To prevent similar incidents, Professor MORGENSTERN and the Works Branch have respectively proposed some improvement measures. The Select Committee have also drawn on the experience of this incident and made recommendations in the Report with a view to improving the system for landslip prevention. In particular, the Select Committee recommend that the Government should submit biannual progress reports to the Legislative Council Panel on Planning, Lands and Works regarding the implementation of the various improvement measures.

Mr President, the Select Committee are also concerned about the adequancy or otherwise of the contingency services provided in this incident and in emergencies in general.

In this incident, five persons were killed, three were injured, some 4 000 residents had to evacuate. The Select Committee consider that this was a very serious incident, which posed a serious test on government's ability to respond to emergencies. No doubt, many good efforts had been made in handling this emergency, there were, however, deficiencies in a number of areas: the alerting system was unsatisfactory; the Civil Engineering Department was not immediately notified when the incident occured; the duty officers of the Civil Engineering Department and the Social Welfare Department arrived at least an hour after their departments had been respectively notified; there was confusion upon evacuation; there could be earlier information dissemination and setting up of the telephone hotline: there was also confusion at Shek Tong Tsui Indoor Games Hall when the residents were arranged in a time-consuming and inefficient process to go back to Kwun Lung Lau to collect their belongings two days after the incident took place. The Select Committee consider that the Government departments concerned should improve on these deficiencies so as to be more able to handle future emergencies.

I wish now to talk about the performance and role of the Government Secretariat Emergency Co-ordination Centre (GSECC) because this is a major concern of the Select Committee.

According to the submission of the Security Branch, in the event of a disaster, GSECC would co-ordinate and monitor the overall response and would also facilitate inter-departmental liaison, and so on.

However, the Select Committee do not consider that GSECC was able to perform this function in this incident. Throughout the night, the duty officers were busy trying to match the various information and to certify certain details. They did not even notify the Secretary for Security nor did they consider it necessary for GSECC to have full manning instead of partial manning. The Select Committee consider that this landslide was a very serious emergency, GSECC should have had a more important role to play in this incident. If GSECC had acted proactively and vigilantly, it could have strengthened the

communication and co-ordination of the various contingency services so as to, at least, enable some of them to have responded to the incident more promptly and efficiently. The Select Committee consider that the Government should review, clarify and strengthen the role of GSECC so that it can discharge the strategic function as the emergency co-ordination centre of the Government Secretariat.

Mr President, the Report in front of you is the result of months of detailed and careful scrutiny of all evidence and materials.

With this enquiry, the Select Committee wish to remind all that our well-being is not a matter to be taken for granted. We should constantly, proactively and vigilantly monitor and review our procedures, practices and systems with a view to minimizing the risks we are exposed to, and their consequences, and maximizing our ability to respond to any emergency should it inevitably occurs.

Mr President, the Kwun Lung Lau incident has taught us a hard lesson. The Select Committee wish to express their sympathy for those who were injured and those who had lost their beloved family members in this tragedy. The Select Committee also thank all those who have assisted in this enquiry. For myself, I would like to thank all other Members of the Select Committee for their contribution and co-operation. I hope this report will remind us that we should make good use of this tragic experience to avert a further tragedy.

ORAL ANSWERS TO QUESTIONS

Sex Education for Secondary School Students

1. MR TIK CHI-YUEN asked (in Cantonese): *According to a survey conducted by the Curriculum Development Institute, some students begin to have intimate contacts and relationship with the opposite sex in varying degrees when they are in secondary school. Will the Government inform this Council:*

(a) what action has been taken, apart from carrying out research studies through the Chinese University of Hong Kong, to make the sex education curriculum more in tune with the needs of students;

(b) how it can ensure that all teachers are provided with sufficient training to enable them to impart proper sexual knowledge to students; and

(c) how it will promote co-operation between families and schools with a view to helping students to obtain proper sex knowledge?

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President,

(a) At present, over 60 topics relating to sex education are taught in the context of 9 different subjects at different levels in primary and secondary schools. The curriculum and syllabuses of these subjects are under constant review by the relevant Curriculum Development Council subject committees and updated regularly to keep up with changing needs. Apart from that, when subject inspectors conduct school visits, they will also give up-to-date advice on sex education to schools. They will also give advice to teachers through in-service teacher education programmes. Early next year the Education Department will undertake an overall review of the Guidelines on Sex Education in Schools.

(b) Over the past three years, a total of 2,550 pre-service and 363 in-service teachers have received training/retraining in sex education. In addition, an average of 120 teachers attend sex education courses organized by the Family Planning Association of Hong Kong each year. The Education Department also provides resource materials and teaching kits to schools in support of their teaching activities, with further teaching or display materials available to schools at the Department's two Sex Education Resource Centres. In the past three years, 62 schools have borrowed such materials from the two Resource Centres.

(c) Following the recommendation of Education Commission Report No. 5, a Committee on Home-School Co-operation was set up to advise the Education Department on ways to stimulate and co-ordinate sustained progress in home-school co-operation. Since its inception in 1993, the Committee has been actively promoting co-operation between schools and parents via measures such as establishment of Parent-Teacher Associations and organizing district parent education programmes. The Committee will soon conduct a survey of parents' views on sex education. The findings of the survey will provide the data base on how families and schools may work together to help students in this respect.

MR TIK CHI-YUEN (in Cantonese): *In paragraph two of his reply, the Secretary mentioned how information was provided to teachers to help them gain more knowledge in this respect. However, a study by the Curriculum Development Institute shows that 60% of those secondary school students who encountered problems in sex did not have the appropriate channels to get information. Most of them obtained information in this respect from friends, newspapers and the media. This shows that they may not be able to obtain the correct information to help them solve their problems. In view of the findings of this study, does the Administration have any specific measures to help the teachers or school social workers play an active part, so that students will turn to them for advice when they have problems?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the study of the Curriculum Development Institute is very useful to us. One of the main results of that study is a recommendation to foster a proper sense in this respect, beginning from senior primary grades. Another important point raised is that we should strengthen the training of teachers, and should also provide two different types of training to our students, that is, the right sex knowledge and the correct sex attitude. Both are very important and they complement each other. Sex knowledge not supported by the correct sex attitude is sure to bring unthinkable consequences. This I believe is known to all. Therefore, we will mainly use these recommendations as the basis to review the secondary school sex education guidelines that we will revise early next year. We hope that by virtue of this study, more specific information on sex education that will meet current needs can be provided to students, teachers and parents.

At present we are promoting work in this respect in three areas:

First, school teachers, with the assistance of social workers, will help students obtain at the earliest possible time the latest and correct sex knowledge and sex attitude.

Second, through curricular and inter-curricular promotion, a wide range of activities will be provided to students outside school or as part of the normal school curriculum. Activities outside school will cover different media, such as visits, interviews and correct social activities. All these are very helpful.

Third, we will help teachers acquire the correct knowledge in this respect by providing them with training through resource centres, so that they in turn can help students develop in the correct direction.

Lastly, the Committee in which Mr TIK is a member is very helpful because the Committee on Home-School Co-operation will surely foster a closer relationship between families and schools, enabling both the teachers and the parents to offer immediate assistance to youngsters when they encounter problems during their adolescence period. We think that this is very useful and very important.

MRS PEGGY LAM (in Cantonese): *Mr President, I repeatedly requested the Education Department (ED) to include sex education into the school curriculum as early as in the late 1960's. After over a decade's effort, ED finally incorporated sex education in the subject of "Social Study", and later agreed to have this subject as a Certificate of Education Examination subject. This is good news. Furthermore, many teachers received training on the teaching of sex education. However, I know that some schools are not offering such subject even in the present day, and think that sex education is not important. Can the Administration inform this Council how many schools in Hong Kong are now offering sex education in their formal curriculum? How many offer sex education in their informal curriculum? And how many schools do not have sex education programmes at all?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, as far as I know, we have not had a comprehensive survey as to under which subject areas schools are conducting sex education programmes. We will of course follow this up.

Naturally, I am very pleased with the encouragement and assistance the Family Planning Association has offered us in this respect. We are very willing to continue the co-operation with the Family Planning Association.

I think the issue is a long-term one. We must truly and actually change the attitude of the parents and the schools. so that they have the correct attitude towards sex awareness and sex attitude. We hope that through the school curriculum and activities outside school, and the training of teachers, our youngsters will obtain the correct sex attitude. We will continue to work hard in this respect.

MR CHEUNG MAN-KWONG (in Cantonese): *Mr President, the Guidelines on Sex Education in Secondary Schools and the teaching of sex education in the context of different subjects as mentioned in the main reply do not require all students to complete a full sex education programme. If the Administration recognizes that sex education, sex knowledge and even sex attitude are the knowledge and attitude that each and every junior or senior secondary school student must have, I wish to ask whether the Administration has considered the proposal of the education sector that the subject of comprehensive civic education be introduced, which among other things will include a complete sex education programme that is relevant to secondary school students and their ages, and make the subject a compulsory one for all secondary school students?*

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, at present secondary schools have seven subjects that are related to sex education, and in primary schools there are two, with an additional one next year, making it a total of three subjects. That is, there are at present a total of 10 subjects that are related to the fostering and training of sex education and sex attitude. We maintain an open mind regarding the proposal of Mr CHEUNG. We will refer this proposal to the Curriculum Development Council, they may like to consider whether or not a brand new and independent subject should be introduced to include all the relevant elements. We will actively consider this proposal.

Customary Rights of Female Indigenous Villagers of the New Territories

2. MISS CHRISTINE LOH asked: *Will the Government inform this Council:*

(a) what customary rights are being enjoyed by the female indigenous villagers of the New Territories; and what are the changes in these customary rights after the passage of the New Territories Land (Exemption) Bill and the Sex Discrimination Bill; and

(b) what measures are being adopted by the Government to promote the customary rights and those new rights under the New Territories Land (Exemption) Ordinance and the Sex Discrimination Ordinance among the female indigenous villagers?

SECRETARY FOR HOME AFFAIRS: Mr President, by virtue of their indigenous status, female indigenous villagers are entitled to exemption of rates in respect of the village houses in which they live and to concession of Crown rents in respect of rural land and property which they hold. They are also permitted to be buried in the New Territories within approved areas outside gazetted cemeteries.

These are not changed in any way by the enactment of the New Territories Land (Exemption) Ordinance and the Sex Discrimination Ordinance.

The Government maintains continual efforts in promoting female indigenous villagers' awareness and understanding of their rights. Following enactment of the New Territories Land (Exemption) Ordinance, a publicity leaflet explaining the purpose and the key features of the Ordinance was distributed to all villagers. A special television civic education programme which focused particularly on the rights of female indigenous villagers under this Ordinance was produced last November. In addition, Liaison Officers in the New Territories District Offices also helped explain the provisions of the new legislation to villagers. Similar publicity will be made to promote understanding of the provisions of the new Sex Discrimination Ordinance.

MISS CHRISTINE LOH: *Thank you, Mr President. Could the Secretary just clarify, in his first paragraph in enumerating the various rights of the female indigenous villagers, that the three rights he has enumerated are the only rights peculiar to the female indigenous villagers? For example, when he refers to burial rights, could he please clarify who should be paying for the cost of the burial? Does the right actually mean that the male members of the family should be paying for those rights? I wonder whether he can clarify that.*

And I think secondly is the effective date of the Sex Discrimination Bill. When that will come in and how the Secretary will promote elections in the villages?

PRESIDENT: Two questions there, Secretary.

SECRETARY FOR HOME AFFAIRS: Mr President, as regards the three rights which I have mentioned in the first paragraph of my reply, the first two derive from the indigenous status of female indigenous villagers. Actually these are prescribed in statutes. These are statutory rights which apply only to indigenous villagers including female villagers. Similarly, the burial right is a customary right which applies to the New Territories and it applies across the board to both female and male villagers. It does not go into such detail as to who pays for the burial ceremonies. It is a right connected with the burial ground that they are permitted to be buried outside gazetted areas, outside gazetted cemeteries within approved areas for this purpose.

Insofar as the second question is concerned, the Sex Discrimination Ordinance, as I mentioned or rather as the acting Secretary for Home Affairs mentioned in these Chambers on 28 June, will come into effect after the Equal Opportunities Commission has been established and after the Equal Opportunities Commission has been given the opportunity to make all the codes of practices regulating the different behaviours provided for under the Ordinance. It provides for different sections to be introduced at different times and we aim to have the Equal Opportunities Commission established as soon as possible. In any case, we aim for the establishment not later than the end of the year and I think if the Commission proceeds with their job immediately, we can expect the Sex Discrimination Ordinance to be brought into effect about the middle of next year.

Insofar as village elections are concerned, as I have told Members on different occasions in these Chambers, that the Heung Yee Kuk has already accepted the principle of equal rights for all villagers to participate in rural elections and most of the villages now have accepted that, even in the absence of statutory provision. And at a meeting of this Council sometime ago I said that there were then only 29 villages left which did not accept, have still not accepted this principle and I said then that we would be working on them. Now that the new Sex Discrimination Ordinance has been passed with provision in this particular regard, we have written to the Heung Yee Kuk reminding them of the new provisions in the Ordinance and we have drawn this particular provision to the notice of the 29 villages concerned and also informed them of the implications.

MR MARTIN LEE: *Mr President, I am sure the female indigenous villagers of the New Territories are very happy to know that they will attain equality when they are buried. But when will the Government do something to ensure that they enjoy equality before they die?*

SECRETARY FOR HOME AFFAIRS: Mr President, with the passage of the Sex Discrimination Ordinance, equality, I think, will be ensured. It is now a statutory provision. And as I have said in my main reply, we will be publicizing the various rights contained in the new Ordinance to the villagers in a similar way to what we did after the passage of the New Territories Land (Exemption) Ordinance so that everyone is aware of their rights under the new Ordinance.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, can the Administration tell us the number of cases where female indigenous villagers have applied for succession to land in the New Territories since the passage and coming into effect of the New Territories Land (Exemption) Ordinance? And how many cases were successful?*

SECRETARY FOR HOME AFFAIRS: Mr President, I have not got detailed figures with me. I will provide such information to the Honourable Member in writing. (Annex I)

MISS EMILY LAU (in Cantonese): *Mr President, the Secretary said that at present indigenous villagers in the New Territories, male or female, are enjoying equality. As the main question is about customary rights, will the Secretary confirm that of all the customary rights of New Territories indigenous villagers, what male villagers enjoy, female villagers can also enjoy?*

SECRETARY FOR HOME AFFAIRS: Mr President, the question specifically asks about customary rights being enjoyed by female indigenous villagers and that is why I have couched my reply in those terms. I think insofar as customary rights are concerned, precisely because they are customary they are not codified. We do not find them in the statute books being codified as such and there are certain recognized rights which apply across all the villages in the New Territories. But I am afraid tradition being what it is, is a bit different between various villages. So although there are certain traditional rights applying throughout the New Territories, there are different variations to the main theme when it is applied to different villages and I am afraid, again depending on different villages, the precise way it is applied to male and female might be a little bit different. They are different, but not in the discriminatory sense.

MR WONG WAI-YIN (in Cantonese): *There is a right that some female indigenous villagers should be entitled to, and that is the sharing of compensation given by the Government for ancestral land otherwise known as "Tong Tso land", this is usually shared by male members of the families concerned. In the case of the male household head having died without male issue, the female household head, that is the wife of the household head, should be given a share of the compensation. However, we know that in many villages, village elders and male villagers will withhold such payments. Is the Secretary aware of this situation? And how will the Home Affairs Department help these female villagers restore their right?*

SECRETARY FOR HOME AFFAIRS: Mr President, as the Honourable Member has rightly pointed out, in those cases the share due to a widow who has no issue is hers. I have not received any complaints in this regard. But according to the Honourable Member, if such cases occur then I think they should make a complaint to the District Office and I think the District Officers will look into those complaints because certainly the case raised by the Members is not permissible and if such complaints are raised with the District Office then we will follow up.

MISS CHRISTINE LOH: *Mr President, my question was not answered and I wonder if you would let me just ask the question again?*

PRESIDENT: Yes.

MISS CHRISTINE LOH: *My first question in fact was not answered because I asked the Secretary what were the customary rights of the female indigenous villagers and in his first paragraph he basically said that there were none. He said that the three rights in his answer are really common to all, male and female, indigenous villagers. So I want to ask the Secretary, are there no rights, customary rights, pertinent just to the female indigenous villagers? If his answer should be no, that there are not, then I think this Council might wish to dispute that point with him?*

SECRETARY FOR HOME AFFAIRS: Mr President, as I have said in my main reply, the fact that they are allowed to be buried is a customary right. For the other two, as I made clear in my reply, are entitled to exemption by virtue of the statutory provisions.

Rules on Briefing Out Cases in Legal and Legal Aid Departments

3. MISS EMILY LAU asked: *In reply to a question at the Legislative Council sitting on 21 June 1995, the Government revealed that a barrister in private practice who was the husband of the Deputy Director of the Legal Aid Department had been assigned 17 legal aid cases by the Legal Aid Department during the period from 1 January 1994 to I May 1995. The fees of 11 of these cases had been settled, which involved a total of over $800,000. In this connection, will the Government inform this Council:*

(a) whether the Legal Aid Department and the Legal Department have laid down any rules specifying the conditions under which cases are permitted to be briefed out to relatives of senior staff in the two Departments; if so, what these rules are; and

(b) how these two Departments can ensure that the existing monitoring mechanism is effective in preventing unfairness and favouritism in the briefing out of cases?

ATTORNEY GENERAL: Mr President, all civil servants are subject to rules relating to conflict of interest, which give guidance on how a conflict of interest can be avoided and the appropriate courses of action to be taken if such a conflict arises. In the Legal Aid Department and Legal Department, a circular setting out details of the rules is circulated once every six months to remind all staff that they should avoid or declare, as appropriate, any conflict that may arise.

For the Legal Aid Department, all professional officers on first appointment are required to declare the names of any private practitioners on the Legal Aid Panel who have a close personal relationship with them. "Close personal relationship" includes immediate family members.

In addition, professional officers are required, on an individual case basis, to make a declaration to their supervising officer if an assignment involves a conflict of interest. The supervising officer would then consider whether it would be more appropriate to assign the case to another private practitioner or to instruct another professional officer to handle the case. Where the supervising officer has a conflict of interest with the proposed private practitioner, the proposal would be submitted to the supervising officer's own supervisor for approval.

These arrangements were put into place on 30 June 1995 on the advice of the Corruption Prevention Department of the Independent Commission Against Corruption (ICAC); and will be kept under regular review by the Departmental Monitoring Committee chaired by the Director of Legal Aid, and attended by a representative from the ICAC. The Monitoring Committee, including a member of the ICAC, has been scrutinizing assignments since 1993. The whole committee were aware that the Deputy Director is the spouse of a member of the Bar.

As regards the Legal Department, the civil service rules on conflict of interest to which I have just referred apply and there are no additional rules relating to briefing out of cases to relatives of senior staff. In fact, no directorate staff within the Prosecutions or Civil Divisions of the Department has any relatives at the private Bar. Two have relatives working in solicitors' firms but so far as we can ascertain no government legal work has been assigned to these firms. The present briefing out procedures of the Legal Department have developed over the years and have incorporated changes recommended by the ICAC following reviews in 1988, 1990 and 1993, as well as new measures adopted by the Director of Public Prosecutions early this year. As Members are aware, a broadly-based working party has recently been set up to review briefing out procedures in the Legal Department. That working party will look into the question of briefing out to relatives to see whether further improvements are necessary.

The existing system in the Legal Department for briefing out cases is designed to prevent unfairness and favouritism. Briefing out of standard criminal cases is done on the basis of rotation and availability of counsel on the briefing-out lists. For all cases of unusual length and complexity, or those which involve fee negotiation, at least two directorate officers are involved in the selection process, with the final approval resting with the Law Officer concerned. In all cases, a written record is kept on file of the time and date of contact, the name of counsel contacted, the results and the reason for selecting a particular counsel.

MISS EMILY LAU: *Mr President, would the Attorney General please inform this Council whether the Deputy Director of the Legal Aid Department in question was directly involved in briefing out any or all of the 17 cases to her husband? And also, regarding the additional arrangements put into place on 30 June this year, which of course Members will recall was only nine days after Mrs TU put in her question on this subject on 21 June, would the Attorney General please inform this Council whether these arrangements, on the advice of the ICAC, were a belated attempt to rectify the oversight not only by the Department's Monitoring Committee but also by the ICAC which is represented on the Committee?*

ATTORNEY GENERAL: Mr President, of the 17 cases referred to in the question, six were civil cases concerning personal injuries and 11 were criminal cases. Recommendations on the assignment of those cases were made by the respective case officers concerned and the decisions were subsequently endorsed by their section heads. In respect of the 11 criminal cases, the Deputy Director of Legal Aid was involved as the approving officer in respect of those cases assigned to her husband.

As regards the second part of the question, the advice of the Corruption Prevention Department of the ICAC was given in the early part of this year, well before June, although I do not have the precise date when that report was submitted.

MRS ELSIE TU: *Mr President, the last paragraph of the reply states that the briefing out by the Legal Aid Department is done on the basis of rotation and availability on the briefing-out lists. Could the Attorney General inform us how many barristers on the briefing-out lists have not been assigned any cases at all within the last five years in comparison with 17 cases assigned to the husband of the Deputy Director within 16 months, and the reasons why no assignments were made to them?*

ATTORNEY GENERAL: Mr President, could I ask, through you, for Mrs TU to clarify that question. The last part of my main answer referred to the Legal Department. I am not sure if her question is directed at the Legal Department or the Legal Aid Department.

PRESIDENT: Mrs TU.

MRS ELSIE TU: *Mr President, I said at the beginning, the Legal Aid Department.*

ATTORNEY GENERAL: Mr President, I am informed that as at 30 June of this year, there are 561 counsels and 1 158 solicitors on the Legal Aid Panel. About 70% of them have been assigned Legal Aid work in the past three years. I do not have the further information requested by the Honourable Member, I will make enquiries and let her have a written reply. (Annex II)

PRESIDENT: Not answered, Mrs TU?

MRS ELSIE TU: *If in the written reply the Attonery General will give the reasons why these barristers were not assigned, and if possible, if they were unavailable, would they confirm?*

ATTORNEY GENERAL: Certainly.

MR MAN SAI-CHEONG (in Cantonese): *Regarding the briefing out of cases by the Legal Aid Department and Legal Department, can the Attorney General inform this Council whether the case cited by Miss LAU is a case of favouritism, or one that has already given the public an impression of favouritism?*

PRESIDENT: Sorry, I did not quite catch it, Mr MAN.

MR MAN SAI-CHEONG (in Cantonese): *Regarding the briefing out of cases by the Legal Aid Department and Legal Department, can the Attorney General inform this Council that the case cited by Miss LAU is a case of favouritism, or one that has already given the public an impression of favouritism?*

PRESIDENT: Yes, you are really asking for an opinion, are you not, Mr MAN?

MR MAN SAI-CHEONG: *Yes. I am trying to ascertain whether after the follow-up study of the case referred to by Miss Emily LAU, the Attorney General has the final analysis that there may be the perception of favouritism already propelled by this case?*

PRESIDENT: You are still asking for an opinion, I fear.

MR MARVIN CHEUNG: *Mr President, could the Attorney General confirm whether the cases in question took place prior to 30 June 1995, and if so, could the Attorney General please describe the arrangements for declaration of interest which was applicable to the Department at the relevant times because clearly the answers he gave in the main reply refer to the procedures after 30 June 1995?*

ATTORNEY GENERAL: Mr President, I can confirm that the cases were assigned before the arrangements to which I referred in my main answer were in place. At that time, the rules on conflict of interest, to which I also referred, applied. I should add that the Departmental Monitoring Committee has been in place since 1993. That Committee, chaired by the Director of Legal Aid, comprising senior staff including a member of the ICAC, sees on a regular basis all assignments of work. I am informed that subsequent to the allocation of the assignment of these cases the Monitoring Committee was made aware of those cases being assigned.

MISS EMILY LAU: *Mr President, in relation to the 11 criminal cases which the Attorney General told us were directly in charge by the Deputy Director of Legal Aid and briefed out to her husband, would the Attorney General please inform this Council, now that there are additional arrangements put in place, would that have been allowed under the new regime?*

ATTORNEY GENERAL: Mr President, could I just clarify that the actual assignment, so I am informed, was carried out by the individual case officer. The covering approval was from the Deputy Director. Mr President, I could not say whether the new arrangements would apply, but I have described those new arrangements. What I will do is to reflect the concerns underlying that question back to the Director.

Quality of Dongjiang River Water

4. MR ALLEN LEE asked (in Cantonese): *Will the Government inform this Council:*

(a) whether the water piped into Hong Kong from the Dongjiang River contains a substance which may cause osteocarcinoma; and

(b) why the Water Supplies Department has refused, for fear of arousing panic among the public, to provide the media with data on the quality of water from the Dongjiang River before being processed by Hong Kong's water treatment works?

SECRETARY FOR WORKS: Mr President,

(a) From our analysis, there is no evidence to suggest that the raw water from Dongjiang River contains substances at levels likely to cause osteocarcinoma. Furthermore, the quality of our treated water complies with the Guideline Values of Drinking Water Quality of the World Health Organization (WHO), and hence is completely safe to drink.

(b) There is no question of withholding data on the quality of Dongjiang River water in order to avoid public panic. In fact, such data has been provided on various occasions upon request, including Members of this Council.

The amount of data on the tests to control the quality of both raw and potable water, is very considerable. Each year, over 600 000 tests are carried out on raw and treated water, and each test result is intended to be understood by a trained person. Improper interpretation by a non-scientific writer could convey the wrong message to the public at large.

We will review information channels to ensure that the laboratory testing procedures, the internal standards of compliance, and the correct interpretation of results are available to the public upon request.

MR ALLEN LEE (in Cantonese): *Mr President, Mr BLAKE, the Secretary for Works, expressed that if the Dongjiang River water failed to meet the water quality as specified in the supply agreement, the Hong Kong side could refuse the supply. Would the Secretary tell us if we refuse Dongjiang River water where from can we get our drinking water supply?*

SECRETARY FOR WORKS: Mr President, the Dongjiang River water comprises up to 70% of our total water requirements in any one year, and of course the reservoirs in the territory also contain a substantial amount of water. The amount of such water depends year on year and subject to seasonal rainfall. If there were any immediate problems with Dongjiang water detected as a result of testing, then the raw water would be immediately stopped and we would be able to obtain water from our storage reservoirs to maintain supply of potable water in the territory.

REV FUNG CHI-WOOD (in Cantonese): *Mr President, the Secretary mentioned that improper interpretation by a non-scientific writer of announced test result could convey the wrong message to the public at large. It is hardly convincing that Secretary chose to refuse publicizing the full information of the tests on such grounds. Would the Secretary let this Council have all the information and results of the tests on Dongjiang River water? If he is prepared to do so, an interpretation by trained personnel could be included in the information supplied; if not, why not?*

SECRETARY FOR WORKS: Mr President, our record of the analytical data of Dongjiang water shows that there has been little change in the level of pollutants over the last 10 years, which is, I think, the main area of Members' concern. The provision of data on a monthly basis or similar frequent basis, in our view does not constitute additional significant or useful information. As I mentioned in the reply, the amount of such data used to analyse the quality of both raw and potable water is very substantial. However, as I said in my main answer, we will review the way in which that data is made available and if we can improve information flow in that area, then we will certainly do so.

PRESIDENT: Rev FUNG, not answered?

REV FUNG CHI-WOOD (in Cantonese): *Mr President, in view of the brevity of the information supplied in the past, could the Secretary inform this Council in clearer terms whether he is going to provide detailed test results to this Council soon?*

SECRETARY FOR WORKS: Mr President, may I propose to take this matter up outside of the Council. I would certainly be delighted to discuss this directly with the Honourable Member in the light of the data available, and to decide with him what further useful information we can make available.

MR PETER WONG: *Mr President, can the Secretary confirm that there are no restricted, confidential or even secret classifications put on such test data?*

SECRETARY FOR WORKS: I can confirm that, Mr President.

MR WONG WAI-YIN (in Cantonese): *Mr President, does the Secretary know that in recent years many complaints have been received to the effect that potable water being discoloured, and frequently with deposits (I saw many such samples), which made the people worried. Still some people complained that they suffered from some discomfort after drinking the potable water, such as a dry throat or inflammation of the throat. Would the Secretary tell this Council whether the situation is now more serious than it was before? Does it show that the quality of Dongjiang River water has deteriorated to a certain extent in recent years? How does the Government of Hong Kong prepare to improve the situation?*

SECRETARY FOR WORKS: Mr President, if I can reply to the last part of the question, first of all, there is no evidence over 10 years to show that the quality of raw water obtained from the Dongjiang River has deteriorated.

There have been consumer complaints on discoloured water. These are not related to the quality of the Dongjiang water, as all raw water is treated to comply with the guidelines for drinking water quality promulgated by the WHO. I am quite sure that the quality of potable water as delivered to buildings which are used for residential purposes is of the appropriate quality.

Indeed there was recently an independent university study which confirmed by tests throughout the territory, that the quality of potable water delivered to buildings used for residential purposes in the territory is of the appropriate quality.

The main cause of discolouration is due to corrosion within the consumers' plumbing systems or storage systems within the residential buildings blocks. These systems mostly use unlined galvanized steel pipes. From December 1995, that is, December this year, the use of unlined galvanized steel pipes will be banned for all new plumbing proposals, and we hope that the discoloured water problem will gradually phase out in the course of time.

MR LEE WING-TAT (in Cantonese): *Mr President, according to what the Secretary said, unlined galvanized steel pipes would be banned by law for new buildings to delivered potable water. This way will no doubt in the long run prevent discolouration of water and deposits appearing in water in new buildings. However, could I ask the Secretary what plan does the Administration have to replace the unlined galvanized steel pipes in the 700 000 to 800 000 residential units in old buildings throughout the territory, so that all people can have water delivered by pipes that meet the provision of the law?*

PRESIDENT: Secretary, do you have the answer?

SECRETARY FOR WORKS: Mr President, under the Water Supplies Ordinance, the Water Supplies Department is responsible for the quality of water up to residential buildings. They are required to approve installations inside the building. It is, however, for the building owners and occupants themselves to ensure that the distribution system inside their buildings does enable the quality of water as delivered to the building to be carried through the building's supply system to the consumers' individual taps. We believe that individual owners will take advantage of opportunities to retro-fit supply systems in the private sector. These retro-fitting systems are available but I am afraid it is for the individual owners themselves to ensure that their own system inside the distribution building is of the highest possible quality.

Legislation Regarding Legal Services

5. MR JIMMY McGREGOR asked: *The Attonery General informed the Hong Kong Democratic Foundation at a recent meeting that he expected to receive all the relevant responses on the Consultation Paper on Legal Services, and to have them collated, by the end of this year. In this regard, will the Government inform this Council when the Government expects to present any legislation that is necessary in this matter to this Council for consideration?*

ATTORNEY GENERAL: Mr President, the consultation exercise is still in progress. When that exercise is completed, the Administration will have to evaluate all the responses from the community and decide whether any changes in respect of legal services are needed. Only after that decision is made will we know whether legislation is needed. I hope, however, that, if it is required, the legislation will be introduced some time in 1996.

MR JIMMY McGREGOR: *Mr President, would the Government agree that the accessibility and affordability of legal services could be significantly improved by the expansion of the role of the Small Claims Tribunal, among other things, through increasing the ceiling on the value of claims over which it has jurisdiction by an amount substantially in excess of the rate of inflation since this ceiling was last amended, and will the Government undertake to implement such action at the earliest opportunity and before the consultation is completed?*

ATTORNEY GENERAL: I will certainly convey those sentiments, Mr President, to the Chief Justice and the Judiciary Administrator.

MISS EMILY LAU (in Cantonese): *Mr President, will the Attorney General tell this Council the number of representations the Administration has received so far in response to this consultation paper? Does it reflect enthusiastic response by the public, or the poor understanding by the public of the very complicated proposals contained in this consultation paper?*

ATTORNEY GENERAL: Mr President, as of yesterday, we had received 52 written responses, of these, 22 were from groups and institutions. In addition, feedback has been received at meetings and through radio phone-in programmes and through speeches. I should add that we are now conducting a public opinion survey aimed at obtaining an even wider spread of opinion in respect of the Consultation Paper. We have been very gratified with the volume of responses and indeed the depth of those responses — many thoughtful comments from not only groups and institutions but from individuals.

MR JIMMY McGREGOR: *Mr President, although in the Consultation Paper on Legal Services the Government has proposed the problem of touting and commission paying in respect of conveyancing be reviewed in 12 months' time, in view of recent media reports that lawyers acknowledge this is rife and have described it as like a full-blown cancer, would the Government now agree to pursue this issue separately as a matter of urgency and, if necessary, before the consultation exercise is completed?*

ATTORNEY GENERAL: Mr President, Mr McGREGOR is quite right to draw attention to a matter of grave public concern over the level of touting and commission taking. It is something that I take very seriously indeed, as do the leaders of the Bar and the Law Society, and I have to say, the Commissioner of the Independent Commission Against Corruption. We have been holding regular meetings to address a whole range of practical measures aimed at eradicating these evils — evils which drive up the cost of legal services, deprive members of the community of getting proper legal services and frequently pave the way for more serious activities of a criminal nature.

One of the objects of the consultation exercise was to get feedback from members of the public about their experiences in respect of touting and commission taking. We have had some responses on that. I can assure the Honourable Member that we take this matter very seriously and will do all that we can to eradicate it.

Professional Liability in the Medical and Construction Professions

6. DR SAMUEL WONG asked: *It is learnt that the Government is proposing to make the Authorized Persons in charge of a construction project criminally responsible, over and above their present professional liability, for deaths arising from lapses in safety on construction sites which total about 75 deaths per year, representing a risk probability of about 0.125% per construction manual worker. Figures released recently by the infection control unit of the Queen Mary Hospital indicate that lapses in safety or hygiene in hospitals have resulted in about 8% of patients contracting a hospital-acquired infection which may lead to several thousand deaths per year. As the safety risk of hospital patients dying from hospital-acquired infections is several times higher than that of construction workers dying from construction site accidents, will the Government inform this Council whether consideration will also be given to making the doctors in charge criminally responsible for deaths arising from hospital-acquired infections, over and above their present professional liability; if not, why is professional liability regarded as sufficient in the medical profession and not in the much less risky field of the construction profession?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I would first like to point out that we are not comparing like with like when we talk about hospital-acquired infections (HAIs) and construction site accidents. I am advised that HAIs in Hong Kong are generally not due to lapses in safety or hygiene in hospitals. They are attributable principally to the following reasons:

(a) First, the immunity defences of many patients are already weakened by their pre-existing illnesses which may make them particularly susceptible to infections.

(b) Second, many aspects of medical care require the use of invasive techniques for diagnoses, monitoring and therapy. These techniques may result in a higher probability of infection among hospitalized patients when compared with normal persons, despite the greatest care exercised by medical personnel.

As there are many factors leading to HAIs, it is difficult, if ever possible, to pinpoint the cause of the infection to be the negligence of the attending doctor. However, I am advised that in the course of treating patients, medical professionals are not immune from criminal liabilities. If a doctor causes death by recklessness, he may be liable for manslaughter, in addition to civil and professional liabilities.

In the case of construction sites, the consequences of an accident, for example a building collapse, may be disastrous and massive. We have seen this in Hong Kong and more recently, very dramatically elsewhere.

Though much has been done in recent years to promote industrial safety, the construction industry has remained a major area of concern for the Government and community. The industry employs less than 8% of the total industry workforce, but it consistently accounts for more than one third of all industrial accidents. There is a clear and urgent need for strengthening supervision at construction sites and the public expects it.

It is not the intention of Government to make Authorized Persons (APs) or Registered Structural Engineers (RSEs) criminally responsible for deaths arising from construction site accidents. In asking his question, I believe Dr the Honourable Samuel WONG is referring to the Buildings (Amendment) (No. 2) Bill 1995. The Government's main objective in the Bill is to strengthen safety assurance at construction and demolition sites. APs, RSEs and Registered Contractors are now already required under the law to provide supervision but it has not been satisfactory as there is inadequate sanction. One of the proposals of the Bill is aimed to clarify how all concerned, including APs and RSEs, will maintain a proper level of supervision during the construction or demolition process and to provide sanctions for failure. The level of supervision to be required will normally be prescribed in a supervision plan to be approved by the Building Authority.

It is not unreasonable that a person who fails to fulfil his duties and thereby puts other people's lives at risk should bear criminal liability. Criminal offences are already provided under the existing Buildings Ordinance against certain misconduct committed by APs and RSEs, such as deviation from approved building plans and failure to notify the Building Authority of contraventions to the Buildings Ordinance. Penalties vary with different offences, and range from a fine of $2,000 and imprisonment for six months to a fine of $250,000 and imprisonment for three years. They were put into the law to ensure adequate protection of public safety.

DR SAMUEL WONG: *Mr President, in his reply, the Secretary for Planning, Environment and Lands said that one of the proposals of the Buildings (Amendment) (No. 2) Bill 1995 is aimed to clarify how APs and RSEs will maintain a proper level of supervision during the construction or demolition process of buildings, and that level of supervision to be required will normally be prescribed in a supervision plan to be approved by the Building Authority. Did he mean that the number of hours in a day and the number of days in a week these professionals are to be personally stationed at the site would be prescribed precisely in a supervision plan?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, our intention is first of all that the APs or RSEs should maintain an adequate level of supervision and make such inspections as may be necessary. The supervision plan is to be prepared by the AP or RSE in which he will propose to the Building Authority his strategy as to how the works are to be supervised. Our intention is also to require the building owner, AP or RSE to appoint technically competent persons to assist them to supervise the building works, as well as requiring the registered contractor to appoint technically competent persons to give continuous supervision on each of the sites for which they are appointed to carry out the works. So, in a nutshell, the supervision plan and the details it contains will have to first come from the AP or RSE for the approval of the Building Authority, and I believe consultation and discussion as each case may require will be taken.

MR EDWARD HO: *Mr President, referring to the reply of the Secretary when he said that there was inadequate sanction for APs to provide supervision, will he please inform this Council:*

(1) how many projects have been undertaken by APs in the last 10 years, and

(2) how many cases there were in the same period when negligence in supervision as directly required by APs, has led to deaths arising from construction sites, and on which the Government was prevented from successful prosecution due to inadequacy in the law?

PRESIDENT: Secretary, are you able to answer?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, Mr HO has asked for rather detailed statistics. I will be very happy to provide them in writing. (Annex III)

MR RONALD ARCULLI: *Thank you, Mr President. Would the Secretary agree that in order to improve site safety much more than strengthening supervision at construction sites is required? And, in this context, would the Administration be prepared to implement a compulsory safety induction course for all construction workers for which they will be issued either a card or a certificate prior to their being employed for work at construction sites?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the Industrial Safety Council and the construction industry have always been in consultation with each other with the aim of promoting further construction site and industrial safety. I will pass Mr ARCULLI's suggestion to them for consideration.

DR LEONG CHE-HUNG: *Thank you, Mr President. It would not be right for a doctor to stand up to defend members of his profession and I therefore welcome the Secretary's comments concerning the fact that medical professionals are not immune from criminal liability due to negligence.*

Is the Government aware that many cases of hospital-acquired infection that produce mortality and morbidity are the result of bacteria that have developed resistance to almost all known antibiotics as a result of mutational changes in the structure of these bacteria and that these bacteria are prevalent in hospitals and are therefore difficult to eradicate? And can the Administration inform this Council what percentage, out of the reported 8%, of patients who have contracted HAIs in Queen Mary Hospital is due to these antibiotic-resistant bacteria?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, could I just say very briefly that my reply to the first part of Dr LEONG's question is: Yes, we are aware that the problem is basically due to reasons other than what the doctors can do. But could I take this juncture to supply Members with some information in response to Dr LEONG's second part of the question.

The Queen Mary Hospital recently undertook a survey and found out that the prevalence rate for HAIs in Queen Mary Hospital is 7.7%. In the United Kingdom, it is well over 9%. And in some other countries, developing countries, it is well over 20%. And therefore, Hong Kong has a rather low HAI prevalence rate and much of that is actually due to the concerted efforts of hospitals and the Hospital Authority in implementing infection control measures in hospitals.

WRITTEN ANSWERS TO QUESTIONS

Trade Deficits of Hong Kong

7. MR MARTIN BARROW asked: Hong Kong's trade deficits (in HK$ billion) have increased as follows:

	1993	*1994*	*%change*	*1994*	*1995 (Jan-Apr)*	*%change*
Deficit	26.3	80.7	+206%	24.4	56.9	+133%

With the deficit in 1994 having more than trebled than that in 1993 and again more than doubled during the first four months in 1995 as compared with that in the corresponding period in 1994, will the Government inform this Council of the reasons for this trend and the implications for the territory's economy?

SECRETARY FOR FINANCIAL SERVICES: Mr President, the Hong Kong economy indeed experienced a deterioration in visible trade deficit over the course of 1994 and in the first four months of 1995. The most significant factors leading to this deterioration were a sharp rise in import requirements for manufacturing production and infrastructural construction, as well as a greater intake of machinery and equipment for capacity expansion and productivity enhancement. Also, the visible trade deficit situation was exacerbated by changes in external conditions, specifically the global recovery in demand causing an upsurge in world commodity prices, a weakened Hong Kong dollar along with the United States dollar, and high inflation in China, which led to a continued deterioration in the terms of trade (that is, import prices rising faster than export prices) for Hong Kong in recent quarters. Thus the enlargement in visible trade deficit in recent quarters was more a consequence of increased demand for production and investment, rather than one of increased demand for consumption. This should underpin overall economic growth in the coming months, as well as help to raise productive capacity generally.

Also noteworthy is the fact that Hong Kong generally has run a deficit on visible trade, but the invisible trade account has been consistently in surplus. As a result, the combined visible and invisible trade account has maintained an overall surplus, except for some earlier years. In 1994, the surplus on invisible trade was reckoned as again more than enough to offset the visible trade deficit, thus giving a small surplus on the combined account. Although figures on invisible trade for the first few months of 1995 are not yet available, the accelerated growth in visible trade and hence trade-related services, continued surge in transhipment, and steady rise in incoming tourists suggest that a further notable increase in exports of services should have been attained. Accordingly,

the surplus on invisible trade in that period should still be able to offset substantially the deficit on visible trade.

Health Care for Vietnamese Boat People

8. DR LAM KUI-CHUN asked (in Chinese): *Regarding the provision of health care for Vietnamese boat people (VBP), will the Administration inform this Council how much money has been spent to date on:*

(i) health care provided in VBP detention centres;

(ii) obstetrical care provided in public hospitals; and

(iii) all other health care provided in public hospitals?

SECRETARY FOR SECURITY: Mr President, the total expenditure incurred by the Department of Health on health care for Vietnamese migrants in the detention centres since 1989 is $133 million.

The cumulative charges imposed by the Hospital Authority from 1992-93 to 1994-95 for the provision of obstetrical care and other health care to Vietnamese migrants in public hospitals are estimated to be $1.13 million and $3.86 million respectively. These charges, which are met by the office of the United Nations High Commissioner for Refugees, represent about 2% of the actual cost of the services provided. A breakdown of hospital care figures as between obstetrical and other health care for the years before 1992-93 is not available.

Ex gratia Compensation for Crops

9. MR ALBERT CHAN asked (in Chinese): *At present, the Government only grants ex-gratia compensation for crops cultivated within a distance of ten metres from the affected structures in "non-development clearances" (NDCs) of structures on agricultural land. The affected farmers generally have expressed great dissatisfaction with the compensation offered by the Government. Some of them even refuse to relocate, thus hampering the clearances. In view of this, the Legislative Council Panel on Planning, Lands and Works has urged the Government to review the existing policy on crop compensation. In this connection, will the Government inform this Council:*

(a) of the total amount of ex-gratia compensation for the loss of crops arising from NDCs paid in 1994/95; and

(b) whether it has conducted a review of the method of calculating crop compensation for NDCs; if so, what the scope of the review is, what progress has been made; and when the review will be completed?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

(a) The total amount of ex gratia allowance for the loss of crops arising from NDCs paid in 1994-95 is $1.02 million.

(b) A review on the policy on crop compensation in NDCs is underway. Its scope includes the eligibility criteria for crop compensation and the basis for the determination of the clearance area. This is a complex issue. Changes to the method for calculating the ex gratia allowance may affect the timing of NDC programmes, in addition to financial and resources implications.

Car Parks in PSPS Housing Estates

10. MR FREDERICK FUNG asked (in Chinese): *With regard to car-parks in Private Sector Participation Scheme housing estates, will the Government inform this Council:*

(a) whether the Housing Authority has laid down the proportion of hourly rental spaces, monthly rental spaces and spaces for sale provided in such car-parks; if so, what the proportion is;

(b) if the answer to (a) is in the negative, what measures will be taken to tackle the problem of developers progressively increasing the proportion of hourly rental spaces and spaces for sale in such car-parks in pursuit of profits, resulting in insufficient provision of monthly rental spaces to meet residents' demand;

(c) of the method used in dealing with speculation in parking spaces in such car-parks; and

(d) whether there is any plan to review the present policy of allowing the offer of parking spaces in such car-parks for sale to the public; if so, what the details are and when the review will take place; if not, why not?

SECRETARY FOR HOUSING: Mr President, as with other sites sold by the Government for residential development, the conditions of sale for sites under the Private Sector Participation Scheme (PSPS) contain no restriction on the proportion of private car parking spaces to be sold or leased.

Under the PSPS, private car parking spaces must, however, be used for the parking of private motor vehicles belonging to residents and their visitors. This requirement aims to provide adequate parking spaces for residents. It is not practicable to set a fixed ratio for hourly and monthly parking spaces, or for rental and sale spaces, as the demand in each category is difficult to forecast.

In order to prevent speculation in parking spaces, the following restrictions on disposal have been imposed on all PSPS projects since 1993:

(a) the developer can assign or sublet car parking spaces only to the owners of residential units; and

(b) not more than one parking space may be assigned or sublet to each flat owner.

The Government will review the effectiveness of these restrictions at the end of 1996 when the first project with such restrictions is completed.

Operation of the Medical Council

11. DR CONRAD LAM asked (in Chinese): *Is the Government aware of the operation of the Medical Council; if so, will the Government inform this Council:*

(a) of the number of complaint cases handled by the Medical Council in each of the past three years;

(b) which are the three types of complaint cases most frequently received, as classified by the nature of complaint; and

(c) whether it is aware of any progress that the Council has made in enhancing its transparency in the past three years?

SECRETARY FOR HEALTH AND WELFARE: Mr President, the Government is fully aware of the operation of the Medical Council of Hong Kong.

(a) During the past three years, that is, in 1992, 1993 and 1994, the Medical Council received a total of 126, 134 and 170 complaint cases respectively.

(b) The three types of complaint cases most frequently received in the past three years, as classified by the nature of the complaint, are as follows:

I.	Disregard of professional responsibilities to patients	229
II.	Advertising	29
III.	Untrue or misleading medical certificates	28

Individual cases of professional misconduct under the category of "Disregard of professional responsibilities to patients" varies from "wrongly advising the patient of the diagnosis or the disease he is suffering from" to "failing to provide a medical report or information on request of patient".

(c) Over the past few years, the Medical Council has made considerable progress in enhancing the transparency of its work. All its disciplinary inquiries, except for cases where special circumstances pertain, are now open to the public.

Apart from disseminating information of public interest regularly through the media and professional groups, the Council's representatives will also brief the press on the work and major decisions of the Council as and when necessary.

In addition, information leaflets in both languages on the Medical Council and its processing of public complaints on professional misconduct are also available in the Secretariat of the Medical Council for members of the public.

With regard to complaints, complainants are now given full reasons as far as possible when their complaints have been dismissed.

Student Travel Subsidy Scheme

12. MR ERIC LI asked (in Chinese): *As the Student Travel Allowance Scheme aims at subsidizing the traffic expenses of needy students for travelling between home and school, applicants are required to pass a family means test so as to ensure that the subsidy will be given to students who are in genuine need of assistance. In view of this, will the Government inform this Council:*

(a) of the reasons why there is an age-limit imposed under the Scheme to deny subsidy to full-time students over the age of 25; and

(b) whether this measure will pose financial problems for full-time students over the age of 25 from low-income families, contrary to the objective of the Scheme?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

(a) The Student Travel Subsidy Scheme (STSS) was introduced as a non-means-tested Scheme in October 1988 to replace the former Student Travel Card Scheme (STCS). The objective of the STSS is to provide subsidies to students for part of the cost of trips between home and the place of study and part of the cost of trips for extra-curricular activities. All full-time students up to the first degree level who are under the age of 25 and have to take public transport to school by paying the full fare are eligible to apply. The STSS was revised to become means-tested in 1991 with the other criteria remaining unchanged. The age limit criterion was inherited from the STCS on the assumption that students reaching the age of 25 should, in general, be able to support their own travel expenses.

(b) The Administration has not received any formal complaints that the age limit criterion has posed financial problems to full-time students over the age of 25.

In view of the expansion in tertiary education and the social changes in recent years, the Administration will review, having regard to the objective of the means-tested STSS, whether the age limit criterion should be modified.

Neighbourhood Level Community Development Project (NLCDP)

13. MR JAMES TO asked (in Chinese): *As the Government is contemplating to recommend to the Executive Council to phase out the "Neighbourhood Level Community Development Project" (NLCDP) service, will the Government inform this Council:*

(a) of the staff resources and expenditure involved in the NLCDP service over the past three years;

(b) what organization will take over the community service currently provided under the Project in the catchment areas of some old districts (including Nam Cheong area of Sham Shui Po and Mong Kok South area of Mong Kok) upon the termination of the NLCDP service; and

(c) whether residents of the affected districts will be consulted on the proposal to phase out the NLCDP service?

SECRETARY FOR HOME AFFAIRS: Mr President:

(a) NLCDPs are carried out by non-governmental organizations with full subvention from the Social Welfare Department. For each NLCDP team, the notional staffing comprises 1/5 Social Work Officer, one Assistant Social Work Officer, two Social Work Assistants and one Clerical Assistant. The manpower and financial input for the past three years are as follows:

	1992-93	*1993-94*	*1994-95*
No. of Teams	52	53	54
Actual Expenditure ($ million)	38.094	44.344	50.225

(b) A comprehensive range of welfare services are provided throughout the territory including old urban areas in accordance with planning standards based on target population or actual demands. Activities and services for community building are catered for under the District Administration Scheme which is fully implemented in all 18 districts. In view of the above, the Government does not, at this stage, foresee the need for another organization to take over the two pilot NLCDP projects in Nam Cheong and Mongkok South when they will come to an end in three years' time.

(c) We have held many meetings with the Hong Kong Council of Social Service, the Social Workers' General Union, NLCDP workers, and residents' groups to explain to them the reasons for rationalizing the NLCDP service. We have also attended district board meetings to discuss the issue. We have been able to hear many views on the subject. These views will be fully taken into account when the matter is considered by the Executive Council.

Relationship between the Executive and Legislative Councils

14. MR ALLEN LEE asked (in Chinese): *Will the Government inform this Council whether it has any draft plan on how to determine the mode of relationship between the Executive and Legislative Councils after the 1995 Legislative Council election, and whether the determination of this mode of the relationship between the two Councils will be dependent upon the outcome of the forthcoming Legislative Council election?*

CHIEF SECRETARY: Mr President, at present, we are still considering whether the present mode of relationship between the Executive and Legislative Councils should be changed after the 1995 Legislative Council Election and if so, how. We will not be in a position to make a decision until after the forthcoming Legislative Council Election, and will take all relevant factors into consideration.

Substitute Teachers in Government Schools

15. MR TIK CHI-YUEN asked (in Chinese): *Regarding the employment of substitute teachers in government schools in Hong Kong, will the Government inform this Council:*

(a) of the proportions of substitute teachers to teaching staff, as well as the respective maximum and average numbers of substitute teachers employed in primary and secondary government schools throughout the territory in each of the past three years; and

(b) whether the current regulations governing the recruitment of teachers will be amended, so that schools may employ fewer substitute teachers?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

(a) The maximum number, average number and proportion of substitute teachers employed in government primary and secondary schools in the Hong Kong Island, Kowloon and New Territories regions to fill vacancies in the past three years are listed below:

(1) *Government Primary School*

	1991-92			*1992-93*			*1993-94*		
	HKI	*K*	*NT*	*HKI*	*K*	*NT*	*HKI*	*K*	*NT*
Maximum No. of substitute teachers (Note (ii))	41	45	23	24	37	12	29	44	36
Average No. of substitute teachers (Note (iii))	36	40	21	17	34	9	22	35	28
Proportion (%) of substitute teachers to teaching staff (Note (iv))	11	7.6	5.9	5.3	6.7	2.6	6.7	6.9	7.3

(2) *Government Secondary School*

	1991-92			*1992-93*			*1993-94*		
	HKI	*K*	*NT*	*HKI*	*K*	*NT*	*HKI*	*K*	*NT*
Maximum No. of substitute teachers (Note (ii))	36	44	105	50	40	101	43	55	96
Average No. of substitute teachers (Note (iii))	32	35	90	36	34	89	34	44	87
Proportion (%) of substitute teachers to teaching staff (Note (iv))	5.9	7.1	9.7	6.8	7.6	9.2	6	10.8	9.2

Notes

(i) HKI - Hong Kong Island; K - Kowloon; NT - New Territories

(ii) This refers to the largest number of substitute teachers employed by all government schools in the region during the school year.

(iii) This is the average of the largest number and the smallest number of substitute teachers employed by all government schools in the region during the school year.

(iv) This is calculated by the following formula:

$$\frac{\text{Average number of substitute teachers}}{\text{Total teaching staff establishment in government schools in the region}}$$

(b) There is no need to amend the current regulations for the recruitment of government school teachers which generally follow the civil service appointment rules and procedures. The Education Department has exercised flexibility wherever necessary, for example, mounting additional recruitment exercises in case of a shortfall. The Department will continue to monitor the recruitment situation and introduce further improvements as required.

University Teaching Staff Undertaking Outside Work

16. MISS EMILY LAU asked (in Chinese): *Is the Government aware that some of the teaching staff in universities undertake outside work on a part-time basis to earn extra money; if so, will the Government ask the management of the universities concerned to provide the following information:*

(a) whether this phenomenon is common in the universities;

(b) what are the procedures and criteria adopted by the university management in considering applications submitted by university teaching staff for permission to undertake outside work;

(c) what information the teaching staff are required to provide to the university management when making such applications;

(d) what areas of outside work are undertaken by university teaching staff; and

(e) what is the highest annual remuneration which a university teaching staff member has received for undertaking outside work in the past three years?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the Government is aware that, subject to the relevant regulations established by individual institutions, academic staff in the University Grants Committee (UGC)-funded institutions are allowed to undertake outside practice. Different institutions adopt slightly different definitions of the term "outside practice". In general, it refers to the use by a staff member of professional knowledge and skill outside of, or in addition to, their normal duties for reward, including fees, honoraria, retainers and any other remuneration.

(a) From the records of the UGC-funded institutions, about 18% of the full-time academic staff engaged in outside work on a regular or ad hoc basis in 1994-95.

(b) All UGC-funded institutions have established procedures and guidelines governing their staff's engagement in outside work. Procedures differ slightly. In general, a staff member must seek the permission of the Head of the Department concerned, or in some cases the Head of the institution concerned, to engage in outside practice. The criteria adopted in considering such applications include the requirement that:

(i) the outside practice does not interfere with the normal duties of the staff member and there will be no conflict of interest; and

(ii) the aggregate amount of time spent on outside practice by a staff member should not exceed an average of about one working day per week.

(c) The information which staff applying for outside practice must submit to the management of the institutions generally includes name of the client; nature of the outside work; the number of working hours involved in outside work; the level of remuneration and whether there will be any use of the institution's facilities.

(d) The areas of outside work undertaken by staff could be grouped into the following three categories:

(i) general educational work such as literary work, examining, authorship of manuscripts, occasional broadcast or televised talks, occasional lectures and seminars and part-time teaching of continuing education courses;

(ii) consultancy and professional practices such as laboratory tests, computer programmes, giving expert professional evidence in legal proceedings, accountancy service and legal service; and

(iii) private clinical practice which includes private patients who are referred for consultation in the teaching hospital and/or those who receive in-patient treatment within the hospital in the private wards, and consultations outside of the hospital usually at the request of a doctor in private practice.

(e) The level of remuneration which staff receive for outside work varies significantly depending on its nature. According to records available, in the past three years, the highest annual remuneration which a member of staff in the UGC-funded institutions received for undertaking outside work was in respect of a clinical academic who earned about $560,000.

Patronage of Accident and Emengency Departments

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

(a) of the number of patients seeking treatment at the accident and emergency departments of public hospitals, together with the percentages of patients seeking treatment during daytime (8:00 am - 4:00 pm), evening (4:00 pm to midnight) and midnight to early morning (midnight - 8:00 am) respectively in each of the past three years; and

(b) in each of the periods mentioned in (a) above, how many patients required admission or referral to specialist clinics for follow-up; how many were trauma cases and how many were cases that could have been treated in general out-patient departments?

SECRETARY FOR HEALTH AND WELFARE: Mr President, the information requested is summarized below:

	1992-93	*1993-94*	*1994-95*
Total number of attendance	1 402 451	1 492 637	1 733 040
Number of traumatic cases	276 000	308 100	349 700
Rate of hospital admission	21.7%	21.2%	20%
Rate of referral to specialist clinics (Note 1)	5.2%	4.6%	3.8%
Cases seeking treatment from 8.00 am to 4.00 pm	41%	41%	41%

	1992-93	*1993-94*	*1994-95*
Cases seeking treatment from 4.00 pm to 12.00 am	42%	42%	42%
Cases seeking treatment from 12.00 am to 8.00 am	17%	17%	17%

Note 1: the declining rate of referral is attributable to initiatives taken by the Hospital Authority to relieve the workload of specialist clinics by providing follow-up treatment at accident and emergency departments for cases that do not require ongoing specialist care.

It is difficult to estimate with accuracy the proportion of accident and emergency cases which could have been treated in general out-patient clinics. From the experience gained in the triage system of all accident and emergency departments in public hospitals, about 10% to 20% of cases could be categorized as non-urgent. However, from the perspective of individual patients, it is understandable that they assume their condition to be of sufficient urgency or severity to warrant immediate medical attention.

Substance Abuse Clinics in Public Hospitals

18. MR WONG WAI-YIN asked (in Chinese): *It is learnt that the Hospital Authority is planning to set up "Drug Abuse Centres" in six public hospitals, in view of the worsening problem of drug abuse among young people. In this connection, will the Government inform this Council:*

(a) of the locations of the six "Drug Abuse Centres" mentioned above and when these centres will be established; and

(b) whether "Counselling Centres for Young Drug Abusers" will be set up in these six locations to complement the "Drug Abuse Centres" so as to make the work of these two types of centres more effective; if not, why not?

SECRETARY FOR SECURITY: Mr President, the locations and the commencement dates of the Hospital Authority's six Substance Abuse Clinics are as follows:

	Location	*Commencement date*
1	Kowloon Hospital, Mongkok	1 April 1994
2	Pamela Youde Nethersole Eastern Hospital, Chai Wan	14 February 1995
3	Prince of Wales Hospital, Sha Tin	1 April 1995
4	South Kwai Chung Polyclinic, South Kwai Chung	1 April 1995
5	Queen Mary Hospital, Pokfulam	1 July 1995
6	Tuen Mun Polyclinic, Tuen Mun	14 August 1995

At present, there are two counselling centres which provide services to psychotropic substance abusers, namely PS33 in Tsim Sha Tsui, run by the Hong Kong Christian Service, and Direction in Wan Chai, operated by the Society for the Aid and Rehabilitation of Drug Abusers. The Government is committed to setting up a similar counselling centre in the New Territories. There is, and will continue to be, close co-operation between the Substance Abuse Clinics and the counselling centres, so that their effectiveness can be enhanced.

Dispensing Service by Private Medical Practitioners

19. DR CONRAD LAM asked (in Chinese): *As the private medical practitioners in the territory at present dispense medicines directly to patients in addition to giving diagnosis, will the Government inform this Council of the following:*

(a) of the reason for adopting such a practice, and how long this practice has been followed;

(b) which advanced countries in Europe and America are still adopting such a practice; and

(c) whether the Government will consider training up a sufficient number of pharmacists capable of providing professional dispensing service to patients so as to improve dispensing service to meet the needs of the community; if so, when such training will be provided; if not, why not?

SECRETARY FOR HEALTH AND WELFARE: Mr President, the dispensing of medicines by private medical practitioners to patients is not unique to Hong Kong and is practised by our neighbours such as Japan and Singapore. Indeed we are not aware of any country which prohibits private medical practitioners by statutory means from dispensing medicines. In countries such as the United Kingdom and United States, separate dispensing of medicines by pharmacists is usually achieved by reimbursing the costs arising from medical consultations and the dispensing of medicines to doctors and pharmacists respectively through an insurance system. Even then, doctors are permitted to dispense medicines to their patients where pharmacists are not easily accessible.

Whilst we are not sure how long the practice of the dispensing of medicines by private medical practitioners has existed in Hong Kong, this one-stop arrangement has worked well for many years. It is convenient to patients and ensures clear accountability for the proper care and safety of patients. However, patients do have the right, if they so wish, to request their doctor to issue prescriptions to be filled by pharmacists. This practice was adopted by the Hong Kong Medical Association as far back as 1981.

Currently, the Chinese University of Hong Kong (CUHK) is offering a three-year Bachelor degree course in Pharmacy. The first batch of 31 students will graduate this year. Whilst the intake level of the Bachelor degree programme will remain at about 30 throughout the 1995-98 triennium, the CUHK plans to introduce a Master of Philosophy programme for Bachelor degree holders in pharmacy from 1996.

Future Development of Land North of Tin Shui Wai

20. MR WONG WAI YIN asked: *With the future development of 200 hectares of land in the north of Tin Shui Wai, it is estimated that the population of Yuen Long district (including Tin Shui Wai) will exceed 900 000 by the year 2000. In this connection, will the Government inform this Council:*

(a) whether there is any plan to build a hospital in the Tin Shui Wai area in anticipation of the growth in population; if so, what the timetable of the plan is; if not, why not; and

(b) what measures are currently in place to reinforce the medical services in the area so as to meet the demand of the continuous growth in population?

SECRETARY FOR HEALTH AND WELFARE: Mr President, an overall review, similar to the one carried out in 1992, is currently being conducted by the Hospital Authority to update the projected demand and supply of public hospital beds in the territory. The medical services required to cater for residents in the Yuen Long District, including Tin Shui Wai, will be covered as part of this exercise.

In response to growing patient demand, the Hospital Authority has taken steps in the last few years to enhance the scope of services and specialized facilities offered by the cluster network comprising Tuen Mun Hospital, Pok Oi Hospital and Fanling Hospital. Apart from other improvement measures which might be pursued following the review mentioned above, completion of North District Hospital with 600 beds in mid-1997 will further strengthen the service provision in the northern and western parts of the New Territories.

MOTIONS

MAGISTRATES ORDINANCE

THE CHIEF SECRETARY moved the following motion:

> "That the Magistrates (Administrative) (Amendment) Rules 1995, made by the Chief Justice on 29 June 1995, be approved."

She said: Mr President, I move the motion standing in my name on the Order Paper.

Rule 2 of the Magistrates (Administrative) Rules requires each magistracy to keep a Case Register which contains the particulars of every proceeding or matter put before a magistrate in the form of a book. As the Judiciary has introduced the computerized court recording at the magistracies level, Rule 2 should be amended to enable a case register to be kept in computerized form instead.

The Chief Justice has made the Magistrates (Administrative) Rules 1995. In accordance with section 133 of the Magistrates Ordinance, the Rules now require the approval of this Council by resolution.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

PROTECTION OF WAGES ON INSOLVENCY ORDINANCE

THE SECRETARY FOR EDUCATION AND MANPOWER moved the following motion:

"That -

(a) with effect from 21 July 1995 ("the effective date"), section 16(2)(f)(i) of the Protection of Wages on Insolvency Ordinance be amended by repealing "$8,000" where it twice occurs and substituting "$24,000";

(b) the Ordinance as amended by this Resolution shall not apply in respect of a severance payment the liability for payment of which arose before the effective date; and

(c) the Ordinance as in force immediately before the effective date shall apply to a severance payment the liability for payment of which arose before that date as if this Resolution had not been made and passed."

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

The purpose of this resolution is to increase the maximum payment from the Protection of Wages on Insolvency Fund in respect of severance payment.

Under the Protection of Wages on Insolvency Ordinance, a person owed arrears of wages, wages in lieu of notice or severance payment by his insolvent employer may apply for ex gratia payment from the Protection of Wages on Insolvency Fund, subject to the maximum limits set out in the Ordinance.

The present coverage of the Fund is as follows:

First, arrears of wages up to $18,000 for services rendered not more than four months prior to the date of application;

Second, wages in lieu of notice up to one month's wages or $6,000, whichever is less; and

Third, severance payment up to $8,000 plus 50% of any excess entitlement over $8,000 under the Employment Ordinance (Cap. 57).

The coverage in respect of severance payment has not been revised since 1991. Statistics in 1993-94 indicate that it is inadequate as only 16.5% of applicants were able to obtain their full severance payment entitlements and only 47.4% could obtain over 75% of their entitlements. This coverage will further diminish as the overall wage levels continue to rise. There is, therefore, a need to amend the Protection of Wages on Insolvency Ordinance so as to expand the coverage of the Fund relating to severance payment.

We now propose that the maximum coverage in respect of severance payment to be increased from $8,000 plus 50% of any excess entitlements to $24,000 plus 50% of any excess entitlements. This proposed improvement will enable low-income employees, particularly those with a shorter length of service, to obtain a relatively higher percentage of severance payment from the Fund. We estimate that under the proposed coverage, 80% of applicants in 1995-96 and 1996-97 will be able to receive from the Fund for not less than 75% of their severance payment entitlements.

We do not, however, propose to make any changes to the payment ceilings in respect of arrears of wages and wages in lieu of notice for the time being because both of them were substantially increased in 1993. We will review the situation later in the year.

The Fund is currently financed by a levy of $250 on each business registration certificate. The proposal will unlikely have any additional cost impact on employers because the existing levy rate would be enough to cover the increased payments from the Fund.

Both the Labour Advisory Board and the Protection of Wages on Insolvency Fund Board have been consulted on this proposal and given their support to it.

Mr President, I beg to move.

Question on the motion proposed.

MR LEE CHEUK-YAN (in Cantonese): Mr President, the Secretary for Education and Manpower moved a motion to raise the level of severance payment under the Protection of Wages on Insolvency Fund from $8,000 plus 50% of any excess entitlement respectively to $24,000 plus 50% of any excess entitlement. I of course support the motion, but I feel and am disappointed that the revision is insufficient. The Government could have done more for the workers, but it has refrained from doing so.

In view of the financial position of the Fund, people feel that the Government is like a miser, guarding jealously the money in the Fund and refusing to part with any of it. At present, the Fund receives about $200 million every year, and pays out some $100 million, that is, there is a yearly surplus. The aggregated surplus is now as much as $780 million. Why does the Government insist on guarding this $780 million and not using any of it to improve the protection for the workers? This is really puzzling. I have to remind Honourable Members that the Fund is the Protection of Wages on Insolvency Fund, and as its name suggests, it ensures that workers get what the labour laws provide only in the event of insolvency and winding up. However, at present, the Fund does not help the workers to get the full amount. What is most disappointing is that the Government has not improved the situation in respect of arrears of wages.

The Secretary just said that the protection level in respect of arrears of wages had remained unchanged since its last revision in 1993. At present the highest level of protection for arrears of wages is $18,000 or four months of wages. According to this scale, if a worker is owed by his employer a full four months of wages, then his monthly protection is only $4,500. Even if he is owed two months, his monthly wage protection is only $9,000. I handled a case recently that involved a garment manufacturing syndicate that owed 200 of its workers two months' wages. Most of them exceeded the $18,000 level, because two months or more of wages can easily exceed $18,000. As a result, they have not been able to recover in full the money they earned by hard work.

On the other hand, the payment in lieu of notice is at present only $6,000. If the median wage is $8,000, then the payment cannot even reach the median wage level. Therefore, I hope that the Government will put forward another proposal as soon as possible to raise the protection level in respect of arrears of wages from the present $18,000 to $32,000 which is four months of the median wage, and to revise the payment in lieu of notice to $22,500, which is the highest protection level the Government recently proposed for employees on monthly salaries. Further still, I hope that the severance payment will be increased as soon as possible. I would like to reiterate that my proposals will not cost the business sector anything, because the Fund under the Government has a surplus of $780 million. I hope that the Government will put the Fund to the best use, for the protection of workers, and will not just hold and guard the money. Thank you, Mr President.

MR TAM YIU-CHUNG (in Cantonese): Since the Protection of Wages on Insolvency Fund was set up, the scope of protection has seen continuous improved. However, it still falls short of the expectation of our labour force and trade unions. For example, the ceilings for payments in respect of arrears of wages and payment in lieu of notice, respectively at $18,000 and $6,000, fall behind the current median wage of our workers, which is about $8,000 per month. Therefore I hope that the Government will conduct a review as soon as possible, and that the median wage should be used as the basis for calculation so as to afford the workers greater protection.

Further, the source of the Fund is the business certificate charge of $250; all companies, including self-employed people, irrespective of size have to pay the same fee. Therefore, the General United Association of Small Traders has made a representation to the Complaints Office of the Legislative Council, maintaining it is not fair that their members, who are mostly small traders and self-employed people without any employees, are also required to pay the same levy. Therefore, I would like to take this opportunity to ask the Secretary for Education and Manpower to consider their view.

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

MR JAMES TIEN (in Cantonese): Mr President, since the Protection of Wages on Insolvency Fund was set up, many employers have been thinking that the Fund should be the responsibility of the Government. At present the Fund gets its income from registration of companies. Just now the Honourable TAM Yiu-chung also mentioned that many small-scale companies are in fact facing difficulties in operation. Though several hundred dollars is a small sum, it does signify the transfer, to the good employers, of the responsibility of bad employers who go insolvent and owe their employees wages. This concept is in anyway unfair. The Government collects huge amount of taxes from the business sector, that is, from the good employers. Under such circumstances, the expenditure incurred in protecting the workers affected by insolvency, being only some $100 million a year, should be borne by the Government.

We will not oppose the proposal of the Honourable LEE Cheuk-yan to adjust the ceiling of $18,000 or four months of wages according to the current inflation rate or even to a higher level. We think that now that there is an aggregated surplus of $780 million in the Protection of Wages on Insolvency Fund, at 10% per annual, the reserves will yield an interest income of $78 million every years, well sufficient to cover the necessary expenditure. We think that it is now high time that the Government should review and stop collecting such levy from all companies every year, until the $780 is completely depleted when other means will be employed to replenish the Fund.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I take it that the three Members who spoke supported the resolutions in the motion, except that they wish to do something more. I will, of course, reflect carefully upon those suggestions on how to improve further.

But just to illustrate the point that we have, in fact, done a lot in this present proposal. In the review of 1993 we set the limits of the existing levels and at the present time these levels, in fact, are still quite high compared with the last review. For example, in respect of the $18,000 for arrears of wages revised in 1993, the previous level was only $8,000 compared with this present level, and with respect to the $6,000 of wages in lieu of notice, the last revision was only $2,000. So it was a very substantial revision in 1993. But, as I said, we will review these two levels later this year, and I will, of course, fully reflect upon Members' suggestions on how to make these even more generous.

As regards the $24,000 which is, of course, a very substantial increase on severance payment compared with $8,000 at the present time, this is supported by Members and we will further consider whether in the next review there will be a need for further revisions in the light of the financial position of the Fund. We will, of course, consult the Fund Board carefully on how to reflect upon those further improvements.

I would take exception to Mr TIEN's point, although, about the business community bearing this cost. The business certificate charge of $250, as the source of the Fund, has been established with the support of this Council. I am sure that this is a matter which has been accepted by the business community for many years. It is meant, of course, to be a cushion against the insolvencies in case of difficulties, and it is decidedly not meant to absolve those businesses insolvent from their liabilities. This is only meant to help those businesses, those workers who have difficulties because of such insolvent situations for the time being. Clearly, the Government, of course, would not wish to see this change because of the Fund having, in fact, a bigger surplus. It is certainly prudent of us to take note of the situation of the Fund and to consider what further improvements are necessary in the light of the present and future situation. And therefore I cannot support the proposal to stop this charging of the business certificate as a source of the funding. But in respect of the other suggestions we will, of course, reflect carefully on how to make further improvements in the light of the present and future financial position of the Fund.

Question on the motion put and agreed to.

TELEVISION ORDINANCE

THE SECRETARY FOR RECREATION AND CULTURE moved the following motion:

"That-

(a) the Commercial Television (Advertising) (Amendment) Regulation 1995; and

(b) the Television (Programmes) (Amendment) Regulation 1995,

made by the Governor in Council on 20 June 1995 and 27 June 1995 respectively, be approved."

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

These two amending Regulations form part of the Administration's overall review to ensure that existing laws do not infringe press freedom and the right to freedom of expression.

The Commercial Television (Advertising) (Amendment) Regulation 1995 was made by the Governor in Council on 20 June 1995. It removes the power of the Director of Health to pre-censor advertisements for any medical preparations. The scope of the Director of Health's discretion has been criticized as sweeping and undefined. It also gives the Authority pre-censorship powers that have been removed elsewhere, and creates a disparity in treatment between different media, since no similar restriction is imposed on sound broadcasters and the printed media. There is little justification to retain this Regulation in the Television Ordinance. Following the repeal however, provisions will continue to be made, and be revised if necessary, in the codes of practice issued by the Broadcasting Authority, to guide broadcasters in respect of advertisements on medical preparations, and to protect the public against misleading and unacceptable advertisements in this regard.

The Television (Programmes) (Amendment) Regulation 1995 was made by the Governor in Council on 27 June 1995. It repeals the stipulation that programmes broadcast by the commercial and subscription television licensees shall exclude material which is likely to offend against good taste and decency, mislead or alarm, encourage and incite crime or social disorder, discredit the law or the social institutions or to serve the interest of any foreign political party. This provision is regarded as excessively restrictive and deemed to contain too vague a restriction on freedom of information. In any event, this provision has been superseded by section 33 of the Television Ordinance, introduced in April 1993, which makes it a requirement for the licensees to to broadcast material that is likely to incite hatred against any group of persons by reason of race, nationality, sex or religion, or cause a general breakdown in law

and order, or gravely damage public health or morals. As part of the same section, the Chief Secretary is empowered to apply to the High Court to prevent the broadcast of any programme which she has reason to believe is likely to give rise to the damage outlined above. Similar provisions are also found in Part IIIA of the Telecommunication Ordinance to regulate sound broadcasting. The Administration considers that these provisions already provide a suitable balance between the need to guard against the broadcast of totally unacceptable programming on the other. Although Regulation 4(e) is not explicitly covered in section 33, there are sufficient powers within the present body of television regulations and within codes of practice for programme standards to deal with the broadcast of programmes that serve the interest of any foreign political party. There is, therefore, little justification to retain restrictions on broadcasting contents in the subsidiary legislation.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

PUBLIC SERVICE COMMISSION ORDINANCE

THE SECRETARY FOR THE CIVIL SERVICE moved the following motion:

"That the Third Schedule to the Public Service Commission Ordinance be amended by adding -

"3. Monetary Authority 30 September 1994"."

He said: Mr President, I move the motion standing in my name on the Order Paper. Section 6(1)(a)-(d) of the Public Service Commission (PSC) Ordinance stipulates, amongst other things, that the Commission shall advise the Governor on the filling of vacancies and the promotion of officers in the public service. This motion proposes to exclude the departmental grades staff in the Monetary Authority (MA) who remain on civil service terms from the purview of the Public Service Commission under section 6(2A) of the PSC Ordinance. The departmental staff include mainly officers of the Bank Examiner and Bank Examination Assistant Grades.

The MA was set up in April 1993 under the Exchange Fund (Amendment) Ordinance, following the re-organization of the then Monetary Affairs Branch. It is accountable to the Financial Secretary who receives advice from the Exchange Fund Advisory Committee. To attract and retain staff with the right experience and expertise, the MA is empowered to employ people on terms different from those in the Government. All serving departmental officers were given the option to resign from the Civil Service and take up MA terms of employment before 30 September 1994. Those who had not opted for MA terms remain working in the Authority as civil servants. As at 30 June 1995, 48 departmental officers had opted for MA terms of employment and the other 78

department officers were still on civil service terms. The option to transfer to MA terms was not available to general or common grades staff. These staff will be transferred back to the Government once the MA has recruited its own staff to replace them.

As a result of the above arrangement, a mixed staff situation now exists in the departmental grades of the MA, under which it is not possible for the PSC to scrutinize promotion exercises of these grades comprising both of civil and non-civil servants. This is because the PSC only has the authority to examine and advise on staff on civil service terms — but not on HKMA terms. Without an overall picture, the Commission is not best placed to determine who are the most meritorious officers. Following the precedent of the Hospital Authority and the Vocational Training Council, we propose that the departmental grade in the MA who remain as civil servant should be excluded from the purview of the Commission. However, matters relating to the conduct and discipline of these staff will continue to be subject to the advice of the Commission.

The MA has drawn up a set of appeal procedures with the Financial Secretary as the final appeal authority to safeguard the interests of staff following the exclusion from the Commission's purview. The staff concerned have indicated no objection to this arrangement. The PSC has also been consulted and agreed to the proposal.

Mr President, with these remarks, I beg to move.

Question on the motion proposed, put and agreed to.

TRADING FUNDS ORDINANCE

THE SECRETARY FOR ECONOMIC SERVICES moved the following motion:

"That with effect from 1 August 1995 -

(a) on the recommendation of the Financial Secretary, the Post Office Trading Fund (the "trading fund") is established to manage and account for the operation of the government service of the Post Office;

(b) the services the trading fund may provide are those set out in Schedule 1;

(c) the assets set out in Schedule 2 are appropriated to the trading fund on the terms set out in that Schedule;

(d) the net value of fixed assets of $3,001.4 million appropriated to the trading fund are represented in the Capital Investment Fund by $900.4 million as a loan and by $2,101 million as a contribution of trading fund capital;

(e) the loan referred to in paragraph (d) is repayable by 10 equal annual instalments of $90.04 million each, the first instalment being due on 1 August 1996 and subsequent instalments being due on the anniversaries of that date;

(f) loan interest is payable annually in arrears at a rate equal to the average of the best lending rate quoted by the continuing members of the Committee of the Hong Kong Association of Banks.

SCHEDULE 1

[para. (b)]

SERVICES

1. Receiving, collecting, sending, dispatching and delivering postal articles within the meaning of the Post Office Ordinance (Cap. 98).

2. Providing Speedpost and other courier services.

3. Retailing stamps and postal related products through counter outlets and appointed agents.

4. Philatelic services.

5. Remittance services.

6. Other services prescribed by the Acts of the Universal Postal Union.

7. Any ancillary service incidental or conducive to providing any of the services in items 1, 2, 3, 4, 5 and 6, including the services of business reply, express, insurance, post restante, private post office boxes, redirection and registration.

8. Agency services for Government departments, public bodies and public utilities, which are compatible with postal related services.

9. Letting out of accommodation that is not immediately required to provide postal services if the letting out does not affect the provision of postal services.

SCHEDULE 2

[para. (c)]

ASSETS

Item	*Description*	*Terms*
1.	Buildings listed in Schedule 3.	The buildings are not to be disposed of (other than by letting as specified in item 9 of Schedule 1) without the prior approval of the Financial Secretary.
2.	All furniture and fixtures, equipment, computer systems and motor vehicles under the control of the Post Office as at 31 July 1995, as set out in the document marked "Inventory of Furniture, Equipment and Motor Vehicles of the Post Office" kept by the Postmaster General.	
3.	Capitalized setting up costs.	

SCHEDULE 3

[item 1, Sch. 2]

OFFICE BUILDINGS APPROPRIATED TO THE POST OFFICE TRADING FUND

	Name of Post Office	*Location*
	Hong Kong and Outlying Islands	
1.	General Post Office	2 Connaught Place, Central
2.	Beaconsfield House	G/F, Beaconsfield House, 4 Queen's Road Central
3.	Sai Ying Pun	G/F & 1/F, 27 Pokfulam Road

	Name of Post Office	*Location*
4.	Stanley	2 Wong Ma Kok Road
5.	Aberdeen	G/F and 1/F, Kam Fung Building, 171 Aberdeen Main Road, Aberdeen
6.	Eastern Delivery Office	1/F, Eastern Law Courts Building, 29 Tai On Street, Sai Wan Ho
7.	Gloucester Road	1/F, Revenue Tower, 5 Gloucester Road
8.	Harbour Building	1/F, Harbour Building, 38 Pier Road
9.	Heng Fa Chuen	G/F, West Car Park Block, Heng Fa Chuen
10.	Morrison Hill	G/F, 28 Oi Kwan Road
11.	Shau Kei Wan	G/F, Perfect Mount Garden, 1 Po Man Street
12.	Wan Chai	G/F & 2/F, Wu Chung House, 197-213 Queen's Road East
13.	Mui Wo	G/F, Mui Wo Government Offices Building, 2 Ngan Kwong Wan Road, Mui Wo
14.	Peng Chau	G/F, Government Building, Wing On Side Street, Peng Chau
15.	Tai O	G/F, Tai O Government Offices Building, Tai O

	Name of Post Office	*Location*
	Kowloon	
16.	Kowloon Headquarters	M/F, Middle Road Carpark Building, 15 Middle Road
17.	Kowloon Central	Basement, G/F, M/F, 1/F & 2/F, Kowloon Government Offices Building, 405 Nathan Road
18.	Canton Road	G/F, Canton Road Government Offices Building, 393 Canton Road
19.	Cheung Sha Wan	G/F & 1/F, 650 Cheung Sha Wan Road
20.	Kwun Tong	G/F, Kwun Tong Government Offices Building, Tung Yan Street
21.	Rennie's Mill Village	G/F, Rennie's Mill Government Offices Building, Section 1, Rennie's Mill Village
22.	Sham Shui Po	G/F & M/F, 55 Un Chau Street
23.	International Mail Centre	80 Salisbury Road, Hung Hom
24.	Air Mail Centre	Tristar Avenue, Hong Kong International Airport
25.	Kowloon East Delivery Office	G/F - 4/F & 9/F, Kolwoon East Government Offices, 12 Lei Yue Mun Road
26.	Airport	D38, Departure Hall, 1/F, Hong Kong International Airport
27.	Hung Hom Bay	G/F, Block 14, Cherry Mansion, Whampoa Garden
28.	Tai Kok Tsui	G/F, 67 Anchor Street, Tai Kok Tsui

	Name of Post Office	*Location*
		New Territories
29.	San Tin	1A Castle Peak Road, San Tin Section, San Tin
30.	Sha Tau Kok	G/F, Sha Tau Kok Government Officers Building, Sha Tau Kok Main Road
31.	Yuen Long Delivery Office	G/F, 1/F & 2/F, Yuen Long District Branch Office Building, 269 Castle Peak Road, Yuen Long
32.	Shek Wu Hui	G/F, 112-116 San Fung Avenue, Shek Wu Hui
33.	Kam Tin	G/F, Kam Tin Government Offices Building, Kam Tin Main Road
34.	Tai Po	G/F, Tai Po Government Offices Building, Ting Kok Road (including G/F counter of 200 m2 which was opened on 19 July 1993)
35.	Fanling	G/F, Fanling Government Offices Building, 3 Pik Fung Road, Fanling
36.	Fo Tan	G/F, Shatin Galleria, 18-24 Shan Mei Street
37.	Sai Kung	G/F, Sai Kung Government Offices Building, 34 Chan Man Street, Sai Kung
38.	Tsuen Wan	1/F & 10/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road
39.	Tsuen Wan West	Bayview Garden, 633 Castle Peak Road”

He said: Mr President, I move the motion standing in my name on the Order Paper. Section 3(1) of the Trading Funds Ordinance provides that the Legislative Council may, on the recommendation of the Financial Secretary, by resolution establish a trading fund. My motion seeks to establish the Post Office Trading Fund with effect from 1 August 1995.

The Hong Kong Post Office was first established over 150 years ago, since then its services have grown with Hong Kong and the Post Office plays an important role in the business and community life of the territory. Despite the advent of the fax machine and new telecommunications technologies, postal traffic in Hong Kong has not only demolished but in fact has been growing at around 6% per annum.

During the past 10 years, the volume of mail traffic handled by the Post Office has doubled, from 575 million items in 1985-86 to 1 147 million items in 1994-95. The staff establishment of the Post Office on the other hand has increased during this period by only 23%. This significant gap has been filled by continued productivity improvements, through investment in automation and through mechanization.

Notwithstanding these impressive productivity gains, the Post Office has found it increasingly difficult to cope with rapid increases in demand while, at the same time, maintaining service standards. Although total revenues from the Post Office's various businesses have been more than adequate to cover operating costs and even provide a modest surplus, under normal departmental funding arrangements the Post Office does not have the flexibility to direct the surplus to meet operating expenses and improve services. As a result, standards of services have had to be reduced in some areas.

In the light of this problem, we have carried out a detailed review of postal policy and operation. This review has concluded, amongst other things, that the best way to improve the performance of the Post Office is to convert it to a trading fund operation, so that it can have the ability to optimize its revenues and direct those revenues to providing better services to the public.

A trading fund operation also accords with one of the objectives adopted by the Universal Postal Union which is that all postal administrations should seek to secure the administrative and financial management flexibility to support a commercial style of management responsive to customer demands.

The trading fund will bring a number of important benefits to the Post Office.

First, the Post Office will be able to enjoy greater flexibility of operation and deploy more commercially-orientated approaches to the conduct and development of the business. As a result, it will be able to respond more effectively to changes in technology, customer demands and market conditions.

Secondly, it will be able to expand its more profitable services to the benefit of customers while, at the same time, using the surpluses to improve productivity, enhance efficiency and customer service and, where necessary, support and improve those loss-making but essential services.

Thirdly and most importantly, the trading fund operation will increase the transparency and public accountability of the Post Office. Each year, the Postmaster General will be required to publish an up-to-date Business Plan for the coming financial year, together with a Corporate Plan setting out his service targets and expenditure proposals for the next five years. In addition, the accounts of the trading fund will be subject to annual inspection by the Director of Audit.

To ensure that the trading fund will exercise its increased flexibility responsibly, a regulatory framework will be established under which the Secretary for Economic Services will become the regulator of postal services. The Secretary will be responsible for formulating postal policy objectives, approving the corporate and Business Plans of the Post Office, setting performance targets, vetting proposals for postage rate increases, and tabling in the Legislative Council an annual report on the operation and performance of the trading fund.

Minimum performance standards, binding on the Postmaster General, will be set for all major postal services and specified in the Corporate and Business Plans of the trading fund. This will ensure that a high quality of service is provided irrespective of the profitability of the services.

Trading fund operation will also bring substantial benefits to customers because the Post Office will have more flexibility to take forward a number of new initiatives which have had to be put in abeyance pending the availability of adequate funding resources. These initiatives include opening more post offices to meet the needs of new housing developments, wider use of computers and automation to speed up counter services, extension of door-to-door parcel delivery service to the New Territories, and expansion of Speedpost and philatelic services. These improvements will benefit all sectors of the community.

To impose the requisite degree of commercial discipline, the Trading Funds Ordinance requires all trading funds to manage their accounts prudently and achieve a reasonable rate of return on the public assets vested in it. The projected rates of return of the Post Office Trading Fund in the next four years are 6.5%, 7.2%, 6.8%, and 8.3% respectively. I should emphasize that the Government's postal policy is — and will continue to be — to provide an efficient and reliable postal service at reasonable and affordable prices to all users. To achieve this policy objective, we undertake that future postage rate increases will be kept broadly in line with inflation as in the past before trading fund operation.

Mr President, I would like to take this opportunity to thank Members of the Subcommittee set up to study the Post Office Trading Fund Resolution for their support of the resolution and their time and the many constructive comments they gave to us. Specifically, the Subcommittee has requested that the Administration undertakes to:

- prepare a proposal on how to involve Members in monitoring the general operation of the Post Office Trading Fund before the end of 1995;

- to complete a review on the framework agreement of the trading fund in the next few months to find out the most suitable method for determining the trading fund's target rate of return; and

- to study the feasibility and desirability of specifying the postal charges by regulations.

The Administration will work with Members to examine the scope of a mechanism whereby Members and the public will be able to monitor the performance of the Post Office Trading Fund more easily and efficiently. As in the recent case of the Office of the Telecommunications Authority Trading Fund, we undertake to discuss the target rate of return with Members in the light of the Post Office Trading Fund's actual operational experience. We are also prepared to consider possible changes to the present system for approving some postal fees and charges. To this end, I undertake to put up proposals for consideration by the Panel on Economic Services and Public Utilities during the next six months. As there are no further proposals to amend postage charge during the financial year 1995-1996, there will be ample time to consider these issues after the creation of the Post Office Trading Fund on 1 August 1995.

Finally, Mr President, I would like to emphasize once again that our primary objective in proposing that the Post Office be moved on to trading fund operation is to provide it with the operational flexibility it needs to optimize the use of resources and provide an efficient and modern postal service to meet and support Hong Kong's continued economic development. The Hong Kong Post Office has a long and distinguished history. Throughout the years, it has provided us with an essential service, efficiently and without fuss. Postal

charges in Hong Kong are among the lowest in the industrialized world; our postmen amongst the most efficient, dedicated and hardworking. I am convinced that, when operating as a trading fund, the Post Office will be able to build strongly on its already excellent track record as one of the world's leading postal administrations.

Mr President, I beg to move.

Question on the motion proposed.

MR PETER WONG: Mr President, as Chairman of the Subcommittee set up to study the Post Office Trading Fund Resolution, I would like to report briefly on our work to facilitate the Council's decision. At the Subcommittee's meeting held on 11 July, three Members voted three to one to support the establishment of the Post Office Trading Fund commencing 1 August with one reserving his position. This decision is based on our recognition of the need to give the Post Office more operational flexibility so that it can optimize its resources to provide an efficient and modern postal service to the people of Hong Kong. We accept that moving the Post Office to trading fund operation is one of the major steps towards achieving this objective, and there is some urgency for taking such a step in order not to jeopardize the new developments of the Post Office such as the opening of more branches in the new towns and the organization of a large-scale international philatelic exhibition in 1997.

While supporting the objective of the resolution, the Subcommittee is nevertheless concerned about how this Council could enhance its control over the trading fund when the appropriation of funds for the Post Office is no longer subject to the scrutiny of the Finance Committee. Given that postal service is a labour-intensive type of operation, we also have reservations about the use of average net fixed assets as the basis for calculating the target rate of return for the trading fund, instead of using business turnover as in the past. In addition, we all consider that the setting of the target rate of return at 12% on average net fixed assets is too high and may affect the Post Office's ability to provide service at reasonable and affordable prices. We suggest serious consideration be given to regulating the revision of postage rates by subsidiary legislation.

To address these concerns, we have requested the Administration to:

- prepare a proposal on how to involve Members in monitoring the general operation of the Post Office Trading Fund;

- complete a review on the framework agreement of the trading fund to find out the most suitable method for determining the trading fund's target rate of return; and

- study the feasibility and desirability of specifying the postal charges by regulations.

I am pleased that the Secretary for Economic Services has accepted all our suggestions and undertaken to revert to us with detailed proposals within six months after establishment of the trading fund. These undertakings, together with the Postmaster General's assurance to the Subcommittee that there will not be any redundancies after the trading fund operation, should have clarified the doubts of Members on this resolution.

Therefore, Mr President, I support the motion moved by the Secretary for Economic Services.

MR STEVEN POON: Mr President, I rise to support the motion to establish the Post Office Trading Fund. The postal service is one of the oldest forms of public communication. Over the years, as communication and transport technologies advance, government postal services all over the world are under pressure to improve their capabilities to meet the modern needs of the public and the high efficiency demanded by consumers.

Apart from having to satisfy the increased expectations of the customers, the Post Office is under severe competition from commercial delivery services. In order for the Post Office to compete in the market place and to meet the requirements of the general public, it has to be provided with flexibility and up-to-date facilities to take advantage of and to react to the latest technologies available. The resolution in question is to do just that.

The idea of a trading fund is relatively new in our Administration. When a government department is given the responsibility to be accountable for the performance of a trading fund, it is expected to earn a return on the operation. The question of how much the real return should be is often a debatable issue. Mr President, I have spent almost the whole of my career in a business of which its rate of return is regulated. I guess I am qualified to say just a few words.

A trading fund uses public money to provide a service to a particular sector of the public. In determining the charges to be made to those who use the service, the principle should be to recover the cost of providing the service, and no more. If the trading fund revenue exceeds the cost of providing the service, the service user will be subsidizing the general public and vice versa. Unless there are some taxation reasons or reasons to suppress demand, this type of subsidy cannot be justified.

The definition of cost of service is the cost to the Government in providing the service, which shall include the cost of money. As the cost of money to the Government relates generally to the rates of interest which currently stand at around the 8% region, I cannot see how the Administration can justifiably come to the conclusion that the Post Office Trading Fund should have a target rate of return of 12%. The Administration explained that the target rate of return is in accordance with the methodology recommended by the consultants whose proposals were put forward in a report on review of government utilities. I am of the opinion that the consultants' report has put too much emphasis on profitability and has given too little consideration to public finance.

Mr President, I do not wish to claim monopoly of wisdom, and indeed experience can sometimes be misused as an excuse of ignorance. I am prepared to give the Administration the benefit of a second look at the matter. I suggest the Administration gives the question of the rate of return a further review in the near future.

As to the Post Office Trading Fund, the Administration has said that, although the target rate of return is 12%, such a target would not be achieved in the next four years. The Administration has committed that it would not, because of the target rate of return, implement postal rate increases beyond the rates of inflation. Furthermore, the Administration would consider requiring postage rates for basic services to be subject to the approval of the Executive Council and specified in regulations. With these assurances, I can see no reason for not supporting the resolution. Rejecting or deferring the trading fund proposal in order to continue arguing on the target rate of return is like throwing out the baby with the bath water. It would be unwise of us not to recognize the advantages of early establishment of the trading fund.

Mr President, I support the motion to establish the Post Office Trading Fund, and suggest that the Administration should review the target rate of return during the course of its operation. Thank you.

MR LEE WING-TAT (in Cantonese): Mr President, I would like to speak on the Post Office Trading Fund. Firstly, I find the whole process of discussion and debate by the Legislative Council on the trading fund rather unsatisfactory because the Legislative Council has comparatively little experience in dealing with trading funds. As far as I can remember, this Council has seen the passage of only one or two resolutions in relation to trading funds. Certainly, of considerable significance is the trading fund relating to a charging scheme for sewage services on which I recall taking part in the discussion. Despite the limited time frame, we held six or seven meetings, spending 10-plus hours scrutinizing the objective, business plan and agreement framework of the trading fund. As for this resolution, the Secretary for Economic Services did not introduce it until late June, that is, the run-up to the end of the current legislative session, thereby leaving barely enough time for Legislative Council

Members to scrutinize the proposed trading fund approach. Although in principle, we may not have a heated debated and controversy, we should not forget that this Council's passage of this resolution on the trading fund represents in an objective sense our concurrent endorsement of everything arising from the trading fund including the future business plan and agreement framework, which involve plenty of calculations in relation to asset transfer and internal rate of return, as well as the development of the Post Office and postal services. As responsible Members, we should scrutinize each item in detail before giving formal endorsement to the entire resolution. Yet, we concur that due to the limited time frame, to give the resolution an exhaustive discussion within the current session is out of question. What we could only do was to rely on Mr Peter WONG who chaired a subcommittee meeting to scrutinize a trading fund scheme of such an enormous scale and of such importance. (Many Members failed to attend that meeting. As the current session is drawing to a close, it is not uncommon to see meetings clashing with one another and as a result, only four to five Members turned up at that meeting). I am therefore not too happy with such an arrangement.

Mr President, I would like to speak on various other points. Firstly, regarding the existing postal services, I agree that the establishment of a trading fund can enable the Post Office to take forward a number of new initiatives which have to be shelved as a result of allocation of resources. The Hong Kong Government, by way of the annual resource allocation exercise, allocates to each department resources to meet the need for the year concerned including additional funds for the provision of new services. I agree that the Post Office Trading Fund can in principle serve this purpose. In this way, the Post Office can, by taking into consideration its needs, direct its surpluses to improve more services including the implementation of automation and computerization; and take more advanced and innovative initiatives with respect to some commercially more profitable services. I cannot agree with this point more.

However, we have to bear in mind that the existing services provided by the Post Office are primarily classified into two kinds and one of them is similar in nature to commercial services and it includes Speedpost and other international courier services. These services bring considerable profits and in principle, they can compete with commercial ones. Regarding this kind of services, I do not share Mr Steven POON's view that the principle should be no more than recovering the cost of providing the services. There is no need, in my opinion, for the Government to confine itself to the principle of recovery of cost. Instead, it has every reason and need to earn its deserved profits through the provision of such commercial services.

The other kind relates to postal services provided to the general public. The Postmaster General, the Secretary for Economic Services and the Secretary for the Treasury certainly have told me many times that only a small number of people write letters nowadays. Maybe the days of writing letters to pen pals and love letters to sweethearts as in the '50s and '60s are gone. To convey your loving affection, a telephone call or a fax message may be an easier way to serve

your purpose. However, we make no question of the fact that still a handsome number of people communicate through the postal services. Whilst we can make a call to convey our love for our wives and girlfriends, we may still like to occasionally write them a few lines just to say "I love you". Therefore, the demand for such services should not be denied. What we and the general public concern most is whether the internal rate of return will be set too high in respect of such services.

Over the past two years, we debated on numerous occassions on what rate of return the Government should set for the provision of services. Former Secretary for the Treasury, Mr Donald TSANG, also conducted a very comprehensive review on how the internal rate of return should be determined for public utilities and whether other public services should be provided on the basis of recovering cost. In fact, the Government has different criteria for determining different kinds of charges. In this connection, I and other Members of the Democratic Party are concerned about whether the rates of return for the provision of various services are set too high.

In his speech, the Secretary for Economic Services undertook to allocate some time during the next six months to discuss with Members of the Legislative Council on how to involve this Council in determining the details in relation to the trading fund. I appreciate his thoughts as in this way we have a chance to sit down and discuss. Even if the trading fund is established, we can still go into its finer details and try to find out the method for determining such details that is acceptable to all. However, his proposal only indicated some possibilities without making reference to how to involve Members in the entire agreement framework and whether it is necessary to involve Members in determining postal charges. I urge the Secretary for Economic Services to address these questions with a positive attitude. We are not sure if we still have the right to amend the details regarding the trading fund once this resolution is passed. However, if a number of Members have views on the setting of the internal rate of return at 12% and consider that Members should have the right to have a say in determining the rate of return, I wish that the Secretary for Economic Services can readily accept our good advice. What is more, the views expressed do not come from individual party but are the views of the majority of Members. Therefore, I hope that we will be given ample time for discussion in the next six months. Moreover, I hope that once this resolution is passed, the trading fund can comes into operation as soon as possible. I urge the Secretary for Economic Services to honour his promise by holding discussion with the Legislative Council Members as soon as possible in the next six months. Thank you, Mr President.

MR FRED LI (in Cantonese): Mr President, I took part in one of the meetings of the sub-committee. At that meeting, three members expressed support. Just now the Honourable Peter WONG said that one Member had reservations, and that Member was me. I represented the Democratic Party and have been looking at the Post Office Trading Fund issue from a very cautious angle. In

the recent week, I was in close contact with officers of the Economic Services Branch. I appreciate the efforts put in by the officers of the Economic Services Branch to discuss in better details with us, Members who have these doubts, with a view to getting a compromise and an idea how both sides should proceed. I have changed, from having reservations at the beginning, gradually to wishing to delay and shelve this motion, to starting to accept the views of the Government now. I feel that to me, this is an invaluable experience. I support the views as put forward by the Honourable Steven POON just now, and it is not what the Honourable LEE Wing-tat had said.

The Government attaches great importance to profitability in setting the level of charges, I feel that this is greatly different from the views of the Democratic Party. I recall that the Honourable Donald TSANG, as the Secretary for the Treasury, once stressed that when the Government took out a sum of money, there had to be a certain profit in return, just like doing business, because there was no reason to give a subsidy. He often made comparison with listed companies and commercial firms on the market, claiming that if there was no profit, the thing might as well be run by a private contractor. I take exception to this kind of mentality and principle.

The Democratic Party feels very strongly about setting the rate of return at 12%. If the Secretary for Economic Services continues to say that there must be a 12% rate of return, I will certainly stand up to object. After discussions, we the Democratic Party are concerned about several points, as covered by Mr LEE Wing-tat. Regarding the way of calculating the rate of return, it has been changed from the previous base of operating costs to the present base of net assets. In fact, I do not think that postal services should be dealt with in the "across the board" manner. The party concerned has never had a very good reason to convince me why net assets have to be used as the base for calculation, following the general practice of the whole government. Postal services are different, there is distinct differences say, from the services of Water Supplies Department.

The mechanism for charge increase is also the issue we are most concerned about. It is because at present the Legislative Council plays no role at all in this respect. Even before the Trading Fund, this Council has no right to scrutinize postage increase. The present practice is for the Postmaster General to propose an increase which, if not opposed by the Economic Services Branch, will be put to the Executive Council, and that, basically, means approval. With the Trading Fund now, the Post Office can manage its own surpluses in a more flexible way to improve services. This I absolutely support, in particular if as a result of the establishment of the Trading Fund, postal delivery services will be extended to certain rural areas and places in the New Territories that do not at present enjoy such services, more new post offices will be opened in locations that are not sure to bring profits. I think that these are the benefits brought about by the Trading Fund, we and the public will also support them.

In view of the above reasons, we the Democratic Party have in the recent week or so finally agreed to the establishment of the Trading Fund and to support this resolution. Our biggest expectation is that the officers of the Economic Services Branch will discuss with the new Legislative Council in October this year. There is still time, and as there will not be any more postage increase for the remainder of the year, they should have lots of sincerity to discuss with Legislative Council Members. We see no problem in the rate of return for the first four years; but regarding the 12% for the fifth year, we still feel there is a big problem. What is more, in what way will the rate of return be worked out? Will it be based on net assets or operating costs? At present subsidiary legislation is used, and then will basic charge and non-basic charge be treated differently. On the rate of return again, will there be an aggregated rate of return which will be the combination of the individual rate of return from basic charge and that from non-basic charge? I feel that the above issues have to be further ironed out in future discussions. However, I will not bar the establishment of the Trading Fund which will develop our postal services.

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

MR ROGER LUK (in Cantonese): Mr President, since the implementation of trading funds, there have appeared in their operation a few technical problems that await further study and interpretation by the Government.

First, rate of return on trading funds is made up of two parts, ie, rate of return without risks and rate of return with risks. Conceptually this is practicable, the problem is how to set the benchmark to define the rate of return with risks. This was discussed by the sub-committee of this Council formed to study the Telecommunications Authority Trading Fund. A similar question was also raised in the sub-committee on the present Post Office Trading Fund. Besides, must the rate of return be based on the average net value of fixed assets? Could other indicators be used, such as capital available? These are subjects that warrant our further study.

Second, how do the Legislative Council and the public at large monitor the operation of the trading funds to ensure they are highly effective as they should be? According to existing arrangements, the manager of a trading fund has to submit annual business plans and five-year operation outlines, and the accounts of the trading fund is audited by the Director of Audit every year. Naturally, the transparency and accountability can be further enhanced. For example, the Director of Audit can furnish the department concerned a report on fund management, and he can submit to the Public Accounts Committee a comprehensive report on the management of the trading fund so as to be accountable to the public.

Third, regarding the procedures for adjustment of fees and charges, the various Government fees and charges are at present adjusted according to different procedures. Some are promulgated after the department has sought the advice of the Governor-in-Council; some are published in the form of subsidiary legislation which needs to be scrutinized by the Legislative Council, in the event this Council does not agree, a resolution can be passed to maintain the original level. With multifarious types of Government fees and charges, the existing different adjustment mechanisms have been created to cope with the different nature and complexity of the fees and charges. However, when operation is switched to one of trading fund, how the departments concerned should further enhance the transparency of their fees and charges adjustment mechanisms is to be reviewed.

I welcome the review on these three aspects, with a report to be tabled in this Council by the end of the year, as promised by the Secretary for Economic Services when he spoke just now on the motion. This pragmatic attitude and positive response are what an open Government should have. Being the Chairman of the Economic Services Panel of this Council, I wish to place on record the amiable and co-operative working relations between the Panel and officers of the Economic Services Branch for the past two years and the support the Branch has had for this Council.

The Post Office Trade Fund is not, as the Honourable LEE Wing-tat alleged, introduced towards the end of the current session. As a matter of fact, a specific introduction was made at the meeting of the Economic Services Panel on 4 April in the conference room of the Post Office. Political parties could have sought clarification from the Economic Services Branch then if they saw problems instead of "see-sawing" now close to the end of the session. I am glad that the Democratic Party has eventually cleared their doubts with the Economic Services Branch and supported the resolution on the trading fund, avoiding another delay of several months.

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

MR LEE CHEUK-YAN (in Cantonese): Mr President, in discussing the concept regarding the Post Office Trade Fund, or the whole trading fund concept for that matter, many people have said the trading fund is but an accounting system, enabling only flexible management of resources distribution between the Government and government departments. I think that if the aim is to have better flexibility to bring improvements to services as well as to raise efficiency, everybody in Hong Kong will approve. However, once the target rate of return is set at 12%, many people will wonder whether this trading fund thing is purely for flexible management to improve services, or it is a means the Government uses to enable a department to generate more profits, this Post Office Trading Fund in particular contains a profit-sharing scheme with the Government, starting with 70/30, and reaching finally a 50/50 split. Thus the Government's claim is not convincing. On the one hand, improvements to

services are promised; on the other, profits earned by the Post Office, instead of being used to improve postal services, have to be shared with the Government. This brings on the Government a bad image, making people wonder what actually is its motive.

In his speech the Secretary for Economic Services said that adjustments to postage would not exceed inflation. This practice of the Government, I am afraid, has all along set a bad example to the private sector. For example, in the present fare increase by the Yaumatei Ferry, they promised that future increases would not follow the inflation. Thus inflation seems to become a line, so long as an increase is within the line, everybody will understand and accept the increase. But I feel that this practice warrants examination. If all Government fees and charges are increased according to inflation, eventually the problem of inflation will keep on getting worse with no improvement in sight. At present the whole community has taken inflation as the No. 1 enemy, and I think it is not enough for the Secretary to simply promise future postage increases will not exceed inflation. On the contrary, all government departments and public utility companies should make it their primary aim to contain inflation. The authorities should not simply said that future postage adjustments will not be more than inflation. Naturally, I am not advocating an "across-the-board" approach to require all charges for postal services to be within a certain level, particularly if mathematics so shows, certain postal services relating to international business services could really warrant slightly bigger increases. The most important thing, in fact, is that anything that will affect people's livelihood must be controlled very stringently. I am not happy that while all along claiming the target rate of return is 12%, the Government seems to have been saying now that it will suffice if the increase of postage does not exceed inflation. Therefore I hope that during the discussions in this half year, the issues regarding this target rate of return, the profit sharing scheme and the setting of postage can all be properly resolved, giving the public the best. I very much hope that we will not think that there is nothing more to be done after the approval of the trading fund, and thus care no more. However, I have much confidence in Mr Gordon SIU.

Thank you.

SECRETARY FOR ECONOMIC SERVICES: Mr President, first of all, I would like to thank Members for agreeing to support the motion. This agreement will enable the Post Office to go to another stage of its development which, as I have said in my speech, will bring about improvement of services to customers, for example, delivery of parcel services to residents in the New Territories. They will now get it. So your agreement will help us achieve that type of objective.

Secondly, I thank Members for the points they have made. I have taken careful note of all of them. This morning I have given some undertakings and I shall honour them. If, in fact, the Chairman of the Panel on Economic Services and Public Utilities would agree, I am prepared to start work at the next meeting, and I am confident that we can work out arrangements which will satisfy Members that the setting up of this trading fund will be beneficial to Hong Kong and will also, at the same time, meet the scrutiny of Members.

Thank you, Mr President.

Question on the motion put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE SECRETARY FOR THE TREASURY moved the following motion:

"That -

(1) the Betting Duty Ordinance (Cap. 108) be amended in section 8 by repealing "of $1,000" and substituting "at level 3";

(2) the Betting Duty Regulations (Cap. 108 sub. leg.) be amended in regulation 3(7) by repealing "of $1,000" and substituting "at level 2";

(3) the Dutiable Commodities Ordinance (Cap. 109) be amended -

(a) in section 6(2) by repealing "$100,000" and substituting "$1,000,000";

(b) in section 13 by repealing "of $5,000" and substituting "at level 5";

(c) in section 21(1) and (2) by repealing "of $5,000" and substituting "at level 5";

(d) in section 25(2) by repealing "of 5,000" and substituting "at level 5";

(e) in section 36(2) by repealing "$5,000" and substituting "$50,000";

(f) in section 46(1) by repealing "$100,000" and substituting "$1,000,000";

(g) in section 46(2) by repealing "of $10,000" and substituting "at level 6";

(h) in section 58(3) by repealing "of $1,000" and substituting "at level 3";

(i) in section 67(3) by repealing "of $5,000" and substituting "at level 5";

(4) the Dutiable Commodities Regulations (Cap. 109 sub. leg.) be amended in regulation 104 -

(a) in subregulation (1)(a) by repealing "$50,000" and substituting "$500,000";

(b) in subregulation (1)(b) by repealing "$100,000" and substituting "$1,000,000";

(c) in subregulation (2) by repealing "$50,000" and substituting "$500,000";

(5) the Dutiable Commodities (Liquor) Regulations (Cap. 109 sub. leg.) be amended -

(a) in regulation 30(1) and (2) by repealing "of $5,000" and substituting "at level 5";

(b) in regulation 30(3) by repealing "of $2,000" and substituting "at level 4";

(c) in regulation 32(2) by repealing "of $250" and substituting "at level 1";

(6) the Dutiable Commodities (Marking and Colouring of Hydrocarbon Oil) Regulations (Cap. 109 sub. leg.) be amended -

(a) in regulation 13(1) by repealing "of $5,000" and substituting "at level 5";

(b) in regulation 13(2) by repealing "$100,000" and substituting "$200,000";

(7) the Estate Duty Ordinance (Cap. 111) be amended -

(a) in section 14(17)(a) -

(i) by repealing "of $1,000" and substituting "at level 3";

(ii) by repealing "$5,000" and substituting "at level 5";

(b) in section 17(2) and (3) by repealing "of $1,000" and substituting "at level 3";

(c) in section 23(1) by repealing "of $1,000" and substituting "at level 3";

(d) in section 24(1), (2) and (3) by repealing "of $1,000" and substituting "at level 3";

(e) in section 25(1) by repealing "of $1,000" and substituting "at level 2";

(f) in section 26 by repealing "of $1,000" and substituting "at level 3";

(g) in section 42(2) by repealing "of $10,000" and substituting "at level 6";

(8) the Inland Revenue Ordinance (Cap. 112) be amended -

(a) in section 51(4B)(a) by repealing "of $5,000" and substituting "at level 3";

(b) in section 51B(4) by repealing "of $5,000" and substituting "at level 3";

(c) in section 77(5) by repealing "of $20,000" and substituting "at level 4";

(d) in section 80(1) and (2) by repealing "of $5,000" and substituting "at level 3";

(e) in section 80(2B) by repealing "of $5,000" and substituting "at level 4";

(f) in section 81 by repealing "of $50,000" and substituting "at level 5";

(g) in section 82(1) -

(i) by repealing "of $5,000" and substituting "at level 3";

(ii) by repealing "of $20,000" and substituting "at level 5";

(h) in section 85(3) by repealing "a sum of $200" and substituting "a fine at level 1";

(9) the Stamp Duty Ordinance (Cap. 117) be amended -

(a) in section 15(2) by repealing "of $5,000" and substituting "at level 2";

(b) in section 19(15) by repealing "of $5,000" and substituting "at level 2";

(c) in section 37 by repealing "of $5,000" and substituting "at level 2";

(d) in section 45(7) by repealing "of $5,000" and substituting "at level 2";

(e) in section 58 by repealing "of $5,000" and substituting "at level 2";

(f) in section 60 by repealing "of $10,000" and substituting "at level 6";

(10) the Air Passenger Departure Tax Ordinance (Cap. 140) be amended -

(a) in section 15(1) by repealing "of $5,000" and substituting "at level 4";

(b) in section 15(2) and (4) by repealing "of $10,000" and substituting "at level 4";

(c) in section 15(5) -

(i) in paragraph (a) by repealing "of $50,000" and substituting "at level 6";

(ii) in paragraph (b) by repealing "of $20,000" and substituting "at level 5";

(iii) by repealing "$1,000" and substituting "$3,000";

(11) the Business Registration Ordinance (Cap. 310) be amended -

(a) in section 14(2) by repealing "of $1,000" and substituting "at level 2";

(b) in section 15(1) and (1A) by repealing "of $5,000" and substituting "at level 2"

(12) the Business Registration Regulations (Cap. 310 sub. leg.) be amended in regulation 9, in Form 3 by repealing "of $5,000" and substituting "at level 2";

(13) the Hotel Accommodation Tax Ordinance (Cap. 348) be amended -

(a) in section 5(2) and (3) by repealing "of $2,000" and substituting "at level 4";

(b) in section 8(5) by repealing "of $500" and substituting "at level 2"."

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

The motion before Members seeks to increase the maximum statutory fines in various tax-related legislation to restore their real value.

The Criminal Procedure (Amendment) (No. 2) Ordinance 1994 enacted in July 1994 introduced a scale of fines for statutory penalties not exceeding $100,000. This enables the maximum fine level to be increased from time to time by a single order by the Governor in Council to take account of inflation and hence preserve the deterrent effect of the penalties. The standard scale of fines consists of six levels, ranging from $2,000 at level 1 to $100,000 at level 6.

The standard scale, however, does not take account of inflation in respect of fines specified in money terms before their conversion on to the scale. A review of existing fines is therefore necessary in order to cater for past inflation since their introduction or last revision until 1994 when the scale was introduced. I have now reviewed all the ordinances under my purview, which relate primarily to tax collection and administration. I now propose to revise 61 items of statutory fines under eight ordinances and five regulations. They fall into three categories.

First, for fines at or below $100,000 after adjustment for past inflation, they will be converted to the appropriate level of fines on the standard scale. There are 53 items in this category.

Second, for fines above $100,000 after adjustment for past inflation, they will be expressed in money terms. There are six items in this category and they all involve serious offences concerning illegal dealings in dutiable commodities, including cigarettes and diesel oil.

Third, for daily fines and fixed penalties which are also outside the scope of the standard scale, they will be adjusted for inflation and will continue to be expressed in money terms. There are two items in this category, namely, a daily fine under the Air Passenger Departure Tax Ordinance and a fixed penalty under the Dutiable Commodities Ordinance.

Actual penalties to be imposed will of course continue to be a matter for the courts. However, the higher maximum fines will give the courts wider scope to impose penalty on convicted offenders as they see fit. They will also help to deter potential offenders and encourage voluntary compliance, which is essential to efficient tax collection and administration.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

BILLS

Second Reading of Bills

CRIMINAL PROCEDURE (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 19 April 1995

Question on Second Reading proposed.

MR RONALD ARCULLI: Mr President, with your leave, I will speak on both the Criminal Procedure (Amendment) Bill 1995 and the Evidence (Amendment) Bill 1995. The Criminal Procedure (Amendment) Bill establishes special procedures in respect of the giving of evidence by vulnerable witnesses during a criminal trial and under this Bill children, the mentally handicapped and persons who are in fear are regarded as vulnerable witnesses. The new procedure is to enable such witnesses to give evidence without fear and without suffering emotional distress. The Evidence Bill provides that all children under the age of 14 are able to give evidence unsworn so as to enable the courts to do justice in such cases and seeks to remove unjustifiable technicalities in the existing law.

The Bills were introduced into this Council on 19 April 1995. A Bills Committee was formed to scrutinize the Bills. The Bills Committee has met four times, including three meetings with the Administration and a meeting with the Hong Kong Bar Association. The Bills Committee has also considered written submission from the Hong Kong Bar Association, the Law Society of Hong Kong and Miss Ann JORDAN.

The Bills Committee is in support of the basic principles of the Bills. It is nevertheless concerned about the practical application of some of the proposed provisions and has given them full consideration in order to ascertain that they meet the intended objective. I shall mention briefly some of the considerations.

The Bills Committee has discussed with the Administration the definition of the various terms such as "child", "mentally handicapped person", "offence of sexual abuse" and "witness in fear" as referred to in the Criminal Procedure (Amendment) Bill. The Bills Committee has noted that the Administration is ready to propose amendments to these definitions in response to comments received and in this regard, Members have also given their suggestions. The Attorney General will move amendments to these definitions at Committee stage.

The Bills Committee has also considered the practical aspects of giving evidence by live television link. Members agree that there should be a provision to clearly spell out that cross-examination and re-examination will occur through the live video-link for a person who has given pre-trial evidence via a video-tape and that the court will decide whether the child witness can give evidence by way of a live television link. The Bills Committee also suggests that the Administration should ensure by administrative measures that at the time of giving such evidence, neither the prosecution nor the defence should exert any influence on the evidence being given, for example, by prompting what the witness should say. In relation to another issue of giving such evidence by way of video recording, the Bills Committee has noted that rules or directions will be made as regards the manner and form of the taking of evidence in the form of a video recording. The Bills Committee agrees that the interviewers shall only be trained police officers, social workers or clinical psychologists employed by the Government. Also, in order to strike a balance between the right to silence and the possible need of the accused who is mentally handicapped, the Bills Committee agrees that an amendment should be made to give the defence an option to apply for leave to have the video recorded evidence adduced in court. The Administration will move the relevant amendments to sections 79B, 79C, 79D and 79E to the Criminal Procedure (Amendment) Bill at Committee stage.

The Bills Committee has noted that the Administration has acted on the recommendation of the Working Party on Mentally Handicapped People Giving Evidence in Court to propose a special procedure of taking a deposition, and has set out very stringent safeguards against abuse of this new procedure.

Mr President, the Bills Committee was also advised by the Bar Association that it does not support the principle of notice of transfer of cases from the District Court to the High Court because the right of a defendant to have committal proceeding under the current procedure can be denied on limited circumstances by the Crown Prosecutor. The Bills Committee has noted that in his matter the Administration has acted on the recommendation of the Report of the Committee on the Evidence of Children in Criminal Proceedings.

There is a safeguard against possible injustice in that the accused has the right to apply to a judge, before arraignment, to dismiss the charge in respect of which a notice of transfer has been given if there is not sufficient evidence to justify a trial. The Bills Committee is in support of the principle of the notice of transfer. Yet in order to build one more safeguard, it has suggested to the Administration that the Crown Prosecutor should prepare a statement to set out the reasons for his opinion that for the purposes of avoiding any prejudice to the welfare of the child, the case should be transferred to the High Court. The Bills Committee has also suggested that the provision of notice of transfer should relate to cases where the child and the mentally handicapped person are victims only. The Administration agrees with this suggestion and will move amendments to section 79F to the Criminal Procedure (Amendment) Bill at the Committee stage.

Mr President, I now turn to the Evidence (Amendment) Bill 1995, the Bills Committee has noted that the Bar Association holds the opinion that section 3(a) should not be repealed. The section is to allow the judge to dicide whether a child is competent to give evidence before the jury hears the case. The Administration has acted in accordance with the recommendation of the Committee on the Evidence of Children in Criminal Proceedings to repeal it so that children of all ages should be treated in the same way as adults and will be allowed to testify in court if they are available to give relevant understandable evidence. The objective of deleting the section is to protect the child by reducing the trauma of having to appear in court unnecessarily. The majority of the Bills Committee supports the recommendation of the Administration.

The Bills Committee has also noted that there will be other technical amendments to the Evidence (Amendment) Bill.

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

MR MARTIN LEE: Mr President, I agree with the views of the Hong Kong Bar Association in relation to the Evidence (Amendment) Bill 1995. From my personal experience in court, what it amounts to is that when you have a young child about to take the witness stand, the trial judge or the magistrate will put some simple questions to the child in order to test whether or not this young child knows the importance of the occasion, the solemnity of the occasion, the importance of telling the truth and the consequences of telling lies. Now, these are, of course, meant to be simple tests and the judge and the magistrate will, of course, be as friendly as possible. These questions and answers will be in public so people will follow what's happening. Now, I understand from the Administration that actually very few children would fail in this test. And that being so, what we are trying to do by this amendment is to allow those who would have failed the test to give evidence. The argument is, this should be left to the jury to decide whether or not the child's evidence is capable of belief or whether they find the evidence unsafe to act on.

Now, Mr President, if we are really dealing with a small number of cases which might not reach the court by retaining the test, then we really have to look at it very carefully. Here you are looking at children who would not have been allowed to give evidence if the test were to be retained. In other words, their evidence would be found to be unsafe by a trial judge or a magistrate for a number of reasons, principally because such children would not be able to understand the difference of telling truth or lie in court.

Bearing in mind that the common law requires the jury to acquit unless they are satisfied beyond reasonable doubt of the guilt of the accused, then in theory, therefore, if juries were to listen to the trial judge's direction on this standard of proof, then such evidence of these children would have resulted in an acquittal anyway. So, by excluding their evidence from being called by the prosecution, I cannot see any harm at all whether to the prosecution or to the defence or to society generally.

We have to remember also, Mr President, that we have already removed the requirement of corroboration. Under the old law even these children who have passed the test would be called to give evidence for the prosecution. Their evidence would still have to be corroborated by independent evidence. In other words, there would have to be supporting evidence to the evidence of young children which, by its very nature, is deemed to be rather unsafe. But now that we have already removed the requirement for corroboration, if we also remove this test, then I am worried, Mr President, that at the end of the day we may not have a correct verdict at all. Now, if the verdict is still "not guilty", then we are simply wasting time by calling such evidence. If the verdict results in a "guilty" one, then it is quite, quite possible, Mr President, that the verdict is wrong.

So, for these reasons I support the Bar's position on this and will be opposing this Bill.

MR SIMON IP: Mr President, the Bar Association opposes the amendment to the Evidence Ordinance which repeals section 3(a) of the Evidence Ordinance. The current section 3(a) provides that children under seven years of age shall be incompetent to give evidence in any proceedings unless they appear capable of receiving just impressions of the facts and of telling them truly.

As the Legislative Council Brief points out, the Attorney General in September 1993 established a Committee on the Evidence of Children in Criminal Proceedings chaired by Mr Grenville CROSS, Q.C. That Committee recommended that procedures similar to those set out in the Criminal Justice Acts of 1988 and 1991 should be adopted in Hong Kong in cases involving children who are witnesses of offences involving sexual abuse, physical abuse or cruelty. The main thrust of that report proceeded on the basis that children witnesses should be protected.

Children can and do feel intimidated when appearing in court. It can be particularly upsetting for a child witness to testify in the presence of the accused during court proceedings. The degree of trauma involved may result in trial witnesses becoming distressed, staying silent, becoming confused, being afraid to tell the truth or even distorting the truth. Children may also feel pressurized by the formal environment of the court into coming up with an answer because they feel obliged to say something without fully thinking through precisely what it is they are saying.

Consequently, the Committee made some recommendations for change similar to changes that had been introduced in the United Kingdom, including the giving of evidence by a child by way of live television link and video-recorded interviews. These are commendable and supportable recommendations. However, the Committee went on to recommend that the presumption of a child's incompetence to testify should cease and that children should be treated in the same way as adults. It said that if a child is available to give relevant, understandable evidence, then the child should be heard. The court will then evaluate that evidence and decide how much reliance to place upon it.

The Bar Association argues that under the current section 3(a) of the Evidence Ordinance there is no automatic disqualification against a child below the age of seven giving evidence. This is clearly correct. Section 3(a) does no more than restate common law principles. In other words, a child under seven can give evidence should the judge consider that he or she has sufficient understanding of the facts and knows what it is to tell the truth. If the answer is "yes", the child will be allowed to testify before the jury. If the answer is "no", then the child will not. If the law is changed, as now proposed, the court will not be able to perform that initial process. It will simply allow the child to give evidence unsworn and uncorroborated, leaving his or her evidence to be assessed by the jury.

The Bar points out that children of very tender years may often have difficulty distinguishing facts from fantasy. Therefore there should be an initial screening by the judge in a friendly manner, satisfying himself that the child is capable of giving evidence, before that evidence is received by the jury. Without this process, the jury may receive evidence which may be more prejudicial than probative.

In light of the current public mood against child molesters, a jury may be willing to convict on such evidence. In short, the Bar's position is that repeal of section 3(a) of the Evidence Ordinance would tip the balance against the accused, whereas retention of the section would in no way prejudice the prosecution.

Mr President, at a time when the public is calling for heavier punishment and retribution against child molesters, it would be easy to be swept by the wave of opinion to relax the law on children's evidence and thereby making it easier to secure a conviction. However, a balance should be struck to ensure fairness and justice, not only to the victim but also to the accused. Protecting the child witness against trauma of the court room is commendable and supportable. Admitting the evidence of children below seven years of age without an initial screening by the judge, goes further than is necessary.

As representative of the Bar Association, whose views I have just reflected, I shall vote against the repeal of section 3(a) of the Evidence Ordinance. Thank you, Mr President.

MRS ELSIE TU: Mr President, I have spent the whole of my life dealing with children, first as an elder sister, then as a teacher, and now in dealing with problem families. So I speak from experience rather than from the niceties of the law as seen by professionals, whose task it is to defend persons who may or may not be guilty of the crimes of which they are accused. I have also assisted, free of charge, any accused I considered not to be guilty, so my views are not just one-sided.

Unless a young child is a born liar, and very few are, one can be fairly sure that a child will tell the simple truth far better than an adult who may have something to hide, or who may have an ulterior motive. And if a child is mentally retarded and incapable of witnessing an event, it should be easily be detected and so his evidence treated accordingly.

However, for a child to relate a traumatic experience, the child must feel a caring and friendly atmosphere. If he knows he is being tested, or if he is cross-examined (and cross-examinations can be frightening as I know from experience) the child will either close up and not speak, or he will become confused, or he may even try to give the answers he thinks his questioners want him to give. Moreover, if he is questioned in the presence of those who abused him, he will be so intimidated that he will block the traumatic experience out of his mind.

I do not doubt that the legal profession have foremost in their minds, quite rightly under law, to defend their clients, the accused persons. I would be the last to suggest that an innocent person should be denied a fair trial. But defence of a client who may be guilty should not take precedence over the right of a child to justice in law.

The proposed amendments by the Law Society seem to suggest that the proposers do not trust a magistrate or judge to detect whether or not the child is telling the truth, or whether the child is mentally incapable of presenting a credible case. This Bill gives an additional safeguard in law against miscarriage of justice, namely, the right of the accused to apply to the High Court for a discharge of the case.

The law, in the past, was heavily weighted against justice for an abused child. The amended law is intended to give the child his chance to speak. The danger of a miscarriage of justice is far less than it is under the present law.

Mr President, as a member of the Bills Committee, I urge my colleagues to support the Bill as presented by the Chairman, Mr ARCULLI and supported by Mr Simon IP and to oppose the amendments suggested by the Bar Association, which would defeat the purpose of the Bill.

PRESIDENT: Mr Simon IP, do you wish to clarify a misunderstanding?

MR SIMON IP: I am not aware of any amendment by the Bar Association unless it has been put forward by Mr Martin LEE. I have not put forward any on behalf of the Bar Association. It is simply that I shall vote against the repeal of section 3(a).

ATTORNEY GENERAL: Mr President, I am grateful to the Honourable Ronald ARCULLI and Members of the Bills Committee for their thorough and careful consideration of these important Bills and with your leave, like him, I would like to take both Bills together. I would also like to thank the Bar Association for their substantial contribution to the improvements to these Bills.

Mr ARCULLI has described the more significant amendments which have been agreed with the Bills Committee. I will be moving these and a number of other technical amendments at the Committee stage.

I would now like to respond to a number of points that have been raised in the debate this morning. First, Mr ARCULLI noted that the Bills Committee had suggested that the Administration should ensure by administrative measures that, at the time of giving evidence by way of live television link, neither the prosecution nor the defence should exert any influence on the evidence being given. I can assure Members that the Administration is fully alive to this issue and will take all appropriate steps to ensure that evidence is given without any influence at all. Secondly, I would like to respond to points raised over the notice of transfer procedure.

Section 79F seeks to prevent child or mentally handicapped witnesses from being required to give evidence in court twice — once at the committal proceedings and again at the trial. The Crown Prosecutor can dispense with the committal proceedings by issuing a "Notice of Transfer", certifying that the evidence is sufficient for the defendant to be committed for trial, and that to avoid any prejudice to the welfare of the witness, the case be taken over by the High Court without delay. The provision is, as presently drawn, similar to that contained in section 53 of the United Kingdom Criminal Justice Act 1991 and to section 3 of our own Complex Commercial Crimes Ordinance. As a safeguard against any possible injustice, the defendant has the right to apply to the High Court to be discharged under the proposed section 79G(2) and such a discharge will be deemed to be an acquittal by virtue of section 79G(7).

I will move an amendment to section 79F to further safeguard the interests of the defendant by requiring the Crown Prosecutor to set out in an affidavit the reasons for his opinion as to the prejudice to the welfare of the witness if the case is not committed for trial without delay. Necessarily, he will have to consult experts such as medical officers, psychologists or social workers before he forms his own opinion. Mr President, this power is not to be delegated but will be exercised with great prudence by the Crown Prosecutor personally.

While the Administration is committed to providing greater protection to the vulnerable witnesses, the defendant's right to a fair trial is not in any way prejudiced. The burden of proof still rests with the Prosecution and the standard of proof remains one of proof beyond reasonable doubt. Apart from the safeguards provided in the Bill, I will also propose amendments to sections 79C and 79E by giving a mentally handicapped defendant an option to produce the video-recorded evidence in court, as well as to give a deposition in writing before a magistrate. The purpose of these amendments is to preserve the defendant's right of silence.

Mr President, with your leave I now turn to the Evidence (Amendment) Bill 1995. I would like to respond to the arguments put forward this morning by the Honourable Martin LEE and the Honourable Simon IP — arguments raised by the Bar against clause 2 of the Bill. The Bill proposes to remove two technical rules in relation to children giving evidence in criminal proceedings, that is, the presumption of incompetence and the rule of corroboration. These two rules are, I would like to submit, outdated and I would note that they were abolished in England in 1988.

Under existing section 3(a) of the Evidence Ordinance, children under seven years of age are generally incompetent to give evidence unless the court is satisfied that they appear capable of receiving just impression of the facts respecting which they are examined and of relating them truly. What that means is that if a child witness fails to satisfy the court that he or she can give credible evidence at trial, the child is barred from giving evidence against the defendant.

The Committee on the Evidence of Children in Criminal Proceedings found that tests as to competence of child witnesses could be arbitrary and this technical rule of evidence was unjustified. A key recommendation of the Committee is that children should be treated in the same way as adults. At present, there is no such competency test for adult witnesses. Accordingly, the power of a court to determine that a particular witness is not competent to give evidence should apply to children as it applies to any other persons. The Court should be able to consider any relevant understandable evidence from a child, and to convict upon it if convinced by it. Like adults, children of all ages should be enabled to give evidence in court without first being tested by the magistrate or the judge.

Clause 2 of the Bill seeks to modernize the law of evidence in relation to child witnesses by repealing the existing Section 3(a) so that every child witness, in particular, an abused child, and without being emotive about it I would remind Members that these two Bills are designed generally for the protection of vulnerable witnesses and in particular children who have been abused, so that every child witness, in particular an absued child will not be intimidated or discouraged from giving evidence by having to go through a test of competency at the outset. The proposed change in no way affects the inherent power of the court to decide on the competency of any witness at any stage of the witness' evidence, be that witness a child or an adult. If a child is available to give relevant and understandable evidence, then the child should be heard. The court will then evaluate that evidence and decide how much reliance to place upon it.

The other rule of evidence concerning child witnesses which is clause 3 of the Bill also seeks to abolish the rule of corroboration. Under the existing law, a child who understands the duty of speaking the truth but who does not understand the nature of the oath may only give unsworn evidence which, without corroboration, is not sufficient to convict a defendant. Put in other way, if a child gives unsworn evidence, his evidence must be supported by some other admissible independent evidence before the defendant can be convicted of the offence. Very often, when a child is abused by a defendant, there would be no other persons present at the scene and as a result, no other independent evidence may be produced in court. If the child is of tender age, he can only give unsworn evidence. Despite the fact that the child alone can give a reliable account of the incident, his or her evidence will not be sufficient to convict the offender for want of corroboration. This rule has been described by one judge as a "child molester's charter".

Before the rule of corroboration was abolished in England, a Home Office report had suggested that there was no compelling scientific evidence in support of the view that a child's testimony is inherently unreliable. It was also found that children were as good witnesses as adults. The same finding was made by the Committee on the Evidence of Children in Criminal Proceedings. Mr President, these proposals are being carefully thought out based on the recommendations of the Committee on the Evidence of Children in Criminal Proceedings. The Committee has included members of the Law Society and the Bar Association. The rules and the Evidence Ordinance are an essential part of a package brought forward to deal with the problem of vulnerable witnesses and I urge Members to support the retention of clause 2 of the Evidence Bill which seeks to amend section 3(a) of the Evidence Ordinance. Mr President, I would like to now go on and say something about two technical amendments that I will be moving at the Committee stage in relation to the Evidence (Amendment) Bill.

Under the proposed new section 4, all child witnesses will give evidence unsworn. This removes the requirement that the court needs to determine whether the child can give sworn or unsworn evidence. Like an adult, if a child is shown to be incapable of giving intelligible testimony, the court will simply attach no weight to his or her evidence. Since this lies within the court's inherent powers, we have agreed with the Bar Association that the proposed new subsection (4) is redundant. I will propose an amendment to delete this subsection at the Committee stage.

Proposed new section 4A seeks to abolish the corroboration rule in respect of evidence given by a child. The reason for this change is that child and adult witnesses should not be treated differently in their evidence simply because of their ages. However, there are offences where corroboration will still be required even in the case of adult witnesses, such as perjury. In these cases, the evidence of a child will continue to require corroboration as it is the case for an adult. Section 4A as presently drawn does not make this clear. I will therefore move an appropriate amendment at the Committee stage to clarify the point.

Mr President, the changes proposed in the Criminal Procedure (Amendment) Bill and the Evidence (Amendment) Bill will enhance the proper administration of justice in cases involving child witnesses and I commend both Bills 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).

EVIDENCE (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 19 April 1995

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).

ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) (NO. 2) BILL 1995

Resumption of debate on Second Reading which was moved on 10 May 1995

Question on Second Reading proposed.

MR ANDREW WONG: Mr President, the Administration of Justice (Miscellaneous Provisions) (No. 2) Bill 1995 seeks to make a number of miscellaneous amendments to various provisions relating to the justice system in Hong Kong.

A Bills Committee, of which I was elected Chairman, was set up to study the Bill. The Bills Committee has held four meetings with the Administration. It has received submissions from the Bar Association, the Law Society and the Tobacco Institute of Hong Kong Limited (Tobacco Institute) and met a deputation from the last organization.

Let me briefly report on the main issues considered by the Bills Committee.

Clause 5 of the Bill seeks to repeal section 6 of the Defamation Ordinance. Since the Legislative Council Panel on Administration of Justice and Legal Services (AJLS) has received a submission from the Hong Kong Journalists Association requesting deletion of both sections 5 and 6 of the said Ordinance, the Bills Committee considers these two related sections together.

Under sections 5 and 6 of the Ordinance, any person who maliciously publishes any defamatory libel shall be subject to criminal sanction of two-year and one-year imprisonment respectively. The main difference between the provisions of these two sections is that under section 5, it is necessary to prove that the person concerned who publishes the libel knows it is false while under section 6, it is not necessary to prove such knowledge.

The Bills Committee supports the proposal to repeal section 6. On the suggestion of a Member that section 5 should also be repealed, a majority of Members and the Administration have great reservations as it will result in making libel a cause of action in civil law only and in removing all criminal liability on any person who deliberately defames another person. They consider that there may be situations in which it will not serve any meaningful purpose to impose civil liability on the publisher concerned, such as where the accused has no assets, or where the plaintiff cannot afford to institute civil proceedings against the publisher concerned, bearing in mind that legal aid is not available for defamatory libel cases. They also note that numerous jurisdictions have criminal libel provisions which are found to be consistent with Article 17 of the International Covenant on Civil and Political Rights (Article 14 of the Bill of Rights Ordinance).

However, in order to allow more time for the Administration to seek relevant information and for Members to discuss the issue fully, Members agree to refer the issue to the AJLS Panel for further discussion in the new Legislative Council Session.

The Administration has agreed to give an undertaking during the resumption of the Second Reading debate of the Bill that it will be committed to further discussions with the AJLS Panel on the issue.

Clause 9 of the Bill seeks to add a new section 81F to the Criminal Procedure Ordinance under which the Attorney General will be given the power to appeal to the Court of Appeal against a High Court Judge's decision to quash an indictment if the decision is considered wrong in law. This proposal is considered to be less costly and time-consuming than the existing provision under which the Attorney General can only appeal to the Privy Council. Under the proposed provisions, there is no impediment for the Attorney General to further appeal to the Privy Council if he is not satisfied with the decision of the Court of Appeal. Moreover, Members note that where an indictment is quashed in the District Court, the Attorney General has a right of appeal to the Court of Appeal. They therefore consider that it is appropriate for the Attorney General to be given a similar power in respect of indictments quashed in the High Court.

Members also note that the legal profession is opposed to the proposed provisions of clause 9. The main objection raised by the Bar Association is that the accused should have the same rights to appeal against a refusal of a High Court Judge's decision to quash an indictment. Under the Bar's proposal, the accused will have an interlocutory right of appeal, that is right of appeal which can be exercised immediately if the indictment is not quashed. Members note that the courts are very much against the procedure of interlocutory appeals by the accused because of the delay caused to the whole trial proceedings. This may result in keeping the jury waiting for months or discharging the jury. It may also become a useful weapon for the accused where there have been other rulings adverse to him which he wants to challenge before a different judge.

After careful consideration, the Bills Committee supports the proposed provisions of clause 9.

Clauses 11 and 12 of the Bill seek to substitute Part IIA and Schedule 2 of the Legal Practitioners Ordinance to broaden the powers of the Law Society to intervene into, and take remedial action in respect of, the practice of a solicitor or foreign lawyer, in order to protect the relevant clients' interest. The proposed provisions are modelled on those of the English legislation.

A Member has expressed his grave concern about the provisions in the proposed new section 26A(1)(a) of Part IIA of the Ordinance because under those provisions, the Law Society's powers of intervention could be triggered off easily. After detailed discussions among the Bills Committee, the Administration and the Law Society at the third meeting of the Bills Committee, it is agreed that the Administration will move a Committee stage amendment to the new section 26A(1)(a) to state explicitly that the Law Society will only exercise its powers of intervention if it considers that it will be in the interest of the public or of the clients concerned.

Clauses 15 and 16 of the Bill seek to amend sections 18 and 21(2) respectively off the Crown Rent and Premium (Apportionment) Ordinance by repealing the phrase "and affixed in a conspicuous position in or on the building".

Members note that under section 18, a notice of intention to apportion relevant interests (that is undivided shares) including the provisional determination of the Crown rent has to be published in the Gazette and affixed in a conspicuous position in or on the building in question. This is to give an opportunity to any interested person to lodge an objection under section 19 of the same Ordinance. Members consider that although no objection under section 19 has been received in the past 10 years, the persons concerned should have the right to be informed of the notice and it is unreasonable to expect members of the public to read the relevant notices in the Gazette.

The Bills Committee does not support the proposed provisions of clauses 15 and 16, and agrees that the subject matter should be referred to the Legislative Council Panel on Planning, Lands and Works for further discussion in the next Session, or if on review by the departments concerned, the Administration still considers the amendment necessary, the proposal should be included in a new Bill.

Clauses 41 and 42 of the Bill seek to amend paragraphs 3(3)(a) and 5(4)(b) of the Smoking (Public Health) (Notices) Order. At present, the lettering and characters of health warning and tar group designation appearing on cigarette packets and advertisements have to be in contrasting colours. As the Administration considers that most of the tobacco companies do not comply with the existing provisions and that it is difficult to define "contrasting

colours", it proposes to adopt the colouring scheme of "black and white", that is health warning should be printed in black upon a white background.

The Bills Committee had a meeting with the representatives of the Tobacco Institute. They are dissatisfied because the Government has not consulted the tobacco industry before the introduction of the Bill and has not given them the opportunity to take remedial action in respect of the problems identified by the Government. They consider that the proposed provision of clause 41 will drastically and materially change the appearance of every tobacco company's product and affect the identities of their trademarks. Interference with these identities will constitute an infringement of tobacco companies' identities and intellectual property rights.

In view of the Tobacco Institute's strong objection to clause 41, the Administration has agreed to withdraw this clause and to give the tobacco industry six months to improve the legibility of health warnings on cigarette packets. The Administration may review the matter after the six months and may introduce the proposed provision again later this year if found necessary in next Session.

Regarding clause 42, representatives of the Tobacco Institute indicate that the tobacco industry is willing to comply with the proposed provision. They request and the Administration agrees to allow the industry a grace period of 12 months for preparing new printed publications and outdoor advertisements.

Clause 44 of the Bill seeks to amend paragraph 1(7) of the Twenty-second Schedule of the Estate Duty Ordinance. The Bills Committee considers that as the proposed provisions are highly complex, have revenue implications and require detailed discussion, it is not appropriate to deal with the matter in the context of this Bill.

The Bills Committee agrees to refer the matter to the Legislative Council Panel on Finance, Taxation and Monetary Affairs for further discussion in the next Legislative Council Session.

Clause 57 of the Bill seeks to substitute section 2 of the Medical (Therapy, Education and Research) Ordinance to make it clear that the dead person's next of kin cannot override wishes of the dead person to donate any specified part of his body after death.

A Member queries the need to introduce the proposed section 2(b). He considers that with or without this new subsection, doctors will not insist on removing any organ from a dead body if the dead person's relatives raise objection to it. The Administration clarifies that the new subsection will be helpful in case of disputes between the dead person's next of kin and the doctor, or among the next of kins.

Some Members are also concerned that the proposed provisions of this new subsection may put doctors into very difficult situations or subject them to legal challenge. The Administration confirms that under the proposed provisions, the doctor is not obliged to remove an organ from a dead person who has previously indicated his willingness to donate that organ, and the doctor cannot be held to have contravened the law by not removing the organ in question.

Apart from the amendments mentioned earlier, the Administration will also move a number of other amendments and four new clauses on which the Bills Committee has no comments and for which support is given.

Mr President, with these remarks, I commend the Administration of Justice (Miscellaneous Provisions) (Amendment) (No. 2) Bill 1995 to Honourable Members.

DR LEONG CHE-HUNG: Mr President, I rise to speak on the Administration of Justice (Miscellaneous Provisions) (Amendment) (No. 2) Bill 1995. In doing so, I am particularly directing to proposed section 2(b), Medical (Therapy, Education and Research) Ordinance (Cap. 278).

Mr President, the current Ordinance so confirmed by the Administration on many occasions, including a reply to a question in this Council, infers that any signed document pertaining to the wish to donate one's organ after death is a legal document and that no further consent shall be needed from the next of kin. In short, the organ donation card is an acceptable legal will and no other consent is required.

The amendment proposed gives this a positive effect stating in no uncertain terms that it is lawful to remove tissue or organs of deceased for therapy and other permitted purposes, even in the presence of objecting next of kin. Mr President, the amendment may therefore produce two effects. Firstly it will put the minds of the medical profession, which is involved in the procuring or harvesting of organs for transplantation, at ease, knowing that he or she is protected by law.

But secondly, unfortunately, it may also produce negative effects for the amendment may lead a potential donor to believe that, in the event that he or she has signed a donor card, then his or her next of kin will not have the right to object to the removal of his or her organs for transplantation under any circumstances at death. Such may, therefore, deter many potential donors to sign, let alone carry an organ donation card.

Mr President, whilst the medical profession considers the amendment redundant, it sees no reasons to object its passage. Yet we would like to put it in the public record that it has always been the aim of the medical profession to remove tissues or organs of deceased persons for transplantation to save the life of another person. This, therefore, they would do only in the presence of consent from donors and consenting next of kin.

Furthermore, Mr President, the medical profession would like to have the full assurance of the Administration that with the passage of section 2(b), this does not make it obligatory that the medical profession must remove an organ or organs from a dead person who had previously indicated his or her willingness to donate and that the medical profession would not be held to have contravened the law by not removing the organ or organs in question.

ATTORNEY GENERAL: Mr President, I am grateful to the Chairman of the Bills Committee, the Honourable Andrew WONG, and to Members of the Bills Committee for their thorough study of this long and complex Bill. I have also taken a careful note of the remarks made by Dr the Honourable LEONG Che-hung and am happy to give the assurance that he sought.

As Mr WONG has explained, the Administration has agreed with the Bills Committee that a number of amendments to the Bill should be made. As a result, I will be later moving a series of Committee stage amendments.

In addition to the matters covered by the proposed amendments, Members of the Bills Committee raised other issues that were of concern to them.

Female offenders and probationers

One of these issues was the proposed amendment of three Ordinances to remove requirements that the supervising officers of female offenders or probationers must themselves be female. Although Members of the Bills Committee supported this amendment as a matter of principle, they were concerned that the assignment of supervising officers to female offenders and probationers should be handled with sensitivity. In particular, Members were concerned that, if the female to be supervised objected to a male supervisor, this objection should be considered seriously before a supervisor was chosen. The view was expressed that these amendments should not be regarded as a matter of operational efficiency, but as a means whereby flexibility is introduced in the interests of those being supervised.

I have consulted my colleague, the Secretary for Health and Welfare, who has policy responsibility for the legislation involved, and the Director of Social Welfare, and I can on their behalf give an assurance that the assignment of supervising officers to females will be handled in the way proposed by Members of the Bills Committee.

Criminal libel

Another concern raised by the Bills Committee related to criminal libel. The Bill proposes to repeal the offence under section 6 of the Defamation Ordinance of maliciously publishing a defamatory libel. This offence can be committed by a person with no intention to defame, and it is no defence to show that the statement was true. Some Members of the Bills Committee also favoured repealing section 5 of the Defamation Ordinance, which relates to persons who publish a defamatory libel knowing it to be false. It was argued that a civil law remedy is adequate to deal with such publications.

The Administration considers that there may be good reasons for retaining section 5. Many other common law jurisdictions have such an offence, and a civil remedy may not be adequate in some situations. However, it was not possible, at the end of this Legislative Session, for either the Administration or the Bills Committee to consider fully the advantages and disadvantages of retaining the provision. It was therefore agreed that the issue should not be resolved in the context of this Bill, but should be considered next session by this Council's Panel on Administration of Justice and Legal Services. I am grateful to members of the Bills Committee for agreeing to this course of action.

Offences relating to children

Mr President, I now turn to the Committee stage amendments that I will be moving later on today. One amendment that will be of general public interest and has relevance to the immediately preceding debate is the proposed increase in penalties for two offences relating to children. Concern over the inadequacy of the existing penalties was widely expressed after a particular case of ill-treatment to a child was recently prosecuted.

Section 26 of the Offences against the Person Ordinance creates an offence of unlawfully abandoning or exposing a child under the age of two years in such a way that the life of the child is endangered or the health of the child is likely to be permanently injured. The current penalty is imprisonment for three years. It is proposed to amend the section so that, on conviction on indictment, the penalty is imprisonment for 10 years and, on summary conviction, the penalty is imprisonment for three years.

Section 27 of the Offences against the Person Ordinance relates to the ill-treatment or neglect a child or young person by someone who has the custody, charge or care of that person. The current penalties are, on conviction on indictment, a fine of $2,000 and imprisonment for two years and, on summary conviction, a fine of $250 and imprisonment for six months. The proposed amendment of the section will provide for a penalty, on conviction on indictment, of imprisonment for 10 years and, on summary conviction, of imprisonment for three years.

Warnings in respect of smoking

I will also be proposing a Committee stage amendment in respect of the health warnings that are required in respect of smoking. At present, the health warnings that are required on cigarette packets and advertisements must be in a colour which contrasts with the background upon which they appear. This requirement is rather vague and some warnings are not easily seen. The Bill therefore proposes that the warnings should be printed in black upon a white background.

The Tobacco Institute of Hong Kong made representations to the Administration and to the Bills Committee in respect of the proposed amendments. With regard to cigarette advertisements, the Institute requested a grace period of 12 months within which cigarette manufacturers would be able to change their existing advertisements in order to comply with the proposed new requirement. The Administration and the Bills Committee considered that this was a reasonable request and, as a result, the amendment in respect of cigarette advertisements will not be brought into operation until 1 August 1996.

With regard to cigarette packets, the Tobacco Institute stated that the design and colouring of such packets are a matter of great commercial importance to manufacturers. The Institute argued that it was wrong to impose a requirement of black and white health warnings on all manufacturers, since not all existing warnings were insufficiently prominent. It proposed that the amendment in respect of cigarette packets be withdrawn at this stage and that the tobacco industry be given six months in which to improve the legibility of health warnings on those packets. Again the Administration and Bills Committee considered this suggestion a reasonable one, and I will therefore later propose a Committee stage amendment to delete the relevant clause of the Bill.

I would add, however, that the Secretary for Health and Welfare will be considering proposals from the Tobacco Institute and if, after six months, there has not been a significant improvement in this area, the proposed amendment will be re-introduced into this Council.

Law Society's powers of intervention

Another amendment agreed with Members of the Bills Committee relates to the Law Society's powers to intervene in the practice of a solicitor or foreign lawyer in order to protect his or her clients. The Bill proposes to broaden those powers to bring them into line with similar powers in England.

One of the situations in which the powers are to be exercisable is where the Council of the Law Society has "reason to suspect dishonesty" on the part of a solicitor or foreign lawyer. The view was expressed in the Bills Committee that this power was too broad, as it could be exercised in respect of a very minor case of dishonesty, which might not be related to the professional practice. The representatives of the Law Society considered this point and agreed that the Bill should be amended to add a further requirement. The amendment I will be proposing provides that the Council of the Law Society can only exercise powers of intervention in cases of suspected dishonesty where it considers that the exercise of those powers would be in the interests of the public or the clients of the solicitor or foreign lawyer.

Immigration Ordinance

I now turn to the provisions in the Bill relating to search and seizure by immigration officers. The Bill provides that a magistrate may issue a warrant to immigration officers to enable them to enter premises and search for and seize things which are liable to be seized under the Immigration Ordinance or that are likely to be value to the investigation of an offence. The Immigration Ordinance currently gives immigration officers powers of search and seizure without a warrant in certain situations. It is therefore necessary to amend those powers so that they dovetail with the proposed new powers.

The amendment I will be proposing provides that the power of search and seizure without a warrant may only be exercised where it would not be reasonably practicable to obtain a warrant.

Pharmacy and Poisons Ordinance

Another amendment I will be moving relates to the Board established under the Pharmacy and Poisons Ordinance. The Bill provides that the Board may transact business by circulation of papers. Members of the Bills Committee considered that this should not be possible if any member of the Board objects to that procedure. The Administration agrees with this, and I will be moving a Committee stage amendment accordingly.

Juvenile Offenders Ordinance

When I introduced this Bill into this Council, I explained that it contains several provisions affecting press freedom. I propose to move a Committee stage amendment in respect of the Juvenile Offenders Ordinance that is also concerned with press freedom.

Section 3D(4) of that Ordinance empowers a juvenile court to exclude any representative of a newspaper or news agency from its sittings. However, it does not provide for the circumstances where that power may be exercised. The Committee stage amendment I will be moving circumscribes the power in section 3D(4) by referring to the interest of the child or young person, since this will bring the provision into line with Article 10 of the Bill of Rights Ordinance and the original intention of the legislature when the legislation was introduced in 1973.

Crown Rent and Premium (Apportionment) Ordinance

I now turn to two aspects of the Bill that Members of the Bills Committee had reservations about. The first is the proposal to amend the Crown Rent and Premium (Appointment) Ordinance so that it would no longer be necessary to affix, on the building concerned, notices in respect of the apportionment of Crown Rent. The purpose of that procedure is to enable the owner of the building to object to a proposed apportionment, or to a decision not to exercise powers relating to apportionment. Since, in practice, no one has ever exercised this right to object, the Administration considered that the procedure could be dispensed with.

Members of the Bills Committee were not sure that this was a sufficient justification for the proposed amendment. In view of the shortage of time at the end of this Legislative Session, it was not possible to explore the issue thoroughly. On the advice of the Secretary for Planning, Environment and Lands, I will therefore propose a Committee stage amendment to delete these amendments from the Bill. However, the Secretary may decide to re-introduce the amendments next Session.

Estate Duty Ordinance

The other aspect of the Bill that the Bills Committee expressed reservations about was a proposed amendment to the Estate Duty Ordinance. The Bill proposes to change the method of calculating the value of benefits that accrued to a deceased person within the three years before his death from controlled companies. This is particularly relevant to benefits in the form of accommodation. Instead of being based on the rent actually received by a controlled company, the Bill provides that the value of accommodation would be based on the fair market rent that would be expected to be received by the company.

The Bills Committee considered that there were revenue implications in this proposal, but there was insufficient time for these implications to be fully explored. The Secretary for the Treasury has therefore agreed to the deletion of this amendment from the Bill. He will, however, consider the issue further when amendments are next being made to the Estate Duty Ordinance.

Cap. 1

A minor Committee stage amendment I will be moving is to add to the Interpretation and General Clauses Ordinance a definition of "weekday". The purpose of this is to clarify the meaning of the Chinese equivalent of that term.

Amendments to the Chinese text of the Bill

Finally, Mr President, I will be moving Committee stage amendments to the Chinese text of the clauses in the Bill relating to the Immigration Ordinance, Crimes Ordinance and Companies Ordinance. Since the Bill was published, authentic Chinese texts of those Ordinances have been published. It is therefore necessary to reflect that development in the amendments to those Ordinances contained in the Bill.

Mr President, I commend the Bill to the Council.

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

Bill read the Second time.

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

AIRPORT AUTHORITY BILL

Resumption of debate on Second Reading which was moved on 24 May 1995

Question on Second Reading proposed.

MR PETER WONG: Mr President, the Airport Authority Bill seeks to reconstitute the Provisional Airport Authority. The Bill sets out the powers and functions of the Airport Authority to provide, operate, develop and maintain Hong Kong's new international airport at Chek Lap Kok, and makes provision for the safe, secure and efficient operation of the airport. The objectives and structure of the Bill are the same as those in the White Bill published in January 1994, and the Bill has taken into account public suggestions and opinion on the White Bill.

The Bill was introduced to the Legislative Council on 24 May 1995. A Bills Committee with 12 Members of which I was elected Chairman and Dr the Honourable Samuel WONG Deputy Chairman was set up on 26 May 1995 to study the Bill. The Bills Committee met the Administration eight times. I wish to record the thanks of the Committee to the co-operation of the Administration

and in particular the assistance of the Secretariat in meeting the very tight schedule.

The Bills Committee has noted that clause 4 of the Bill provides that the affairs of the Airport Authority shall be under the care and management of a Board. In this respect, the Administration explains that the Airport Authority is a legal person, the Board is not and does not have to be. The Airport Authority will perform its functions at all times through the Board and no corporate act can be performed by an individual or a group of members of the Airport Authority. The Administration will move an amendment to clause 13(2) at the Committee stage to replace the term "Authority" by the term "Board" in order to more accurately reflect the intention in that context.

The Bills Committee asks whether the Bill has set a right balance of general public interest against the prudent commercial interest in the operational objectives of the Airport Authority. The Administration assures Members that whilst the Airport Authority is to conduct its business according to prudent commercial principles, there are plenty of provisions within the Bill to safeguard the public interest. The role of the public officers is but only one measure. The Secretary for Economic Services will speak on the role of the public officers in the Board in protecting the public interest later. Despite this assurance given by the Administration, some Members still feel the need to spell out clearly in the Bill that the Airport Authority shall take into account public interest in the conduct of its business. The Honourable Albert CHAN will move an amendment to clause 6 of the Bill at the Committee stage.

The Bills Committee has sought clarification on the extent of power given to the Governor in council under clause 20(1)(a) in respect of directions given in the public interest. The Administration explains that the overall intention is that if the Airport Authority has a discretionary power to do something, then a directive may be given by the Governor in Council in relation to it. The Governor in Council cannot direct the Airport Authority to do, or omit to do a thing which the Airport Authority is not permitted to do under the Ordinance other than clause 6 or generally by law.

The Bills Committee has also made several suggestions to the Administration to strengthen the management aspect of the Airport Authority. They include: (a) delegation and sub-delegation of functions must be made within the Airport Authority; (b) the chairman of a committee established by the Airport Authority must be an Airport Authority member; (c) the quorum of a meeting of the Board should include two non-public officers; and (d) the assignment of function or direction to the Chief Executive Officer may bear an expiry or termination date. The Administration has carefully considered these suggestions and the Secretary for Economic Services will move amendments to meet Members' concerns at the Committee stage. The Secretary for Economic Services will also indicate that it will be open to relevant professional bodies to give views to the Administration relating to the appointment of the members of the Airport Authority. The Honourable Albert CHAN has another view about

the appointment of member and will move an amendment at the Committee stage.

In order to enhance the public accountability of the Airport Authority, as the Bills Committee has suggested, the Administration will move an amendment to the effect that the Airport Authority will keep a register of interests declared by its members under clause 13(1) which will be made available for public inspection on request.

Despite some Members of the Bills Committee's suggestion, the Administration feels that whether meetings of the Airport Authority should be open to the public should be a matter for the Airport Authority itself. The Honourable Albert CHAN will move an amendment at the Committee stage in this respect.

The Bills Committee has also suggested a number of technical amendments relating to the financial provisions of the Bill, particularly to clause 24, the Chinese text of clause 29(4) and clause 32(2) and the Secretary for Economic Services will move such amendments at the Committee stage.

Regarding the power of investment, it has been my particular concern, which I have expressed in the Bills Committee, that the Airport Authority must establish a proper control mechanism for investment since the amount of money involved will be huge and that the Government must always maintain an overall view of the activities of the Airport Authority, including the activities of its associated companies as well as the subsidiary companies. I hereby invite the Secretary for Economic Services to respond to my concern when he speaks.

The Bills Committee has discussed in detail the role of the Audit Committee, and agreed that it shall be responsible to the Airport Authority. Members have noted that the Government will, through public officers on the Board, be aware of issues considered by and areas of concern if any of the Audit Committee and that the Secretary for Economic Services will ask the Airport Authority to consider including the work of the Audit Committee in a section of its annual report to the Legislative Council. Members have noted also that although the Administration could not see why the Chairman of the Audit Committee must be a non-public officer, it envisaged that in practice that would most likely be the case. The Secretary for Economic Services will also move an amendment to clause 31(1) to the effect that the Audit Committee should consist of a minimum of three members.

The Bills Committee has also discussed in detail the role of the auditor. It holds the view that he should be an independent and professionally qualified party. Towards this end, the Secretary for Economic Services will move an amendment to clause 32(3) at the Committee stage to specify that the auditor shall not be a member of the Airport Authority, or a member of the Audit Committee, or an employee of the Airport Authority. The Administration has also drawn Members' attention to section 29(2) of the Professional Accountants

Ordinance which governs that the auditor must be a professional accountant holding a practising certificate. There have also been discussions as to the role of the Director of Audit in relation to the Airport Authority and the Honourable Albert CHAN wishes to pursue this issue further and will move an amendment at the Committee stage.

The Secretary for Economic Services will move an amendment at the Committee stage to require the Airport Authority to send to the Financial Secretary a five-year business plan instead of a one-year business plan. He will also ask the Airport Authority to brief this Council on their commercial ventures and major expansion plans from time to time.

The Secretary for Economic Services has also agreed to speak on consultations in relation to airport charges.

There are other minor and technical amendments to clause 7(2)(f), clause 11(13) and clause 15(1)(d).

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

MR MARVIN CHEUNG: Mr President, pursuant to Standing Order 65, I wish to declare that I am a partner of KPMG Peat Marwick who are the auditor of the Provisional Airport Authority.

DR SAMUEL WONG: Mr President, during the Bills Committee, there were a number of areas of particular concern to Members. These included membership of the Airport Authority and the auditing of the Airport Authority. I am pleased to note that the Secretary for Economic Services has tried to address the main concerns and suggestions of the Bills Committee through a number of Committee stage amendments which he will be moving later.

Some Members however feel that the proposed amendments to be moved by the Secretary for Economic Services still do not meet their wishes. In that regard, I note that the Honourable Albert CHAN is proposing a few Committee stage amendments.

One of the amendments proposed by Mr CHAN is to require that one third of the Airport Authority members (other than the Chairman and the Chief Executive Officer) be nominated by the Legislative Council and be appointed by the Governor. I do not support this proposed amendment, as such a requirement would not only unduly restrict the discretionary power of the Governor in making appointments, but also be bound to politicize the whole process of appointments to the Airport Authority. Mr President, what I am after, and I believe the same can be said for every Member of this Council, is a

strong and dedicated Board, one which will effectively discharge the duties of the Airport Authority. Thus it is important that persons should be appointed as members of the Authority by virtue of their experience, knowledge and commitment and not solely by virtue of their political affiliation or because they are simply Members of this Council. In that regard, I am pleased to see clause 3(3)(d) of the Bill which indicates the ares from which the Governor may draw from in making appointments of members of the Authority. This is an improvement over the White Bill. That said, I believe that the membership of the Authority could be made even more representative, and thus more effective in discharging the Authority's duties, if the Governor, when appointing members of the Authority, would also take into account views from the relevant professional bodies. I hope the Administration would consider this suggestion.

Now I would like to turn to the functioning of the Audit Committee. Many views, in some cases diametrically opposed, were expressed in the Bills Committee relating to the need to ensure the independence of the Audit Committee, its composition and membership, its reports and meetings.

There can be no question that the Audit Committee is crucial to the implementation of an effective internal control system within the Authority. Whilst all possible steps should thus be taken to ensure its independence, we must also bear in mind that the Audit Committee is a committee established by the Board and that its purpose is to perform functions delegated or assigned by the Board or assist the Board in monitoring the work of management. Thus all appointments and removal of members of this Committee should be a matter for the Board. This view is supported in the Cadbury Report on the Financial Aspects of Corporate Governance. The Report concludes that the effectiveness of an Audit Committee depends crucially on having a strong chairman, who has the confidence of the Board, and on the quality of the non-executive members. The Board should therefore have a free hand in appointing persons, who appear to be suitably qualified. Mr President, with this in mind, I do not consider it necessary, or appropriate, for example to restrict appointment of the Chairman of this Committee to a member of the Authority who is not a public officer, nor to confine membership of this Committee only to members of the Authority.

As the Audit Committee is answerable to the Board, it should also report to the Board. It should then be up to the Board to decide how to respond to the findings of the Committee including the implementation of any recommendations that may be made by the latter. As all this is part of the internal control system, I disagree with the view that reports of the Committee should be published or that the meetings of the Committee be opened to the public.

The present scheme of things in the Bill, together with the proposed amendments to be moved by the Secretary for Economic Services which provides that the Audit Committee shall have a minimum of three members and which ensures the independence of the auditor, should already provide sufficient auditing safeguards.

Last but not least, I would like to turn to the proposed amendment to clause 32(3) by the Honourable Albert CHAN which provides that the annual accounts of the Airport Authority shall be audited by the Director of Audit and that the Director of Audit shall be remunerated by the Authority for the services rendered. I must say that I cannot see any justification for treating the auditing of the annual accounts of the Airport Authority differently from that for the Mass Transit Railway Corporation. (MTRC) and Kowloon-Canton Railway Corporation (KCRC). The Airport Authority, like the MTRC and KCRC, will be required to conduct their business in accordance with prudent commercial principles and it is obviously more appropriate for their annual accounts to be audited by professionally qualified auditors in the private sector. Furthermore, the Bill has made it clear that, if need be, the Director of Audit could always be authorized by the Governor under the Audit Ordnance to audit the accounts of the Authority. In view of the above reasons, I do not support the Honourable Member's proposed amendment which provides that the annual accounts of the Airport Authority shall be audited by the Director of Audit.

Thank you, Mr President.

MR ALBERT CHAN (in Cantonese): Mr President, just now Dr the Honourable Samuel WONG spoke like a government spokesman. The Chinese and British Governments signed in 1991 a Memorandum of Understanding concerning the construction of the new airport. It provided for the establishment of an Airport Authority to be responsible for the construction and operation of the new airport. The Provisional Airport Authority was set up in April 1990. Initially, the Government intended to introduce the Airport Authority Bill to the Legislative Council as soon as possible with the subsequent formal establishment of the Airport Authority to follow. However, with the Chinese and British sides entangling themselves in a longstanding row over the overall financing of the airport as well as the financing agreement on the new airport and airport railway, the introduction of the Airport Authority Bill was delayed time and again.

The Hong Kong Government published the Airport Corporation Bill in January 1994 in the form of a White Bill for public consultation. Regarding the Government's move to seek advice from various parties before finalizing the Bill and the hard work of the government officials concerned over the past two years, they, in the opinion of the Democratic Party, deserve our tribute and commendation, although most of our suggestions have not been accepted by the Government.

The transfer of the operation of the territory's airport service from the Government to a public commercial corporation, as a matter of fact, represents a significant policy change. Whilst the Airport Authority will operate under commercial principles, it should concurrently take the public interest into full account as all of its capital comes from taxpayers. The establishment of the Airport Authority should not be used as an excuse for evading the monitoring by the public and the Legislative Council. Without prejudice to its daily operation, the Airport Authority should be obliged to account to the public and the Legislative Council for its major policies and operation.

When the Government published the Airport Corporation Bill in January 1994, it was generally believed that the supervision of the Airport Authority as provided by the Bill was insufficient. Many places in the Bill are over generalized, making it difficult for proper external monitoring. After 10-plus months of discussion and delay by the Chinese and British Governments, the Hong Kong Government ultimately introduced the revised Airport Authority Bill to the Legislative Council in May 1995.

The revised Bill has indeed incorporated some of the public suggestions such as limiting the scope of business that can be conducted by the Airport Authority, restricting the delegation of any of the statutory functions of the Airport Authority and setting up of the Audit Committee. However, the Democratic Party still opines that the existing system of supervision is hardly comprehensive, and will therefore move a number of amendments at the Committee Stage.

The future airport at Chek Lap Kok is a place that assembles an abundance of commercial activities with a large proportion of them being monopolistic in nature. Apart from conforming to economic principles, the allocation of business benefits of these activities, more importantly, has to be subject to the regulation of legislation.

The first amendment to be moved by the Democratic Party relates to the constitution of the Board of the Airport Authority. A laissez-faire approach towards the membership and selection procedure of the Board was seen in the Airport Corporation Bill 1994. The present Bill, introduced after revision with reference to the Airport Authority Act of the United Kingdom, sets out that the chairman and other members of the Airport Authority may be appointed from among persons who appear to the Governor to have had wide experience in air or other forms of transport, industry, or in commercial, financial, consumer or labour matters, or in administration. This change is an improvement over the White Bill. However, in this way, the Authority is still subject to the manipulation of the government departments and consortiums concerned, and this violates the principles of fairness and openness. In the light of this, the Democratic Party proposes an amendment to require that one third of the members of the Airport Authority be nominated by the Legislative Council and be appointed by the Governor. Many statutory corporations nowadays, including the Mass Transit Railway Corporation, do have Members of the

Legislative Council sitting on their boards for a long time. Therefore, history and fact prove that it poses no question at all to have Legislative Council Members on the Board of the Airport Authority. The Legislative Council is the highest authority representing public opinion. To vest the Legislative Council with the power of nomination can enhance not only the recognition of the Board but also its public accountability. (The Democratic Party only proposes a minimum of one third of the members to be nominated by the Council, it is a small number.)

Requiring the top management of statutory corporations to enhance its transparency and representativeness is the trend of the times. The Hong Kong Arts Development Council Ordinance which was recently passed also stipulates that nine of the members of the Hong Kong Arts Development Council shall be nominated by the literary and art circles. This is sufficient proof that members of statutory corporations do not necessarily hold office wholly through the appointment of the Governor. The autocratic requirement for the appointment of members to the Board of the Airport Authority by the Governor alone is a departure from the political principles which emphasize participation and openness.

The second amendment to be moved by the Democratic Party relates to the operational objectives of the Airport Authority. The Democratic Party seeks to add a provision to the Bill to the effect that the Airport Authority, while operating under prudent commercial principles, should also take concurrently into account the long-term interests of Hong Kong. Being a statutory corporation with all of its capital coming from taxpayers, the Authority should take public interest into consideration. This is absolutely necessary. Kai Tak Airport which is presently under the management of the Civil Aviation Department also has to take public interest into full consideration. Doing so has not hampered the development and operation of Kai Tak Airport. On the contrary, apart from earning substantial profit, Kai Tak Airport can provide more efficient aviation services. In terms of passenger volume, the airport in Hong Kong is the second largest in the world.

The third amendment to be moved by the Democratic Party is for the Authority to open its Board meetings to the public. This amendment gives the public statutory power to attend the meetings of the Airport Authority, which in turns strengthens its Board's public accountability. When the Board discusses sensitive commercial or personnel matters, the public's power to attend its meetings can be restricted. In the United States, the majority of this kind of statutory corporations, including the airport authority that runs the airport in Washington D.C., also open their board meetings. It can be seen from overseas experience that opening meetings will not hamper the commercial activities and decision-making of these airport authorities.

The fourth amendment to be moved by the Democratic Party is to bring the auditing of the Authority's statement of accounts under the ambit of the Director of Audit. For some time in the past, within the Provisional Airport Authority arose a number of financial problems including the granting of a considerable amount of money to the Chief Executive Officer as contract termination compensation, the alleged squandering of public money by the staff of the Authority and discrimination in relation to staff welfare. All these have prompted the public to strongly demand for stepping up the financial monitoring of the Airport Authority. In almost all European and developing countries, the auditing of the statements of accounts of statutory corporations rests with the state audit departments. The airport authority of Singapore, our neighbouring country, is no exception. In the United Kingdom, although the statements of accounts of statutory corporations do not necessarily have to be subject to inspection by the state audit department, this has given rise to much controversy. We do not have to follow in the footsteps of the United Kingdom. In the past, the Civil Aviation Department which ran the airport was subject to inspection by the Director of Audit and the former Director of Audit also agreed that the statements of accounts of the Airport Authority had to be inspected by the Director of Audit. As can be seen, such request has a lot of support. The Democratic Party opines that it is justified and reasonable to bring the auditing of the statements of accounts of the Airport Authority under the ambit of the Director of Audit.

The Democratic Party hopes that every Member of the Legislative Council can give serious consideration to the various amendments standing in my name which I am going to move at the Committee Stage. I also seek your support to the amendments.

Mr President, with these remarks, I will move the amendments at the Committee Stage following the Second Reading of the Bill.

12.50 pm

PRESIDENT: I understand that Members have a guest luncheon in the afternoon. I will suspend the meeting until 2.15 pm.

2.22 pm

PRESIDENT: Council will now resume the debate on the Airport Authority Bill.

MR ERIC LI: Mr President, I would just like to say a few words to supplement the comments of the Honourable Peter WONG and Dr the Honourable Samuel WONG. First of all, I would particularly welcome the Government's initiative to take over one of my intended amendments, to clarify that the appointment of auditor actually means an independent, outside firm of certified public accountants.

The Airport Authority, being a corporation run on commercial principles, has already had tight financial control. First of all, it has the internal auditor who will report to the Audit Committee and there exists already a mechanism to actually deal with things like the detection of fraud, corruption and value-for-money, and that there is the external auditor who is experienced and independent and will make an assessment on the financial position of the Corporation to ensure that it complies with a true and fair view.

Thirdly, the Government still maintains reserve power to call on the Director of Audit to deal with any other matters as the situation demands. These internal controls are clearly good enough for outside financial institutions who, I am sure, would be willing to invest a substantial amount of their own good money to the Corporation. If it is good enough for those financial institutions, I cannot see why it is not good enough for the Government, who has itself direct financial management control.

I also do not agree with the Honourable Albert CHAN to say that the Director of Audit will actually give greater public confidence. I doubt actually whether the Director of Audit is experienced to conduct the normal commercial audit to give a true and fair view. It would also create a lot of other possible problems, for example, whether he is actually licensed under the Professional Accountants Ordinance to conduct the audit. And what if there is a case of some form of negligence? Is he then subject to the disciplinary committee of the profession? If there is a civil claim, is he actually liable for this civil claim because it does involve outside investors?

An obvious area of improvement, though, is in the area of the Audit Committee. As the Airport Authority is a statutory corporation, it is itself not subject to any other external requirement or supervision, like in the case, perhaps, of a listed company which is subject to the supervision of the Stock Exchange and the Securities and Futures Commission. And in those situations, they have a quite clear guideline as to what is proper corporate governance and there are also clear terms of reference for what the audit committee is supposed to do. But as a statutory corporation, the Airport Authority is not subject to any of these requirements. I have already recommended the Cadbury Report which is a very authoritative document on corporate governance to the Administration for their reference, and I hope that they will take into account of what was said in the Cadbury Report, and I am sure that the Council will continue its monitoring role on the Airport Authority to ensure that it has the best corporate governance practice.

I would also say a few words on the membership of the Audit Committee. I would also disagree with the Honourable Albert CHAN to say that perhaps a politician make the best member in this particular Committee. To me it is not really the name or how famous that particular person or who he represents should sit on the Audit Committee, which is very much a professional operating committee. To my mind, I think the best people should be those who are well-trained, have the interest, knowledge and also the substantial time that they can actually spend on the Committee to actually help the Corporation and the Board of Directors to discharge this internal control purpose.

With these remarks, Mr President, I will support the original Bill and not the amendment proposed by the Honourable Albert CHAN.

MR ROGER LUK: Mr President, the Airport Authority is a public corporation. It is a company incorporated by statue having a share capital. The Government is the sole shareholder. It is to be operated according to prudent commercial principles and thus a de facto commercial going concern. Conceptually it is no different from a publicly listed company except that it is non-profit oriented in nature. Like any listed companies, its effectiveness of operations and integrity of internal controls should be evaluated from the perspective of corporate governance rather than public governance. In this respect, the Audit Committee to be established under the Bill will play an important role in ensuring financial integrity and the effective internal controls within the Authority.

The concept of audit committee evolved in the 1970s as a response to several highly publicized fraud cases and corporate failures in the United States and Canada. These incidents give rise to public concerns about the quality of financial disclosures and the effectiveness of internal control systems of listed companies. Market regulators recognized from these failures that an effective audit committee would offer additional assurance in corporate transparency and integrity.

In the United States, listed companies have been required since 1978 to set up audit committees composed solely of independent directors. In the United Kingdom, listed companies have also been required to have similar audit committees following the publication of the Cadbury Report in late 1992.

Hong Kong lags behind in this regard. The audit committee is not mandatory under listing rules of the local stock exchange. It is, however, encouraging to find that an increasing number of listed companies has an audit committee in place.

The audit committee is a committee of the board of directors established to give added assurance regarding the quality and reliability of financial information used and published by the company. It enables the board to delegate the thorough and detailed review of accounting and audit matters to a subcommittee of independent directors. It also enables the non-executive directors to contribute more readily an independent view and to play a more positive role in corporate governance. I disagree with the suggestion of appointing members outside the Board of the Authority to serve on the Audit Committee.

The Audit Committee is therefore as good as the people on it and the ways in which its business is conducted. Its effectiveness depends crucially on a strong, independent chairman who has the confidence of the Board and the quality of the non-executive directors on the Committee. Moreover, the Committee will fall short of the company's operations and in particular the understanding to deal adequately with the auditing and financial matters.

The duties of the Committee should be tailored to the objectives, needs and circumstances of the company itself. In general, the Committee provides the mechanism for non-executive directors to oversee the systems which ensure that the senior management including the executive directors are properly controlled.

In respect of internal controls, the Committee's primary concern relates to those controls designed to provide assurance of the maintenance of proper accounting records and reliability of financial information used. The Committee also considers the recommendations in the external auditor's letter to the management on material weaknesses in the internal control system and in the regular reports of the internal auditor on the effectiveness of the system.

The Audit Committee should have explicit authority to investigate any matters within its terms of reference, and be provided with the necessary resources including full access to relevant information and people. At least annually, the Committee should present a formal report to the Board of Directors summarizing the activities of the Committee during the past year. The Chairman should be available to answer questions about the Committee's work at the Company's annual shareholders' meeting.

Mr President, the concept of audit committee is proven in ensuring effective corporate governance over the years. The Board of the Mass Transit Railway Corporation has already established an Audit Committee comprising independent non-executive directors although this is not mandatory by law. Therefore, the statutory provision for establishing an Audit Committee in the Airport Authority Bill is an important step forward in the governance of public corporations and a recognition of the Committee's value in enhancing their public accountability.

I share the views of the Honourable Eric LI and Dr the Honourable Samuel WONG on adopting the code of best practice as recommended by the Cadbury Report as the guideline for the operation of the Authority as well as the Audit Committee.

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

MR FREDERICK FUNG (in Cantonese): Mr President, though the Airport Authority (AA) Bill is to a certain extent an amended version of the White Bill, both the Association for Democracy and People's Livelihood (ADPL) and I still have quite a few opinions regarding its operation. The operation of the Mass Transit Railway (MTR) has told us that while MTR is a wholly Government-owned corporation, it has not had public interests in mind. Therefore, I am very much worried that the AA will be the same as MTR, and fail to take care of public interests as a public transport provider. Therefore both ADPL and I are of the view that it is necessary to strengthen the supervision of the AA. It has perhaps been commented that it is an unnecessary worrisome mentality to require stronger supervision, there is actually no need to worry. However, I wish to stress again that past experience points out that we should be prepared, and prepared well, rather than trying to find remedies when problems arise. It is also feared that remedies may come too late.

In respect of the composition and structure, the Bill is vague regarding the relationship between the AA and the Legislative Council, there is no clear provision that defines the Legislative Council's supervisory power over the AA. Firstly, appointment of the AA chairman and members and their term of office are decided by the Governor, while the final say regarding airport charges rests with the Governor-in-Council. The powers regarding the use of funds by the AA are in the hands of the Financial Secretary. The Bill is very ambiguous about the role of the Legislative Council in these matters. Though the Government has said that the relevant professional bodies can make suggestions on the appointment of AA members, but it is said in a very indefinite way, there is no clear indication as to how in practice that can be done. I think that elected Members of the Legislative Council, Members of District Boards and elected members of the two Municipal Councils as well as members of the Airport Advisory Committee appointed by the Government and other professionals can be appointed to the AA so as to ensure extensive representativeness in the membership of the AA, putting an end to the past wholly appointed system. Therefore, I support the suggestion in the amendment that no less than one third of the AA membership should be nominated by the Legislative Council.

As to the protection of public interests, the Bill explicitly provides that the AA is to operate on commercial principles. However, to ensure that public interests are taken care of, I am of the view that the Ordinance must ensure that the AA strikes a proper balance between public interests and commercial interests and in the event of a conflict between the two, I think that public interests should come first. Though the Government said that the Bill has incorporated many safeguards for public interests, without specific provisions written to protect public interests, how can such protection be realized?

Further, the Bill requires AA members, once appointed, to declare their interest to the AA. I on the other hand think that the Government should be required to ascertain the financial and other interests of potential members before offering appointments, so that the members will not be biased in discharging their duties. However, the Government should also have the right to require AA members to supply the necessary information at any time so as to exercise restriction on the members. For public interests, members should not only declare their interests to the AA, but also to the public who should be given access to such information.

The amendment proposes that under certain circumstances meetings of the AA Board of Directors be open to the public. I also support this proposal because open meeting can enhance transparency and make possible public supervision of the board's work.

The Bill proposes that the financial matters be audited by the Audit Committee appointed by AA and approved by the Governor. I think that the AA should be place within the jurisdiction of the Director of Audit so as ensure public interests. Though the Audit Department only makes one end-of-period monitoring audit every year, this is still very important because at least there will be checks and balances as well as a deterrent effect.

On the other hand, as the AA can engage expert consultants as it sees fit or requires, I also worry that this will develop into a "top-heavy" situation, escalating its administrative costs, eventually resulting in requiring the public to pay various charges to cover part of the costs. This is harmful to the public. I think that the Government should exercise further oversight in this respect, including the engagement of experts and the use of administrative funds. Therefore to include the AA into the jurisdiction of the Audit Department will to a certain extent have the effect of supervising the AA and monitoring its accounts.

With these remarks, I support the amendments as proposed by the Honourable Albert CHAN.

MR HOWARD YOUNG: Mr President, I rise to support the Second Reading of the Airport Authority Bill. This Bill, in fact, is a landmark in the development of Hong Kong's badly-needed replacement airport. Only by going ahead with the replacement airport at Chek Lap Kok can we resolve the problem of saturation at Kai Tak; can we solve the problems of noise and nuisance to residents once and for all; can we pave the way for development of tourism well into the next century; and also provide adequate facilities to ensure Hong Kong's commercial viability as a business centre.

I would like to say here that the airlines, although the main users in the front line of an airport and also the main customers of an airport, are by far not the only beneficiaries from an airport. The scope is much wider. The airport itself will serve as a magnet to draw businesses into Hong Kong. It can draw many industries like catering, engineering, ground handling and hotels to the airport and its vicinity. Many tourism-related industries, including the retail trade and transportation ranging from coach drivers to taxi drivers, will all benefit. And, of course, at a time when today employment or availability of jobs is a hot topic in Hong Kong, it is a facility that will create much more employment for Hong Kong.

The airline community which includes organizations like the Board of Airline Representatives of Hong Kong and International Air Transport Association had made representations to the Government after scrutinizing the White Bill that was put forward in January 1994. It is the common view that the current Bill in front of us today is an improvement over the previous White Bill, and we have noticed that many, many observations, many opinions and many suggestions have been taken on board to improve the Bill which is before of us today.

However, there is one aspect which I would like to mention which still makes the airline and the aviation community unhappy, that is, the mechanism on airport charges. The Board of Airline Representatives did write to the Secretary for Economic Services expressing their worries in the middle of June, saying that they were concerned that the Airport Authority, which will be a monopoly, I must add, would have the freedom under this legislation to effectively increase airport charges at will without consultation. They say that in the Bill there is no reference to keeping costs below the rate of inflation or passing productivity benefits to users, or indeed of the single-till concept which, in the airline community's opinion, is a most appropriate mechanism to deal with income and expenditure from an enterprise as large as the airport.

It had been noted by the aviation community that many other monopoly providers in Hong Kong — in fact some of these monopoly providers are not as potentially monopolistic as far as domestic Hong Kong is concerned as the airport — do have all sorts of profit controls imposed either through capped rates of return or only permitting price rises below the rate of inflation. It has been pointed out by the airlines, and I believe also by one speaker before me, that in the United Kingdom the British airport authorities did in fact, when they privatized, come up with a scheme where their airport charges could only increase at inflation-minus-x per annum, and I believe the Hong Kong Government has also done that for other industries, such as telecommunications.

More specifically, the concerns of the airline community are in four aspects. Point one is that although the International Civil Aviation Organization recommends consultation there is no apparent requirement in the Bill, as I have just mentioned, for any consultation prior to increases being imposed.

Point two: the Governor can only turn down a charges scheme submitted by the Director of Civil Aviation (DCA) on grounds of "violating international obligations", and not on any other ground such as reasonableness and competitiveness.

Point three: the aviation community believes that the scope of airport charges as defined in the Bill is too narrow. They would like to see all aspects of the airline operation at the airport including the provision of lounges, offices, commercial space, and so on, to be included in this definition so that we can really practise a single-till concept.

Fourthly, it has been pointed out by local airlines, and there are three local airlines in Hong Kong at the moment, that if the Government merely takes air service agreements as part of so-called international obligations, this ironically puts local airlines in a weaker position than foreign airlines because foreign airlines negotiate with the Hong Kong Government air service agreements, and therefore they can during the negotiation ask for restraints to put into the air service agreement regarding Chek Lap Kok charges, whereas local airlines negotiate air service agreements with other governments, of course, they can ask for the same thing at the other end.

The airline community appreciates the need to progress this legislation as quickly as possible, and at one stage it was urged upon me to put forward an amendment to take care of the worries of the airlines as just described. In fact, when the Government listed a list of changes in the new Bill, clauses 34(3), (5) and (6), it did say that the Government made changes in the Bill to take into account suggestions that charges of the Airport Authority be approved by the Governor in Council in order to safeguard against an attempt by the Airport Authority to levy high charges to maximize profit.

The airlines thought that it was a rather indirect and weak way of achieving the objective, and at one stage wanted me to put in an amendment to clause 34(3) so that, upon receiving their submission regarding airport charges, the DCA would need to notify in writing operators of aircraft using the airport, who would have the right upon a request to be supplied with a copy of the proposed charges scheme, and at the request of either the Airport Authority, the DCA or any operator of the aircraft using the airport, consultations in accordance with accepted international practice shall be held regarding the draft proposed charges scheme. But in the interests of progressing forward with this legislation as quickly as possible, I have made it clear that I would not be going ahead with this legislation on the understanding that we would look forward to the statements made by the Secretary for Economic Services regarding this Bill on to what extent the Government is willing to carry out consultation regarding charges.

I also mentioned the concept of single-till operation. I did notice that earlier on while we were discussing the Post Office Trading Fund, the Secretary for Economic Services said, in recommending the Trading Fund to Members, that "It would be able to expand its more profitable services to the benefit of customers while at the same time using the surpluses to improve productivity, enhance efficiency and customer services, and where necessary, support and improve those loss-making but essential services."

Mr President, at the airport there are services provided by the Government, mainly aeronautical, which is reflected in landing charges, parking charges, but there are many other activities as well which draws money from the users directly or indirectly. These are office and commercial rentals. In fact, at this moment at Kai Tak we are not practising a single-till concept. We are practising a three-till concept. On the one hand, the Government wants to raise charges to recover costs, and even pre-recover costs for Chek Lap Kok through landing charges. It also collects money in the way of franchise fees for many commercial activities and thirdly, on top of that, there is an airport tax which is levied on passengers, also users of the airport, and goes straight into the government coffers.

The latter two do not seem to help in any way what I would regard as an essential service in the way of aeronautical activities. This is very much like in Hong Kong where we have traffic policemen on the roads. We have traffic wardens for the sake of the whole community, trying to ensure a free flow of an accident-free traffic scheme on our roads. But we do not ask only drivers of motor cars or buses to pay for policemen and traffic wardens. I believe this is taken care of from many different sources of revenue, and quite rightly so.

So, Mr President, I would re-emphasize that the airline community and the International Air Transport Association has all along advocated the operation of a single-till concept in managing the airport. We hope this will be taken into account in due course by the Airport Authority's Board when setting its charges.

Mr President, we hope that the airport will look beyond just making a return and profit, and realize it is the community as a whole that benefits from having an airport. It is a monopoly as far as domestic Hong Kong is concerned. But however, there is competition in the region. There is Shenzhen, already operational; Macau, shortly to be operational; there is Zhuhai being built; Guangzhou is having a new airport; let alone potential airports in the region like Foshan and Huizhou.

We wish to maintain Hong Kong as a highly competitive regional air transport centre. We wish to see Hong Kong not just become an airport where airlines go to because their passengers happen to be here or their passengers want to come here, but we also hope to draw airlines from around the world who will bring cargo and passengers to Hong Kong which would not ordinarily have come here. In other words, try to make Hong Kong a hub, a hub in the Southeast Asian region for the whole region. In order to do that we must have competitive charges, otherwise these airlines will look to other potential hubs very near us, namely, Kaohsiung, Taipei, Manila, or even some new airports in the South China region.

I must say here that I do have some sympathy, although not in the amendment itself, with the aspiration and the logic behind some of the Honourable Albert CHAN's amendments regarding whether we can emphasize public interest when we talk about prudent commercial principles. Having looked at it carefully, I do agree public interest can be interpreted to mean anything to anybody who wishes and is extremely difficult to write down in law. Otherwise I might have thought of asking for exemption from my party and voting for his amendment.

But having said that, I do hope that the Secretary for Economic Services will make it quite clear how we intend to make the airport, which is in fact a domestic monopoly, something that will benefit the community as a whole, and let us have this airport not only be a landmark in the development of Hong Kong, but also pave the way for the further growth of tourism, so that we will be catering for more than 10 million visitors a year and become the top foreign exchange earner for Hong Kong.

MR STEVEN POON: Mr President, in October 1991 when the Administration reported to this Council that the Chinese Government and the United Kingdom Government had signed a Memorandum of Understanding concerning the construction of the new airport, we all had high hopes that the project would be implemented smoothly. This has turned out to be vastly over-optimistic. After almost four years of disappointment, argument and sometimes confrontation, I am pleased to see the Airport Authority Bill going through its Second Reading in this Council. I hope this signifies the end of an unpleasant period and the beginning of a renewed co-operation between the two Governments.

The one thing that we all learnt in the process is that, no matter how many words of co-operation have been specified or put down in a document, it takes the will of those in power to implement them. The lack of will of the parties to co-operate has benefitted no-one, least of all the people of Hong Kong.

Whereas the Joint Declaration made promises of co-operation, the Memorandum of Understanding is supposed to turn some of them into reality. It has taken the parties too long to reach agreement on how to do so. The result is that the opening of the New Airport and the Airport Railway is delayed to 1998 instead of the original schedule of 1997. The delay has caused incalculable damages to the economy of Hong Kong and I believe it has also adversely affected the economic development in the South China region.

Mr President, putting history behind us, we must look forward to the future with optimism. Thus the Airport Authority Bill is most welcome. The Bill is one of the very few Bills on which the Administration has taken the trouble to consult the public through publication of a White Bill. I can see that both the Chinese Government and the United Kingdom Government have taken note of the numerous opinions and suggestions made by the various sectors of the community. For me, I am particularly pleased that a significant number of the Liberal Party suggestions have been adopted. Notably our proposals for a clear definition of the Authority's responsibility; separation of the role between the Chairman and the Chief Executive Officer; constitution of a Board; formation of committees; establishment of an Audit Committee; and any submission of a business plan have been accepted and incorporated into the Bill.

The Bill, as it now stands will, I believe, produce a corporation which will meet the modern needs of the public. This is in contrast to the Mass Transit Railway Corporation Ordinance, which was written some 20 years ago. What I think is also of significance is the fact that the Administration and the Chinese Government were willing to listen to reasonable suggestions made by the Legislative Council Bills Committee. In the Bills Committee meetings, the Liberal Party suggested certain amendments in essentially two aspects, that is, enhancing the management of the Authority and achieving better monitoring by the public. We have suggested that members' declaration of interest should be made available to the public; committees should be normally chaired by a member of the Authority; the Audit Committee should be chaired by a member who is not a public officer; the quorum of a Board meeting should include at

least two members who are not public officers; and the auditor of the Authority should be a person or body not being part of the Authority's establishment. Most of these suggestions have been accepted, and I understand the Administration will later move amendments accordingly.

Two of our suggestions were not fully accepted by the Administration. These are the tabling of the Audit Committee report and the five-year business plan at the Legislative Council. The objective of these suggested amendments is to make the Airport Authority more transparent, thus more accountable to the public. I understand the Administration intends to deal with these questions through policy statements. Perhaps the Secretary for Economic Services could address them in his speech.

I now turn to amendments proposed by the Honourable Albert CHAN. One amendment requires that one third of the membership of the Authority be nominated by the Legislative Council. It is a matter of principle. I am sorry, Albert. I and my Liberal Party cannot agree to this amendment. Since the Legislative Council is a political body, the proposed Legislative Council nomination of membership would inevitably be politicized. If a member is nominated to the Authority as a result of the political muscle of his party, his loyalty to the Authority becomes questionable. This will make the management of the Authority extremely difficult. We must bear in mind that the Airport Authority is to be run with prudent commercial principles, and it is required to secure and to service large sums of finance from the commercial market. It just cannot operate effectively if it is turned into a political body or if it is politicized.

The Liberal Party's will is that the membership of a statutory body should be decided on the merits of the member's contribution to that particular organization. I am sure the Governor will give due considerations to the talents of the individual Members of the Legislative Council when he appoints members to the Authority.

Another amendment proposed by the Democratic Party is to add wordings to the Bill to the effect that the Authority should take into account the long-term interests of Hong Kong. The Administration explained that the whole Bill contains numerous clauses which require the Authority to act in the interests of Hong Kong. We, the Liberal Party, subscribe to this view. In fact, stating in the Bill that the Authority is to take account of the long-term interests of Hong Kong does not have much effect in itself as the statement is subject to various interpretations. We are satisfied that the Bill contains material clauses to require the Authority to safeguard the interests of Hong Kong, both long-term and short-term.

The third amendment put forward by the Honourable Albert CHAN is for the Authority to open its Board meetings to the public, except where there are sensitive financial and personnel matters to discuss. The Airport Authority, having the responsibility to operate one of the busiest airports in the world with prudent commercial principles, will inevitably have to deal with sensitive commercial matters and personnel matters in practically all Board meetings. This will make the open meeting proposal inoperable. The Liberal Party does not believe that the proposed amendment is practical or meaningful.

The Democratic Party also proposes to amend clause 32 so that the Authority's annual statement of accounts is audited by the Director of Audit instead of by an external auditor. This amendment is perhaps the result of a misunderstanding of the nature of the statement of accounts and the role of the external auditor. Generally speaking, the external auditor's job is to ensure that the accounts comply with accounting standards; that they give a true and fair view of the state of affairs of the company at the end of the financial year; and that they have been properly prepared in accordance with the Ordinance. To ask the Director of Audit to conduct these tasks in place of the external auditor does not enhance public monitoring of the Authority at all. To debate whether the Director of Audit should be given the responsibility of conducting value-for-money audit is one thing. To ask him to audit a statement of accounts, which could be done perfectly well by an external auditor, is another matter altogether. This amendment does not serve, in my view, any useful purpose and is unnecessary.

The Liberal Party, therefore, I am afraid, does not support any of the amendments proposed by the Democratic Party.

Mr President, I have enjoyed enormously working with the Government and my colleagues in this Council in the airport project including, of course, the Honourable Albert CHAN whom I respect enormously. The airport is the largest project Hong Kong has ever embarked upon. The formation of the Airport Authority signifies not the end but a new beginning of the Legislative Council's responsibility in ensuring justifiable and proper use of public funds in this massive project. The task now rests with those of us who are able to return to this Council in October. I wish them success in taking on these important tasks.

Thank you, Mr President.

SECRETARY FOR ECONOMIC SERVICES: Mr President, I would like to start by thanking all Members of the Bills Committee, in particular the Chairman, the Honourable Peter WONG, and the Deputy Chairman, Dr the Honourable Samuel WONG, for the expeditious yet extremely thorough examination of the Bill during these two very busy months. Without the exceptional efforts on the part of all concerned, we would not be able to resume the Second Reading debate on the Bill today, thereby ensuring that this important piece of legislation can be enacted before the end of the current Session.

Between the 1 June and 4 July 1995 the Bills Committee met eight times. Members sought clarification on many issues. The Administration provided five notes to clarify the issues raised by Members. We also considered Members' views very carefully with a view to incorporating as many of the suggestions as possible. As the Honourable Peter WONG has said, at Committee stage I shall be moving a number of amendments as agreed with the Bills Committee to cover the following issues.

Proposed amendments to the Bill

Delegation

To address concerns expressed about the Authority's power to delegate its functions to outside bodies, I propose to amend clause 9(1) of the Bill so that, subject to clause 9(7), the Authority may, except with the prior approval of the Financial Secretary, delegate its function only to its members, employees, committees and subsidiaries. This amendment will tighten controls over the Authority's power of delegation without inhibiting delegation to outside bodies if circumstances so justify.

Committees

In view of the important role which committees of the Board will play in the effective functioning of the Authority, Members suggested that the chairmen of all committees established by the Authority should be members of the Airport Authority. They also considered that, in view of the particular importance of its functions, the Audit Committee should have a minimum number of members.

In line with Members' views, I shall be moving amendments to clause 10(2) and clause 31(2)(a) of the Bill respectively to provide that the chairman of a committee shall be a member of the Authority, and that the Audit Committee shall have a minimum of three members. The latter is in line with the recommendation of the United Kingdom Cadbury Report on Corporate Governance, and I thank Dr the Honourable Samuel WONG, the Honourable Eric LI and the Honourable Roger LUK for drawing the concepts enshrined in this report once again to our attention.

Quorum

Members have suggested that decisions taken by the Board should reflect the views of both public and non-public officers. I find it difficult to imagine a meeting where decisions would be taken only by public officers. Nevertheless, given the importance of ensuring, at all times, a proper balance of advice from Board members, I shall be moving an amendment to clause 11(8) to provide that the quorum shall, in addition to other requirements, include at least two members who are not the Chairman, the Chief Executive Officer or a public officer.

Declaration of interest

To enhance confidence in the integrity of the operation of the Airport Authority, Members suggested that it should keep a register of interest declared by its members under clause 13(1) of the Bill and open it for public inspection. The Provisional Airport Authority already adopts this practice administratively, and in deference to Members' requests that the practice be made a legal requirement, I shall be moving an amendment to clause 13.

Accounting

On the advice of accounting experts in the Bills Committee, I shall also be amending clause 32(2) to reflect the fact that the profit or loss account and cash flow statement, which form part of the statement of accounts, cover the whole financial year rather than only the position as at the end of the financial year.

Auditor

Members were concerned that the Bill should safeguard the independence of the external auditor of the Airport Authority. To put the matter beyond doubt, I shall be moving an amendment to clause 32(4) to provide that the auditor shall not be a member or an employee of the Airport Authority or a member of its Audit Committee. The amendment will also restrict the appointment by the Airport Authority of a partnership or company as auditor if one of their partners or directors is a member or an employee of the Authority or a member of its Audit Committee.

Business plan

The Bill provides that the Authority shall send a five-year financial plan to the Financial Secretary. I shall be moving an amendment to clause 33 to require the Authority also to send to the Financial Secretary a business plan for the coming five years, instead of only the next financial year, as currently specified.

In addition, I shall also be moving a number of purely technical amendments which cover drafting, textual and other changes.

Committee stage amendments proposed by the Honourable Albert CHAN

The Honourable Albert CHAN has given notice that he intends to move four Committee stage amendments. These are not endorsed by the Bills Committee as a whole and I have to say that I have problems with them, and that I am afraid I shall be asking Members not to support them.

The Honourable Albert CHAN

The Honourable Albert CHAN commented, and I think other Members did also, if I have misquoted them I apologize, on the fear of the monopolistic nature of the Airport Authority. Let me just assure Members that when we look at services provided at our new airport, we shall be adopting as open, as pro-competition and as pro-choice a range of operations as we can encourage so that members of the public and travelling citizens would have a wide range of services to choose from. Airlines also would benefit from the fact that they would not have to work with one company providing the different essential services such as maintenance, catering, and so on.

Nomination of Airport Authority Members

On the nomination of Airport Authority members, Dr the Honourable Samuel WONG and the Honourable Steven POON have already commented on why the proposed amendment to require a proportion of the membership of the Authority be nominated by the Legislative Council cannot be supported. I agree with them that it would be wrong to fetter the power of the Governor to appoint as members of the Airport Authority those he considers best qualified for the job. I hope the Honourable Albert CHAN, on further reading of clause 3(3)(d) of the Bill will see that the Administration's policy intentions, that there should be as wide a range of experience as possible for members of the Authority, are already enshrined in the Bill.

Long-term interests of Hong Kong

As regards the so-called long-term interests of Hong Kong, I find it difficult to support the suggestion that the Bill should include a provision to the effect that the Authority shall take into account the long-term interests of Hong Kong in addition to conducting its business in accordance with prudent commercial principles. I have no doubt that in conducting their business, members of the Authority will take into account the long-term interests of Hong Kong. I do not see the need to specify this in the law. The Bill already contains a large number of provisions aimed at safeguarding the public interest which would include the overall interests of Hong Kong long- or short-term. I am glad to note that the Honourable Steven POON and other Members of the Liberal Party subscribe to this view.

Open meetings of the Board of the Airport Authority

The Honourable Albert CHAN has also proposed an amendment to require that, with certain exceptions, meetings of the Board of the Airport Authority should be open to the public. First, may I say that we fully understand the wish for transparency and accountability. However, this arrangement is not in line with the practice of the Mass Transit Railway Corporation and the Kowloon-Canton Railway Corporation, both of which, like the Airport Authority, conduct their business in accordance with prudent commercial principles. Nor is it in line with the practice of companies in the private sector which the Airport Authority would expect to do business with.

A further practical problem is that many of the issues to be considered by the Board are likely to fall into the category of information not for public disclosure because they may touch on matters which are confidential to members and/or commercially sensitive. In sum, I consider the proposed amendment to be neither appropriate nor practical.

Director of Audit

I know that the role of the Director of Audit in relation to the Airport Authority has been widely debated. In moving the Second Reading of this Bill, I have already pointed out that section 15 of the Audit Ordinance provides that "Notwithstanding that he is not empowered by any Ordinance to audit, examine or inquire into the accounts of a person, body corporate or other body, the Director may audit, examine or inquire into the records and accounts of any person, body corporate or other body if he is authorized in writing to do so by the Governor in the public interest". Clause 32(7) of the Airport Authority Bill makes it clear that this section of the Ordinance applies to the Airport Authority.

As the Airport Authority will be conducting its business in accordance with prudent commercial principles like the Mass Transit Railway Corporation and the Kowloon-Canton Railway Corporation, its auditing arrangements should generally be on a par with the two railway corporations and other commercial organizations. Having the Director of Audit audit the annual accounts of a body to be run along prudent commercial lines, in place of a commercial auditor, would be unprecedented, and it is unclear how such a departure from normal practice would be received in the market place, for example, by the Authority's lenders and business partners.

The main point, Mr President, is that the Administration does not accept that auditing of the Authority's annual accounts by the Director of Audit would provide better protection of the public interest than the combination, and I emphasize the combination, of the powers provided in the current Bill and the Audit Ordinance.

Clarification of issues of interest to Members

I will now explain the Administration's position on a number of issues of interest to Members.

Role of the public officer

Members have sought clarification as to how public officers on the Board can in practice act in the best interests of the Authority on the one hand while still safeguarding the public interest on the other.

All members of the Airport Authority, including public officers, have an obligation to act in the best interests of the Authority. This does not mean that by so doing they will be acting against the public interest. The objectives of the Authority set out in clauses 5(1) and 6 of the Bill take account of the interests of the community. In the final analysis, even clause 6(1), which provides that the Authority shall conduct its business in accordance with prudent commercial principles will work to the benefit of the community of Hong Kong as it will minimize the need for more equity injection into the Airport Authority.

Under clause 14 of the Bill, a member of the Authority who is a public officer has an added role. He has to draw the attention of the Board to any conflict between a matter before it and the public interest as perceived by him. The purpose is to ensure that the Board would be fully aware of the public interest affecting a matter being considered before it takes the decision. It is, of course, possible that different public officers may perceive the public interest differently in a particular issue before the Board. This is why, as a final safeguard, clause 20 of the Bill empowers the Governor in Council to issue a direction to the Authority in the public interest regarding the performance of its functions.

Nomination of professional bodies

Some Members have suggested that the relevant professional bodies should be able to nominate a proportion of the members of the Airport Authority for appointment by the Governor. As always, we are open to suggestions on membership, but a proposal to require the Governor to reserve a proportion of the membership for professional bodies goes against the principle that the Governor must ultimately have an unfettered discretion in appointing whom he considers most suitable to be members of the Authority.

Investment, subsidiaries and associated companies

In his statement, the Honourable Peter WONG has raised the question of a proper control mechanism for investment by the Airport Authority and the need for the Government to maintain an overall view of the activities of the Airport Authority, including the activities of its associated companies as well as subsidiary companies. May I assure Mr WONG that the Government shares his concern that the funds controlled by the Authority must be handled with the highest level of care and diligence, and by handling I of course include investment.

Under clause 25 of the Bill, funds of the Authority available for investment may only be invested in such classes or description of investment as the Financial Secretary may in writing specify. In practice the Board, including public officers, will need to scrutinize every investment strategy proposed by management. Thereafter any investment which the Authority wishes to make would be carefully scrutinized by the Government before approval would be given by the Financial Secretary.

Whilst a subsidiary is defined by reference to the Companies Ordinance, there is no legal definition for an associated company although the term generally refers to a company in which one has a substantial, but not controlling, interest. I have no doubt that the Board of the Airport Authority, including all the public officers on it, will examine very carefully any justification for the acquisition of a subsidiary or investment in an associated company before authorizing them.

Audit Committee

Members have, and I believe quite rightly, attached great importance to the role of the Audit Committee. Some have suggested that the Committee should table a report in Legislative Council with the view of making the workings of the Airport Authority more transparent and more accountable to the public. Whilst sympathetic to the spirit of this suggestion, in practice it would be most exceptional for the deliberations of an audit committee of a body run along commercial lines to be subject to this type of public scrutiny. It would, for example, make the Airport Authority subject to a quite different regime of corporate governance from that applicable to our two railway corporations and other commercial organizations.

The Audit Committee will be a statutory committee appointed by the Airport Authority to perform in addition to its statutory functions, such dedicated functions relating to the financial affairs of the Authority or to assist the Board in overseeing matters of financial control, both internal and external, of the Authority. Clauses 31(2) and (3) of the Bill set out its relationship with the Authority, in effect the Board, to whom the Committee is broadly

answerable. As a Committee appointed by the Board, it will report to the Board, which will then consider how best to respond to its advice. In short, we feel that generally speaking, the functioning of the Audit Committee should follow best corporate as it evolves, and that it should not be required to table a report in the Legislative Council.

It is also not considered appropriate for reports on the internal audit and value for money studies undertaken under the direction of the Audit Committee to be made public as these could well contain sensitive information, commercial or otherwise, the disclosure of which might jeopardize the effectiveness of the operation of the Committee and the Authority. However, given the interest of Members in the work of the Audit Committee, I shall ask the Airport Authority once it comes into being to include in its Annual Report a section describing generally the work of the Audit Committee in the relevant year.

Mixed views have been expressed as to whether members of the Audit Committee should all be members of the Authority. Our view is that what is important is that the Audit Committee should be independent of the management of the Authority. Therefore under clause 31(2)(b) of the Bill neither the Chief Executive Officer nor any other employee of the Authority may be appointed as a member of the Audit Committee. The other consideration is to find the best person for the job. It should, in our view, be left to the Authority to decide on the composition of the Audit Committee and whether outside members should be appointed onto it.

Business plan

Members would like the business plans of the Airport Authority to be tabled in this Council. We have some difficulty with this suggestion. As the Authority moves into the operational phase, its business plan will contain some sensitive information. The public disclosure of sensitive information may handicap the Authority's dealings or negotiations with its commercial counterparts. Nevertheless, in recognition of Members' interest in the ongoing workings of the Authority, I shall ask the Provisional Airport Authority and in future the Airport Authority to brief this Council on major expansion plans, commercial ventures and business outlooks.

Airport charges

The Honourable Howard YOUNG has commented on the strongly-held concerns on behalf of airlines about the future charging policy of the Authority and related consultation arrangements.

Mr President, as Mr YOUNG knows, I am alive to the background to the concerns expressed. The Administration will, of course, ensure that airport charges of the Authority will not be in breach of international obligations applicable to Hong Kong. We will ensure that the Airport Authority consult airlines before setting airport charges in accordance with our international obligations.

As regards airlines' concerns regarding the future level of charges at the new airport, I would like to point out that whilst the Government will be seeking a reasonable return on its investment, clause 5(1)(a) of the Bill provides inter alia, that the Authority shall operate the new airport with the objective of maintaining Hong Kong's status as a centre of international and regional aviation. I have no doubt, therefore, that in setting future airport charges, the Authority will have due regard to maintaining the competitiveness of our new airport.

Now, as regards single-till or multiple-till, I would suggest that this best be left to discussions between the Administration, the Authority and the airlines because many different views are held by different parties and there is yet no agreed position.

Conclusion

To conclude, Mr President, I would like to thank Members of the Bills Committee, and particularly the Chairman, the Honourable Peter WONG, the Deputy Chairman, Dr the Honourable Samuel WONG, the Honourable Ronald ARCULLI, the Honourable Albert CHAN, the Honourable LEE Wing-tat, the Honourable Eric LI, the Honourable Jimmy McGREGOR and the Honourable Steven POON and the Honourable Howard YOUNG for their invaluable input in helping me crystallize the package of amendments which I will be moving later. I commend the Bill, together with these amendments which have the wide support of the Bills Committee, to this Council. The enactment of the Airport Authority Ordinance will mark another major milestone for the airport project and will enable the Authority to maintain momentum on its work. 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).

PUBLIC ENTERTAINMENT AND AMUSEMENT (MISCELLANEOUS PROVISIONS) BILL 1995

Resumption of debate on Second Reading which was moved on 3 May 1995

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).

CONTROL OF OBSCENE AND INDECENT ARTICLES (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 22 February 1995

Question on Second Reading proposed.

MRS SELINA CHOW (in Cantonese): The community felt very strongly last year about pornographic comic books and publications because undesirable publications gravely harm teenagers who have yet to come to mental maturity. The various sectors were not satisfied that the Government had not done more in this respect. Under pressure from the community generally and from this Council, the Control of Obscene and Indecent Articles (Amendment) Bill 1995 is now before us eventually and hopefully it will be passed today to help the Government tackle this problem. The Bill amends the Control of Obscene and Indecent Articles Ordinance in three areas. Firstly, it seeks to impose more restrictions on publishing indecent articles; secondly, it seeks to empower police officers to seize and detain such articles in a public place; and thirdly, it seeks to increase the level of penalties on offences relating to unlawful publication of indecent articles and penalties on repeated offences.

A Bills Committee of which I was elected Chairman was set up by Legislative Council Members. The Bills Committee held seven meetings with the Administration, paid a visit to the Repository of the Obscene Articles Tribunal (OAT), received 19 written submissions from 13 organizations and met eight deputations.

The Bills Committee deliberated at great length the proposals of the Bill, the enforcement power of the Television and Entertainment Licensing Authority (TELA), the role of OAT and the adequacy of the present classification system. It identified several issues of concern and discussed them in detail with the Administration. In this connection, the Bills Committee feels grateful that the Administration responded positively to most of its suggestions.

Firstly, the Bills Committee observes that if the Administration's proposal to seal indecent articles with opaque wrappers were agreed, up to about 65% of publications on sale could be sealed in completely opaque wrappers in black, dark blue or gray. This may infringe on the adult consumers' right to information and give the publications an ugly appearance, and therefore may affect the business of the trade. In the light of such comments, the Administration has come up with a revised proposal which is: to allow indecent articles containing no indecent material on the covers to be sealed in transparent wrappers on the one hand, and indecent articles containing indecent material on the covers to be sealed in opaque wrappers in any and all colours of the publisher's choice on the other hand. The Administration will move amendments to the Bill to such effect.

One point worth special mentioning is that newspaper vendors have made representation to the Bills Committee that they are worried that they may inadvertently violate the law because they do no know what publications are deemed obscene or indecent. Newspaper vendors certainly play an important role in the sales process of publications, therefore they cannot completely avoid this social responsibility. However, before the Attorney General decides on a prosecution, the actual circumstances involving the newspaper vendor concerned should be adequately considered. If the publications have not been sealed in wrappers, there is a possibility that the vendors do not know which publication might have a problem and thus violate the law without knowing it. The authorities concerned might have to specially consider this scenario.

On the other hand, the Bills Committee suggested to the Administration that it would definitely facilitate the work of TELA if its inspectors were empowered to seize obscene and indecent articles in a public place. Also, in order to prevent unscrupulous publishers asking surrogates to deputize them to publish obscene or indecent articles in violation of the Ordinance, the Bills Committee suggested that there should be a fine and an imprisonment sentence on the surrogates. The Administration will also move an amendment to address this issue.

The Bills Committee feels strongly that OAT must apply a consistent standard to classify articles, and must make such standard known to the general public and the interested parties, especially the publishers. The Bills Committee did consider in great detail whether or not to work out clear definitions for "obscene" and "indecent" but had to accept finally that this was extremely difficult. It is because on the one hand, examples cannot be exhaustive, and on the other, social norm is an ever-changing thing and that legal provisions cannot encompass all situations. Eventually, the Bill Committee accepted the proposal of the Administration to ask OAT to consider compiling an annual report on significant cases and important rulings and decisions which it has made during the year. The Administration also agreed to spell out in the legislation that for the purpose of interim classification, OAT may give guidance to the applicant in relation to the article submitted and shall identify the part of the article which causes the obscenity or indecency, this is very important; and that for the purpose of full hearing, there shall be at least four adjudicators. The Administrative will move relevant amendments to the Bill. OAT has also confirmed to Members that its has been its practice to appoint different adjudicators for interim classification and at full the hearing in respect of the same article. In other words, they do not have a duplication of adjudicators for these two different steps.

Mr President, as a result of the recent "New Man" incident, there has been a suggestion that we specify in the principal ordinance that OAT, when determining classification of articles, has to consider art, literature and science factors. In view that this suggestion has no direct relevance to the Bill, and that this important issue needs ample time to examine and discuss, the Bills Committee decided not to consider this amendment. However we hope that the Administration will deliberate the issue in detail as soon as possible.

In the process of our scrutinizing the Bill, certain community groups and publishers suggested to amend the so-called three-class system: Class I are publications for all ages; Class II are not salable to young people under 18 or children; and Class III are of course obscene articles prohibited from publication. These community groups and publishers feel that we have to consider whether the so-called three-class system is suitable, or whether some amendments should be made because some publications possibly unsuitable for young children can be read by teenagers. Therefore there may perhaps be a need to have an additional class which will include an advice to parents and teenage readers. I attempted to propose to the Bills Committee an elementary form of a Member's Bill for consideration and discussion. However, due to the limited time available and that any amendment may not only have an effect on comic books, but also on the press, after discussion by the Bills Committee, I have decided not to introduce the Member's Bill for the time being so as to enable more extensive consultations and discussions on the issue. I urge the Administration to deliberate this important subject, that is, to limit the restriction to comic books only, because there may be such need.

Finally, I am very pleased that the Administration has accepted a suggestion put to me by members of the public to open the process of OAT recruitment by appointing as adjudicators members of the public who so volunteer and who are interested in serving the community in this area. I believe that this practice will enhance the credibility of OAT.

Mr President, the Administration now has the statutory powers, and have no more excuses for not cracking down hard on problematic publications, especially the comic books. It is hoped that we can see conspicuous and effective actions by the Administration to contain this problem that has been plaguing parents for quite some time.

MR TIK CHI-YUEN (in Cantonese): Mr President, the Control of Obscene and Indecent Articles (Amendment) Bill 1995 was gazetted in February 1995. The objectives of the Administration in proposing the amendments are to control the display and publication of indecent articles by way of sealing the same with wrappers and to strengthen the enforcement capacity of the police, so as to eliminate any chances for our youngsters to have access to undesirable publications. However, as the Democratic Party observed that the present publications classification system and the adjudication system are not satisfactory, we think that the proposals of the Administration are not effective enough in keeping youngsters away from undesirable articles.

The Democratic Party also raised several points, hoping that the Administration could make amendments to the Bill. These points include: first, we propose a three-class classification, that is, Class I are suitable for viewing by people of all ages; Class II unsuitable for children; and Class III, being indecent articles, salable only to people over 18; and Class IV are obscene ones, display and publication prohibited. Our second proposal seeks to require Class III articles, apart from wrappers and warnings and information on the publisher, be only sold at designated shops, and to require Class II articles that are not suitable for children, though can be sold to people under 19, carry warnings on their front covers. The third proposal, on law enforcement, seeks to empower officers of Television and Entertainment Licensing Authority (TELA) to enforce the relevant laws. The fourth seeks to improve the composition and adjudication procedure of the Obscene Articles Tribunal (OAT).

Following discussions by the Bills Committee, the Administration is prepared to improve the composition and adjudication procedure of OAT and also to strengthen the enforcement power of TELA officers. We welcome these improvements. However, we are disappointed that the Administration has maintained a strong stand in not accepting the proposed three-class classification, the reasons it held being that such classification could give rise to two problems: the first was pre-censoring; and the second was the possibility of lowered standards. We do not readily accept these reasons. Regarding pre-

censoring, we think that it is not needed if there are relatively clear criteria and if OAT records can be made open, both can enable the formulation of relatively clear indicators for the people in the trade as well member of the public. We also think that if pre-censoring is required, it will be required both with the two-class or three-class systems; we see no reason why only a three-class classification requires pre-censoring. As to lowering of standards, we think that the argument is dubious because we trust OAT to set the standards for Classes I, II and III according to social norm and expectation, therefore ensuring that the standards will not be lowered as a result of a different classification.

There are several reasons for us to propose a three-class classification. The existing three-class classification cannot cater to the need of the different age groups. There are many unreasonable areas in the two-class classification now proposed by the Administration as it has not considered the big difference in the reading interest and the ability to receive the information from publications of youngsters between 15 and 16 and of children under 10. A publication containing description or depiction of violence and sex, no matter how mild, is not suitable for children. However, the same contents may be acceptable to youngsters of 15 or 16 who are more mature mentally, and I am sure they have the ability to make a judgement for themselves. Therefore to combine these two groups of readers may deprive the right of these youngsters to choose reading materials, it also may ignore current market conditions. On the other hand, we think that a three-class classification, with an additional class that is not suitable for children, both parents and teachers can identify certain publications that could be read by people under 18 with adult counselling. Under the present two-class classification system, parents and teachers may think that all Class I articles are suitable for people under 18. Here exists danger in two areas: firstly, people of different age groups may have different mental maturity, and the attraction of different publications to them is also different; secondly, some publications may be in the gray area, with the two-class system, some reading materials that may be classified as Class I, are in fact suitable to people under 18 only with adult counselling. The three-class system for publications is more close to the three-category system for motion pictures. The community will find it easier to understand this issue and easier to differentiate the different classes under the system.

In view of the above reasons, the Democratic Party is of the view that the Administration should pursue the three-class classification system. During the period the Bill was scrutinized, the Administration promised that the relevant Panel of the Legislative Council would be regularly briefed on the progress in the implementation of the relevant ordinances in the future, for example can youngsters be effectively barred from access to undesirable articles after the new legislation becomes effective. The Administration also promised to provide statistics on prosecutions as well as to examine the three-class classification proposal with an open mind. I hope that the Administration will re-examine these issues in the next Legislative Session and put forward amendments for passage by the Legislative Council.

MISS CHRISTINE LOH: Thank you, Mr President. I was not a Member of the Bills Committee but I took an interest in this subject, along with the Arts Development Council of which I am Vice-Chairman, after the Tribunal ruled on a bronze sculpture titled "New Man".

I think it is fair to say that never has the Obscene Articles Tribunal received so much attention and interest from the public. That is no bad thing, since they are the exclusive defender of our public morals, so I think it is very good that at last we are focusing on the workings of this Tribunal.

I look forward to the speech to be delivered by the Secretary for Recreation and Culture in a minute or so because he has given us a number of undertakings which will not be reflected in Committee stage amendments. He has promised both myself and the Arts Development Council that these issues will be brought back to this Council not in the distant future but during the next Legislative Session, and I hope that he will give us an undertaking to do so.

These undertakings include, Mr President, first of all a review of section 10 of the Obscene and Indecent Articles Ordinance. The Branch has in fact originally suggested that the artistic, literary and scientific value of a matter or an article might be included in section 10(1) as general guidance to the panel during the adjudication process. However, I understand that the Judiciary has objected to the inclusion of this amendment at this time because it needs more time to reflect on whether that might affect the adjudication process. But the Administration has promised to come back to this Council for further discussion and debate during the next Session.

Also I applaud the Committee stage amendment to increase the number of adjudicators during the full hearing. What I would like to urge the Administration to do, during the Secretary's response, is to give us a little bit more information as to how the pool of adjudicators would be increased, particularly to include female members. One of the problems of the Tribunal as we understand it is that more than 75% of the adjudicators are men, and we thought it would be very useful to ensure that there is a good balance of both sexes.

One of the issues that the Arts Development Council would also very much like to see is that during the appeal full hearing process, that not only will there be a new panel of lay adjudicators but that there will also be a new magistrate. This is something that would obviously require further discussion with the Judiciary, and I hope that again this subject could also be brought back to this Council in the next Legislative Session.

Thank you.

SECRETARY FOR RECREATION AND CULTURE: Mr President, first, I wish to thank the Honourable Mrs Selina CHOW and Members of the Bills Committee for their hard work and valuable contributions when studying the Control of Obscene and Indecent Articles (Amendment) Bill 1995. I would also like to thank the many organizations and individuals, including the publication industry, for their interest and valuable comments on this Bill. Indeed, the Bills Committee has not also taken a broad interest in the overall operation of the Control of Obscene and Indecent Articles Ordinance (COIAO). I believe that the Bill, with all the Committee stage amendments, now represents the community's consensus on how obscene and indecent articles should best be regulated at the present time, taking into account the need to protect public morality, decency and propriety, and uphold freedom of expression and artistic creation currently enjoyed by Hong Kong.

There have been a large number of suggestions from the community on how obscene and indecent articles should be controlled. These range from restricting the sales outlets for indecent articles, defining the meaning of "obscenity" and "indecency" clearly in law, increasing the power of law enforcement agencies, to modifying the operation of the Obscene Articles Tribunal (OAT). In considering all these suggestions, we always adhere to the principle of maintaining freedom of expression through a system that imposes the minimum restrictions necessary to protect public morality, decency and propriety. This means that measures which would be too restrictive and would infringe on freedom of expression would not be pursued unless there are very strong public interests for so doing. I am grateful that the Bills Committee also shares this important principle.

I have now agreed with the Bills Committee to introduce the following changes to address the concerns expressed by the various parties.

First, to address the concern of the publication industry that the compulsory use of opaque wrappers on all indecent articles is too restrictive, and will deprive them of the chance to promote their articles through the use of attractive cover designs or packaging, we have agreed to only requiring those articles, the cover designs or packaging of which are also indecent, to be put in opaque wrappers. This requirement is needed to prevent offensive or indecent material from being publicly displayed. Indecent articles with cover designs or packaging which are not indecent shall use transparent wrappers. These wrappers serve a very important function which is to clearly identify the article as indecent thereby alerting both the vendors and the prospective buyers to their contents.

Second, we have agreed, after due consultation with the Judiciary, to make some changs to the OAT to make its operation more transparent and its classifications more readily understood by the community. I am pleased to say that the Judiciary has been highly responsive to community views and has agreed to these changes, which include:

- increasing the minimum number of adjudicators from two to four at full hearings to review, pursuant to section 15, the interim classification of articles, or to reconsider, pursuant to section 17, previously classified articles;

  However, for interim hearings and for full hearings to determine the obscenity and decency of articles referred to the OAT by other courts under section 29, the minimum number of adjudicators will remain at two, as at present.

- disqualifying an adjudicator who sat at an interim hearing from sitting again as a member of the Tribunal at a full hearing to review the classification of the same article; and

- lastly, requiring the OAT to identify at both interim and full hearings the offending part or parts of an article which give rise to an "obscene" or "indecent" classification. This piece of information will be filed together with the article concerned in the repository of the OAT for public information.

However, the OAT will not be able to publish this information in an annual report as proposed by the Honourable Mrs Selina CHOW at this moment. The OAT examined over 12 800 cases last year. To publish the rulings on all such cases would make the report extremely bulky and expensive to compile and print. In any case, interested parties can always go to the repository to obtain the information required. The need for the OAT to identify the part or parts of an article on which basis the article is classified as "obscene" or "indecent", will require additional resources before it can be put into effect. The implemention of this amendment, therefore, will have to be deferred to a later date when the necessary resources are made available to the OAT. All other amendments, however, can be put into effect when the Bill is enacted and a date set for its implementation.

Finally, we have agreed to a number of amendments proposed by the Honourable Eric LI to strengthen the enforcement of this Bill. Firstly, we will clarify the meaning of "publisher" by adding specifically persons who control or manage the printing, manufacturing or reproduction of an article. A new offence will be created to penalize any person who knowingly or wilfully allows his name to be printed on an indecent article as the publisher of the article, when in fact he is not. The maximum penalty for this offence will be a fine of $50,000 and imprisonment for six months. These two amendments will reduce

the chances of surrogates being employed to circumvent the new restrictions imposed on publishers of indecent articles.

Furthermore, we have agreed to give inspectors of the Television and Entertainment Licensing Authority (TELA) as defined in the Bill the power to seize indecent articles in public places. We have all along been very cautious of any proposals to turn TELA into a fully fledged law enforcement agency similar to the police with the power of arrest. Being civilian staff, TELA inspectors are not trained for investigative and conventional law enforcement duties. Such duties remain best to be discharged, as at present, by the police and the Customs and Excise Department. However, to augment and enhance the overall effectiveness of enforcement, the additional powers entrusted to TELA inspectors should greatly facilitate the control and regulation of indecent articles. Notwithstanding this amendment, the Royal Hong Kong Police Force and the Customs and Excise Department will continue to vigilantly enforce this Ordinance as at present.

The control of the publication of obscene and indecent articles is indeed a complex and controversial subject, not least because public standard of morality, decency and propriety changes with social attitudes and time. I understand that there are two issues which the Bills Committee will want to pursue further. The Honourable Mrs Selina CHOW would wish to change the current two-tier classification system for published articles into a three-tier one by creating an additional advisory class to be labelled "not suitable for children under the age of 12". This proposal is also requested by the Members of the Democratic party. I fully understand the reasoning for making this proposal, but having considered the possible consequences that such a change could lead to a relaxation of standards and the implications on newspaper publications, I have serious reservations. Without the benefit of a thorough examination and analysis of the pros and cons of such a change and as a responsible government, I cannot support coming to a hasty decision. A lot of consultation and deliberations are warranted. I shall be pleased to discuss this subject with Members of this Council in future.

The Arts Development Council (ADC) has, through its Vice-Chairman, the Honourable Miss Christine LOH, raised at a very late stage of the Bills Committee's deliberations a number of proposals concerning the operation of the OAT. First, the Council proposes that the OAT should take account of the artistic, literary or scientific value of an article when making a classification. We are sympathetic with this suggestion but we need time to discuss its full implications with the Judiciary. I, therefore, consider it inadvisable to rush this amendment through now and have agreed with the Bills Committee to bring the subject back for further discussion as soon as possible. The ADC also request that both sexes should be represented at full hearings of the OAT. In this regard, I am pleased to say that the Judiciary will be taking steps to substantially enlarge the panel of adjudicators. The Judiciary will also ensure that when enlarging the panel, more female adjudicators will be appointed to achieve a better balance of the sexes.

On the Administration's part, we shall be inviting applications as proposed by the Honourable Mrs Selina CHOW from members of the public to serve as adjudicators so that any member of the public who is interested and meets the requirements stipulated in the COIAO can apply to become an adjudicator of the OAT. This exercise will last for about a month starting in late July. The names of eligible applicants will be submitted to the Chief Justice for his consideration for appointment as adjudicators.

Other proposals by the ADC relating to increasing the number of adjudicators at full hearings of the OAT and requiring the OAT to state the reasons for its classifications, and so on, have been generally dealt with in the Committee stage amendment that I intend to make.

One last point I should like to make concerns the proposals by some groups for clear legal definition of "obscenity" and "indecency" and for the OAT to promulgate comprehensive guidelines on standards adopted. I am grateful to the Bills Committee for their understanding and agreement not to pursue these proposals. As we have explained at length to the Bills Committee, any attempt to define "obscenity" and "indecency" in law would be unworkable, contrary to the common law tradition and would lead to numerous unnecessary litigations. To require the OAT to promulgate comprehensive guidelines on standards, as explained by the Chief Magistrate in writing to the Bills Committee, will run contrary to the principle of judicial independence and the spirit of the "public standards test".

Mr President, let me assure Members that we will be closely monitoring the effectiveness of the amendment legislation after it is enacted, and as always will continue our enforcement, publicity and educational efforts to tackle the problem of indecent articles on all fronts.

Mr President, I now commend this Bill to Members subject to the amendments I intend to move at the Committee stage. Thank you.

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).

FILM CENSORSHIP (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 18 January 1995

Question on Second Reading proposed.

MR ALBERT CHAN: Mr President, the Film Censorship Ordinance requires all films for public exhibition to be submitted, prior to public release, to the Film Censorship Authority for censorship and classification. The spirit of the Ordinance is to protect public morals and young people from exposure to excess sex, violence and repulsive behaviour depicted in films. The Bill seeks to amend the Ordinance in several aspects including a more refined film classification system, a requirement that Category III film posters should be censored before public display, and other changes for the purpose of improving the control scheme.

A Bills Committee under the chairmanship of the Honourable James TO was set up to study the Bill on 27 January 1995. The Bills Committee has held four meetings with the Administration. The Bills Committee have also received five deputations and their written submissions. The Bills Committee has considered various issues and has made suggestions to the Administration regarding the following two issues.

The first issue is the Administration's proposal to split Category II films into two sub-categories on the basis of the ages of 12 and 18 respectively. The proposal is to address the concern of the community which is that the existing spectrum of Category II films is too wide. The Bills Committee agrees with the principle that the category should be subdivided but considers that the subdivision according to age will cause confusions to parents, viewers as well as the film industry because the maturity of prospective viewers will depend very much on their background and exposure. The Bills Committee therefore suggests the Administration to split the category on the basis of children and young persons. The Administration is agreeable to this suggestion and will move amendment at the Committee stage.

The second issue is about membership of the Board of Review. The majority view of the Bills Committee is that members of the Board of Review should be able to represent the views and interests of the community and be able to command respect and in this relation, the number of official members should be reduced from four to one to include the Secretary for Recreation and Culture only. The other official members from the Education Department, the Home Affairs Department and the Social Welfare Department should be replaced by experts in the respective fields in the private sector. These officers can still attend the meeting to give advice. The Administration is agreeable to this view of the Bills Committee and will move an amendment at the Committee Stage. The Administration will also move amendments to revert the number of Board members to the existing number and to expand the powers of the Board to cover appeals relating to advertising materials and the packaging of video-tape or laser discs.

During the course of scrutiny of the Bill, the Administration has shown that it is receptive to new ideas and is ready to make improvements on its proposals where necessary. I wish to make use of this opportunity to thank the Administration for its co-operation and urge the Administration to continue with the attitude.

With the above remarks, Mr President, I commend to Members this Bill and the amendments to be proposed by the Secretary for Recreation and Culture at the Committee stage.

SECRETARY FOR RECREATION AND CULTURE: Mr President, I would first like to thank the Honourable James TO and Members of the Bills Committee for their diligent study of and their contributions to refining the Film Censorship (Amendment) Bill 1995. I am pleased that the main objectives of the Bill, namely, to impose compulsory censorship on the advertising materials of Category III films and to refine the existing Category II by dividing it into two sub-categories, have obtained the full support of the Bills Committee and the film industry.

However, in the course of studying the Bill, two issues have emerged. These concern the wording used in the notices for the two proposed sub-categories under Category II and the membership of the Film Censorship Board of Review. After careful consideration and wide consultation, we have agreed to make certain amendments at the Committee stage to accommodate the views of Members of the Bills Committee and of the film industry.

When the Bill was introduced into this Council in January this year, we proposed Category II films to carry a notice to specify that they were either "not suitable for children below 12 (parental guidance recommended)" or "not suitable for persons below 18". As with the existing Category II, these two new sub-categories are advisory in nature. The aim in dividing the existing Category II into two sub-categories is to let movie-goers, in particular parents, have more information so that they can decide whether the film concerned is suitable for viewing by the their children.

The industry, however, is concerned about the original proposed wording of these two notices. Its worry is that parents may take the age advice as a compulsory warning rather than as general advice. The industry has suggested using a more general wording without any reference to age.

We have examined the industry's concern and suggestion carefully with the Bills Committee. After balancing the community's needs to have more information about Category II films against the industry's deep concern, we have agreed to revise the notices to read "not suitable for children" and "not suitable for young persons and children".

We believe that the two revised notices now represent a reasonable compromise. The new approach has the advantage of being flexible and could provide parents with adequate advice. At the same time, it will not impose undue restrictions on the film industry.

Let me now turn to the second amendment. At present, the Film Censorship Ordinance provides that the Board of Review shall consist of the Secretary for Recreation and Culture as the ex officio member, six non-official members, and three official members, namely, the Secretary for Home Affairs, the Director of Social Welfare and the Director of Education. One of the six non-official members shall be appointed by the Governor as the chairman.

The Bills proposes to increases the number of non-official members to eight with a view to bringing in a wider range of community views into the Board. The Bills Committee, however, considers that this could be achieved by replacing the three official members with non-officials without the need to increase the size of the Board.

Having carefully considered the Bills Committee's view and having consulted the Secretary for Home Affairs, the Director of Education and the Director of Social Welfare, we have now agreed not to increase the size of the Board as originally proposed but just to replace the three existing official members with non-officials. The Secretary for Recreation and Culture will, however, remain on the Board as the ex officio member to advise on matters of policy.

Mr President, with these remarks, I commend the Bill to Members subject to the amendments I intend to propose at the Committee stage. Thank you.

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).

INSURANCE COMPANIES (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 15 February 1995

Question on Second Reading proposed.

MR PETER WONG: Mr President, the Insurance Companies (Amendment) Bill 1995 was introduced to the Legislative Council on 15 February 1995. The object of the Bill is to make various amendments to the principal Ordinance to take forward the necessary statutory regulation of insurance business. One aspect of the Bill is the proposed section 4A(3) introduced by clause 2 and is to define the regulatory and supervisory functions of the Insurance Authority and to empower it to issue guidelines to the industry indicating the manner in which it proposes to exercise its statutory functions and the manner in which the industry should carry out its duties under the Ordinance.

Since the introduction of the Bill, a total of eight written submissions have been received by the Legislative Council Secretariat. Their main concern is about the proposed section 4A(3).

A Bills Committee of which I was elected Chairman was set up to study the Bill. The Bills Committee has held a meeting with the Administration. The Administration said they had no intention to interfere with professional decisions and they were ready to move amendments to the proposed section 4A(3) accordingly. They confirmed that the amendment would still sufficiently reflect the statutory power of the Insurance Authority. The Guidance to be issued would mean guidance per se and not instructions as the Insurance Authority would rely on other provisions in the Ordinance to give instructions. The Bills Committee has been assured by the Administration that the industry's concerns have been mollified.

The Secretary for Financial Services will move other minor and technical amendments at the Committee stage.

Mr President, I recommend to Members the Bill and the amendments to be proposed by the Secretary for Financial Services.

SECRETARY FOR FINANCIAL SERVICES: Mr President, I would like to thank the Bills Committee under the chairmanship of the Honourable Peter WONG for its careful consideration of the Insurance Companies (Amendment) Bill 1995. I would also like to express my appreciation to the professional and industry organizations involved for their valuable comments.

One of the functions of the Insurance Authority is to promote and develop self-regulation by market and professional bodies in the insurance industry. Market and professional bodies in this context are meant to cover associations of insurance practitioners, that is, authorized insurers and insurance intermediaries. It is not our intention to cover professional bodies which participate in the insurance industry but are not part of it, for instance, the Hong Kong Society of Accountants. To avoid any misinterpretation, I shall move Committee stage amendments to clarify this intention.

The insurance industry and the professional bodies have expressed serious concern over the proposed subsection 4A(3)(b), which provides that the Insurance Authority may issue guidelines to authorized insurers and insurance intermediaries as well as their auditors and actuaries indicating the manner in which he expects them to carry out their duties under the Ordinance. I wish to clarify that this proposed subsection is not intended to introduce any new regulatory requirements or to interfere with the internal operations of an insurer or insurance intermediary, or the professional practice of their auditors and actuaries. Whenever compliance with the duties imposed by provisions of the Ordinance comes into question, each specific case will be determined by the legal nature of the duty and the facts concerned and not by the guidelines. However, to address the concern of the industry and the professional bodies, we propose to remove this particular subsection from the Bill because its intended effect is already implied in the other part of section 4A(3). Deletion of subsection 4A(3)(b) would also bring section 4A(3) into line with similar provisions in the Banking Ordinance and the Securities and Futures Commission Ordinance.

An actuary, like an auditor, is required to report on the financial position of an insurer. We agree with the Actuarial Society of Hong Kong that the Insurance Authority should be allowed to disclose information to an actuary where such information is necessary for him to carry out his duties under the Insurance Companies Ordinance. Similarly the Insurance Authority should be allowed to disclose information to an auditor of an insurance broker or a body of insurance brokers who is required to report on the affairs of the insurance broker or body of insurance brokers. I shall move a Committee stage amendment to this effect at the Committee stage.

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).

HONG KONG ASSOCIATION OF BANKS (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 7 June 1995

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 ORDER (AMENDMENT) BILL 1994

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

Question on Second Reading proposed.

MR WONG WAI-YIN (in Cantonese): Mr President, the Public Order (Amendment) Bill seeks to revise and update the provisions on the regulation of public meetings and processions and is a result of a review of legislation in the light of the Bill of Rights Ordinance.

A Bills Committee under my chairmanship was set up in April 1994 to study the Bill. The Bills Committee met nine times including eight meetings with the Administration. It received a deputation from the Hong Kong Human Rights Commission. It did not meet for a period of seven months from November 1994 to June 1995 to await response from the Administration to the Committee's suggestion to establish independent appeal board. The Bill Committee is extremely dissatisfied with the Administration for such a late response.

The Bills Committee discussed in detail the general approach of control, the notice requirement, the appeal channel, the power of the police, the threshold requirements and the power of the Governor in Council to prohibit public gatherings. Members and the representatives of the Hong Kong Human Rights Commission felt that the right of peaceful assembly should be fully respected and any system of control should be mapped out on the basis of mutual trust and co-operation.

The Administration replied that the Bill sought to introduce a number of modifications to the Public Order Ordinance, which would effectively relax the general control on public meetings and processions. The Bills Committee considered the proposed seven-day notice requirement too long, especially for urgent public meetings and processions. The Administration explained that the police would need sufficient advance notification to arrange the necessary policing deployment to safeguard public order and safety in respect of a large scale public assembly and/or procession. It pointed out that the new sections 8(2) and 13A(2) already provided the flexibility to oblige the Commissioner of Police to accept shorter notice where he was satisfied that earlier notice could not reasonably have been given. Nevertheless, in the light of the Bills Committee's comments, the Administration will move an amendment at the Committee Stage later so that the Commissioner of Police will be obliged to accept shorter notice if he is reasonably satisfied that earlier notice cannot be given.

The Bills Committee considered that the conditions imposed by the police were sometimes excessively restrictive and would create difficulties for the participants. The Administration said that it had been the practice of the police to discuss and reach agreement with the organizers regarding the conditions. Yet it agreed to move an amendment at the Committee Stage later to specify that the police shall give reasons for imposing conditions. It will also move amendments to specify that the Commissioner of Police will give reasons for prohibiting notified public meeting or a notified public procession and that he is required to give notice of prohibition to the person who gives notice or who is named in the notice. The police will revise its internal enforcement guidelines to ensure standardization and consistency of enforcement after the enactment of the Bill.

The Bills Committee considered that the new provision proposed by the Administration on the appeal channel still inadequate. Under the new provisions, an aggrieved person can appeal to the Governor in writing against such prohibition or condition imposed by the Commissioner of Police. In this regard, the Bills Committee is of the view that the appeal body should be independent, effective and able to command public trust and should give decision on the appeal before the proposed event. After lengthy deliberations, the Administration agreed to set up an Appeal Board which will consist of a Chairman and a panel of 15 members. The Bills Committee discussed in detail the proposed constitution and powers of the Appeal Board with the Administration. In response to its suggestion, the Administration agreed that the Chairman should be a retired High Court or District Court judge, or a former magistrate who has served in the Judiciary for 10 years or more, in order to maintain the independence of the Appeal Board from Government, both in substance and in appearance. It will move an amendment at the Committee Stage. The Bills Committee also discussed with the Administration as to whether the Appeal Board should be empowered to consider appeals against the police's decision not to accept notices of less than seven days for holding a public meeting, despite the fact that the Board may not be able to meet

and give ruling prior to the event. The Administration said the organizer would then be at liberty to seek a judicial review and declined to move an amendment because it considered that a post-event ruling given by the Appeal Board would not be meaningful. Rev the Honourable FUNG Chi-wood, however, will move an amendment to this effect at the Committee Stage.

The Bills Committee has reservations about the provisions of section 6 of the original Ordinance which it considers are giving the police too much power in regulating public meetings and processions. In particular, it considers that section 6(a) is in breach of the right to freedom of expression. The Administration said that there was no intention on its part to use the provision as a tool of censorship. The provision was only to provide the police with a lawful and effective means of maintaining public order. The police would invoke such a power only if they considered it to be reasonably necessary in the interests of public order or public safety and the decision would be subject to judicial review. The Administration will move amendments to the section to ensure consistency with other sections under Part III of the Ordinance and to improve section 6(c) by adding the word "reasonable" and deleting the word "expedient", and will move an amendment to section 52 of the original Ordinance to the effect that the powers of the police under section 6(a) will only be delegated to a police officer of the rank of Chief Superintendent of Police or above. Members of the Democratic Party still feel that the possibility of prohibiting public meetings because of the content of speeches or the way in which speeches are given, or simply because of the perceived effect of such speeches, will be a serious threat to the freedom of expression. The Honourable CHEUNG Man-kwong will therefore move an amendment at the Committee Stage.

The Bills Committee has noted the fact that organizers will face practical difficulties due to the different thresholds set for public meetings and processions since it is not uncommon for a procession to immediately follow an open public meeting. The Administration explained that the Bill already amended the definition for "procession" to include any meeting held in conjunction with a procession. The Secretary for Security also undertook to review the thresholds in future. The Bills Committee is concerned over section 17E of the Ordinance that the Governor in Council is empowered to prohibit all public gatherings for any period not exceeding three months. In view of the limited time available left of this legislative session, the Secretary for Security undertook to review the section in future.

Finally, Mr President, on behalf of the Bills Committee, I would like to thank the Government for accepting most of the views of Members, and moving the Committee Stage amendments. What the Government, the Security Branch and the police have done are really praiseworthy.

With the above remarks, Mr President, I support the Second Reading of the Bill.

MR CHEUNG MAN-KWONG (in Cantonese): Mr President, the introduction of the Public Order Ordinance by the Hong Kong British Government was primarily aimed at curbing the opposition activities of Chinese communist bodies in Hong Kong. Now the fundamental spirit of such legislation is no longer applicable to the actual situation of Hong Kong. In spite of this, the outdated ordinance is still the principle legislation through which the police maintain the order of public processions and meetings today. Meanwhile, as society becomes more open in recent years with the development of parliamentary politics, the public in Hong Kong increasingly know how to fight for their own rights and voice their opinions by various peaceful means. According to official statistics, the number of approved processions and meetings in Hong Kong exceeds 1 000 annually in recent years. As the number of processions and meetings keeps increasing whereas regulatory legislation is insufficient to cope with such activities, it will easily lead to unnecessary conflicts between the police and the public. Besides, the procedures set out in the Public Order Ordinance have long been criticized by the public as being bureaucratic, overelaborated and without flexibility. The unreasonable restrictions imposed would even turn police officers enforcing the legislation into the petitioners' targets of attack. The Security Branch is well aware of these problems. Moreover, in the light of the promulgation of the Bill of Rights in Hong Kong, the Government therefore takes the initiative to propose amendments to the Public Order Ordinance.

If we understand the essential spirit of the Public Order Ordinance and the fact that freedom of expression is just what should be cherished by our society, we should then perceive that the proposed amendments not only aim at giving people the right of expression and peaceful assembly as specified in the Bill of Rights but also try to resolve the difficulties and conflicts between the police and the petitioners as a result of the outdated Public Order Ordinance. At present, apart from aggrieved petitioners who think their rights of peaceful expression of their aspirations are subject to unreasonable restrictions, the Security Branch also frankly admits that police officers have found it difficult to properly enforce the outdated provisions of the Public Order Ordinance. In view of this, the amendments to the Public Order Ordinance should be considered from an enlightened and rational angle. As a matter of fact, the 1 000-odd processions and meetings held annually at present have never affected social stability. Rather, these activities could help relieve public feelings. Meanwhile, the relaxation of provisions on processions and meetings does not mean that the power of the police will be diminished. On the contrary the police will command better trust when enforcing the legislation so that unnecessary conflicts between the police and the public could be avoided.

Mr President, as an executive organ, the Security Branch is bound to have some reservations towards the relaxation of the power of control. The Bills Committee initially held lengthy discussions on various aspects of processions and meetings such as notification procedures, threshold numbers, notice time requirement and appeal channels, and so on. Some of the Bills Committee's advice has been heeded by the Security Branch. The more important one is to

set up an Appeal Board for organizers who feel aggrieved at the prohibition or conditions imposed by the Commissioner of Police. The Board should be empowered to conduct hearings upon receiving appeals and make decisions as far as possible within 24 hours, so as to replace the past mechanism under which the aggrieved could either lodge appeals to the Government or apply to the Court for judicial reviews. What we have persisted in the Bills Committee is to have an independent Appeal Board with a sense of time. In the past, rulings of appeal cases were usually given after the scheduled dates of processions or meetings. However, since processions and meetings tend to have a time element and even to be urgently held, post-event rulings very often could only bring justice to the appellants but are never able to give them back the time so that they could have petitioned as scheduled. This has in principle infringed on the appellants' right of peaceful petition. Under such circumstance, that the Appeal Board could conduct hearings and give rulings before the petition date will have profound implications for safeguarding the public's right of petition. As for the importance of independence, it is not surprising that credibility was called into question when complaints against executive organs were handled by the Governor, that is the head of executive organs, in the past. An independent Appeal Board can therefore properly check the police's power of prohibiting processions and meetings. Yet, one of the key elements for maintaining the independence of the Appeal Board is its composition. In this regard, the Democratic Party insists that members and the Secretary of the Board should be independent of the executive organs of the Government. Moreover, the chairman has to be familiar with the Bill of Rights, which is particularly important when he has the casting vote in case of a tie. In the light of this, the Democratic Party is of the view that to appoint a judge or a retired judge to be the chairman is the best and most feasible way of ensuring the fairness, justice and credibility of the Appeal Board.

However, there is a world of difference in the attitudes of the Security Branch towards the establishment of the Appeal Board and the repeal of section 6 (A) of the Public Order Ordinance, being enlightened to the former but persistent and obstinate to the latter. Section 6 (A) of the Public Order Ordinance empowers the Commissioner of Police to control the broadcasting of music or other broadcasts by petitioners in or towards public places if and when necessary. Police officers may take immediate action against anyone who breaks the law, including the confiscation of amplification devices and loudspeakers. In fact, making such a provision is a very sensible act from the sole perspective of noise control to prevent petitioners from making too much noise which might disturb others, as everyone should observe the principle of not infringing others' rights when expressing his views. However, the Noise Control Ordinance in Hong Kong at present has already imposed certain restrictions on the volume of loudspeakers to prevent nuisance to others, and offenders will be charged and fined a maximum of $5,000. This should have a sufficient deterrent effect on petitioners. Yet, as set out in the Security Branch paper, even though the volume of sound made by a person does not exceed the specified limit, the police could take action of confiscating amplification devices according to section 6(A) of the ordinance if the circumstances under which the

sound is made might cause strong reaction in others. In other words, section 6(A) does not actually focus on noise control. Rather, it aims at controlling or restricting the content of the petitioners' speeches in the name of noise control, that is police officers are empowered by the law to censor the content of speech of petitioners.

Mr President, may I draw the Honourable Members' attention to the fact that section 6(A) of the Public Order Ordinance allowing police officers to censor the content of petitioners' speech will severely breach the citizens' fundamental right to freedom of speech. This is a matter of principle. To restrict the right of exercising such power to officers of the rank of Superintendent of Police only does not mean that this important issue of principle is settled as it is not to do with human factors. The provision itself is already an infringement on the fundamental freedom of speech. Therefore, even if such power is restricted to just one person or even to the Governor only, it does not in any way mean that the problem of principle involved in this provision, with freedom of speech infringed and fundamental human rights seriously breached, could be rectified and rationalized.

Apart from the matter of principle involved in this provision, the enforcement of section 6(A) will most probably produce results opposite to what the police subjectively hope. The Security Branch time and again stressed that the provision would allow the police to take immediate action which is more effective than the Noise Control Ordinance that only allows post-event indictment in tackling situations "which will possibly lead to public disorder". However, I would like to point out that it already involves very subjective judgment to let police officers decide whether the content of a speaker's speech will possibly constitute incitement. In this connection, discrepancies of individual perception will suffice to cause disagreement between the police and the public. Moreover, if the police take immediate action of confiscating amplifiers during public meetings and processions, it will also lead to unnecessary conflicts or fear in the public. As a matter of fact, amplification devices are used by organizers not only to convey messages but also as an important tool to maintain order during petitions. Therefore, by retaining the form of post-event indictment, unnecessary conflicts between the police and the public could be avoided without affecting the force of the law. On the contrary, the police's immediate action of taking away amplifiers might bring even greater disturbance to social peace and cause even more serious public disorder. What I have just said is not alarmist talk. Rather, it is a situation which will most probably occur. In the light of this, we must consider in detail the problems of the provision in terms of principle and actual implementation so that a most sensible and reasonable choice could be made.

Lastly, I have one point to add regarding section 6(A). The existing legislation is basically adequate to safeguard social peace. If petitioners produce noises exceeding the permitted level, the police could charge them in accordance with the Noise Control Ordinance. Even if the content of petitioners' speech could really instigate others to break the law, there are sufficient and comprehensive legislation at present for the police to arrest and prosecute troublemakers and even rioters. Under such circumstances, the Security Branch paper is not correct when it stressed repeatedly that the police would be unable to control activities not classified as public processions and meetings without section 6(A) of the Public Order Ordinance. Mr President, in view of all the reasons above and, to safeguard the most valuable freedom of speech of our society, to maintain the public's right of peaceful expression, to resolve the difficulties encountered by the police in enforcing the legislation as well as to avoid unnecessary conflicts between the police and the public, I shall move an amendment in accordance with the Order Paper to delete section 6(A) later.

Finally, Mr President, I hope the Security Branch will consider a proposal made in the Bills Committee relating to the threshold number of participants in meetings and processions of which the police have to be notified. According to the existing legislation, the police have to be notified of processions with more than 30 people or public meetings with 50 or more people seven days before such processions or meetings are held. But generally speaking, petitioners now usually have public meetings followed immediately by processions. In other words, a public meeting with 31 people is a legal one at first, but then becomes illegal when procession begins. This is due to the fact that the legislation has not taken full account of the actual circumstances faced by organizers, which results in such discrepancy. Therefore, I hope the Security Branch will from a pragmatic angle relax the threshold number of participants of processions so that it will be the same as that of public meetings, and take into account the practical difficulties encountered by organizers so as to further improve the Public Order Ordinance.

Mr President, we found there was still much room for improvement during our deliberations on the Public Order Ordinance, but had to end our deliberations in the face of amendment requirements and limited time left of the session. We are reluctant to see a bill which has cost Honourable Members and the Government much efforts eventually comes to a premature end simply because it could not be tabled in the Council as scheduled in the days left (of the session). In fact, there are still many provisions in the Ordinance which could be relaxed and improved. Now we could only pin our hopes on the Legislative Council of the forthcoming session that it will introduce an amendment in keeping with public opinions and government aspirations, and which could strike a balance between police power, civil rights and human rights. But in any case, today we are going to move an amendment to section 6(A) which we think has apparently defied the Bill of Rights.

Thank you.

REV FUNG CHI-WOOD (in Cantonese): Mr President, the Public Order (Amendment) Bill 1994 will bring about some good changes to the existing Public Order Ordinance, I fully agree with these amendments. During discussions by the Bills Committee set up to scrutinize this Bill, the Administration promised the Bill Committee that an appeal board would be set up and that a retired judge would be appointed as its chairman. I am grateful to the Administration, in particular the agreement and co-operation of the Security Branch and the Police. I believe that after the establishment of the appeal board, there will be certain protection for people's right to hold meetings and processions.

On the other hand, I must point out that the existing Public Order Ordinance and even its revised form after the passage later of the amendments, still has room for further improvement. Some areas of the existing Public Order Ordinance needs some future amendment. As we discussed at Bills Committee meetings, the present Section 17 empowers the Government to, in special circumstances, for the prevention of serious public disorder, prohibit any and all public meetings in Hong Kong for a period of not more than three months. It goes so far as to specify that all forms and sizes of public meetings are included. Such extensive power should be reviewed. If such power is inappropriately exercised, our people's freedom of speech and freedom of assembly will be gravely undermined.

Mr President, at the Committee Stage later, I shall introduce two amendments. The first seeks to require the authorities concerned to clearly give the reason when members of the public applying for permission to hold meetings and processions are turned down because the period of notice is less than the statutory one week. The Administration has agreed to this. The second amendment seeks to specify that in the event that the application by a member of the public to hold meeting and procession is turned down for reason that the period of notice is less than one week, that member of the public can appeal to the appeal board, an action he cannot take at present. As to the detailed reasons for this amendment, I shall elucidate later.

MRS SELINA CHOW (in Cantonese): Mr President, the Liberal Party is of the view that the Public Order (Amendment) Bill 1994 undoubtedly relaxes the restrictions on public meetings and processions. We think that, after repeated discussions that result in the Committee Stage amendments, appropriate balance has been achieved.

I would like to say a few words about several issues of the concern of the Liberal Party, all the issues were raised during the scrutiny of the Bill by the Bills Committee. We are concerned that the officer exercising the power on behalf of the Commissioner of Police at the scene must be a considerably high ranking police officer, this is for the prevention of a junior policeman exaggerating his authority and insisting on stopping the progress of reasonable activities. We are pleased that the Police has explicitly confirmed that officers exercising such power will be of the rank of Chief Superintendent of Police, this basically dispels our worry. Further the guideline for the exercise of the power has been amended to read as "where necessary and reasonable", this is more objective and acceptable than the original "where necessary and expedient". We think that this guideline will be adequate in restricting the Police, and we should not seek to remove their power to terminate a meeting or procession when they judge that public disorder will be cause by the activities concerned on grounds of the content of speeches. I believe it is appreciated that when a large crowd is assembled, overly inflammatory speeches can really give rise to unthinkable consequences. Therefore from the angle of protection of public order, it is reasonable for the Police to insist on this power.

I do not agree with the Honourable CHEUNG Man-kwong's view that the freedom of speech is absolute. Under certain sensitive circumstances when the crowd is highly agitated, overly inflammatory and radical speeches can in fact bring about some very horrible consequences. If we do not empower the Police to prevent or to avoid these horrible consequences on grounds purely of the freedom of speech, thus rendering the Police powerless in the face of impending disaster, I believe the Liberal Party cannot accept this. Therefore we do not support the amendment of Mr CHEUNG. Of course, if the Police terminate or interfere with the activities on whatever grounds, the people affected absolutely do have the right to apply for a judicial review, to challenge the legality of the Police action in exercising such power. And the crux of legality lies exactly in whether it is lawful to exercise the power, whether that is necessary and in the interest of the public and public order. I believe these are also part of people's rights.

Apart from judicial remedies, political channels are always there, that is to say, the public and this Council have adequate power to require the Police to explain and to be responsible. The above are means to check the Police in exercising the power. As to the right to appeal if applications are refused because the period of notice is less than seven days, as proposed by the Honourable Rev FUNG Chi-wood, the Liberal Party accepts the Administration's explanation that it would be difficult in practice to accede to that proposal. It is because within the seven days, two to three days will be used to make a response, and then only three to four days are left, the board will face actual difficulties in arranging a hearing of the appeal in such a short time. Therefore we will not support this amendment either. And we think that judicial review is also a channel the applicants may follow.

Mr President, in regard to the choice of chairman for the appeal board, the Liberal Party is pleased that the Administration accepted what we insisted in the Bills Committee and changed its original intention, and will now appoint a former judicial officer, rather than a Member of the Executive Council, as the chairman of the appeal board. The request of Liberal Party is based on the fact that the Executive Council is part and parcel of the executive authorities, and cannot be viewed as wholly objective and fair and therefore is not able to make any ruling with acceptability and solid credibility.

Thank you, Mr President.

MR FREDERICK FUNG (in Cantonese): Mr President, the Hong Kong Bill of Rights Ordinance enacted in 1991 provides in unequivocal terms that everyone enjoys the freedom of expression and the right to hold peaceful meetings. It has been four years since the Ordinance became effective, but in some laws there are places that contravene the Bill of Rights Ordinance, and the Public Order Ordinance is one of them. The Public Order Ordinance contains provisions that directly undermine people's freedoms of expression, speech and assembly. Mr President, the provisions in the Public Order regarding public meetings and processions are very harsh. The organizing bodies or organizations concerned must apply to the police for a licence seven days in advance and the police can prohibit the proposed meetings and processions without giving any explanation. On top of this, various conditions can be imposed. There were occasions in the past when the police took overly sensitive and agitating measures, imposed some unnecessary restrictions, indirectly leading to clashes. I believe that such clashes can be avoided, particularly in view that the processions and meetings in recent years have been conducted in a peaceful manner, and members of the public have also been self-disciplined and observing the law. This is not what the police can deny. Therefore the Government should proceed to remove some of the unreasonable restrictions, and let those who wish to express their views do so freely or take actions to show their dissatisfaction towards certain matters.

Further, following the enactment of the human rights law, the Government no longer has any reason not to amend the laws that contravene the human rights law. It is natural, in this progressive society with increasing civic awareness, for the public to express their views over social policies and incidents by way of processions, meetings and slogan shouting. The right of the public to hold peaceful meetings should be respected and any controlling measures should be formulated on the basis of mutual trust and co-operation. For instance, after the currently proposed amendments, the Public Order Ordinance still provides that the police may impose control on or give guidance to public meetings or processions if and when the police judge it necessary on grounds of the content of the speeches made or music or other voice broadcast in the public place. This is section 6(A). We should know that the objective of

the Public Order Ordinance was at first to let the police make arrangements beforehand for meetings or processions with over 100 people in terms of crowd- and traffic-control manpower. If the police has been given prior notice of the meeting or procession by the organizing body, there is no longer any reason for the police to further interfere with the content of the speeches or music, still less should the police stop the activities concerned. I am greatly unhappy that the Administration has retain this provision which will directly limits public freedom of expression and speech. I submit that this provision should be amended.

On the other hand, the Hong Kong Government and the police should not deem those people holding meetings, processions and demonstrations as the minority, or to think that the participating people hold views greatly different from the rest of the public. It should be appreciated that various groups of citizens have their own views and ways of looking at things, and processions and meetings are but a way of expression. Some people will go to see Government officials to voice their views; others will speak and write to the media to vent their dissatisfaction. Therefore the Government and the Police must not presume that people not taking part in processions and meetings hold different views from those who do and therefore draw a clear line between procession and meeting participants and the rest of the public.

Finally, members of the Preliminary Working Committee (PWC) have said that the amended Public Order Ordinance will weaken the power of governance of the Government and the police, and will be in contravention of the all-along enshrined executive-led principle. Members of the PWC have also warned that if the Legislative Council passes these amendments today, the Public Order Ordinance will not be able to transit beyond 1997. The Association for Democracy and People's Livelihood and I cannot agree with such words. The amendments to the Public Order Ordinance are to tie in with the enactment of the human rights law, and will by no means threaten the executive-led principle. In any democratic country and region, even though the executive-led principle is adopted, the Government must still be supervised by the people and the rights of the people must certainly be respected. Furthermore, Article 39 of the Basic Law provides that the two international covenants as applied to Hong Kong will be implemented through the laws of the Hong Kong Special Administrative Region. The Hong Kong Bill of Rights Ordinance and the revised Public Order Ordinance are exactly in accordance with these two international covenants as applied to Hong Kong, and do not contravene the Basic Law. Therefore I think that they should transit smoothly beyond 1997 along with all other ordinances.

With these remarks, I support the amendments of the Honourable CHEUNG Man-kwong and Rev the Honourable FUNG Chi-wood.

MRS ELSIE TU: Mr President, we have come a very long way since the days when all processions were illegal and when all public meetings were held only at one or two designated places. For those changes I am thankful, and I shall support this Bill which further relaxes the law.

However, we have to bear in mind that the police are commissioned to safeguard the public not only from crime but also from public nuisances and from disorderly or violent behaviour. The Commissioner of Police has the very heavy responsibility of making quick decisions on whether or not to allow a demonstration that does not meet the time limit. He must not be deprived of his right to make decisions which he believes to be in the public interest.

Sudden occurrences, such as the unexpected riot a few years ago in Nathan Road and the tragedy in Lan Kwai Fong, lay a heavy burden of responsibility on the police to act promptly and decisively, often at very short notice. We should not undermine their confidence by passing laws that may result in their standing by until some innocent person is injured or killed before they can act. I am sure that legislators would complain against the police if they allowed this sort of thing to happen.

The police must not abuse their powers, which they must exercise with the restraint that they are taught by their training. Their discipline must be strictly maintained according to that training. To add amendments to the law to increase those restraints would, in my estimation, affect their morale. They will be serving two masters: their superior officers and the politicians who put further unnecessary, if not dangerous, restraints upon them. I do not believe that the public would welcome such restraints on police powers when they are trying to control rowdy behaviour.

Mr President, I shall support the Bill but I shall oppose the amendments proposed by Rev FUNG and Mr CHEUNG Man-kwong.

MR LEE CHEUK-YAN (in Cantonese): Mr President, section 17 of the Hong Kong Bill of Rights Ordinance explicitly provides that: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others."

The Bill of Rights Ordinance in fact has affirmed the whole right of peaceful assembly and made clear several principles involved therein.

Firstly, the Government must first and foremost recognize the people's right of peaceful assembly, and not consider beforehand how the assembly should be restricted or prohibited. Therefore the primary role of the Government is to do its best to assist the smooth progress of the procession and meeting, to respect the right of the participants, rather than to create all sorts of reasons to presume the participants are trouble-makers who will destroy social peace. The Government also, as a matter of course, has the responsibility to maintain public order while observing the Bill of Rights Ordinance. However, it is clear to us that public order should be considered within the framework of a democratic society, that any restrictions should be what a democratic society can allow. Therefore, we must strike a balance, taking into account public interests and that any and all necessary restrictions within a democratic society should be kept within the bounds of a democratic society, and should not be decided single-handedly by the police.

After the passage of the Bill of Rights Ordinance in June 1991, many human rights organizations already pointed out many provisions of the Public Order Ordinance contravene the Bill of Rights Ordinance. Unfortunately the Government turned a deaf ear to them and refused to amend the Public Order Ordinance, and even went so far as to say that the Ordinance would only be reviewed if and when the court ruled the Ordinance actually contravened the Bill of Rights Ordinance. Therefore, the amendment bill before us today is a very much delayed one. It is now July 1995, a long time since June 1991 when the Bill of Rights Ordinance was passed, and we eventually can discuss amendments to the Public Order Ordinance. Therefore the action of the Government in this respect is a belated one.

Though this amendment bill enhances protection of human rights, the degree of improvement is still limited. First, notices must be given beforehand for all meetings and processions; failing to give notice is an offence punishable with imprisonment. The penalty is arguably very heavy indeed. This requirement is obviously excessive, deterring organizers and participants of meetings and processions, and giving the general public an impression that only trouble-makers take part in meetings and processions. In a democratic society as we understand it, this is not necessary.

Secondly, there are problems in the provisions in the amended Ordinance in respect of the restrictions on future meetings and processions. The restrictions as stipulated in the Bill of Rights Ordinance are based on the criteria in a democratic society, but there are no similar provisions in the Public Order Ordinance, and thus the Commissioner of Police can impose certain restrictions according to the situation in Hong Kong. However all such restrictions are not necessary in a democratic society as we understand it.

Thirdly, the power to impose restrictions on meetings and processions should not be exercised by an executive department alone. On the contrary, if the police wants to restrict a meeting or a procession, they should apply to the court. This is the practice of Victoria Province, Australia where the police commissioner applies to the court for the imposition of any restrictions. But this is not the case in Hong Kong, here it is for the organizers of the meetings and processions to lodge appeals after the Commissioner of Police imposes restrictions.

Fourthly, the criteria for the selection of appeal board members are not clearly defined. We very much hope that when making appointments to the appeal board, the Government will include some people who understand human rights and respect human rights.

Lastly, I think that the amendment moved by the Honourable CHEUNG Man-kwong is a very important one because it will safeguard the freedom of speech. I am sure no democratic society can allow the police to have the power to stop on the spot any speech or any broadcast of music at a public meeting. There are potential dangers inherent in this provision of imposing restrictions on grounds of the content of the speech of the organizers or speakers. This will make people worry that restrictions will be slammed down in future if participants at meetings and processions say words that those in power do not like to hear. A Member asked earlier about what could be done if somebody should instigate others to resort to violence. As a matter of fact, there still exists the provision regarding illegal assembly which in reality already give the police adequate power to deal with possible violence and disorder. Therefore, we think that the amendment moved by Mr CHEUNG only seeks to remove the unreasonable stipulations that limit the freedom of speech. Therefore, I hope Members will support Mr CHUENG's amendment.

Lastly, I wish to point out that Hong Kong is a very orderly society. From this Chamber to the streets outside, the people of Hong Kong observe order. I very much hope that the police and the Secretary for Security can confirm that all past processions and meetings in Hong Kong were very orderly. I hope that people will no longer doubt that meetings and processions are anything but orderly. As a matter of fact, Hong Kong is one of the most orderly societies in the world, you need only to have a look at the sittings of this Council to see my point clearly. Thank you, Mr President.

SECRETARY FOR SECURITY: Mr President, I would like to thank the Chairman, Mr WONG Wai-yin, and Members of the Bills Committee for their thorough and careful study of the Public Order (Amendment) Bill 1994.

The Bill seeks to update the provisions in the Public Order Ordinance dealing with public meetings and processions in the light of police experience in handling public gatherings, and having regard to the Bill of Rights. It strikes the right balance between an individual's right to freedom of assembly, and the need to maintain public order and ensure public safety. I must disagree with the Honourable CHEUNG Man-kwong for these reason. The Public Order Ordinance is still required. Both he and Rev FUNG Chi-wood are incorrect when they imply this Bill seeks to restrict freedom of expression. I can assure them and the Honourable Frederick FUNG that the Bill is wholly consistent with the Bill of Rights.

The Bill sets out the general conditions and obligations for holding of public gatherings. The previous requirement for the licensing of public processions is replaced with a requirement for advance notification. The grounds on which the police can prohibit the holding of, or impose conditions on, public meetings and processions are specified more clearly.

We propose to increase the threshold numbers for requiring notification of public meetings and processions. Also, we propose to modify a number of other provisions relating to the police powers of stop and search, the designation of closed areas, and the requirement to provide identification; as well as to repeal section 4(29) of the Summary Offences Ordinance, which requires the issue of police permit for the use of loudhailers in public places. I am pleased that the Bills Committee supports the basic principles of the Bill.

However, Mr President, there were certain aspects of the Bill which were of particular concern to Members of the Bills Committee.

The Bills Committee felt strongly that there should be an independent appeal procedure to replace the present arrangement for appeals to be made to the Governor. The proposed Appeal Board should be independent from the Administration, be able to hear an appeal quickly and deliver a pre-event decision, that is, before the public gathering is scheduled to take place. After careful consideration, we have agreed to provide for the establishment of the Appeal Board on Public Meetings and Processions and have accepted the suggestion of the Bills Committee to appoint a retired judicial officer to be Chairman of the Board.

Another question raised by Members of the Committee was the numerical thresholds for requiring notification of public meetings and public processions. The Bill proposes that for public meetings and public processions consisting of less than 50 persons and 30 persons respectively, prior notification of the police is not necessary. Some Members suggested that the thresholds should be further raised. We consider that the proposed threshold of 50 and 30 are appropriate since in normal circumstances, the police can handle these numbers without having to call in reinforcements. Any drastic increase in the threshold will undermine the ability of the police to maintain public order and to ensure public safety. At the request of the Bills Committee, we have agreed to keep the

thresholds under review, having regard to improvements in police mobility and communications. We have also undertaken to review the length of the notification period in the light of operational experience. I think that this responds positively to the suggestion made by the Honourable CHEUNG Man-kwong.

Some Members of the Bills Committee were concerned about the power of the Governor in Council under section 17E of the Ordinance to prohibit the holding of any public gathering in any part of Hong Kong for a period not exceeding three months. Some Members consider that such power should be reduced, or be subject to approval or disallowance by the legislature. The power is, in fact, very carefully circumscribed because the Governor in Council has to be satisfied that particular circumstances exist in Hong Kong and that it is necessary for the prevention of serious public disorder before he can exercise the power. Nevertheless, we have accepted the Committee's suggestions to reconsider the scope of this provision in a future review.

Mr President, I would now like to turn to the amendments which I will move at the Committee stage. The first amendment relates to clause 5 of the Bill. We note Members of the Bills Committee's concern about the exercise of the Commissioner of Police's general powers to regulate public gatherings under section 6 and propose to tighten up the wording so that the powers can only be exercised by the Commissioner of Police if he reasonably considers it to be necessary in the interest of public order or public safety, not just on grounds of mere expedience. I think that this meets the concern expressed by the Honourable Mrs Selina CHOW.

The amendment to clause 7 of the Bill requires the Commissioner of Police to give more detailed reasons for prohibiting the holding of, for imposing conditions on, or for amending any condition previously imposed on any public gathering. It modifies the requirement of reasonableness in proposed sections 8(2) and 13A(2) by providing that the Commissioner of Police shall accept shorter notice when he is reasonably satisfied that earlier notice could not have been given. The amendment also clarifies the person to whom a notice of prohibition shall be given under proposed sections 9(2)(b)(i) and 14(2)(b)(i).

The amendment to clauses 14 and 15 relates to the composition, constitution, functions, powers and procedures of the independent Appeal Board. We have accepted all the suggestions of the Bills Committee to ensure that the appeals are dealt with impartially and expeditiously.

The amendment to clause 18 restricts the delegation of the Commissioner of Police's power under section 6(a) to control the broadcast of music or speech in public places to a police officer not below the rank of Chief Superintendent and I am grateful for the Honourable Mrs Selina CHOW's support in this regard.

Mr President, we have been very responsive to the views of the Bills Committee and have accepted a number of their suggestions in proposing the amendments I have just mentioned. However, I am disappointed that some Members are still not satisfied with two aspects of the Bill and will proposed their own Committe stage amendments, which the Administration is unable to support.

Two Committee stage amendments will be moved. One by Rev FUNG Chi-wood who will compel the Appeal Board to consider appeals against the Commissioner's decision not to accept late notifications under proposed sections 8 and 13A. We do not think that his amendments will serve any useful practical purpose. The amendments to clause 7 that I will move will give very little discretion to the Commissioner of Police not to accept late notifications. The Appeal Board will only just have enough time to consider an appeal even if proper notice is given. If an organizer gives an unrealistically short notice and this is not accepted by the police, then the Appeal Board will be unlikely to have time to arrange a hearing and deliver a decision should the organizer decide to appeal. To compel the Appeal Board to make a post-event decision rather than a pre-event decision defeats the very purpose of setting it up.

The second amendments to be moved by the Honourable CHEUNG Man-kwong to repeal section 6(a) of the Ordinance will deprive the police of the necessary power to prevent the breach of public order. The purpose of the power is not, as the Honourable CHEUNG Man-kwong and the Honourable LEE Cheuk-yan suggested, to enable police officers to censor speech but rather to give them the legal basis to take early preventive actions in highly provocative situations. The police have a responsibility to prevent breaches of the peace and I do not think that the victims would thank the Honourable Members for tying the hands of police by deleting this section. The provision is not inconsistent with the Bill of Rights and that there are no alternative powers available to the police. As I have just mentioned, the amendments I will move will further tighten the wording of the section and will ensure that only directorate police officers are allowed to exercise this power. This will address Members' concern about possible abuse of power by junior officers and I am grateful for the support of the Honourable Mrs Elsie TU in this respect.

Mr President, I urge Members to support our amendments and vote against these two amendments to be proposed by Rev FUNG Chi-wood and the Honourable CHEUNG Man-kwong.

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

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

Bill read the Second time.

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

SUPPLEMENTARY APPROPRIATION (1994-95) BILL 1995

Resumption of debate on Second Reading which was moved on 5 July 1995

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

Bill read the Second time.

Committee Stage of Bills

Council went into Committee.

CRIMINAL PROCEDURE (AMENDMENT) BILL 1995

Clauses 1, 2 and 4 were agreed to.

Clause 3

ATTORNEY GENERAL: Mr Chairman, I move that clause 3 of the Bill be amended as set out under my name in the paper circulated to Members.

Section 79A as drafted defines "child" to mean generally a person under 14 years of age except in the case of sexual abuse, when it means a person under 17 years. In practice, there is bound to be a time lag between the taking of evidence and trial. In order to cater for the situation when the upper age limits are passed when the trials take place, the definition of "child" is amended by relaxing the age limits by one year to allow for the estimated maximum lapse of time between the taking of video recorded evidence and trial. Section 79C(7) is deleted as a consequence.

One of the new procedures introduced by the Bill is the "live television link" system. As it is presently drafted under section 79A, the system refers to one linking a courtroom and another room in the same premises. This definition will not cover the situation where a magistrate takes a deposition before the trial from a witness under the proposed section 79E in a room which is not a courtroom. The definition of "live television link" is therefore amended by adding a new provision which specifically deals with this situation.

The definition of "mentally handicapped person" is amended to reflect the existing definition of "mental disorder" under the Mental Health Ordinanc. That definition is under review at the moment. A consequential amendment will be proposed if it is warranted after that review has been completed.

The definition of "offence of sexual abuse" is amended by deleting those offences which are not sexual offences under Part XII of the Crimes Ordinance.

In the proposed section 79B(1), the definition of "witness in fear" is refined by providing that the court's determination is to be based on reasonable grounds.

The proposed section 79B provides that child and mentally handicapped witnesses can give evidence by way of a live television link. Subsections (2), (3) and (5) are amended to make it clear that the system can also be used where a witness does not give evidence live in court but his or her evidence is produced by way of pre-recorded video tapes on which he or she may be cross-examined.

The proposed section 79C is amended by adding a new definition of "adult" to ensure that only trained professional officers can conduct video recorded interviews of child or mentally handicapped witnesses.

Subsection (2) of the proposed section 79C is amended by providing an option for a defendant who is mentally handicapped to produce the video recorded evidence in court. The purpose of this amendment is to ensure that the defendant's right to silence is not prejudiced.

For the same reason, the proposed section 79E(2) is similarly amended.

The proposed section 79F as drafted allows the prosecution to bypass the preliminary hearing before a magistrate and transfer the more serious cases to the High Court for trial. This new procedure is introduced to save the child and mentally handicapped witnesses from giving evidence twice; once at the committal proceedings and subsequently at trial. It is amended by confining the witnesses to victims only. The provision is further amended by requiring the Crown Prosecutor to set out in an affidavit the reasons when he issues the notice of transfer. As I explained earlier on today, the judicial requirement is to further safeguard any possible injustice and the power is not to be delegated but would be exercised with great prudence by the Crown Prosecutor personally.

The proposed section 79G provides for a defendant to apply to be discharged following service on him of a notice of transfer under section 79F. As drafted section 79G applies only in cases involving child witnesses. As the proposed section 79F covers children and mentally handicapped persons, section 79G should also apply to cases involving mentally handicapped witnesses. Section 79G(5) is amended accordingly.

The power to make rules under the proposed section 79G(8) is transferred from the Rules Committee to the Chief Justice to follow section 79D.

Mr Chairman, I beg to move.

Proposed amendment

Clause 3

That clause 3 be amended —

(a) in the proposed section 79A -

(i) by deleting the definition of "child" and substituting -

""child" means a person who -

(a) in the case of an offence of sexual abuse -

(i) is under 17 years of age; or

(ii) for the purposes of section 79C, if the person was under that age when a video recording to which section 79C applies was made in respect of him, is under 18 years of age; or

(b) in the case of an offence to which this Part applies, other than an offence of sexual abuse -

(i) is under 14 years of age; or

(ii) for the purposes of section 79C, if the person was under that age when a video recording to which section 79C applies was made in respect of him, is under 15 years of age;";

(ii) in the definition of "live television link" -

(A) in paragraph (b) by deleting the semicolon and substituting a comma;

(B) by adding after paragraph (b) -

"and includes a similar system linking a room in which a magistrate is taking a deposition in writing under section 79E with another room from which the person gives evidence for the purpose of the deposition;";

(iii) by deleting the definition of "mentally handicapped person" and substituting -

""mentally handicapped person" means a person who is mentally ill or is suffering from arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind;";

(iv) in the definition of "offence of sexual abuse" by adding ", other than sections 126, 147A and 147F," after "XII".

(b) in the proposed section 79B -

(i) in subsection (1) by adding ", on reasonable grounds," after "satisfied";

(ii) in subsection (2) -

(A) by adding ", or be examined on video recorded evidence given under section 79C," after "is to give evidence";

(B) by adding "or be examined" after "child to give evidence";

(iii) in subsection (3) -

(A) by adding ", or be examined on video recorded evidence given under section 79C," after "is to give evidence";

(B) by adding "or be examined" after "person to give evidence";

(iv) in subsection (5) by adding "or being examined" after "in proceedings".

(c) in the proposed section 79C -

(i) by adding before subsection (1) -

"(1A) In this section -

"adult" means -

(a) a police officer;

(b) a social worker or clinical psychologist who is employed by the Government.";

(ii) in subsection (2) by adding "where such a defendant and his counsel so request" after "defendant";

(iii) by deleting subsection (7).

(d) in the proposed section 79E(2) -

(i) by deleting ", including one who is a defendant,";

(ii) by adding ", including a mentally handicapped person who is a defendant where such a defendant and his counsel so request," after "from the mentally handicapped person".

(e) by deleting the proposed section 79F(1) and (2) and substituting -

"(1) Where -

(a) a person has been charged with -

(i) an offence of sexual abuse;

(ii) an offence of cruelty; or

(iii) an offence which involves an assault on, or injury or a threat of injury to, a person and the offence is triable -

(A) on indictment; or

(B) either summarily or on indictment;

(b) a child was the victim of the offence with which the person has been charged,

and the Crown Prosecutor is of the opinion -

(i) that the evidence of the offence would be sufficient for the person charged to be committed for trial; and

(ii) that it is necessary for the purpose of avoiding any prejudice to the welfare of the child that the case should be taken over and proceeded with without delay by the High Court.

the Crown Prosecutor may serve a notice of transfer on the relevant magistrate certifying his opinion, together with an affidavit setting out the reasons for such opinion.

(2) Where -

(a) a person has been charged with any offence that is triable -

(i) on indictment; or

(ii) either summarily or on indictment;

(b) a mentally handicapped person was the victim of the offence with which the person has been charged,

and the Crown Prosecutor is of the opinion -

(i) that the evidence of the offence would be sufficient for the person charged to be committed for trial; and

(ii) that it is necessary for the purpose of avoiding any prejudice to the welfare of the mentally handicapped person that the case should be taken over and proceeded with without delay by the High Court,

the Crown Prosecutor may serve a notice of transfer on the relevant magistrate certifying his opinion, together with an affidavit setting out the reasons for such opinion.".

(f) in the proposed section 79G -

(i) in subsection (5) by adding "or mentally handicapped person" after "child";

(ii) in subsection (8) by deleting "Rules Committee" and substituting "Chief Justice".

Question on the amendment proposed, put and agreed to.

Question on clause 3, as amended, proposed, put and agreed to.

EVIDENCE (AMENDMENT) BILL 1995

Clause 1

ATTORNEY GENERAL: Mr Chairman, I move that clause 1 of the Bill be amended as set out in the paper circulated to Members.

Clause 1 is amended by deleting subclause (3) as it is intended that the proposed Ordinance shall come into operation immediately upon enactment. The heading of the clause is also amended accordingly.

Mr Chairman, I beg to move.

Proposed amendment

Clause 1

That clause 1 be amended —

(a) by deleting the heading and substituting -

"Short title and application".

(b) by deleting subclause (3).

Question on the amendment proposed, put and agreed to.

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

Clause 2 was agreed to.

Clause 3

ATTORNEY GENERAL: Mr Chairman, for the reasons given earlier today in the debate on the Criminal Procedure (Amendment) Bill and this Bill, I move that clause 3 be amended as set out in the paper circulated to Members.

Proposed amendment

Clause 3

That clause 3 be amended —

(a) by deleting the proposed section 4(4).

(b) in the proposed section 4A(1), by adding "in relation to cases where such a warning is required by reason only that the evidence is the evidence of a child" after "abrogated".

Question on the amendment proposed, put and agreed to.

Question on clause 3, as amended, proposed, put and agreed to.

ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) (NO. 2) BILL 1995

Clauses 1 to 10, 12, 13, 17 to 24, 26 to 40, 43, 45 to 50, 52, 53, 54, 56 and 57 were agreed to.

Clauses 11, 14, 15, 16, 25, 41, 42, 44, 51 and 55

ATTORNEY GENERAL: Mr Chairman, for the reasons given earlier today in the debate on this Bill, I move that clauses 11, 14, 15, 16, 25, 41, 42, 44, 51 and 55 be amended as set out in the paper circulated to Members.

Clause 11 relates to the powers of the Law Society to intervene in the practice of a solicitor or foreign lawyer in order to protect his or her clients.

Clauses 15 and 16 withhold the proposal to dispense with the procedure in respect of the apportionment of Crown Rent.

Clause 25 relates to the circulation of papers to the Board established under the Pharmacy and Poisons Ordinance.

Clause 41 withdraws the proposed requirement of black and white health warnings in respect of cigarette packets.

Clause 44 withdraws the proposed amendment to the Estate Duty Ordinance.

Clauses 14, 42, 51 and 55 are drafting changes.

Mr Chairman, I beg to move.

Proposed amendments

Clause 11

That clause 11 be amended, in the proposed section 26A(1)(a) —

(a) in subparagraph (iii), by deleting the semicolon at the end and substituting a comma;

(b) by adding at the end -

"and the Council considers the exercise of those powers is in the interests of the public or the clients of the solicitor or foreign lawyer;".

Clause 14

That clause 14 be amended, by deleting "of the Interpretation and General Clauses Ordinance (Cap. 1)".

Clause 15

That clause 15 be amended, by deleting the clause.

Clause 16

That clause 16 be amended, by deleting the clause.

Clause 25

That clause 25 be amended, by deleting the proposed subsection (6A) and substituting —

"(6A) (a) The Board may transact any of its business by circulation of papers and, subject to paragraphs (b) and (c), a resolution in writing which is approved in writing by all the members present in Hong Kong (being not less than the number required to constitute a majority of the Board) shall be as valid and effectual as if it had been passed at a meeting of the Board by the votes of the members so approving the resolution.

(b) Any member of the Board may, by notice in writing to the Chairman of the Board, require any business which is being transacted by circulation of papers to be transacted at a meeting of the Board.

(c) Where a notice under paragraph (b) has been given to the Chairman of the Board, any resolution in respect of the business the subject of the notice, which has been approved in writing by the members under paragraph (a) shall be void.".

Clause 41

That clause 41 be amended, by deleting the clause.

Clause 42

That clause 42 be amended, by adding "of the Smoking (Public Health) (Notices) Order (Cap. 371 sub. leg.)" after "Paragraph 5(4)(b)".

Clause 44

That clause 44 be amended, by deleting the clause.

Clause 51

That clause 51 be amended, by deleting the clause and substituting —

"51. 與弱智者性交

《刑事罪行條例》（第 200 章）第 125(1)條現予修訂，在"定罪"之前加入"循公訴程序"。".

Clause 55

That clause 55 be amended, by deleting "The Immigration Ordinance (Cap. 115) is amended by adding "and substituting "The following is added".

That clause 55 be amended, by deleting the proposed section 56AA and substituting —

"56AA. 進入及搜查手令等

(1) 裁判官如鑑於任何人所作的宣誓，覺得有合理因由懷疑在任何處所或地方有任何可根據本條例扣押的物件，則該裁判官可向人民入境管理隊的任何成員或任何警務人員發出手令，賦權該成員或人員帶同所需的助手，在日間或夜間進入及在有需要時破門或強行進入該手令指明的處所或地方，並搜查及扣押、移走及扣留可根據本條例扣押的任何該等物件。

(2) 裁判官如鑑於任何人所作的宣誓，覺得有合理因由懷疑在任何建築物、船隻（軍艦或具有軍艦地位的船舶除外）或地方內，有任何文件或文件的任何部分或摘錄或任何其他物品或實產，就調查已經進行，或合理地懷疑已進行的或即將進行的或意圖進行的違反本條例或《人事登記條例》（第 177 章）或《人民入境管理隊條例》（第 331 章）的條文的罪行而言，是相當可能有價值的（不論就其本身或連同任何其他東西），則該裁判官可向人民入境管理隊的任何成員或任何警務人員發出手令，賦權該成員或人員帶同所需的助手，在日間或夜間 —

(a) 進入及在有需要時破門或強行進入該建築物、船隻或地方，並搜查及接管可能於其內尋獲的任何該等文件，或該文件的任何部分或摘錄，或任何其他物品或實產；及

(b) 於爲容許該項搜查得以進行而合理地需要的期間內，扣留任何看似是管有或控制該文件或其任何部分或摘錄或其他物品或實產，並屬若非如此扣留，便會妨礙該項搜查的目的之人。".

Question on the amendments proposed, put and agreed to.

Question on clauses 11, 14, 15, 16, 25, 41, 42, 44, 51 and 55, as amended, proposed, put and agreed to.

Heading before New clause 10A	Juvenile Offenders Ordinance
New clause 10A	Procedure in juvenile courts
New clause 13A	Interpretation of words and expressions
Heading before New clause 51A	Offences against the Person Ordinance
New clause 51A	Exposing child whereby life is endangered
New clause 51B	Ill-treatment or neglect by those in charge of child or young person
New clause 54A	Miscellaneous powers of immigration officers and immigration assistants

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

ATTORNEY GENERAL: Mr Chairman, for the reasons given earlier today in the debate on this Bill, I move that the heading before new clause 10A, new clauses 10A and 13A, the heading before new clause 51A and new clauses 51A, 51B and 54A as set out in the paper circulated to Members be read the Second time.

Clause 10A circumscribes the power of the juvenile court to exclude any representative of a newspaper or news agency from its sittings.

Clause 13A clarifies the meaning of the Chinese equivalent of the term "weekday".

Clauses 51A and 51B increase the penalties for two offences relating to children.

Clause 54A provides that the power of search and seizure without a warrant may only be exercised where it would not be reasonably practicable to obtain a warrant.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

ATTORNEY GENERAL: Mr Chairman, I move that the heading before new clause 10A, new clauses 10A and 13A, the heading before new clause 51A and new clauses 51A, 51B and 54A be added to the Bill.

Proposed additions

Heading before new clause 10A and new clause 10A

That the Bill be amended, by adding —

"Juvenile Offenders Ordinance

10A. Procedure in juvenile courts

Section 3D(4) of the Juvenile Offenders Ordinance (Cap. 226) is amended by adding "if it considers it is necessary to do so in the interests of the child or young person in question" after "thereof".".

New clause 13A

That the Bill be amended, by adding before clause 14 —

"13A. Interpretation of words and expressions

Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) is amended by adding -

""weekday" and week-day"（周日）mean any day other than a Sunday;".".

Heading before new clause 51A and new clauses 51A and 51B

That the Bill be amended, by adding —

"Offences against the Person Ordinance

51A. Exposing child whereby life is endangered

Section 26 of the Offences against the Person Ordinance (Cap. 212) is amended by repealing everything after "offence" and substituting -

"and shall be liable -

(a) on conviction on indictment to imprisonment for 10 years; or

(b) on summary conviction to imprisonment for 3 years.".

51B. Ill-treatment or neglect by those in charge of child or young person

Section 27 is amended -

(a) in subsection (1)(a) by repealing "to a fine of $2,000 and to imprisonment for 2" and substituting "to imprisonment for 10";

(b) in subsection (1)(b) by repealing "to a fine of $250 and to imprisonment for 6 months" and substituting "to imprisonment for 3 years".".

New clause 54A

That the Bill be amended, by adding before clause 55 —

"54A. Miscellaneous powers of immigration officers and immigration assistants

Section 56(1A) of the Immigration Ordinance (Cap. 115) is amended -

(a) in paragraph (c) by repealing ", or enter and search any premises or place,";

(b) by adding -

"(d) enter and search any premises or place if he has reason to suspect that there is therein any person who may be arrested under this Ordinance;

(e) without a warrant where it would not be reasonably practicable to obtain one, enter and search any premises or place if he has reason to suspect that there is therein any thing which may be seized under this Ordinance.".".

Question on the addition of the heading before new clause 10A, new clauses 10A and 13A, the heading before new clause 51A and new clauses 51A, 51B and 54A proposed, put and agreed to.

Schedule 1

ATTORNEY GENERAL: Mr Chairman, I move that schedule 1 be amended as set out in the paper circulated to Members. This is to effect some drafting changes to the item in the schedule.

Proposed amendment

Schedule 1

That Schedule 1 be amended, in item 3, by deleting column 3 and substituting —

"在附表 10 第 9(1)(c)段中，廢除"48(1)條但書(b)及(c)"而代以"47C(4)(b)及(c)條"。".

Question on the amendment proposed, put and agreed to.

Question on the schedule, as amended, proposed, put and agreed to.

Schedule 2 was agreed to.

AIRPORT AUTHORITY BILL

Clauses 1, 4, 5, 8, 12, 14, 16 to 23, 25 to 28, 30, 34 to 47 and 50 were agreed to.

Clauses 2, 7, 9, 10, 13, 15, 24, 29, 31, 33, 48 and 49

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

The amendments to clauses 2, 7, 13(2), 15, 24, 29, 48 and 49 are technical. The amendments to the other clauses specified are made with a view to addressing the concerns expressed by Members of the Bills Committee, namely, clause 9(1) is amended to prohibit delegation of functions by the Authority to outside bodies except with the prior written approval of the Financial Secretary.

Clause 10(2) is amended to provide that the chairman of a committee established by the Authority shall be a member of the Authority.

Clause 13(1) is amended to require the Authority to maintain a register of interest declared by members of the Airport Authority under that subclause and to make the register available for public inspection.

Clause 31(2)(a) is amended to provide that the Authority's Audit Committee shall consist of a minimum of three members. And clause 33(a) is amended to provide that the Authority's business plan to be submitted to the Financial Secretary shall cover five years instead of one year.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2(2)(a) be amended, by deleting "及" and substituting "或".

Clause 7

That clause 7(2)(f) be amended, by deleting "airport-related business or other".

That clause 7(2)(i) be amended, by deleting "（如適用）在符合第 34 條" and substituting "在符合第 34 條（如適用）".

Clause 9

That clause 9(1) be amended, by deleting ", to any person." and substituting -

"-

(a) to any member or employee (including the Chief Executive Officer) of the Authority or any committee (including the Audit Committee) or any subsidiary; and

(b) if, but only of, it has the Financial Secretary's prior written consent, to any other person.".

Clause 10

That clause 10(2) be amended —

(a) in paragraph (c) by deleting "The" and substituting "Subject to paragraph (d), the".

(b) in paragraph (d) by deleting "person" and substituting "member of the Authority".

Clause 13

That clause 13 be amended —

(a) by renumbering subclause (1) as subclause (1)(a).

(b) by adding after subclause (1)(a) -

"(b) The Authority shall establish and maintain a register ("the register") for the purposes of this subsection.

(c) Where a member of the Authority makes a declaration required by this subsection, the Authority shall cause the name of the member to be entered in the register together with the particulars contained in the declaration, and if, in accordance with such a requirement, the member subsequently makes any such declaration, the particulars already so entered shall be added to or otherwise amended in such manner as the Authority considers appropriate.

(d) The Authority shall make the register available for public inspection at any reasonable time."

That clause 13(2) be amended —

(a) by deleting "Authority" after "determined by the" and substituting "Board".

(b) in paragraphs (c) and (d) by deleting "Authority" and substituting "Board".

Clause 15

That clause 15(1)(b)(ii) be amended, by deleting "3(6)" and substituting "3(6)(b)(ii)".

That clause 15(1)(d) be amended, by adding "for such period as is specified at the time of the assignment or direction or, in case no period is so specified," after "in force".

Clause 24

That clause 24 be amended —

(a) in subclause (1) -

(i) by deleting "expenses" and substituting "items of expenditure";

(ii) by deleting "an expense" and substituting "expenditure".

(b) in subclause (2) -

(i) in paragraph (a) by deleting "each expense" and substituting "expenditure";

(ii) in paragraph (a)(i) and (ii) by deleting "expense" and substituting "expenditure";

(iii) in paragraph (b) by deleting "expenses" and substituting "expenditure".

(c) in subclause (4) by deleting "expense" and substituting "expenditure".

Clause 29

That clause 29(4) be amended —

(a) by deleting "協議的授權下作出、發出或訂立，首述的決議不得損害" and substituting "決議的授權下作出、發出或訂立，首述的決議不得損害依據或根據".

(b) by deleting "持續全面有效" and substituting "繼續具有十足效力".

Clause 31

That clause 31(2)(a) be amended, by adding ", not being less than 3," after "members".

Clause 33

That clause 33(a) be amended —

(a) by adding "for the next financial year" after "revenue".

(b) by deleting "next financial year" after "business plan for the" and substituting "period of 5 years beginning on the first day of the next financial year".

Clause 48

That clause 48 be amended, by deleting "區目" and substituting "區內".

Clause 49

That clause 49 be amended, in the Chinese text, by deleting the clause and substituting —

"49. 公共機構

《防止賄賂條例》（第 201 章）的附表現予修訂，廢除第 59 項而代以 —

"59. 機場管理局。" 。".

Question on the amendments proposed.

MR MARVIN CHEUNG: Mr President, pursuant to Standing Order 65, I wish to declare that I am a partner the firm of KPMG Peat Marwick who are the auditors of the Provisional Airport Authority.

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 7, 9, 10, 13, 15, 24, 29, 31, 33, 48 and 49, as amended, proposed, put and agreed to.

Clauses 3 and 11

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that clauses 3 and 11 be amended as set out under my name in the paper circulated to Members.

The amendments to clauses 3 and 11 mainly seek to require the nomination of not less than one-third of the other members of the Airport Authority (AA) by the Legislative Council for appointment by the Governor.

During the Second Reading debate just now, many Members spoke their views regarding this issue. They opined that it would politicize the AA if members of the Board of Directors of the AA had to be nominated by Legislative Council Members, making it impossible for the AA to run on prudent commercial principles. I do not think such argument is reasonable, because over the years, among the many statutory bodies, including the Provisional Airport Authority, the Mass Transit Railway Corporation, the Kowloon-Canton Railway Corporation, the Land Development Corporation, some have had Legislative Council Members as chairmen. If they could serve concurrently in the Legislative Council and the statutory bodies concerned without being alleged to have politicized these bodies, how, then, can my proposal politicize the AA as all I seek is to require part of the membership, that is, one-third, to be nominated by Legislative Council for appointment by the Governor?

The main reason for proposing these amendments is that our present Governor, and for that matter the Chief Executive after 1997, do not have a mandate from the people. The present Governor was appointed by Her Majesty the Queen of United Kingdom, and the future Chief Executive will also be an indirectly appointed one. Therefore, for a statutory body whose finance comes totally from the taxpayers, it must have, on its Board, some representatives nominated by an organization publicly accepted before its future operation will be approved by the public, and such representatives can also supervise its operation.

In future when the Chief Executive or the Governor is elected by universal suffrage, his appointees can then be said to have the indirect authorization of the public. Only then should appointments be made entirely by the Governor. Many management bodies in other parts of the world are so constituted. For example many statutory organizations are appointed by the presidents, or mayors or provincial governors, but these presidents, mayors or provincial governors are all elected ones. I think that this way, public acceptability and approval can be more easily obtained. I hope that Members will consider this issue and my views carefully, and do not automatically oppose any and all proposals put forth by the Democratic Party. Thank you, Mr Chairman.

Proposed amendments

Clause 3

That clause 3(3)(c) be amended, by deleting the paragraph and substituting —

"(c) Subject to paragraph (a) and section 15(1)(a), the Chairman and the other members of the Authority shall each be appointed by the Governor, but not less than one-third of such other members shall be nominated by the Legislative Council and appointed by the Governor.".

Clause 11

That clause 11(11) be amended, by deleting the subclause and substituting —

(1.1) Subject to having a quorum, the Authority may act notwithstanding the fact that, excluding the Chairman and the Chief Executive Officer (if any) -

(a) the Authority has for the time being less than 8 members; or

(b) less than one-third of the members of the Authority have been nominated by the Legislative Council.

Question on the amendments proposed.

MR PETER WONG: Mr Chairman, I would just like to respond to the Honourable Albert CHAN that he only has completely overlooked the point that if you are elected from a body such as this, you are beholden to this body for your election and thereby you have to be accountable to it. Whereas all the other Members of the Legislative Council who were appointed to the various boards by the Governor, they were appointed in their own personal right and they are under no obligation whatsoever to be answerable to this Council and therein lies a difference.

Question on amendments put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR ALBERT CHAN: I claim a division.

CHAIRMAN: Committee will proceed to a division. The division bell will ring for one minute of course.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We are two short of the head count; one short. Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr Conrad LAM, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Dr YEUNG Sum, Mr WONG Wai-yin and Mr LEE Cheuk-yan voted for the amendments.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendments.

Miss Emily LAU abstained.

THE CHAIRMAN announced that there were 15 votes in favour of the amendments and 36 votes against them. He therefore declared that the amendments were negatived.

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I move that clause 11 be amended as set out under my name in the paper circulated to Members.

The purpose of the amendment to clause 11(8) is to take account of suggestions by Members of the Bills Committee that in addition to at least two public officers, the quorum for a meeting of the Board should include at least two members who are not the Chairman, the Chief Executive Officer or a public officer. This would ensure that decisions taken by the Board would have a proper balance of advice from Board members.

The amendment to clause 11(13) is technical. It aims to bring the wording in clause 11(13) in line with drafting in the clause.

Mr Chairman, I beg to move.

Proposed amendment

Clause 11

That clause 11(8) be amended, by adding after "officers" -

> "and at least 2 shall be members who are not the Chairman, the Chief Executive Officer or a public officer".

That clause 11(13) be amended, by adding "and the Chief Executive Officer (if any)" after "Chairman".

Question on the amendment proposed, put and agreed to.

Question on clause 11, as amended, proposed, put and agreed to.

Question on clause 3 standing part of the Bill put and agreed to.

Clause 6

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that clause 6 be amended as set out under my name in the paper circulated to Members. First of all, I wish to thank the large number of Members for returning to this Chamber, to enthusiastically cast their negative votes. *(Laughter)*

The amendment to clause 6 mainly seeks to insert the words "and take into account the long-term interests of Hong Kong" after "prudent commercial principles". You just said that the last amendment was a political one, but the present amendment involves only a very common principle. Logically, conceptually, there is no reason to oppose it. To vote against this amendment, political factors might be the only consideration. Mr Chairman, I am only speaking with Members, and am not lobbying them because the stand of many Members is perfectly clear, and I would not like to embarrass them by trying to lobby them, the Honourable Vincent CHENG in particular. *(Laughter)*

When I spoke with Members over the amendment to this clause, they were worried that if it was successfully amended by the Democratic Party, the agreement reached by China and the United Kingdom would be ruined, making it impossible to implement the ordinance, then we would turn from having an ordinance to having no ordinance. I do not subscribe to this way of thinking. This amendment has been continuously discussed in the Committee in the past several months, but both the *Wen Wei Po* and *Ta Kung Pao* did not make any

criticism against my amendment. As the press of the Chinese side has not refuted my amendment, why are Members so afraid?

During the discussions on this issue, the Administration repeatedly stressed that the need "to take into account the interests of Hong Kong" was built in in other clauses, and that being the case, it was not necessary to have the same specified in that clause. As this is a clause of principle, and if other clauses already embody this principle, then why not also clearly make it clear in the operation objectives the need "to take account the long-term interests of Hong Kong"? If there is no objection against this principle, why is it not possible to explicitly and at the beginning of the Bill specify this under the operation objectives? I hope the Administration and Members would look at this issue more objectively and more rationally. As it is agreed that this objective can be accepted, when you cast your votes in a moment, even if you cannot vote for it for some reasons, please actively abstain from voting. Thank you, Mr Chairman.

Proposed amendment

Clause 6

That clause 6(1) be amended, by adding ", shall take into account the long-term interests of Hong Kong" after "prudent commercial principles".

Question on the amendment proposed.

MR PETER WONG: Mr Chairman, if we need to legislate every time that one plus one equals two then I advise Members to vote for this. However, I would recommend to you to vote against this.

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I have already covered the reasons why the Administration opposed this amendment in the speech which I made earlier. Of course, we take Members' concern that the protection of the public interest is vital and I would suggest that we would protect the public interest. We would have already covered, both the long-term public interest and the short-term public interest, so I would not wish to delay with the argument. Thank you.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR ALBERT CHAN: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr Vincent CHENG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr Conrad LAM, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Dr YEUNG Sum, Mr WONG Wai-yin, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

Mr HUI Yin-fat and Miss Emily LAU abstained.

THE CHAIRMAN announced that there were 18 votes in favour of the amendment and 34 votes against it. He therefore declared that the amendment was negatived.

Question on clause 6 standing part of the Bill put and agreed to.

Clause 32

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I move that clause 32(2) be amended as set out under my name in the paper circulated to Members.

The purpose of the amendment is to set out in more precise terms the requirement regarding the Authority's statement of accounts. It takes into account the fact that the Authority's profit and loss account and cash flow statement should cover the whole financial year.

Mr Chairman, I beg to move.

Proposed amendment

Clause 32

That clause 32(2) be amended —

(a) by adding "each of the following, namely," after "view of".

(b) by adding ", its profit or loss and its cash flows for that financial year" after "relates".

Question on the amendment proposed, put and agreed to.

CHAIRMAN: Mr Albert CHAN has given notice to move amendments to subclauses (3) and (4) of clause 32. The Secretary for Economic Services has also given notice to move an amendment to subclause (4) of clause 32. I will call upon Mr Albert CHAN to move this amendment first in accordance with Standing Order 25(4) and 46(2).

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that clauses 32(3) and (4) be amended as set out under my name in the paper circulated to Members. Mr Chairman, judging from the voting trend, my fourth amendment might be carried.

Mr Chairman, the proposed amendments to clauses 32(3) and (4) mainly seek to empower the Director of Audit to audit the financial position of the Airport Authority (AA). The past performance of the Director of Audit is for all to see. As a member of the Public Accounts Committee, I observed that in the past the findings as the result of the auditing work of the Director of Audit invariably pointed out a number of problems, particularly those relating to value-for-money, other financial performance or procedures; and also pointed out examples where government departments did not comply with established government policies. The most successful aspect of such auditing is that all such problems were exposed to the public. The Public Accounts Committee, having studied the views of the Director of Audit, would also make specific recommendations to the Government which would then respond to the Committee in due course. After the problems were pointed out, whether the recommendations have been implemented, the public will know. This is

conducive to the improvement of the operation of government departments. I feel that this practice is suitable for such a public corporation as the AA.

The Provisional Airport Authority had a lot of problems in the past. Those were there for all to see. One of the examples was the resignation of the Chief Executive Officer which many people alleged that there was a "golden handshake" problem. Another example was the discrimination against local staff over employment benefits, an overseas employee may draw a housing allowance of $48,000 per month, while a local one of the same rank may have only $18,000 to $20,000. What is more, whether its staff abused their powers or made excessive overseas study tours were subject to serious doubt. The most notable example was the case of two employees going to Vietnam on a study tour. They were interviewed by reporters in the airport, but then forgot to board their plane.

These examples show that there was problem in supervision in the past. Though the public knew of such problems, but what has been done internally? What improvement has been made? There have been no reports whatsoever, even the Legislative Council is in the dark as to whether any improvement has been made afterwards. Therefore, this amendment would make public supervision of the future operation of the AA possible, would let the public have the real right of information and the means to successfully monitor its operation. I hope that Members will support this amendment.

Proposed amendment

Clause 32

That clause 32 be amended —

(a) in subclause (3), by deleting everything after "audited by" and substituting -

"the Director of Audit, who -

(a) shall make a written report thereon to the Authority; and

(b) shall be remunerated by the Authority for the cost of services rendered in conducting the audit required by this section.".

(b) by deleting subclause (4).

Question on the amendment proposed.

MR ROGER LUK: Mr Chairman, as a certified public accountant, the external auditor of a limited company gives an opinion on the truth and fairness of the annual financial statement of the company as prepared by the management. Incidental to this statutory duty, the external auditor has to be satisfied that the accounting records are properly kept and there is a proven system of checks and balances in this regard. As a public corporation operated under prudent commercial principles, the statutory auditor of the Airport Authority, like any listed company, should be a certified public accountant.

The "amendment" in question is simple in concept but far reaching in practice. The appointment of the Director of Audit to assume the role of the statutory auditor of the Airport Authority is virtually giving public auditor a statutory role in examining the Airport Authority. The underlying question is whether the Director of Audit, as the public auditor, should and could play any proactive role in monitoring the efficiency and integrity of the internal controls of public corporations.

In general, there are three arguments for a proactive role of the public auditor in respect of statutory public entities.

First, the public funding argument. As statutory public entities are financed by public fund, either in the form of working capital or equity capital, it is the duty of the public auditor to give the general public an assurance that the related funds are properly and effectively used for the intended purposes.

Second, the public accountability argument. Statutory public entities should be accountable to the general public for their performance and utilization of resources, and the engagement of the public auditor is an indispensable arrangement in this context.

Third, the public interest argument. As the public auditor is both independent and impartial and there is an established mechanism for the auditor reports to be scrutinized by the legislature in open hearings, it is in the best interest of the general public to entrust the public auditor as the watchdog for the statutory public entities.

While these arguments are generally valid in most cases, they are not applicable to public corporations like the Airport Authority. Moreover, they presume the applicability of the public sector audit philosophy primarily designed for public entities to commercial going concerns.

There are basically four types of statutory public entities. First, local authorities, that is, the two municipal councils which provide public health, cultural and recreational services. Second, public authorities which perform regulatory, policy or development functions. The Securities and Futures Commission, for instance, is a regulatory body; the Housing Authority is a policy body and the Productivity Council is a development body. Third, subvented universities which are supported by government grants. Finally, public corporations which are companies incorporated by statute and operated according to prudent commercial principles to provide specific public services. The Airport Authority to be established under this Bill is a public corporation.

In the case of the first three forms of statutory public entities, the public funding argument is valid by virtue of their financial dependence on the Government. However, this is not the case of public corporations as the public moneys at stake are no more than the equity investment involved. The public funding argument is inapplicable.

Local authorities and public authorities are virtually substitutes for government entities, and the subvented universities are virtually national institutions. As such, their public accountability is no different from any government entity. Moreover, they do not have a full-fledged internal audit function. It is definitely in the public's interest to bring them within the ambit of the public auditor.

On the contrary, public corporations are similar in nature to publicly listed companies. Public accountability should be achieved in the perspective of corporate governance. In listed companies, the internal auditor conducts management and compliance audits and is directly accountable to the board of directors through the audit committee. The external auditor maintains a check on the internal audit quality through technical reviews of the internal audit plan, approach and scope as part of their annual statutory audit exercise.

As external and internal auditors of a public corporation are both enacted by and report to the corporation itself, some Honourable Members worry that they lack the independence and impartiality of the public auditor. They argue that the engagement of the public auditors will eliminate this deficiency. Public accountability would be assured as the audit report would by virtue of this arrangement be subject to public scrutiny by the legislature.

This is a fallacy. In the case of listed companies, public accountability is achieved through compliance with elaborated disclosure requirements and corporate governance standards in particular the "Code of Best Practice". In the United Kingdom, for instance, the Code requires directors to, inter alia, review the effectiveness of internal controls, and submit an audited report to the shareholders accordingly.

For public corporations, accountability should be achieved in the same manner. The proposed engagement of the public auditor rather than a certified public accountant as the external auditor will undermine the operation of the public corporations as a business going concern.

In fact, the Director of Audit is only the internal auditor of the Government. The Director is not licensed as a certified public accountant to carry out statutory financial audit for limited companies. As such, the Director could not be held responsible for professional liabilities as in the case of certified public accountant and this would in turn undermine the ability of the public corporation to access to bank financing. The Director of Audit exists to perform public sector audit. The audit approach and subsequent public inquiries on the findings are primarily designed from the public goverance perspective. Applying the same to the public corporations would defeat the purpose of establishing these corporations and undermine the benefits from operation according to commercial principles. Thus, the public accountability argument and public interest argument are both flawed in the case of public corporations.

Mr Chairman, as a public corporation, the Airport Authority is a de facto commercial going concern. Public accountability and interest could not and should not be safeguarded through the means of public goverance. They should be safeguarded through the means of corporate governance. The proposal to engage the Director of Audit as the external auditor would only undermine the intended purpose of establishing the Airport Authority as a public corporation.

As the sole shareholder of the Authority, the Government has direct control over the composition of its Board. Above all, the Government has reserved powers both in under this Bill and the Audit Ordinance to exercise checks on the Authority. In particular, the Governor can always direct the Director of Audit to examine any public corporation if so required. With all these checks and balances in place, public interest should be well assured and adequately safeguarded. I cannot see the logic for arguing otherwise.

Finally, the Honourable Eric LI has asked me to put this on record that he shares my views.

With these comments, Mr Chairman, I oppose the amendment.

MR PETER WONG: Mr President, first let me say that both the Director of Audit and the present auditors as mentioned are members of my functional constituency so I am not being partial. I feel that there are some fundamental misunderstanding in this amendment of Mr Albert CHAN. I do not recall any serious discussion within the Bills Committee to have the Director of Audit undertake the responsibility of full audit of the financial statements of the Airport Authority.

The point of discussion was whether the Director of Audit had the right to perform value-for-money audits, leaving the audit to an independent firm of certified public accountants of the private sector. I strongly doubt whether the Director of Audit would be acceptable to international lenders from the viewpoints of professional liability and the ability to be sued. Neither does he carry any professional indemnity insurance. Fellow Members know that I have certain sympathies to permit the Director of Audit to perform value-for-money studies whilst the Authority is beholden to the Government for financial support as this Council may be called to prop it up.

However, this is not the case before us today. The amendment asks us to be approve the appointment of the Director of Audit to perform the full audit, something which even the Director of Audit does not want to do. I would recommend all Members to vote against this amendment. The Liberal Party will do so.

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I would like to just say that in fact I have already given the reasons why the Administration cannot propose to Members to accept the Honourable Albert CHAN's amendment. Later on I shall be moving an amendment to clause 32(4), and taken together the provisions in the Bill plus that amendment, I would put it to Members that the controls are sufficient. Thank you.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I would like to respond to a few points. The Honourable Roger LUK said just now that if the audit was undertaken by the Director of Audit, many consortia or business corporations would have a confidence problem with the Airport Authority. I think that this is an inappropriate argument because it in a way implies no confidence in the Audit Department.

Many overseas organizations of a nature similar to the Airport Authority are audited by the audit departments of their respective countries. If western and capitalist countries adopt this mode of operation without having their borrowing or commercial activities adversely affected, I do not see why we in Hong Kong alone should have such bias against the Audit Department in this area of work.

Statutory bodies now being audited by the Director of Audit include the two municipal councils and the Housing Authority. The Housing Authority is little short of the biggest land owner in Hong Kong. According to the Honourable LEE Wing-tat the Housing Authority has an accumulated surplus of nearly $15 billions. The Housing Authority is also engaged in many commercial activities and construction projects, and no consortium has ever questioned its reliability or its commercial status. I do not see why the Airport Authority in particular will have such problems.

As regards the auditing of the financial position of the Airport Authority, I would like to point out that our proposal, does not rule out the Audit Committee, which will be set up despite the Director of Audit. The Democratic Party is not asking for the abolition of the Audit Committee; therefore, in auditing matters the Audit Committee will continue to have a certain role to play. The participation of the Director of Audit will, according to the jurisdiction of the Audit Department and through the participation in turn of the Public Accounts Committee, enhance the transparency and credibility in the financial operation of the Airport Authority.

Thank you, Mr Chairman.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR ALBERT CHAN: Division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Ms Anna WU and Mr LEE Cheuk-yan voted for the amendment.

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

THE CHAIRMAN announced that there were 19 votes in favour of the amendment and 35 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: Secretary for Economic Services, as Mr Albert CHAN's amendments to clause 32 have been negatived, you may move you further amendments to clause 32 now.

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I move that clause 32(4) be amended as set out in the paper under my name.

This amendment is made in response to suggestions by Members of the Bills Committee. Its purpose is to put the independence of the external auditor of the Authority beyond doubt.

Mr Chairman, I beg to move.

Proposed amendment

Clause 32

That clause 32(2), be amended —

(a) by adding "each of the following, namely," after "view of".

(b) by adding ", its profit or loss and its cash flows for that financial year" after "relates".

That clause 32 be amended —

(a) by renumbering subclause (4) as subclause (4)(a).

(b) in subclause (4)(a) by deleting "The" and substituting "Subject to paragraph (b), the".

(c) by adding after subclause (4)(a) -

"(b) A person appointed under paragraph (a) shall not be -

(i) a member or employee of the Authority;

(ii) a member of the Audit Committee;

(iii) a partnership of which any of the partners is either such a member or such an employee; or

(iv) a company of which any of the directors is either such a member or such an employee.

(c) The reference in paragraph (b) to a person shall not be construed as referring only to an individual.

(d) Nothing in this subsection shall be construed as affecting section 29(2) of the Professional Accountants Ordinance (Cap. 50).".

Question on the amendment proposed, put and agreed to.

Question on clause 32, as amended, proposed, put and agreed to.

New clause 11A Board meetings open to public

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

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that the new clause 11A, as set out in the paper circulated to Members under my name, be read a Second time.

Question on Second Reading of the clause proposed.

MR PETER WONG: Mr Chairman, I would recommend that Members vote against this amendment as it will totally fetter the operations of the Board and will merely induce the Authority to move this decision process to another forum. It will be far better to leave it to the good sense of the Board and the Chairman to come up with an arrangement to inform the public as to what is going on, now that it has been put squarely that the public has the right to be kept informed.

In case the amendment gets pass, I would draw the Honourable Albert CHAN's attention to the wording of his section 11A(2) in the fourth line when the meeting has to decide in open meeting that "the following information would be likely to be disclosed to the members of the public present". I would put it that "would be likely" is a fairly high degree of proof and would most likely lead to the identity and pertirent facts being disclosed before a ruling can be made to go into closed session.

Although I disapprove of the whole of this amendment, the haste with which this process has been subjected precluded a proper dialogue of this particular amendment, making it more flawed than it should be.

SECRETARY FOR ECONOMIC SERVICES: Mr Chairman, I have already given in my earlier speech the reasons why I cannot commend this amendment proposed by Mr CHAN.

MR ALBERT CHAN (in Cantonese): Mr Chairman, I would thank the Honourable Peter WONG for his views. Comparing with the previous several amendments, this one has cast the least effect to the Airport Authority (AA) and the best acceptability in terms of principle. We only seek to make the meetings of the AA open, and not unconditional at that. If personal information of employees or potential employees, or information of a personal nature, or sensitive commercial information, and so on are involved, members of the AA can decide to hold the meeting behind closed doors. Many statutory bodies take this approach to turn open meetings into secret meetings, in particular, the two Municipal councils, with whose operation I am quite familiar, having served as a member for nine years. Whenever a member feels that a certain topic involves a commercial issue, the pay of an artist to be engaged for instance, the discussion will be held behind closed doors. Members have not objected to discussing the issue behind closed doors. Naturally, the public should know the topic under discussion, for example certain orchestra is to be engage to perform in Hong Kong. It is appropriate for the public to know the agenda.

Mr Chairman, since we became Members of this Council four years ago, the operation of the Legislative Council has been changed from a closed one to an open one. There has not been any problem in these four years, nor has the Legislative Council been affected in any way. Many of what was previously labelled sensitive, confidential information is now open. Many documents we recently received would have been confidential ones just four years ago, they are now open documents. This is the prevailing trend. As we could, just four years ago, lead the highest authority, if not in terms of power, then in terms of legislative authority, in the territory from a closed form to an open form, why can we not in a similar manner give a conditionally open form of meeting to AA? Mr Gordon SIU, SES, just said that this was not the practice with MTRC and KCRC, but it was the same with the Legislative Council four years ago when this Council would hold meetings behind closed doors and the President would only brief the press afterwards. I think it is very inappropriate to vote down a proposal for openness on grounds of such feudalistic, conservative and backward mode of corporate operation.

The supporting votes for the previous three successive amendments kept increasing, I hope that you would vote with this trend. I am still actively lobbying Members, even though you cannot openly support this amendment, please at least abstain.

Thank you, Mr Chairman.

Question on the motion put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Mr Albert CHAN claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

Mr HUI Yin-fat, Mr Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Dr YEUNG Sum and Mr WONG Wai-yin voted for the motion.

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

THE CHAIRMAN announced that there were 17 votes in favour of the motion and 36 votes against it. He therefore declared that the motion was negatived.

Schedule was agreed to.

PUBLIC ENTERTAINMENT AND AMUSEMENT (MISCELLANEOUS PROVISIONS) BILL 1995

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

Clauses 5 and 13

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that clauses 5 and 13 as set out in the order paper circulated to Members be amended.

The amendment to clause 5(a)(iii) rectifies a shortcoming in section 7(1)(d) of the Places of Public Entertainment Ordinance by extending the scope of the regulation-making power under this subsection to include the power to make regulations to govern the structural and electrical safety of temporary stages, and lighting installation on platforms in places of public entertainment.

The amendment to clause 5(c) will insert a new subsection 7(2A) of which the effect will be to limit the general purpose of section 7(1)(f) of the Places of Public Entertainment Ordinance to ensuring the safety of any persons present in a place of public entertainment should a fire or other emergency occur in that place, and to avoiding disorder in such a place. This is to address concern expressed in certain quarters that the wording of section 7(1)(f) might be broader than our stated policy intention, which is to prevent disorder and to protect public safety in the course of a public entertainment.

Finally, the amendment to clause 13(2) provides a definition for the word "revolve" which will mean "rotate or otherwise move in a circular or any other orbit".

Mr Chairman, I beg to move.

Proposed amendments

Clause 5

That clause 5(a)(iii) be amended, by deleting everything after the dash and substituting —

> ""(including any stage, electrical wiring, lighting platform or electrical or other installation, whether such stage, wiring, platform or installation is temporary or permanent, and also including any other installation and any electrical or other system or arrangement)";".

That clause 5(c) be amended, by adding —

"(2A) The general purpose of regulations under subsection (1)(f) shall be to -

(a) ensure the safety of any persons present in a place of public entertainment should a fire or other emergency occur in that place; and

(b) avoid disorder in such a place.".

Clause 13

That clause 13(2) be amended, in the proposed Schedule 2, by adding —

"3. In this Schedule "revolve"(旋轉)means rotate or otherwise move in a circular or any other orbit.".

Question on the amendments proposed, put and agreed to.

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

New clause 5A Licensing authority may determine fees

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

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that new clause 5A as set out under my name in the paper circulated to Members be read a Second time.

New clause 5A repeals section 7(c)(viii) of the Ordinance to remove the definition of Licensing Authority which is already included under clause 2 of the Bill. This is just to rectify an oversight.

Mr Chairman, I beg to move.

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

Clause read the Second time.

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that new clause 5A be added to the Bill.

Proposed addition

New clause 5A

That the Bill be amended, by adding —

"5A. Licensing authority may determine fees

Section 7C(8) is repealed.".

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

CONTROL OF OBSCENE AND INDECENT ARTICLES (AMENDMENT) BILL 1995

Clauses 1, 3, 4 and 6 to 9 were agreed to.

Clauses 2, 5 and 10 to 14

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

To prevent publishers from circumventing the requirement to give their particulars, especially their proper address, on the cover of an article by simply putting down a postal box number, clause 5(b)(1B) of the Bill is amended to require the display of the full address of the place of business of the publisher. A definition for "place of business" is added under clause 2 following the meaning used in the Business Registration Ordinance.

The amendments to clause 5(a) of the Bill reflect the revised proposal on wrappers, so that only indecent articles with indecent cover designs or packaging are mandatorily required to be sealed in opaque wrappers. Indecent articles with cover designs or packaging which are not indecent shall be enclosed in transparent wrappers. Clause 5(b)(1A), (1C) and (1D) are consequential to the revised proposals on wrappers.

The amendments to clause 5(b)(1E) and (1F) and clause 10 give effect to the Honourable Eric LI's suggestions. The amendment to clause 5(b)(1F) pins down the definition of "publisher" to include those who control or manage the printing, manufacturing or reproduction of an indecent article. The amendment to clause 5(b)(1E) creates a new offence attracting a maximum fine of $50,000 and imprisonment for six months to penalize any person who wilfully or knowingly allows his name to be used as the publisher of an indecent article, when in fact he is not. The combined effect of these changes will reduce the chance of surrogates being used by unscrupulous publishers to bypass restrictions imposed on them by this Bill.

The amendments to clause 10 empower inspectors of the Television and Entertainment Licensing Authority (TELA) as defined in clause 2 to seize indecent articles in public places, thus facilitating street level surveillance and monitoring. Clauses 11, 12(c), 13 and 14 are consequential changes as a result of the amendment to clause 10 to ensure that the additional power conferred on TELA inspectors can be used effectively to enforce the Ordinance.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended —

(a) by deleting "of the Control of Obscene and Indecent Articles Ordinance (Cap. 390)".

(b) by renumbering the clause as clause 2(2).

(c) by adding -

"(1) Section 2(1) of the Control of Obscene and Indecent Articles Ordinance (Cap. 390) is amended by adding -

""inspector"（督察）means a public officer authorized under section 36B(1);

"place of business"（營業地點）includes in relation to -

(a) a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32), its registered office; and

(b) a company to which Part XI of the Companies Ordinance (Cap. 32) applies, the address of any person whose name has been delivered to the Registrar of Companies for registration under that Part;".".

Clause 5

That clause 5(a) be amended, by deleting the proposed subsection (1) and substituting —

"(1) A person shall not publish an indecent article -

(a) where -

(i) the article has no cover or packaging or the covers or packaging is not indecent, unless the article (together with its covers or packaging, if any) is sealed in a transparent wrapper;

(ii) either the front cover or back cover of the article or both such covers are indecent (whether or not the article has any packaging and whether or not the packaging is indecent), unless the article (together with the covers, and packaging if any) is sealed in a completely opaque wrapper; or

(iii) the packaging of the article is indecent (whether or not the article has any cover and whether or not the covers are indecent), unless the article (together with the covers, if any, and the packaging) is sealed in a completely opaque wrapper;

(b) where the article is an article -

(i) described in paragraph (a)(i), unless the article bears; or

(ii) described in paragraph (a)(ii) or (iii), unless the article and the completely opaque wrapper each bears,

a notice which is in the form specified in subsection (1D) and is displayed in accordance with subsection (1C); and

(c) unless the article, and its transparent wrapper or completely opaque wrapper, as the case may be, comply with the relevant requirements in subsections (1A) and (1B).".

That clause 5(b) be amended —

(a) in the proposed subsection (1A), by deleting everything after "is published" and substituting -

"-

(a) if it is an article which is sealed in a completely opaque wrapper, nothing other than the name of the article, its date of publication, issue number and selling price shall be displayed on its completely opaque wrapper; or

(b) if it is an article which is sealed in a transparent wrapper, nothing shall be displayed on its transparent wrapper.".

(b) by deleting the proposed subsection (1B) and substituting -

"(1B) Where an indecent article is published -

(a) it shall have -

(i) where it has no packaging, printed either on its front cover or back cover;

(ii) where it has any packaging, (whether or not it has any covers) printed on its packaging; or

(iii) where it has no cover or packaging, printed on a label affixed to the article and which occupies the whole article; and

(b) where it is sealed in a completely opaque wrapper, it shall have in addition to the requirement in paragraph (a) printed on either side of the completely opaque wrapper,

clearly and conspicuously, the name, the full address of place of business and the telephone number of the publisher.".

(c) in the proposed subsection (1C), by deleting everything after "noticeable" and substituting -

"-

(a) (i) on both the front and back covers of the article;

(ii) on the packaging of the article if the article has no cover; or

(iii) on a label affixed to the article and which occupies the whole article if the article has no cover or packaging; and

(b) on both sides of its completely opaque wrapper where the article (together with its covers or packaging, if any) is sealed in a completely opaque wrapper."

(d) in the proposed subsection (1D)(a), by deleting everything after "at least" and substituting -

"-

(i) (A) 20% of each cover of the article;

(B) 20% of the packaging of the article if the article has no cover; or

(C) 20% of a label affixed to the article and which occupies the whole article if the article has no cover or packaging; and

(ii) 20% of each side of its completely opaque wrapper where the article (together with its covers or packaging, if any) is sealed in a completely opaque wrapper;".

(e) by deleting the proposed subsection (1D)(b) and substituting -

"(b) the letters and characters referred to in paragraph (a) shall be of a colour which contrasts with the colour of the background upon which they are printed;".

(f) in the proposed subsection (1E), by adding -

"(c) Any person who is not the publisher of an indecent article but wilfully or knowingly allows his name to be printed on it or its completely opaque wrapper (as may be appropriate) as the publisher of it, commits an offence and is liable to a fine at level 5 and to imprisonment for 6 months.".

(g) in the proposed subsection (1F), in the definition of "the publisher", by deleting "it to be printed, manufactured or reproduced, as the case may be" and substituting ", manages or controls the printing, manufacturing or reproduction of it, as the case may be".

Clause 10

That clause 10 be amended —

(a) by deleting everything before "added" and substituting -

"10. Sections added

The following are".

(b) by adding -

"36B. Seizure by inspector

(1) The Commissioner for Television and Entertainment Licensing may authorize in writing any public officer to be an inspector for the purposes of this Ordinance.

(2) An inspector may seize, remove and detain -

(a) any article in a public place, in respect of which he reasonably suspects that an offence under section 23, 24, 27 or 27A has been committed or is being committed; and

(b) anything whatever in a public place, which he reasonably suspects to be, or to contain, evidence of the commission of such an offence.".

Clause 11

That clause 11 be amended, by deleting "or 36A" and substituting ", 36A or 36B".

Clause 12

That clause 12(c) be amended —

(a) by adding "or inspector" after "officer".

(b) by adding "or 36B respectively" after "36A".

Clause 13

That clause 13 be amended, by deleting "or 36A" and substituting ", 36A or 36B".

Clause 14

That clause 14(b) be amended, by adding ", 22(2), 23(2), 24(3)" before "or 27A(2)".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 5 and 10 to 14, as amended, proposed, put and agreed to.

New clause 2A	Membership of Tribunal
New clause 2B	Interim classification
New clause 2C	Requirement for full hearing

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

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that new clauses 2A, 2B and 2C as set out under my name in the paper circulated to Members be read the Second time.

The new clauses 2A, 2B and 2C are to improve the operation of the Obscene Articles Tribunal (OAT) as explained in my earlier speech at the resumption of the Second Reading debate of this Bill. Under new clauses 2B and 2C(c), the OAT shall identify the part or parts of an article which give rise to an "obscene" or "indecent" classification. Under new clauses 2A and 2C(a) and (b), the minimum number of adjudicators will be increased from two to four at two types of full hearings.

Besides, adjudicators who sat at an interim hearing of an article shall not be competent to sit as a member of the Tribunal at a full hearing to review the classification of the same article.

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 RECREATION AND CULTURE: Mr Chairman, I move that new clauses 2A, 2B and 2C be added to the Bill.

Proposed additions

New clauses 2A, 2B and 2C

That the Bill be amended, by adding —

"2A. Membership of Tribunal

Section 7(1) is amended by repealing "A Tribunal" and substituting "Subject to section 15(1A), a Tribunal".

2B. Interim classification

Section 14(3) is amended by repealing everything after "a Tribunal" and substituting -

"-

(a) shall not be required to give any reasons for any interim classification;

(b) may give guidance to the applicant in relation to the article submitted: and

(c) shall identify the part of the article which causes the obscenity or indecency.".

2C. Requirement for full hearing

Section 15 is amended -

(a) by adding -

"(1A) Subject to subsection (2)(b), the Tribunal for a full hearing held pursuant to subsection (1) or section 17 shall consist of the following persons appointed by the Registrar -

(a) a magistrate who shall preside; and

(b) 4 or more adjudicators selected from the panel of adjudicators.";

(b) in subsection (2)(b), by repealing "any magistrate and any adjudicator shall be competent to sit as a member of the Tribunal at that full hearing notwithstanding that" and substituting "any adjudicator shall not be competent to sit as a member of the Tribunal at that full hearing if";

(c) by adding -

"(6) At a full hearing, the Tribunal shall identify the part of the article which causes the obscenity or indecency.".".

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

FILM CENSORSHIP (AMENDMENT) BILL 1995

Clauses 1 to 5, 8, 10, 13, 21, 23, 25 to 28 were agreed to.

Clauses 6, 7, 9, 11, 12, 14 to 20, 22 and 24

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

Clause 6(b), 11(b) and 12(b)(iii) are amended to reflect the revised wording of the notices for the two proposed sub-categories under Category II films. The reason for this change has been thoroughly explained in my speech at the resumption of the Second Reading debate.

The amendment to clause 16 gives effect to the agreement reached with the Bills Committee that the three official members on the Board of Review be replaced by non-officials whilst keeping the total membership of the Board at 10. The Board will in future comprise nine non-officials and one ex officio member, namely, the Secretary for Recreation and Culture.

The purposes behind the amendments to clauses 7(a), 7(b), 9, 14, 19(j), 20 and 24, are made either to clarify the relevant provisions to reflect the correct policy intention or to deal with matters of a technical nature.

Amendments to clauses 6, 9, 15, 17(b), 18(b), 19(e), 22 and 22(b)(iii) of the Chinese Bill serve to refine the Chinese wording to reflect accurately the intended meaning of the corresponding clauses in the English Bill.

Mr Chairman, I beg to move.

Proposed amendments

Clause 6

That clause 6(b) be amended, in the proposed paragraph (b), by deleting everything after the dash and substituting —

""NOT SUITABLE FOR CHILDREN.

兒童不宜" or

"NOT SUITABLE FOR YOUNG PERSONS AND CHILDREN.

青少年及兒童不宜"; or ";".

That clause 6 be amended, in the Chinese text, by deleting paragraph (c) and substituting -

"(c) 在(c)段中 —

(i) 在"均須"之後加入"顯眼地" ;

(ii) 廢除"在顯眼處清楚"而代以"並顯眼而清楚地" 。".

Clause 7

That clause 7(a) be amended, by adding —

"(ia) in paragraph (b) by repealing everything after "classification" and substituting -

"under -

(i) section 12(1)(b), endorsed with the condition referred to in that section; and

(ii) section 12(1)(c), endorsed with the condition referred to in that section;";".

That clause 7(b) be amended, by adding —

"(ia) in sub-subparagraph (B) by repealing everything after "classification" and substituting -

"under -

(I) section 12(1)(b), endorsed with the condition referred to in that section; and

(II) section 12(1)(c), endorsed with the condition referred to in that section;";".

Clause 9

That clause 9 be amended, in the proposed section 15AA —

(a) in subsection (2)(a) and (c) by deleting "includes" and substituting "shall be construed as including a reference to";

(b) by adding -

"(3) For the avoidance of doubt it is declared that, where -

(a) as a result of a submission under section 8 and any submission under subsection (1), there is more than one certificate of exemption or certificate of approval in force in respect of a film; and

(b) each such certificate of exemption or certificate of approval, as the case may be, relates to a different form of that film,

any reference in this Ordinance to a certificate of exemption or a certificate of approval shall be construed having regard to the form of the film concerned and as a reference to the certificate of exemption or the certificate of approval, as the case may be, issued in respect of that film, for that form.".

That clause 9 be amended, in the proposed section 15AA(2)(c) by deleting "就" and substituting "依據".

Clause 11

That clause 11(b) be amended, in the proposed passage, by deleting everything after the dash and substituting —

""NOT SUITABLE FOR CHILDREN.

兒童不宜"; or

"NOT SUITABLE FOR YOUNG PERSONS AND CHILDREN.

青少年及兒童不宜"; and ";".

Clause 12

That clause 12(b)(iii) be amended, by deleting everything after the second dash and substituting —

"""NOT SUITABLE FOR CHILDREN.

兒童不宜"; or

"NOT SUITABLE FOR YOUNG PERSONS AND CHILDREN.

青少年及兒童不宜"";".

Clause 14

That clause 14 be amended, by deleting the clause and substituting —

"14. Notification of revocation

Section 1 5I is amended -

(a) in subsection (1) by repealing everything after "writing" and substituting "to the person who has notified him under section 15F of the relevant publication, by registered post sent to his last known address, of such revocation or deemed revocation, unless, in the case of the revocation of a certificate of exemption, that person is the person to whom the certificate was issued and has been given notice of the revocation pursuant to section 9(4).";

(b) in subsection (2) by adding "or deemed revocation" after "revocation".".

Clause 15

That clause 15 be amended, in the proposed section 15K —

(a) in subsection (7) by deleting "該影片" where it last appears and substituting "該等宣傳資料";

(b) in subsection (11) by deleting "指稱的" and substituting "指稱爲".

Clause 16

That clause 16 be amended, by deleting paragraph (a) and substituting —

"(a) in subsection (2) -

(i) in paragraph (a) by adding "and" at the end;

(ii) by repealing paragraph (b);

(iii) in paragraph (c) by repealing "6" and substituting "9";".

Clause 17

That clause 17(b) be amended, in the proposed paragraph (c)(ii) by deleting "並".

Clause 18

That clause 18(b) be amended, in the proposed paragraph (c)(ii) by deleting "並".

Clause 19

That clause 19(e) be amended, in the proposed paragraph (c)(ii) by deleting "並".

That clause 19(j) be amended, in the proposed subsection (12)(c) by deleting "to whom the relevant certificate of exemption or certificate of approval, as the case may be, was issued" and substituting "who has the right (by copyright licence, ownership of the copyright or any other right or licence) to distribute the videotape or laserdisc".

Clause 20

That clause 20 be amended, in the proposed subsection (3B) —

(a) by deleting "Subsections (1) and (3A)" and substituting "Subsection (3A)";

(b) in paragraph (a) by deleting "and" at the end and substituting "or".

Clause 22

That clause 22 be amended, in the Chinese text, by deleting paragraph (a) and substituting —

"(a) 在第(2)(a)款中，廢除"，而該項上映或發布是違反本條例的規定的";".

That clause 22 (b)(iii) be amended, by adding"該" before"兩個地址".

Clause 24

That clause 24 be amended —

(a) by adding before paragraph (a) -

"(aa) by adding "15AA(1)," before "17(2)(c)(i)";".

(b) in paragraph (b) by deleting "secondly" and substituting "twice".

Question on the amendments proposed, put and agreed to.

Question on clauses 6, 7, 9, 11, 12, 14 to 20, 22 and 24, as amended, proposed, put and agreed to.

New clause 12A	Notification of publication of film
New clause 12B	Authority to require deposit of film

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

SECRETARY FOR RECREATION AND CULTURE: Mr Chairman, I move that new clauses 12A and 12B as set out under my name in the paper circulated to Members be read the Second time.

New clause 12A amends section 15F(1) of the Ordinance to correctly reflect our policy intention that the distributor of a videotape or laser disc version of a film shall inform the Film Censorship Authority within one month after the publication of the film in the form of videotape or laser disc.

New clause 12B amends section 15G(1) to clarify that the distributor of the video tape or laser disc version of a censored film instead of the certificate holder shall deposit a copy of the relevant videotape or laser disc with the Film Censorship Authority if he so required. Both amendments serve to clarify our policy intention.

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 RECREATION AND CULTURE: Mr Chairman, I move that new clauses 12A and 12B be added to the Bill.

Proposed additions

New clauses 12A and 12B

That the Bill be amended, by adding —

"12A. Notification of publication of film

Section 15F(1) is amended by repealing "by or to the knowledge of the person to whom the certificate is issued" and substituting "by the person who has the right (by copyright licence, ownership of the copyright or any other right or licence) to distribute the videotape or laserdisc to which the certificate of approval or certificate of exemption, as the case may be, relates".".

"12B. Authority to require deposit of film

Section 15G(1) is amended by repealing "the person to whom the relevant certificate of approval or certificate of exemption is issued" and substituting "the person who so notifies him".".

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

INSURANCE COMPANIES (AMENDMENT) BILL 1995

Clauses 1, 3 to 6 and 8 to 11 were agreed to.

Clauses 2 and 7

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that clauses 2 and 7 be amended as set out in the paper circulated to Members.

Proposed section 4A(2)(e) is amended, through clause 2(b), to clarify that it is the Administration's intention to promote and develop self-regulation by market and professional bodies of the insurance industry only. Professional bodies which practise in but are not of the insurance industry will not be covered.

Proposed section 4A(3) is amended, through clause 2(c), to delete subsection 4A(3)(b). This is intended to address concerns expressed by the insurance industry and professional bodies that proposed subsection 4A(3)(b) may enable the Insurance Authority to interfere, by means of guidelines, in the internal operations of an insurer or insurance intermediary or in the professional practices of their auditors or actuaries.

Proposed section 53A(3)(f) is amended, through clause 7(c), to enable the Insurance Authority to disclose information to an actuary or auditor of an insurance broker or body of insurance brokers, if such information is necessary for them to carry out their duties under the Insurance Companies Ordinance.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended —

(a) in the proposed section 4A(2)(a), by adding "and an insurance intermediary's" after "insurer's".

(b) in the proposed section 4A(2)(e), by deleting "in" and substituting "of".

(c) by deleting the proposed section 4A(3) and substituting -

"(3) The Insurance Authority may from time to time cause to be prepared and published by notice in the Gazette, for the guidance of authorized insurers, insurance intermediaries, and the auditors and actuaries of such insurers and intermediaries, guidelines not inconsistent with this Ordinance, indicating the manner in which he proposes to exercise functions imposed or conferred upon him by this Ordinance.".

Clause 7

That clause 7(c) be amended, by deleting the proposed subsection (3)(f) and substituting —

"(f) by the Insurance Authority to an auditor or actuary of an authorized insurer, an authorized insurance broker or a body of insurance brokers approved under section 70 if, in the opinion of the Insurance Authority, such information is necessary for the auditor or actuary, as the case may be, to perform his duties under this Ordinance;".

Question on the amendments proposed, put and agreed to.

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

HONG KONG ASSOCIATION OF BANKS (AMENDMENT) BILL 1995

Clauses 1 to 7 and 9 to 12 were agreed to.

Clause 8

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that clause 8 be amended as set out under my name in the paper circulated to Members.

The amendment seeks to clarify the arrangements for presiding over Consultative Council meetings of the Hong Kong Association of Banks. If the Chairman is present, he shall preside. The amendment sets out the detailed arrangements in the event of his absence. This is in response to a comment on detailed drafting made by the Hong Kong Association of Banks after the Bill had been gazetted.

Mr Chairman, I beg to move.

Proposed amendment

Clause 8

That clause 8(a) be amended, by deleting the proposed paragraph (b) and substituting —

"(b) the Chairman shall preside;

(c) if the Chairman is absent, the Vice-Chairman who most recently held office as Chairman and who is present at the meeting shall preside;

(d) if the Chairman and all Vice-Chairmen who have held office as Chairman are absent, then the members present shall select a Vice-Chairman to preside;

(e) if the Chairman and all Vice-Chairmen are absent, a member selected by the members present shall preside.".

Question on the amendment proposed, put and agreed to.

Question on clause 8, as amended, proposed, put and agreed to.

PUBLIC ORDER (AMENDMENT) BILL 1994

Clauses 1 to 4, 6, 8 to 13, 16, 17, 19, 20 and 21 were agreed to.

Clause 5

CHAIRMAN: Both the Secretary for Security and Mr CHEUNG Man-kwong have given notice to move amendments to clause 5. I will call upon the Secretary for Security to move his amendments first, as he is the public officer in charge of the Bill.

SECRETARY FOR SECURITY: Mr Chairman, I move that clause 5 be amended as set out under my name in the paper circulated to Members. The amendments address the Bills Committee's concern of the Commissioner of Police's general powers to regulate public gatherings under section 6 and propose to tighten up the wording so that the powers can only be exercised by the Commissioner if he reasonably considers it to be necessary in the interest of public order or public safety, not just on grounds of mere expedience.

I do not support the proposed amendment to be moved by the Honourable CHEUNG Man-kwong because it will deprive the police of the power necessary to maintain public order and ensure public safety.

Mr Chairman, I beg to move.

Proposed amendment

Clause 5

That clause 5 be amended, by deleting the clause and substituting —

"5. General powers of Commissioner of Police

Section 6 is amended -

(a) by repealing "if it appears to him to be necessary or expedient in the interests of public order so to do" and substituting -

"if he reasonably considers it to be necessary in the interests of public safety or public order";

(b) in paragraph (a), by repealing "notwithstanding the issue of any permit under section 4(29) of the Summary Offences Ordinance (Cap. 228),";

(c) in paragraph (c), by deleting "as he may consider necessary or expedient" and substituting "as he may reasonably consider necessary".".

Question on the amendment proposed.

CHAIRMAN: I will call upon Mr CHEUNG Man-kwong to speak on the amendments proposed by the Secretary for Security as well as his own amendments, but will not ask Mr CHEUNG to move his amendments unless the Secretary for Security's amendments have been negatived. If the Secretary for Security's amendments are agreed, that will by implication mean that Mr CHEUNG's proposed amendments are not agreed.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Chairman, I wish to respond to some of the views of the Secretary for Security and of the Honourable Mrs Selina CHOW.

Mrs CHOW held that the freedom of speech was not absolute, therefore when the Government had reasons to believe certain speech was inflammatory and could endanger public safety and order, such speech should be stopped right at the meeting, and the way of doing this would be to remove the loud-hailer, or to cut its power. This view is in fact the view of the Administration, and that means any view they consider inflammatory will no longer be allowed at meetings. However, I hope that Members will appreciate a question, what is the definition of "inflammatory"? The most important point is, who has the power to decide at a meeting what is inflammatory and what is not? If we enforce the law, it is not because the actions of the participants violate the law, but only because the police, albeit in the person of very senior officers, judge that certain speech of the participants may cause some people to act against the law, and as a result, the speech at the meeting is stopped, and the freedom of speech and of expression is stopped. All these are doubtlessly based on the subjective judgement and assumption of individual police officers. I find such a practice ridiculous.

Section 6(a) of the Public Order Ordinance seeks exactly to give a legal base to such subjective judgement and ridiculous assumption. Supporting this proposal of the Administration with the off-hand comment that there is no absolute freedom of speech is to give the absolute power to the police officers at the scene to judge freedom of speech, to judge if any speech is inflammatory. This is unacceptable to anyone who supports freedom of speech and the Bill of Rights Ordinance. What is more perilous is that such power is really a highly dangerous power. Just think, at a meeting, the loud-hailers of the speakers can

be seized just somebody happens to think that their speech is inflammatory. This action alone is enough to incite and even instigate the crowds at the scene to stage resistance, possibly bringing unthinkable consequences. This is the case of many clashes in the past between processions and the police as the result of barriers unreasonably erected by the police. Sometimes clashes happened not because the procession participants wanted to have clash with the police, but because the barriers erected at the meeting place barred them from carrying on the procession. What grounds are there for actions to be taken on the judgement of the police alone, branding them inflammatory, ruling their speech sufficient to cause some unlawful acts, and unplugging their loud-hailers?

I feel that we have laws now against illegal acts at meetings. Whether such laws are in the area of noise nuisance or of unlawful acts or even violence, the existing laws are adequate for the police to deal with such acts, to enable arrests and prosecutions. When unlawful acts are committed, the police can make arrests and prosecutions on the spot. Prosecutions then are not based on the police assumption that the speech is inflammatory in nature. Therefore we do not need this section 6(a), which infringes the freedom of speech, in the Public Order Ordinance to restrain speech. This section is superfluous. Therefore, the Democratic Party will insist on this amendment. I also hope that Members will give it support so that this amendment will be passed to safeguard the freedom of speech at meetings.

CHAIRMAN: Members may now debate the amendments moved by the Secretary for Security as well as those proposed by Mr CHEUNG Man-kwong.

MRS SELINA CHOW (in Cantonese): What Mr CHEUNG alleged just now was not what I said earlier. I never said anything for the police to unplug loud-hailers. I never did say such words! This could be that Mr CHEUNG was able to say something more inflammatory under certain circumstances so that you would find his words more lively, or would be more sensitive to their shocking effects. But at the same time, I believe what Mr CHEUNG told you is but one-sided. He did not say that when I said the freedom of speech was not absolute, I did not mean that the power to restrain the freedom of speech could be absolute. Just now he used the word "absolute". Nobody ever said that the police could have this kind of freedom to exercise absolute power, the police are within the constraint of certain laws, and whether such constraints are necessary and reasonable depends on public interest and public order. Precisely because the police is subject to such constraints, the people concerned can absolutely apply to the court for a review if their activities are interfered by the police unlawfully exercising power, or doing so not within the constraints as stipulated in the law, they can even raise protests against the police for exercising that kind of power. Thus, the police is answerable in law. Therefore, on these grounds, the Liberal Party and I agree that the police can, when in need, reasonably exercise these powers to safeguard public interest and public order.

I hope that Mr CHEUNG would not quote me out of context by referring only to the former portion and not the latter of my words. For these reasons, the Liberal Party does not accept Mr CHEUNG's amendment relating to the so-called absolute freedom of speech, and will support the clause to allow the police to have these powers for the avoidance of tragedies.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Chairman, I wish to respond to one point. Yes, it is true that in Hong Kong any and all things can be taken to the court for a ruling as the last resort. However, please note there is one very important point of view in my response, and that is, when the police officers at the scene suspect that the speech of certain person is inflammatory enough to cause certain unlawful acts, or suspect such speech will be about to cause certain unlawful acts, the way of stopping that person from speaking is to confiscate his loud-hailer. When the police act in this way, the Honourable Mrs Selina CHOW said that person could seek a court judgment later. But what I said was that clash could result at that very moment. Once the clash happened, it could not be undone. Even though the court in some future date could uphold the innocence of that person, and could rule that the police made a wrong judgment at that time, that the police should not have presumed that his speech was inflammatory, and that the police should not have taken away his loud-hailer, but who can undo the clash as a result of the crowd's anger over the seizure of the loud-hailer? Who should be responsible for such action? This is exactly what I have to criticize. This is a dangerous power, we must remove it by way of legislation. When we remove this dangerous power from the law, we are protecting the freedom of speech at meetings and ensuring the peace of the meetings from another direction.

I hope that Members will understand, many of us have in fact taken part in meetings and processions; we hope to have a good system in the law to ensure that all participants in a meeting or a procession, irrespective of their degree of indignation, can take part in a meeting in peace and go home in peace, rather than joining a meeting for a particular purpose, but ending up having clashed with the police and going home in a foul mood, knowing that the objective of the meeting was not achieved, or even facing prosecution. What purpose does it serve then? That is totally meaningless.

A very important spirit in our passing this Public Order (Amendment) Bill today is to hope that all people in future will abide by law, and that all laws will, under reasonable and sensible circumstances, bring good results. Once people become accustomed to this assembly culture, this procession culture, unnecessary clashes will no long occur. News reports will then only cover the requests raised during the meetings, and not the bloody clashes as a result of loud-hailers being seized by the police.

For the present time, to safeguard the freedom of speech at meetings, the more important thing is to allow this assembly culture to peacefully develop in Hong Kong. We must oppose this ordinance, otherwise our hope will not come true. Thank you, Mr Chairman.

MISS EMILY LAU (in Cantonese): Mr Chairman, I am very much in support of the freedom of speech, and I do find the police are being vested with too much power. But having heard the Honourable CHEUNG Man-kwong's speech, I would like to ask Mr CHEUNG too clarify a certain point so as to make it clearer to every one of us and to the public as well.

Mr CHEUNG mentioned just now that nobody should be stopped from saying something; he also referred to inciting words. Indeed, meetings were held in a peaceful manner in Hong Kong over the past 10 years or so. But I remember in 1967 the situation was highly volatile, and I believe the same situation will occur again in the future. If Mr CHEUNG's amendment is passed, then if sometime in the future inciting words are spoken in an assembly, for example, "beat Emily LAU to death" or "kill and exterminate", Mr CHEUNG mentioned just now that the police are already empowered to take action, or not to take any action. Is it that action may only be taken after my head is broken any my blood spills? Could Mr CHEUNG clarify this point a bit? Thank you, Mr Chairman.

MR CHEUNG MAN-KWONG (in Cantonese): Honourable Members, these were the viewpoints I raised during the Second Reading of the Bill. It is right that nothing can be assumed. If somebody keeps on saying "Beat Emily LAU to death", nobody will pay him any attention, because he has no reason at all, and at this time no action is taken. As no action is taken, what can you charge him of? Can you charge him of saying the few words "Beat Emily LAU to death"? At the City Forum, many people used foul language against me, and even my family. He could do that, though being quite rude, and his words unpleasant as well. But he did not do anything. Could he be assumed under the law that when he said those words, all other people would act according to his words? This is the difference between speech and action, the difference between mere words and actual violation of the law. If his words exceeded 65 decibels in volume, you could arrest him under the Noise Control Ordinance. If somebody acts according on his words, the police can charge him of resorting to violence the moment he takes action, and use various means to arrest him. As a matter of fact, many people were in the past arrested for attempting to take certain actions.

Therefore, under these circumstances, we do not need section 6(a), because this is a provision authorizing an arrest on grounds of the content of one's speech, and there is no standard whereby to judge the content of speech. We do not know who should pass a judgment on other people's speech as inflammatory. In fact, many people at a meeting want to have an inflammatory effect on other people, but as they cannot speak their words good enough and they have no strong reasons, no matter how "inflammatory" they try, there is no "effect" at all. As a matter of fact, at meetings, even words spoken in a peaceful tone, if they are strong enough, they have the "effect" even they are not "inflammatory". This is essentially not a matter of unlawful or not. Sometimes not only words can be inflammatory, body language and many other ways can be inflammatory as well. Can seizing loud-hailers solve the problem? The answer is no. I hope that we will distinguish words and acts clearly. There is no one in this Council who will tolerate unlawful acts, and no one is prepared to. Thank you, Mr Chairman.

DR YEUNG SUM (in Cantonese): Mr Chairman, speaking of loud-hailers, I personally have some special feelings because I was prosecuted once by the police for using a loud-hailer in a public place without prior application. I was convicted and fined. I had, however, wanted imprisonment instead of a fine, but for reasons unknown, someone paid the fine on my behalf. I appealed and had my conviction quashed. Therefore whenever the issue of loud-hailer comes up, I would smile amusedly.

As a matter of fact, the amendment this time by the Administration of the Public Order Ordinance is commendable, because the Administration has done a lot of things, for example it listened to the suggestions of the Bills Committee regarding the appeal mechanism and the appointment of a judge to chair the appeal board. These were proposed by the Democratic Party at meetings of the Bills Committee. We are grateful that they were finally accepted by the Administration.

The present amendments to the Public Order Ordinance indicate that the Administration is prepared to relax the tight control in the '60s and '70s. It is a pity that the police was a bit overcautious when we had discussions with the people concerned over the issue of loud-hailers. If loud-hailers are seized because some words are inflammatory, serious problems will emerge.

Firstly, disturbance can be caused at the scene. It is because if some senior police officers rule that the words of the speaker are inflammatory and seize his loud-hailer, the situation will become explosive. The purpose of the seizure is to control the situation, but instead we can image the scene of a large crowd listening to the speaker but suddenly losing their loud-hailers. With senior police officers alleging the speaker of instigating the crowd and then seizing the loud-hailers, what will happen? Explosive situations are the result of such decisions.

Secondly, should words be made punishable? Though I do not agree with the content of the words of somebody, I will fight to my death to defend his freedom to say the words. We have heard these words often enough. Why then we outlaw some speech? If some actions at a meeting cause disturbance or noise nuisance or obstruct traffic, the police can take prosecution actions. Why seize his loud-hailer merely on grounds that the content of his words may stir up disturbance?

Therefore, though I commended that the amendment of the Public Order Ordinance is openness on the part of the Administration, some areas of the amendments are still too conservative. I hope all Members will support the Honourable CHEUNG Man-kwong's amendment.

Thank you.

MRS ELSIE TU: Mr Chairman, I will be brief as usual. I think there is a vast difference between a peaceful assembly where people have freedom to speak and I am sure we all agree with that. There is another kind of assembly where people began to being inflammatory and we saw that outside this building when Mr LEE Wing-tat was kicked down and Miss Emily LAU has been threatened, too. Surely, who is going to make the decision to when is inflammatory and when is dangerous? Surely that is the police's responsibility and it seems to me that Mr CHEUNG would like to take away that responsibility from the police. I will support that this responsibility to decide the point when it becomes dangerous belongs to the police. And I support the Administration.

MR SZETO WAH (in Cantonese): Mr Chairman, the Honourable Miss Emily LAU just now mentioned the riots of 1967. I believe her words might have made some people unhappy, and might mislead some people to think that the riots were the result of not seizing loud-hailers. As a matter of fact, not only were loud-hailers seized at that time, tear gas was used as well, and all actions were taken. But the riots still broke out. Do not think that with the power to seize loud-hailers, certain incidents that affect social order can be prevented. On the contrary, sometimes it is precisely the misuse of such power that will cause problems.

REV FUNG CHI-WOOD (in Cantonese): Mr Chairman, I wish to respond to the issue raised by the Honourable Miss Emily LAU.

Section 26 of the present Public Order Ordinance stipulates that it is an punishable offence for any person to make any statement or behave in a manner which is intended to kill or do physical injury to others or to incite others to destroy property. I shall read out the original English text of this section:

> "Any person who, without lawful authority, at any public gathering makes any statement, or behaves in a manner, which is intended or which he knows or ought to know is likely to incite or induce any person:
>
> (a) to kill or do physical injury to any person or to any class or community of persons;
>
> (b) to destroy or do any damage to any property; ....."

Mr Chairman, the Public Order Ordinance already has a stipulation to punish anybody who intends to incite any other person to commit an unlawful act.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I also wish to respond to the issue the Honourable Miss Emily LAU just raised.

I had wanted to read out the section Rev the Honourable FUNG Chi-wood just quoted, but there is another section I wish to read out, and that is section 18:

> "When 3 or more persons, assembled together, conduct themselves in a disorderly, intimidating, insulting or provocative manner intended or likely to cause any person reasonably to fear that the persons so assembled will commit a breach of the peace, or will by such conduct provoke other persons to commit a breach of the peace, they are an unlawful assembly".

As a matter of fact, three persons can be regarded as constituting an unlawful assembly. Therefore there have already been many provisions to control the situations Members have mentioned. Therefore, I believe that the amendment as proposed by the Honourable CHEUNG Man-kwong will in no way affect the power of the police in preventing violence. Thank you, Mr Chairman.

MR HOWARD YOUNG (in Cantonese): Mr Chairman, I do not know whether it is because the Members concerned were eager to make the amendments that when quoting legislation they only cited a portion of the particular sections and in their speeches they also quoted things out of context. I was not a member of the Bills Committee, therefore I have no way to know. However, as I understand them, the sections read out just now by two Members no doubt prescribe offences, but those are to be prosecuted after the offence is committed. I believe there are quite a few medical practitioners in this Chamber who believe prevention is better than cure. Do we wish to initiate prosecutions only after those serious incidents as mentioned just now have happened? Is that the best way? However, would it not be better if police officers with good judgment power, and we all agree that the Hong Kong police is of a considerably high quality, are allowed to make immediate judgment and take preventive measures?

MR WONG WAI-YIN (in Cantonese): Mr Chairman, I rise to speak in support of the amendment moved by the Honourable CHEUNG Man-kwong.

This Bill has been scrutinized for over one year since April 1994. Clause 6(a) was discussed from the first meeting, and through to the last. As Dr the Honourable YEUNG Sum just said, we are grateful that the Administration listened to the many suggestions of the Members, and eventually accepted them. The only and biggest bone of contention between the Administration and Members has remained clause 6(a). Now the Administration has made a little concession in that the rank of the police officer having the power to make the relevant decision has been raised to Chief Superintendent of Police (CSP) or above. But I wish to tell the Secretary for Security that it is not the rank or the officer that is the issue, it is a matter of principle.

It is obvious that, under clause 6(a), during a meeting or procession, if the police, which is now amended to mean a police officer of the CSP rank or above, hear some speech which he judges to be inflammatory or likely to induce certain consequences, the police can impose prohibition. Here may emerge a problem of even a more minute nature. I must point out that at present the majority of police officers of the CSP rank or above are still expatriate officers. Does each and every public meeting or procession require the presence at the scene of a CSP? Probably not. He may rely on his officers via telephone or other facilities to know the situation at the scene, he may be sitting in a police station when receiving such information and making the decision to prohibit the use of loud-hailer or the seizure of such. Even at the scene, he may have to rely on an interpreter to understand the content of the words of the speaker using the loud-hailer. Any deviation in the tone by the interpreter may affect his decision.

The reason I have all along maintained that this is a matter of principle is that the words of the speaker using the loud-hailer may have different effects on different listeners. This is a very subjective judgment. Like the words of Mr CHEUNG Man-kwong not too along age caused the Honourable Mrs Selina CHOW to say that his words were inflammatory, that was a subjective judgment. The speech by Mr CHEUNG Man-kwong in the Council could produce 60 different reactions, some may think it was inflammatory, some may think not, and that is subjective judgment. It is unacceptable to let the police made subjective judgment which can be in no way verified because action has been taken before an incident takes place. Even as Mrs CHOW suggested, a judicial review can be sought afterwards, but how is it to be reviewed? No one can prove whether or not the speech will eventually cause an incident, because only a subjective judgment of the content of the speech is involved. Therefore I feel that this is a major matter of principle, involving may be censoring of speech and obstructing the freedom of expression.

I recall that at the beginning of discussion on this clause, the police said that if unlawful acts resulted from the words of the people using loud-hailers, for example, if they shouted for the assaulting of the Government House, and some people really took certain actions apparently preparing to assault the Government House, or began actually assaulting the Government House, the police would take immediate action to prohibit the use of loud-hailers. However as the discussion proceeded, the police seemed to become ever more cautious, more nervous and finally indicated that the provision could be invoked as soon as they felt there could be trouble. It seems that the police have been overcautious and too eager to obtain more power to facilitate their work. However, this is unnecessary. As Dr YEUNG Sum and Mr CHEUNG Man-kwong had said, this will cause even more serious disturbance.

I therefore hope that the Administration, the Security Branch, the police and Members of this Council will understand clearly the consequence and far-reaching impact of this clause which will have a bearing on the content of our speech in future and affect our freedom of expression. Thank you, Mr Chairman.

MR MARTIN LEE (in Cantonese): Mr Chairman, in fact I wish to look at this issue from a different perspective. Some people are born with a big voice, like our former colleague the Honourable LAU Chin-shek. When he speaks, he does not need a loud-hailer. On the other hand, some people has a weak voice, like our Secretary for Security. Though he is brilliant and imposing, with quite a handsome face too, his voice is more or less like mine. Therefore I need an amplifier even if I speak to a luncheon meeting of a few dozen people. Suppose Mr LAU Chin-shek and I speak on the same occasion, I with a loud-hailer and Mr LAU without one, the effect will be the same. So if the law is amended as is proposed, with my loud-hailer taken away, my voice will be weak (this the Secretariat for Security is sure to understand, that is, people cannot hear my

words), but the words of Mr LAU by my side will be heard by all. So what is the purpose of that? Therefore I hope everybody will consider this point.

If the content of speech can already violate the law, then the Honourable Howard YOUNG need not worry. He referred to prevention, but if the content of speech can already constitute a breach of the law, when the police can make arrests, the incident will be stopped, therefore Mr YOUNG need not worry. But if my words are deemed unpleasant to the police, the police, being unable to arrest me because I break no law, may take away my loud-hailer, then people cannot hear my words any more. But what Mr LAU says beside me will still be audible by people. So why do the police take such action? So I support the amendment of the Honourable CHEUNG Man-kwong.

MR RONALD ARCULLI: Mr Chairman, in reply to a question for clarification from the Honourable Emily LAU, the Honourable CHEUNG Man-kwong has said that if nothing actually happens, if no one moves to threaten her life, then no harm has been done. His basic premise is really quite simple. His argument really is that if a substantive offence has been committed, then whoever perpetrates that should be arrested for that and therefore there is no need for the power that is being sought, and there is therefore no need for the power of prevention. The law would take its course and indeed the police, who have the heavy duty of preserving law and order and indeed protecting the community as a whole, may find themselves in some difficulty on hopefully some rare occasions.

There are many instances, Mr Chairman, that I can recall where our law enforcement agencies, and I do not restrict this just to the police, have been given power to prevent crimes. I think that is what the public and the community deserves. So, really the real question here today is not whether the police should have the power but whether, looking at the issue as a whole in terms of public interest, wherein lies a fair balance? The right to freedom of speech, the right to demonstrate and the right to do a whole host of things that have, in fact, been perhaps unduly curtailed over the past years, might have brought about the reaction that we are seeing here from some Honourable Members today.

Mr Chairman, the way I see it is this, that if the police actually abuse the power on one occasion and is taken to court, I am quite sure that those who would be prejudiced by their abuse of power would win the case and therefore rule the day. Now, that is what I understand the rule of law to be about. To actually then go on to suggest that our Police Force would repeatedly abuse their power in fairly similar circumstances, frankly I think is being grossly unfair to our police, and for the good work that they have been doing all these years, despite some perhaps very trying moments.

So, Mr Chairman, I think in the light of those comments, I would support the position of the Administration as far as this particular amendment is concerned. Thank you.

MISS EMILY LAU (in Cantonese): Mr Chairman, I am very grateful for the words of the Honourable SZETO Wah just now. He recalled the situation during the 1967 riots and clarified that it was not the case of having the right to speak if you had loud-hailers and not without. I believe this did not cause the riots. Mr SZETO pointed out the circumstances, I thank him for mentioning this.

Both the Rev the Honourable FUNG Chi-wood and the Honourable LEE Cheuk-yan pointed out not long ago that the Administration has other powers. I believe that during our discussions, we had all along a consensus, and that was, should there be any inflammatory and highly dangerous behaviours, Members would not object if the Administration intervened. I believe the Democratic Party has not suggested amending or repealing the section the Rev FUNG Chi-wood read out just now. Therefore, unless in response the Administration could point out that the powers under the provisions referred to by the Rev FUNG Chi-wood and Mr LEE Cheuk-yan in fact do not exist and that such powers cannot in any case be used to intervene, otherwise Members would not feel this should be so. As to the highly inflammatory, highly dangerous speeches, I believe that Members have agreed that the Administration has this power to do so. Now that the Honourable CHEUNG Man-kwong proposes to remove that power, I feel it should be done. Thank you, Mr Chairman.

SECRETARY FOR SECURITY: Mr Chairman, may I clarify as I mentioned in the Second Reading that the offence committed under section 4(29) of the Summary Offences Ordinance by the Honourable YEUNG Sum has been repealed by this Bill, so he needs to have no further fears on that score.

I do not support the Honourable CHEUNG Man-kwong's proposed amendment. If it is passed, it will deprive the police of the power necessary to maintain public order and ensure public safety. It would seriously weaken the power of the Police Force to discharge its responsibilities under the Public Order Ordinance. I repeat, the purpose of section 6(1) is not to censor speeches or to threaten freedom of expression but rather, to give the police the legal basis to intervene in highly provocative situations which will lead to breaches of the peace. It would be too late if police officers were only allowed to take action after public order has been breached or personal injuries or damage to property sustained. This would be irresponsible. The public has a right to expect the police to protect them. Mr Chairman, there are no alternative powers. The sections mentioned by the Honourable CHEUNG Man-kwong and the Honourable LEE Cheuk-yan refer to unlawful assembly. They do not refer to incitement. Unless the provisions of section 6(a) are retained, then, much as I personally would be appalled at, people would have the right to call on others

over loudhailers to kill the Honourable Miss Emily LAU. This is clearly wrong. I must also point out that section 6(a) is not inconsistent with the Bill of Rights.

To allay Members' concern about the possible abuse of this power, we propose to tighten the wording of section 6, so that the powers can only be exercised by the Commissioner of Police if he reasonably considers it necessary in the interest of public order or public safety, not just on grounds of mere expedience. I will also move an amendment to clause 18 of the Bill to restrict the exercise of this power to directorate police officers, that is, Chief Superintendent or above. These officers must be on the ground and it is not true that the majority would be expatriate. The Honourable WONG Wai-yin is well aware that the majority of those who were at the scene of demonstrations of this sort are local officers.

Mr Chairman, I urge Members to support my amendment. Thank you.

Question on the amendment put.

Voice vote taken.

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

Mr CHEUNG Man-kwong claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: I think for the avoidance of doubt, Members are being asked to vote on the amendments proposed by the Secretary for Security. If those are agreed, then, as I said earlier, by implication Mr CHEUNG's proposed amendments are not agreed. Would Members please proceed to vote?

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

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Dr David LI, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted against the amendment.

THE CHAIRMAN announced that there were 34 votes in favour of the amendment and 19 votes against it. He therefore declared that the amendment was carried.

CHAIRMAN: As the Secretary for Security's amendments to clause 5 have been agreed, I will not call upon Mr CHEUNG to move his amendments to the same clause since his amendments are inconsistent with the decision already taken.

Question on clause 5, as amended, proposed, put and agreed to.

Clause 7

SECRETARY FOR SECURITY: Mr Chairman, I move the amendments as set out in paragraphs (a) to (h) of my amendments to clause 7 indicated under my name in the paper circulated to Members. They require the Commissioner of Police to give more detailed reasons for prohibiting the holding of, for imposing conditions on, or for amending any condition previously imposed on any public gathering. It modifies the requirement of reasonableness in proposed sections 8(2) and 13A(2), and clarifies the person to whom a notice of prohibition shall be given under proposed sections 9(2)(b)(i) and 14(2)(b)(i).

The purpose of these technical amendments is to make the provisions more effective and they are supported by the Bills Committee. I urge Members to support them.

Proposed amendment

Clause 7

That clause 7 be amended —

(a) in the proposed section 8(2), by deleting "satisfied that earlier notice could not reasonably" and substituting "reasonably satisfied that earlier notice could not".

(b) by deleting the proposed section 9(2) and substituting -

"(2) Notice of a prohibition under subsection (1) shall be given -

(a) in writing to the person who gave notice under section 8 or to any person named in that notice for the purposes of section 8(3)(a)(i); or

(b) by publication in writing in such manner, or by posting a notice of the prohibition in such place, as the Commissioner of Police may think fit,

and such notice shall state the ground or grounds on which the prohibition is considered to be necessary and the reasons for the Commissioner's opinion as to those grounds.".

(c) in the proposed section 11(3), by adding "and shall state the reasons why such condition is considered necessary" after "the meeting".

(d) in the proposed section 11(4), by adding after "imposed" -

"and reference in this Ordinance to a condition imposed under or pursuant to subsection (2) shall, except where the context otherwise requires, include reference to an amendment to such a condition pursuant to this subsection".

(e) in the proposed section 13A(2), by deleting "satisfied that earlier notice could not reasonably" and substituting "reasonably satisfied that earlier notice could not".

(f) by deleting the proposed section 14(2) and substituting -

"(2) Notice of a prohibition under subsection (1) shall be given -

(a) in writing to the person who gave notice under section 13A or to any person named in that notice for the purposes of section 13A(3)(a)(i); or

(b) by publication in writing in such manner, or by posting a notice of the prohibition in such place, as the Commissioner of Police may think fit,

and such notice shall state the ground or grounds on which the prohibition is considered to be necessary and the reasons for the Commissioner's opinion as to those grounds.".

(g) in the proposed section 15(2), by adding "and shall state the reasons why such condition is considered necessary" after "the procession".

(h) in the proposed section 15(3), by adding after "imposed" -

"and reference in this Ordinance to a condition imposed under or pursuant to subsection (2) shall, except where the context otherwise requires, include reference to an amendment to such a condition pursuant to this subsection".

Question on the amendment proposed, put and agreed to.

REV FUNG CHI-WOOD (in Cantonese): Mr Chairman, I move that clause 7 be amended as set out under my name in paragraph (a) and (b) in the paper circulated to Members.

This amendment seeks to require the police to give reasons for prohibiting, as they are empower to do, meetings and processions for which shorter than seven days of notice has been given. I hope it will have your support.

Proposed amendment

Clause 7

That clause 7 be amended —

(a) in the proposed section 8, by adding after subsection (2) -

" (2A) In cases where the Commissioner of Police has decided not to accept shorter notice than is specified in subsection (1), he shall as soon as is reasonably practicable inform in writing the person purporting to give the notice of his decision and the reasons why the shorter notice is not acceptable.".

(b) in the proposed section 13A, by adding after subsection (2) -

" (2A) In cases where the Commissioner of Police has decided not to accept shorter notice than is specified in subsection (1), he shall as soon as is reasonably practicable inform in writing the person purporting to give the notice of his decision and the reasons why the shorter notice is not acceptable.".

Question on the amendment proposed.

SECRETARY FOR SECURITY: Mr Chairman, the amendments as set out in paragraphs (a) and (b) of Reverend the Honourable FUNG Chi-wood's amendments to clause 7 require the Commissioner of Police to give early notice of his decision of, and the reasons for, not accepting late notifications for holding public meetings or public processions. They are acceptable to the Administration.

Question on the amendment proposed, put and agreed to.

CHAIRMAN: Both the Secretary for Security and Rev FUNG Chi-wood have given notice to move amendments to the part in clause 7 relating to "Appeals". I will call upon the Secretary for Security to move his amendments first, as he is the public officer in charge of the Bill.

SECRETARY FOR SECURITY: Mr Chairman, I move the amendments as set out in paragraph (i) of my amendment to clause 7 indicated under my name in the paper circulated to Members.

The amendments provide that an appeal against the decision of the Commissioner of Police under proposed sections 9, 11, 14 or 15 may appeal to an independent Appeal Board constituted under proposed section 44, instead of to the Governor under the existing arrangements.

I do not support the proposed amendment as set out in paragraph (c) of Rev FUNG Chi-wood's amendment to clause 7 because it will compel the Appeal Board to consider decisions of the Commissioner of Police not to accept late notifications. This would make it virtually impossible for the Appeal Board to deliver a pre-event decision when an appeal is made because the Appeal Board will only just have enough time to consider an appeal if proper notice is given. The Administration and the Bills Committee do not intend to overload the Appeal Board with post-event reviews.

Mr Chairman, I beg to move.

Proposed amendment

Clause 7

(i) by deleting the proposed section 16 and substituting -

"16. Appeals

Any person, society or organization -

(a) named in a notice given under section 8 or 13A; or

(b) to whom a notice of prohibition may be given under section 9 or 14,

and who is aggrieved by a prohibition issued under section 9 or 14 or by a condition imposed by the Commissioner of Police under section 11 or 15 may appeal in writing to an appeal board constituted under section 44 against such prohibition or condition.".

Question on the amendment proposed.

CHAIRMAN: I will call upon Rev FUNG Chi-wood to speak on the amendment proposed by the Secretary for Security as well as his own amendment, but will not ask Rev FUNG to move his amendment unless the Secretary for Security's amendment has been negatived. If the Secretary for Security's amendment is agreed, that will by implication mean that Rev FUNG's proposed amendment is not agreed.

REV FUNG CHI-WOOD (in Cantonese): Mr Chairman, my amendment seeks to allow an applicant to appeal if a meeting or procession is prohibited by the Commissioner of Police pursuant to the provision of the law and on grounds that the period of notice is less than the statutory period of one week and that the organizer has done so without reasonable excuses.

Mr Chairman, I thank the Security Branch and the police for agreeing to establish the Appeal Board which will handle appeals concerning prohibition of meetings and processions by the police, the conditions imposed or the disagreement of and change to venues and routes of meetings and procession, and so on. Applicants or organizers can lodge appeals in the event of the above.

I am greatly puzzled why the jurisdiction of the Appeal Board does not cover late notice and why the police is given that much discretion. In many circumstances, and in respect of many meetings and processions, particularly small meetings, it is difficult to give notice one week before. I would like to cite some common examples. If there is a fire in a certain housing estate, or a major blackout, or water supply is cut because of a burst water pipe, many community leaders or District Board members will on the very evening or the next evening call a residents' meeting to resolve the matter. If the meetings are convened several days later, they will be criticized. This sort of things happen often enough, and cannot therefore comply with the one-week notice rule. Naturally, these situations will be deemed reasonable by the police, but it is always difficult to second-guess other people's views and angles. The police can think that there is no need to rush things, and the meeting can be held the next week. The police may also think differently regarding the venue.

Another point is that the police will not accept the excuse of a organizer having forgotten to give notice as a reason. The police will hold that as it is clearly written in the law, nobody can claim he has forgotten. However an organizer can argue that it is his first time and not knowing what exact procedures to follow, has given the notice one day late. This sort of arguments often make the organizers unable to hold the meetings and processions they are entitled to, as a result, they are deprived of their due right.

Mr Chairman, why can the Appeal Board not receive appeals regarding prohibition as a result of late notice? As this Bill seeks to replace the need to apply with the need to give notice, in theory the right to give notice rests with the public. If a period of notice is prescribed, that is, notice be given seven days before, insufficient notice period will be subject to adequate reasons, and without adequate reason, the gathering cannot be held. In that case, it is tantamount to taking away the right to hold meetings and processions. As a matter of fact, this is not much different from the original requirement to make an application. Therefore, I hope very much Members will consider this point, and agree to include late notice into the jurisdiction of the Appeal Board.

Mr Chairman, the Secretary for Security worries that late notices cannot be dealt with for lack of time. In fact this Bill makes it possible for the police to advise the organizers 48 hours before the meeting or procession is to take place whether the police is going to issue prohibition. Just think about the scenario when the police notify the organizers 49 hours before, that is, two days before, that for certain reasons the event is not approved, and the organizers immediately lodge an appeal. I would like to ask the Secretary, can they appeal? The answer is they absolutely can. However, there are only two days left to handle the appeal, and the time is also very tight. The Bills Committee pointed out that members of the Appeal Board had to be prepared to make sacrifice because appeal hearings could be convened at very short notice. The Appeal Board can in fact draw a line that, for example, if the period of notice is less than 48 hours, the police naturally cannot handle immediately. The Appeal Board can let the public know which applications have not been dealt with because notices are given too late. Therefore, it is without adequate grounds to claim that time is insufficient for appeals. I also believe that the public will certainly accept if the Appeal Board cannot deal with the appeal because the notice is given too late.

Mr Chairman, another very important point that the Administration does not agree concerns remedial appeals. For example, if notice for a proposed meeting is given two days before the scheduled time and the police issue refusal one day later, then only one day is left for the appeal. In such case, time is obviously inadequate, and it is already agreed that the police will have to offer the reasons. If the applicants deem the reasons offered insufficient, they should also lodge an appeal, even the action will not enable the meeting or procession to take place as originally scheduled. But if appeals can be lodged and the Appeal Board rules that the reasons given by the police are not adequate, then the police will know such reasons are inadequate, so that other applications can get approval to proceed with the co-operation of the police.

I hope that Members will consider my views and give a chance for organizers of meetings and processions to argue their case.

CHAIRMAN: Members may now debate the amendment moved by the Secretary for Security as well as that proposed by Rev FUNG Chi-wood.

SECRETARY FOR SECURITY: Mr Chairman, one of the most important factors which led the Bills Committee to propose the setting up of an independent Appeal Board on public meetings and processions was to enable appeals to be dealt with expeditiously, so that a decision could be made before the planned gathering.

If the jurisdiction of the Appeal Board was extended to cover decisions of the Commissioner of Police not to accept late notifications, this would make it virtually impossible for the Appeal Board to deliver pre-event decision when an appeal is made.

The amendment to clause 7 of the Bill requires the Commissioner of Police to give more detailed reasons for prohibiting the holding of or imposing conditions on or amending any condition previously imposed on any public gathering. It modifies the requirement of reasonableness in proposed sections 8(2) and 13(8)(ii) by providing that the Commissioner shall accept shorter notice when he is reasonably satisfied that earlier notice could not have been given.

I must stress that if an organizer gives proper notice for holding a public gathering then the Appeal Board would only just have enough time to make a pre-event decision on an appeal.

If Rev FUNG's amendments were passed, the Board would be unable to deliver a pre-event decision, and therefore the Appeal Board would become overloaded with post-event reviews. This is not what either we or the Bills Committee intended.

Mr Chairman, I urge Members to support my amendment. Thank you.

Question on the Secretary for Security's amendment put.

Voice vote taken.

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

Rev FUNG Chi-wood claimed a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

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

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH and Mr LEE Cheuk-yan voted against the amendment.

THE CHAIRMAN announced that there were 33 votes in favour of the amendment and 18 votes against it. He therefore declared that the amendment was carried.

CHAIRMAN: As the Secretray for Security's amendment to clause 7 proposed in paragraph (i) in the paper under his name has been agreed, I will not call upon Rev FUNG Chi-wood to move his amendment to the same clause proposed in paragraph (c) under his name in the paper circulated to Members, since his amendment is inconsistent with the decision already taken.

Question on clause 7, as amended, proposed, put and agreed to.

Clauses 14 and 15

CHAIRMAN: Both the Secretary for Security and Rev FUNG Chi-wood have given notice to move amendments to clauses 14 and 15. I will call upon the Secretary for Security to move his amendments first, as he is the public officer in charge of the Bill.

SECRETARY FOR SECURITY: Mr Chairman, I move that clauses 14 and 15 be amended as set out under my name in the paper circulated to Members.

The amendments relate to the composition, constitution, functions, powers and procedures of the independent Appeal Board. We have accepted all of the suggestions of the Bills Committee on the Appeal Board to ensure that appeals would be dealt with impartially and expeditiously.

Rev FUNG Chi-wood's amendments to clauses 14 and 15 were consequential amendments to paragraph (c) of his amendment to clause 7, as a result of his proposal to extend the jurisdiction of the Appeal Board under proposed section 16 to cover decisions of the Commissioner of Police not to accept late notifications. Since my earlier amendment to proposed section 16 has been carried, Rev FUNG's amendment is inconsistent with the decision already taken and should therefore be rejected.

I beg to move.

Proposed amendments

Clauses 14 and 15

That clauses 14 and 15 be amended, by deleting the clauses and substituting —

"14. Sections substituted

Sections 43 and 44 are repealed and the following substituted -

"43. Appeal Board

(1) Every appeal made under section 16 shall be determined by an appeal board to be known as the Appeal Board on Public Meetings and Processions (in this section and sections 44 and 44A referred to as "the Appeal Board").

(2) The Governor shall appoint to be the Chairman of the Appeal Board a person who -

(a) is a retired Justice of Appeal or judge of the High Court;

(b) is a retired District Judge; or

(c) has served for more than 10 years as a magistrate but who is no longer serving as a magistrate.

(3) The Governor shall appoint a panel of 15 persons, not being public officers, whom he considers suitable for appointment under section 44 as members of the Appeal Board, 2 of whom he shall appoint to be the Deputy Chairmen of the Appeal Board.

(4) Subject to subsection (6), the Chairman and any person appointed under subsection (3) shall be appointed for a term of not more than 2 years but may be reappointed.

(5) An appointment under subsection (2) or (3) shall be notified in the Gazette.

(6) The Chairman and any person appointed under subsection (3) may at any time resign by notice in writing to the Governor.

44. Constitution and powers of Appeal Board

(1) The Appeal Board shall consist of the Chairman or a Deputy Chairman who shall preside at the hearing and 3 persons selected in rotation in accordance with the alphabetical order of their surnames from the panel referred to in section 43(3), whom the Chairman shall appoint to be members of the Appeal Board to hear any appeal.

(2) In relation to the hearing of appeals every question before the Appeal Board shall be determined by the opinion of the majority of the members hearing the appeal and in the case of an equality of votes the Chairman or Deputy Chairman shall have a casting vote.

(3) In hearing an appeal the Appeal Board may receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law.

(4) The Appeal Board may, after hearing an appeal, confirm, reverse or vary the prohibition or condition appealed against.

44A. Supplementary provision relating to appeals

(1) The procedure and practice of the Appeal Board shall, subject to this Ordinance, be determined by the Chairman.

(2) If the Chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions the Deputy Chairman shall take it in turn to act as Chairman, and as such to exercise all the functions of the Chairman during the period the Chairman is precluded from exercising his functions, with the identity of the Deputy Chairman to act on the first such occasion being determined in accordance with the alphabetical order of the surnames of the Deputy Chairmen.

(3) In the hearing of an appeal, the appellant and the Commissioner of Police shall be entitled to be heard either in person or through a representative.

(4) If a party mentioned in subsection (3) fails to attend or be represented at a hearing of which he has been notified the Appeal Board may hear and determine the appeal in the party's absence.

(5) Before deciding to dispose of any appeal in the absence of a party the Appeal Board shall consider any representations in writing submitted by that party and, for the purposes of this subsection, an appeal and any reply to an appeal shall be treated as representations in writing.

(6) Where any notice of an appeal is given the Appeal Board shall consider and determine the appeal with the greatest expedition possible so as to ensure that the appeal is not frustrated by reason of the decision of the Appeal Board being delayed until after the date on which the public meeting or public procession is proposed to be held.

(7) The determination of an appeal by the Appeal Board shall be final.

(8) The Chairman of the Appeal Board, in consultation with the Secretary for Security, may make rules providing for matters in connection with appeals to the Appeal Board and the hearing and determination of such appeals.".

Question on the amendments proposed.

7.26 pm

CHAIRMAN: Secretary for Security, for my benefit, are you making the point that Rev FUNG's further proposals are inconsistent with the decisions already taken? It is a point that we had not taken on board. I will suspend the meeting for a few minutes.

7.40 pm

CHAIRMAN: I am grateful to the Secretary for Security for drawing this point to my attention and to the Rev FUNG Chi-wood for agreeing with the Secretary's analysis. We will therefore proceed to the Secretary for Security's amendments.

MR WONG WAI-YIN (in Cantonese): Mr Chairman, clauses 14 and 15 both relate to the Appeal Board. Though Members welcome the Administration's acceptance of the suggestions of the Bills Committee to have an independent appeal mechanism, as I pointed out during the Second Reading, the Administration took seven months to consider the establishment of the Appeal Board, that is to say, the Bill was "frozen" for seven months. When this Bill is returned to this Council now towards the end of the session, we do not have sufficient time to discuss other provisions. Despite the undertaking of the Secretary for Security that there would be another review in the coming session, the loss of these seven months is our loss in terms of time to scrutinize the Bill.

During the process, though the Administration eventually agreed to establish an independent Appeal Board, its original proposal regarding the composition was one Chairman and 15 Unofficial Justices of the Peace, with the chairmanship going to a Member of the Executive Council. Members of the Bills Committee felt strongly about the proposed composition of the Board as the Appeal Board is set up to review executive decisions of the Administration, it is not appropriate to have as the chairman a person very closely related to the Administration, such as a Member of the Executive Council which is virtually a cabinet of sorts of the Governor. It was also felt that it would not be necessary to have Unofficial J.P.'s as members of the Board. The Administration later agreed that the requirement to have Unofficial J.P.'s as members need not be specified, but stood fairly firmly on the choice of the chairman. It was only the unanimous and strong all-party indication that an amendment would be proposed that made the Administration accept our view, that is, the chairman should be a retired High Court or District Court judge, or a former magistrate who has served for 10 years as a magistrate. This amendment was originally proposed by the Bills Committee, and when the Administration agreed to accept the proposal, the amendment is then taken up by the Administration.

Over this matter we felt that the Administration took a very strong stand, and maintained that firm stand even it knew that Members of the Bills Committee already reached a consensus, to the extent that there was nearly not sufficient time to place the Bill before this Council. This created great pressure on us, making it appear that it was we who stalled this Bill. It is hoped that for future bills, when the Administration knows Legislative Council Members have reached a consensus, it will not obstruct the scrutiny of the bills with such a strong attitude. Thank you, Mr Chairman.

Question on the amendments put and agreed to.

Question on clauses 14 and 15, as amended, proposed, put and agreed to.

Clause 18

SECRETARY FOR SECURITY: Mr Chairman, I move that clause 18 be amended as set out under my name in the paper circulated to Members.

The amendment to clause 18 restricts the delegation of Commissioner of Police's power under section 6(a) to control the broadcast of music or speech in public places to a police officer of the rank of Chief Superintendent or above. Others are technical amendments.

Proposed amendment

Clause 18

That clause 18 be amended, by deleting the clause and substituting —

"18. Delegation of powers

Section 52 is amended -

(a) in paragraph (a) by repealing "section 4, 6, 9, 11, 13 or 14; and" and substituting "section 6(b) or (c), 9, 11, 14 or 15;";

(b) by adding -

"(aa) delegate to any police officer of the rank of chief superintendent or above any of the powers conferred on him by section 6(a); and".".

Question on the amendment proposed, put and agreed to.

Question on clause 18, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

CRIMINAL PROCEDURE (AMENDMENT) BILL 1995

EVIDENCE (AMENDMENT) BILL 1995

ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) (NO. 2) BILL 1995

AIRPORT AUTHORITY BILL

PUBLIC ENTERTAINMENT AND AMUSEMENT (MISCELLANEOUS PROVISIONS) BILL 1995

CONTROL OF OBSCENE AND INDECENT ARTICLES (AMENDMENT) BILL 1995

FILM CENSORSHIP (AMENDMENT) BILL 1995

INSURANCE COMPANIES (AMENDMENT) BILL 1995

HONG KONG ASSOCIATION OF BANKS (AMENDMENT) BILL 1995 and

PUBLIC ORDER (AMENDMENT) BILL 1994

had passed through Committee with amendments and the

SUPPLEMENTARY APPROPRIATION (1994-95) BILL 1995

having been read the Second time, was not subject to Committee stage proceedings in accordance with Standing Order 59. He moved the Third Reading of the Bills.

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

Bills read the Third time and passed.

PRIVATE MEMBER'S MOTIONS

HONG KONG ROYAL INSTRUCTIONS 1917 TO 1993

MRS MIRIAM LAU moved the following motion:

"That the Standing Orders of the Legislative Council of Hong Kong be amended -

(1) in the enactment paragraph by repealing "1917 TO 1992" and substituting "1917 TO 1993 (NOS. 1 AND 2)";

(2) in Standing Order No. 60B -

(a) in the heading by adding **"and Conduct"** after **"Committee on Members' Interests"**;

(b) in paragraph (1) by adding "and Conduct" after "Committee on Members' Interests";

(c) in paragraph (1) by adding -

"(da) to consider and, with the consent of not less than four of the members of the Committee, to investigate any complaint concerning a Members' conduct in matters of ethics in his capacity as such;";

(d) in paragraph (1)(e) by adding "and Conduct" after "Interests";

(e) in paragraph (5) by repealing "All matters" and substituting "Subject to paragraph (1)(da), all matters";

(f) by adding -

"(6A) The committee shall have regard to advice given and guidelines issued under paragraph (1)(d) when determining whether a recommendation for sanction under Standing Order No. 65A(2) (Sanctions relating to Interests and Conduct) should be made in respect of a Member who is the subject of a complaint concerning his conduct in matters of ethics in his capacity as such.";

(3) in Standing Order No. 64A(4)(g) by adding "which arise out of or are related in any manner to his membership of the Council," after "his spouse";

(4) in Standing Order No. 65A -

(a) in the heading by adding "and **Conduct"** after **"Interests"**;

(b) by renumbering it as Standing Order No. 65A(1);

(c) by adding -

"(2) A Member may be admonished, reprimanded or suspended by the Council upon a motion moved by the chairman of the Committee on Members' Interests and Conduct in accordance with a recommendation of the committee made under Standing Order No. 60B(1)(e) (Committee on Members' Interests and Conduct).".".

MRS MIRIAM LAU: Mr President, I move the motion standing in my name on the Order Paper.

Before I elaborate on the proposed amendments to the Standing Orders relating to the Committee on Members' Interests (hereunder called CMI), may I as the Chairman of the CMI explain the background to this resolution.

In may last year, the House Committee invited the CMI to deliberate on a proposal that a committee be set up to monitor the conduct of the Legislative Council Members. Since then, the CMI has held 11 meetings to look into the issue, with particular emphasis being given to the extent to which the conduct of the Legislative Council Members should be monitored. In the course of its work, the CMI has studied the practice adopted by other legislatures in monitoring the conduct of Members of Parliaments. The study covered a number of Commonwealth countries as well as the United States. The CMI concluded that some general and specific standards of conduct should be drawn up. These standards would serve to remind the Legislative Council Members of conduct which is generally expected of a member of a legislature bearing in mind the need to maintain the public interest vested in them. After several months' deliberation on the issue, a set of draft Guidelines on the standards of

conduct for Legislative Council Members was drawn up in February this year. A report was made to the House Committee and a public consultation exercise on the draft guidelines was lauched from 24 February to 24 March inviting both members of the public and Members of this Council to give their views. No submission was received from the public, but there was one written submission received from a Legislative Council Member, namely, the Honourable Ronald ARCULLI. Mr ARCULLI not only cared to put in his views to the Committee but he also took the time and trouble to appear before the Committee to make representations and to discuss the issue with the Committee for which I render my personal thanks as well as thanks on behalf of the Committee.

The CMI then further deliberated on the matter and subsequently submitted a report to the House Committee for consideration at its meeting on 16 June. The report recommended that:

(a) the draft Guidelines on the standards of conduct of Legislative Council Members drawn up by the CMI should be adopted;

(b) the CMI should be empowered to carry out investigation into complaints about misconduct of the Legislative Council Members;

(c) no investigation into a complaint of misconduct may be carried out unless approved by not less than four members of the CMI. The CMI comprises a total of seven members;

(d) no single political party or grouping would command a simple majority of the membership of the CMI;

(e) the name of the CMI should be changed to "Committee on Members' Interests and Conduct" and the Chinese name would be "議員利益及操守委員會";and

(f) the sanctions that may be imposed by the Council on a substantiated complaint of misconduct should be the same as those set out in existing Standing Order 65A.

At that meeting, that is, the meeting on 16 June, Members of the House Committee suddenly expressed strong reservations on the recommendations set out in the report. Some Members felt that Legislative Council Members' conduct was already under public scrutiny and any misconduct by a Legislative Council Member would be subject to public censure, thus in their view there was no need to introduce any formal system to monitor the conduct of Legislative Council Members. Some raised queries on the wording of the draft Guidelines. A few expressed the view that they were not given adequate time to consider the recommendations of the report in depth. This came as a total surprise to me as well as Members of the CMI. The CMI has embarked on this exercise for over a year. Throughout this period, the CMI has adopted the principles of transparency and open-mindedness affording all possible opportunity for expression of views on the issue. At the House Committee meeting in February this year, I specifically appealed to Legislative Council Members to give their views on the draft Guidelines during the public consultation period which I mentioned earlier. Unfortunately, none except one cared to respond.

Members may wish to be aware that under its terms of reference set out in Standing Order 60(B)(1), the CMI can at present only consider matters of ethics in relation to the conduct of Members in their capacity as such, and to give advice and issue guidelines on such matters. It has no power to carry out any investigation into a complaint about a Member's misconduct, unlike the legislatures in most other countries where there is a formal mechanism to consider and investigate complaints about misconduct by Members. Under the present set-up of the Legislative Council, there is no mechanism to deal with allegations of misconduct by Legislative Council Members in an expeditious manner. Any formal investigation of a complaint about a Member's misconduct can only be conducted by a select committee appointed by resolution of the Council. This process, as Members of this Council well know, is cumbersome and time-consuming. The majority of Members of CMI are therefore of the view that the introduction of some formal measures to monitor the conduct of the Legislative Council Members would be a step in the right direction and would enhance the integrity of the Legislative Council.

At the House Committee meeting on 16 June, some Members have expressed concern that the CMI might operate like a secret police if it took up the role of monitoring the conduct of Legislative Council Members. Similar concern was actually raised by Dr LAM Kui-chun, a Member of the CMI during the course of the CMI's deliberations. Such concern was specifically taken on board by the CMI and it was exactly for this reason that the CMI decided that it would not carry out investigations on its own initiative but would only act in response to complaints. The CMI is also conscious of the need to guard against the danger of being overwhelmed with spurious complaints, thus it will not investigate complaints which are considered trivial, frivolous or vexatious. Furthermore, no investigation into a complaint about a Legislative Council Member's misconduct may be carried out by the CMI unless approved

by not less than four of its Members, that is the majority of Members of the CMI.

Mr President, as the House Committee failed to arrive at a decision on the recommendations of the CMI's report at the meeting on 16 June, the CMI has deliberated the issue again and agreed unanimously that a resolution should be moved, under my name in my capacity as its Chairman, to amend the Standing Orders to empower the CMI to consider and investigate complaints about Legislative Council Members' miconduct. Members will then be able to debate this very important issue fully in this Council and to decide on whether they wish to be regulated by any such rules as are now proposed by the CMI or at all.

I now turn to the proposed amendments to the Standing Order as set out in the resolution.

The amendments to the heading of Standing Order 60B and Standing Order 60B(1) will change the name of the CMI following the conferment of additional powers and responsibilities on this Committee.

New Standing Order 60B(1)(da) will empower the CMI to consider and investigate complaints about Legislative Council Members' misconduct. I have already explained the rationale for this new provision earlier in my speech.

The amendment to Standing Order 60B(5) is a consequential amendment as a result of the proposed addition of new Standing Order 60B (1)(da).

New Standing Order 60B(6A) will specify that the CMI shall have regard to advice given and guidelines issued by the CMI when determining whether a recommendation for sanction should be made.

The amendment to Standing Order 64A(4)(g) will make it clear that the requirement to register interests received from overseas organizations or persons only applies to interests received by a Legisltive Council Member or his spouse arising out of the Legislative Council Member's membership of the Council, that is, actually in response to the request or query made by the Honourable ARCULLI.

The amendment to Standing Order 60B(1)(e), the heading of Standing Order 65A and new Standing Order 65A(2) will lay down the sanctions that may be imposed for misconduct.

Mr President, I beg to move.

Question on the motion proposed.

8.00 pm

PRESIDENT: It is now eight o'clock and under Standing Order 8(2), this Council should now adjourn.

ATTORNEY 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.

MISS EMILY LAU (in Cantonese): Mr President, I rise to speak in support of the Honourable Mrs Miriam LAU's motion.

On 30 May last year, I put forward to the House Committee, and requested for the deliberation of this Council on, a proposal for the setting up of a committee to monitor the conduct of Members. I have also suggested that the functions of the Committee on Members' Interests (CMI), of which I am a member, be expanded to include this area of responsibility.

Mr President, you would perhaps recall that the incident was caused by the concern and criticism from the public on the way some Legislative Council Members used their allowances last year. Some of the public opined that the Legislative Council should consider setting up a committee to monitor the conduct and behaviour of Members.

According to Standing Order No. 60B(1)(d), the CMI is empowered to consider matters in relation to the ethics of Members but only in their capacity as Members exercising their duties. The Committee may also give advice and issue guidelines on matters concerning the ethics and conduct of Members. However, it has no power to carry out any investigation into such a complaint. Any investigation of a complaint about a Member's misconduct by this Council can only be conducted through inquiries by a select committee appointed by resolution of the Council. We can thus see that at present there is no standing mechanism in the Legislative Council to deal with complaints about Member's misconduct in a systematic, expeditious and effective manner. Just now, the Honourable Mrs Miriam LAU has clearly mentioned that such mechanisms have been established in parliamentary assemblies in other democratic and civilized states. Why is Hong Kong such an exception then?

Mr President, you may also remember the apart from the incident about how Legislative Council Members made use of their allowances, there was also another incident last year in which a Member made public remarks that were insulting to women. Such behaviour and statements have aroused much public uproar, but there was nothing that the Legislative Council could do. At that time, many people criticized the Council for taking no action at all in the wake of such incidents. Of course, some Members will say that this Council should in fact do nothing. I think when some other Members rise to speak later on, they will keep on telling us that the Legislative Council should not do anything because the Members would be censored by public opinion and ultimately, by their constituents (if they are elected Members).

As the Honourable Mrs Miriam LAU has said, some Members worried that a committee vested with the power to monitor the conduct of Members might become a secret police, while other Members said that such a committee might become a vehicle for instituting political persecutions. The present proposal put forward by the CMI is not about the tracking down of or investigation into those Members who have been the subject of complaints. The CMI should therefore in no way be regarded as a secret police. I dare not guarantee, however, what will happen after 1997. Mr President, with regard to political persecutions, something may occur in Hong Kong very soon, when elected Members will soon be expelled from this Council and some people may even be deprived of their eligibility to participate in elections. If someone really want to impose political persecutions on people and to spare no one, I do not think they need to make use of this trivial committee. Those people are endowed with infinite power and we should not associate this matter with the committee.

Mr President, as provided by Standing Order 65A, any Member who fails to comply with Standing Orders No. 64A or 65(1), (1A) or (1B) on declaration in interests may be admonished, reprimanded or have his Membership suspended by this Council on a motion moved by other Members to that effect. If someone want to victimize Members of this Council through political persecutions, they can actually do so now by invoking the above provision in the Standing Orders. For these Members who are concerned that such a problem might occur, why have they not taken any action to repeal this provision over the years? I really find it strange and I hope some Members would provide us with an explanation later on. Since this provision has always been in the Standing Orders, if some Members object to it, why have they not proposed any amendment for the past four years?

Mr President, the Honourable Mrs Miriam LAU has just now said that in order to avoid having the CMI, which is formed by seven Members, controlled by any single political party, the CMI has recommended in the draft guidelines that no single political party should have more than three Members serving in the committee. However, since at present there is no law on political parties in Hong Kong, the term "political party" does not have a legal definition and thus cannot be effectively regulated in the Standing Orders of the Legislative Council. However the CMI hoped that our recommendation will be accepted by Members so that such practice can become a tradition in the Legislative Council and the future CMI will not be controlled by a single political party. The CMI also suggests that the Standing Orders be amended to provide that any investigation into a complaint about a Member's misconduct may only be conducted with the consent of not less than four of its members.

Finally, Mr President, I fully concur with the grievances aired by the CMI's chairman, the Honourable Mrs Miriam LAU, in serving the committee. Much has been done by the CMI, but only the Honourable Ronald ARCULLI has cared to "respond and support". Actually, we all know that Members are very busy. But we still hope Members can respect the spirit of a parliamentary system. While it is common to have different opinions in the Council, I do hope that these opinions can be discussed or even debated in the meetings of our committees. But to my regret, no one has paid us any attention during the four-week consultation period and people just turned a blind eye to the CMI. Not until we finally put forward our conclusions did they raise strong oppositions. Can we truely exalt the spirit of discussing and debating public affairs in this Council in this way? Have the Members practised what they preached? We sometimes said that people ignore us. But if we do not respect even ourselves and the rules of the Legislative Council, how can we expect others to respect us?

Mr President, I have no idea how Members are going to vote shortly after. But I personally support the setting up of such a committee. I also feel that the community that expectations on this Council and wants to see a certain mechanism in place. Such a mechanism would neither serve as a means for instituting political persecutions against Members, nor a secret police which probes into their affairs; but rather, this mechanism would allow people, or for that matter Members, to lodge their complaints, if any, about a Member's misconduct. If Members negatived the motion put forward by the Honourable Mrs Miriam LAU today, they would be telling other people not to make any complaint because there will be no mechanism even if they have done so. As I said at the outset, someone suggested that a select committee may be appointed by resolution of the Council after debates are held, just as in the case of the dismissal of Alex TSUI. But do we want things to go to such extent? I would therefore wish to urge Members to think about it. If we support the motion, we would be sending a message to the public that the Legislative Council is not above the law. Members do have rules to observe and there is a mechanism through which complaints can be lodged by the public and various quarters. Moreover, the process of handling complaints is very fair and open. Hence, I hope Members can thoroughly consider it again and support the motion.

MR MICHAEL HO (in Cantonese): Mr President, the Democratic Party will oppose the motion. I am also a member of the CMI.

There are in fact two parts to the motion this evening. The first part is a technical amendment which we support. However, since it will later on be voted upon as an integral part of the motion, we have to reluctantly reject it, pending a decision next week when we deal with amendments to Standing Orders.

The second part of the motion is concerned with an amendment to Standing Order 60B, that is, renaming the Committee on Members' Interests as Committee on Members' Interests and Conduct. We do not subscribe to this principle. In fact, the Honourable Miss Emily LAU has already stated our reasons. With all Members of the Legislative Council returned by democratic election in September this year, we believe that this Council will then be subject to censorship by voters, the mass media and the Hong Kong public. Just now, Miss LAU mentioned that the conduct of individual Members could indeed have gone overboard. Should someone's conduct be such and if he is elected as a Member of this Council, it would serve to indicate that there are problems with our election system. In a democratic system, should someone's conduct go excessively overboard, his voters could decide, by their vote, whether they should re-elect this particular person. Some has also asked: Why do we not amend the existing Standing Orders? The answer is that we do not seek amendments to or election of part of the existing Standing Orders does not necessarily mean we have to set up such a committee. Therefore, we do not subscribe to this principle. Nor do we agree that some Members should monitor other Members or conduct inquiries into their conduct.

The Democratic Party very much appreciates the considerable time that members of the CMI have spent in studying the issue. I can fully empathize the discontent and frustration felt by CMI members' for our present opposition to the proposal when we should have instantly expressed our opinions several months ago during the consultation period when this Council was approached for its views. The Democratic Party would like to apologize for not properly voicing our opinions in time during the consultation period, thus laying to waste all the time and effort that have been spent after the consultation. But in any case, since we do not subscribe to this principle, we will vote against the motion later on.

DR LEONG CHE-HUNG: Mr President, perhaps I have to declare my interest also as a member of the CMI. Mr President, whilst nobody, let alone Members of this and future Council should object to the fact that Members must behave in a mode befit of them, I still rise to speak against empowering the CMI with the investigatory role in complaints concerning Members' conduct in matter of ethics.

Mr President, in a few months' time this Council will consist of all elected Members. Each Member is thus accountable to his or her constituents and his or her actions, right or wrong, will be scrutinized by the people of Hong Kong. It is therefore right that it should be his or her voters who should apply the sanction and not Members of this Council whom he or she is not accountable to. Furthermore, even if sanctions should fail by his voters at that point in time, the people of Hong Kong can still cast a negative vote on that Member at the next election, producing thus a permanent censure. This, Mr President, is what democracy is all about.

Mr President, in these days of complete open legislature, any proposed investigations, no matter what the outcome may be, will tarnish the image of that particular Member who may face the unfair sentence of guilty although proven otherwise, even before a proper trial. In doing so, I am not implying that the Legislative Council is above all or above any laws, as implied by the Honourable Emily LAU, for there is still a machinery existing to censure Members both by this Council and by the public.

DR LAM KUI-CHUN: Mr President, I am also a member of the Committee on Members' Interests (CMI). I wish it to be noted that this motion is not an unanimous recommendation from the Committee.

Mr President, in a powerful body like the Legislative Council, I agree it is important that its Members' behaviour should be entirely in the interests of the community at large over and above their own individual interests. Where conflict of interest arises, the legislature should know about it and, where appropriate, the person concerned should abstain from exercising his power on the particular issue. Measurement of conflicts of interest is generally easy and straightforward. In the history of this Legislative Council known to me, this system has been working well.

Where I believe the CMI in this present Session has overstepped its boundaries is the monitoring of Members' conduct. A year's work follows the proposal by one of the Members of the Committee "that a committee be set up to monitor the conduct of Legislative Council members". The Committee eventually came to the conclusion "that the monitoring of the Legco Members' conduct should be undertaken by an in-house body." (Legco Paper Number CB532/94 to 95.)

Mr President, I have tremendous difficulty in accepting the attitude that some Members of this Council should view themselves so superior to the others that they assert for themselves the role of monitoring others' conduct. This "holier than thou" attitude is arrogance beyond civil acceptability. I would believe that all Members of this Council are equal. None more so than others. All Members should treat all other Members with respect. To monitor another's conduct with a view to bring on accusation and disciplinary action smacks of megalomania.

At his induction into this Council, each Member takes an oath to "conscientiously and truly serve the people of Hong Kong". For his action, he is responsible to his own constituents, not to a higher tier of Council Members. His constituents, through the mass media, monitor his conduct. His misbehaviour, if any, is sanctioned by the people of Hong Kong. To a responsible legislator, this is the gravest sanction of all.

I disagree with the proposal that this Council should run a monitoring system that may, no matter how remotely, be reminiscent of a secret police. I am a Member of the Committee on Members' Interests. I do not approve of the final conclusion leading to this motion. I have previously raised my objections to the Committee. Mr President, the wording of this motion seems innocuous. The thinking behind it is misguided. I oppose the motion.

MR LEE WING-TAT (in Cantonese): Mr President, the first thing that struck me as odd was that all five Members who spoke moments ago are members of the Committee. I am not a member of the Committee and so I am in a better position to avoid confusing my colleagues as to how they should cast their vote having regard to the widely different views expressed by the five committee members. Even within a political party views of individual members may differ. Mrs Miriam LAU and Dr LAM Kui-chun hold different views although they both belong to the Liberal Party.

Firstly, I am speaking against the present proposal. I hope Members will understand that there are already stringent provisions under Standing Orders to regulate, *inter alia*, declaration of interests. I believe that in Hong Kong, apart from the Executive Council, we, Legislative Councillors, declare our interests in the most comprehensive as well as specific manner. We are required under Standing Orders to declare, failing which we shall be subject to sanctions. There are objective standards with regard to declaration of interests involving pecuniary or other commercial dealings, for example, as to whether a Member has declared or whether the declaration is comprehensive. I believe the major problem about the proposal to set up a committee is that it will bear on personal integrity and conduct, which is a controversial problem indeed.

I would like to respond to Miss Emily LAU's argument to the effect that there are similar committees in many western countries while Hong Kong has none. There is nothing strange about this. Miss LAU should be aware that: first, Hong Kong's legislature is not wholly constituted by popular elections and so we do not have certain system which other countries have. In many countries with a western constitutional model of government, parliamentary committees monitoring the operation of government are chaired by members of the opposition party. But Hong Kong is different because not all the seats on the legislative body are returned by popular election. This is possible because our political culture has not fully matured.

Secondly, many of Hong Kong's Legislative Councillors are not members of political parties. This, however, is not the case with other countries where political parties themselves are the foremost checkpoint to monitor the conduct and integrity of their members who sit on the legislature. Hong Kong has no such checkpoint. There are many independent Members in Hong Kong's legislature. Who are to monitor them? Perhaps the electorate monitors them through observation of the proceedings of the Legislative Council. Before we have a first checkpoint, do we really need to jump to the next step?

Thirdly, the political culture of Hong Kong is, relatively speaking, in its incipient stage of development. As to how Legislative Councillors or party functionaries should go about monitoring their peers or their colleagues — including Legislative Councillors and party colleagues — and how political parties are to monitor their own members, the political culture in this regard has yet to develop and mature. I can even say that the public is unsure of how to exercise this right. Therefore, this is the simple answer to Miss LAU's question as to why most western countries have similar committees while we have none: It is because we do not have a legislature wholly constituted by popular elections. It might have been better if the present motion had been moved and carried last year.

I would like to turn to the second area of the subject. A moment ago a Member said that the present circumstances did not imply that in Hong Kong a Legislative Councillor could do whatever he liked in utter disregard of law and discipline. Through appropriate general monitoring as well as monitoring by the news media, the public has acquired a clear understanding of much of our work, particularly in regard to the conduct of public affairs. In this respect, the Legislative Council has made vast improvements. Our meetings are open and we have to be accountable for numerous matters. Legislative Councillors cannot evade such monitoring and accountability. They cannot behave or work in an unreasonable manner or contrary to social or moral norms or accepted codes of conduct. And therefore certain rules now exist to regulate the conduct of Legislative Councillors. The absence of such committee does not mean that Hong Kong's Legislative Councillors can act in a lawless way.

I am particularly worried about the present proposed amendment to the effect that after receipt of a complaint investigations can get under way if four members of the committee agree. Although Miss Emily LAU said she hoped that different political parties would participate in the committee in the future, yet it would be difficult to ensure that this would be the case. Would participation by different political parties mean that the work performed by the committee each time would necessarily be in the public interest? Let us not forget that the absence of the power of investigation exercisable by the committee would not necessarily mean that those Legislative Councillors whose conduct is grossly questionable would not be subject to appropriate sanctions. Standing Orders provide that the Legislative Council may, by resolution, set up an ad hoc committee to investigate a complaint. To some, this procedure may

seem drawn out and complicated. However, as the person under investigation is a Legislative Councillor, I agree with Dr LEONG Che-hung's comment that before the investigation findings are known the very fact of being investigated already hurts immensely. Therefore, the procedures and rules relating to the investigation must be stringent. Not only will this protect us, Legislative Councillors, it will also protect the overall dignity of the Legislative Council.

A moment ago Miss Emily LAU said that we had numerous problems these few years and she cited two examples. The first example involved the use of Members' allowances. Last year the Treasury and the Secretary for the Treasury introduced a number of amendments to address some of the grey areas with regard to the use of Members' allowances. We were urged to consult the Treasury in case of doubt as to the use of Members' allowances so that our way of using the allowances would meet the requirements of the law and taxpayers, that is to say, the allowances should be used on Members.

Miss LAU drew our attention to the matter of a Member making insulting remarks on women. Miss LAU rarely bothered to speak in guarded terms as she did on this occasion. She was referring to Mr CHIM Pui-chung. Mr CHIM may later speak in response to this. But I think that the question does not lie in what a Member says or what remarks he makes. We have a number of functional constituencies in our political system. If his functional constituents like what he says, he will be re-elected. But in a popular election, I am sure Mr CHIM will lose. As popular elections are not involved, it would not be right for Miss LAU to lump the two questions together. Therefore, Miss LAU should continue to insist on 60 directly elected seats, in which event many questions would disappear.

With regard to the recommendations in this report, I myself am worried about two points. The first point relates to the question of what constitutes personal interests and personal matters under the Members' code of conduct. During the last meeting of the House Committee, Mr Edward HO also broached this point, that is to say, how to define personal interests and personal matters and what would constitute a breach. Because of the vagueness of the terms in which the recommendation is couched, it is difficult to understand it. The second point relates to Members' appearances in commercial advertisements. A number of Members, such as Mr Ronald ARCULLI and Mr MAN Sai-cheong, did so. It was because of one such advertisement that I bought a pair of jeans. However, we can be rather subjective when we are defining what sort of advertisements are unbecoming of a Legislative Council Member. It is because individual Members' views with regard to morals and conduct differ. Some may take a strict view while others may take a lenient view. If Mr Andrew WONG has a couple of beers with a brewer or seller, what should we do? He likes to drink. Many questions in a variety of forms will emerge. The public

may take a view and immediately lodge a complaint with the committee. And an investigation will be undertaken. I do think there is no need for this.

I would like to add one point in response to Miss Emily LAU's question of why some western countries have such a committee. According to the usual practice of political parties in these countries, the party will taken disciplinary action against a member when irregularities of conduct are uncovered. The member concerned will resign. For example, a Tory MP recently asked a question in Parliament on an entrepreneur's behalf without declaring interest. He eventually resigned under pressure from his own party and from the public. Therefore I feel that at the present stage it would not be appropriate to suggest having such a committee.

I only agree with Miss Emily LAU in regard to her observation that under Standing Order 60(B)(c) and (d) the Legislative Council should deal with such a complaint and investigate it but that we have failed to do so. I would suggest that in the next legislative year we should roll up our sleeves and take on this matter.

MR FREDERICK FUNG (in Cantonese): Mr President, I am against some of the recommendations by this Committee, apart from certain proposed technical amendments. But as they are placed before us a package to be dealt with, I shall have to vote against it.

First of all, I feel that some points are open to question. Miss Emily LAU stated a moment ago that Standing Orders also require Members to declare their interests, failing which a resolution can be passed to subject the defaulting Members to sanctions. But it is obvious that the declarable interests consist of: (1) interests manifestly connected with the direct interests of the Members; (2) interests that can be counted; (3) interests that can be readily and specifically enumerated. Such declared interests can be easily dealt with and investigated.

As regards investigation of a Member's conduct, I have a few worries. Firstly, it would be difficult to define what constitutes improper conduct. A person's general conduct or moral conduct consists of a number of tiers. Society may not have a confirmed and objective definition of personal and moral conduct. For instance, pre-marital sex was not acceptable but current survey findings indicate that more and more young people are beginning to accept this concept. People used to smoke wherever they liked. But now many places are non-smoking areas. When past moral concepts permitted smoking wherever one liked, I had the habit of smoking. Now suddenly with so many no smoking areas am I to quit smoking? This is a standard not readily susceptible to definition. Secondly, different religions have different standards. Moral standards vary between Christians, Catholics, Taoists, Muslims and people with no religion. Even in the light of the two major factors aforesaid, personal

definitions of these standards vary. When two Christians are faced with the same problem, their standards of moral conduct may vary in terms of strictness or severity. In the face of so many imponderables, I feel that it would be difficult to vet the moral conduct of a Member.

Besides, if a Members does wrong or breaches the law, there are laws in Hong Kong that can be invoked and enforced against him. For example, if a person is found smoking in a place where smoking is not permitted, the anti-smoking law can be invoked against him. Another example would be the way we dress. We come to Council meetings on Wednesdays in suits and ties. Nowadays some Members are saying they will not be wearing ties. Would the failure to wear suits and ties when a Member attends Council meetings constitute a question of conduct? If I appear in a rather trendy outfit, would I be permitted to attend meetings? All these can constitute possible grounds for complaint against a Member. However, would such grounds be sufficient to justify meting out punishment against the Member concerned? I think that this is a matter open to question.

The second aspect concerns the question of implementation. If a cause for complaint arises, a complaint is lodged and four Members agree, how then are we to get on with the investigation? Would the getting on with the investigation constitute a problem already? If no investigation is undertaken, how can it be proved that the Member concerned did wrong? If an investigation is launched, how are we to go about it? Are we to undertake the investigation ourselves or to engage a team of full-time private detectives to do it for us? Moreover, this would involve the question of whether the process should be open. Miss Emily LAU said a moment ago that the process should be open, I believe we cannot get away with it now that there are more directly elected Members on this Council and society is becoming more and more open. Whether the system would prescribe an open process or a non-open process, I believe the investigation findings would be published anyway. To the person under investigation, the whole process would hurt and, after all, he might be innocent.

Thirdly, the consequences. If this Committee, after it is set up, investigates or holds an inquiry on a Member, it will damage the prestige of the Member — at least for as long as the inquiry lasts — no matter whether the process is open or not. There may emerge a scenario where today one Member is doing this to another and tomorrow that other Members may be doing the same to yet another Member. Today, a Member from a political party is being investigated. Tomorrow, this political party will be doing the same to yet another party. A state of affairs will emerge where parties will be persistently accusing one another and exposing the failings of one another. The side effects of negative effects will only worsen, never mitigated.

Therefore, I feel that since the 1995 Legislative Council will be constituted by elections, the moral conduct of Members will be subject to monitoring by the electorate and the media. I think Miss Emily LAU and Mr Michael HO need not worry about imperfections in the election system. The elections are not to blame if the election system changes the moral judgment of Members and the citizens. When the voters in a constituency find the conduct of a Member proper and acceptable, they can re-elect him. If, notwithstanding purported improper conduct, a Member is re-elected, this may be because his other merits outweigh his shortcomings. No one's conduct is one hundred per cent perfect. If the public, the media and the electorate know of certain conduct on the part of a Member, let them pronounce their judgement in the once-every-four-year elections as to whether they accept such conduct. I feel that this would be a better way.

Finally, a point I would like to reiterate is that this will have more negative effects than positive ones. It is particularly so in relation to conduct the propriety of which is not readily susceptible to definition. Miss LAU said that there would be no guarantee after 1997. If there are so many things to worry about, might it not be better to dispense with it altogether? Therefore, I am against this motion. I feel that Miss LAU is not too much in favour of it either because she dared not offer a guarantee.

MR ERIC LI (in Cantonese): Mr President, I am also one of the members of the Committee on Members Interests (CMI) but I only realize today I have never heard of the views given by three Members during the numerous meetings we have held. I am a bit surprised indeed. I understand that it is not easy for a legislature as unique as ours to accept the proposal put forward by the CMI. This is because the membership of this legislature is relatively small with less than 60 Members while there exists distinct political differences. In addition, if Members do not trust each other, it will not be easy for a Member to accept the notion of empowering others to govern himself or herself. I believe we are still quite far from treating ourselves of having a civilized and democratic legislature as referred to by the Honourable Mrs Miriam LAU.

Many Members are of the opinion that the Committee will produce a lot of negative effects. However, if seen from a positive angle and an angle of more confidence, we should see that there are a lot of positive effects indeed. Firstly, I entirely agree with the views of the Honourable Miss Emily LAU. The reason for our spending so much time and making so many efforts is only to respond to the mass media which have expressed disappointment or helplessness with our legislature. Because of the conduct of some Members (I do not wish to elaborate as some Members have cited numerous examples moments ago), a lot of critics from the media held that what this legislature could do was only to choose or not to choose. It would take a few years even if re-election was warranted and, in the interim, it was impossible to effectively monitor or respond to or even punish a Member, such as by issuing warnings. This legislature was entirely lack of a self-discipline or self-monitoring

mechanism. I believe the general critics at that time was that the options available were too limited when some relatively trivial or unimportant mistakes were made. I also believe what the media wanted at that time was we could take advantage of the development of incidents and make some responses. Obviously, they hoped the legislature could show collective conscience and responsibility.

Some of my colleagues said those belong to a political party would have to abide by the mechanism of his or her political party. However, there are still a lot of Members who do not belong to any political party. When something happens to them, nobody will give a helping hand. This is particularly the case as the public opinions usually have no conclusion or there is no chance for getting hold of the true picture of all the things involved. I agree with what the Honourable Frederick FUNG said regarding the expression of opinions or launching of investigations by the CMI. I hope that Members will not misunderstand that the CMI is trying to fight for power or seeing itself as superior to others. What we considered and debated at that time was open, obviously for the purpose of helping all the incumbent Members to tell the truth in a sober and objective environment. It was also hoped that Members could co-operate during the investigation so that all Members could understand and grasp all facts before presenting a report to the full Council for a decision. If a judgement can be made on the facts, there will at least be a general comment and verdict, no matter the Member in question or what he or she does is right or wrong or in between. The result is very important as far as Members are concerned. It is better than those general comments that have no argument and conclusion. Just as the examples I citied just now, it is still not yet known whether these are acceptable to the public or not. With the setting of examples, it can help our legislature to mature in future; furthermore, we can make judgements on the basis of these examples in future and even prevent other Members from doing the same thing or similar things.

It seems that it is not easy and quite hopeless to ask the legislature today to show collective conscience or responsibility. I would like to ask Mrs Miriam LAU not to be disappointed though a lot of efforts she made might have been wasted. But I hope our research and comments will serve as useful references when the Hong Kong Legislative Council develops into a legislature that is willing to be collectively accountable to the public one day. Thank you, Mr President.

MRS SELINA CHOW (in Cantonese): Mr President, I have a feeling that today's debate should have been held a year ago so that the invaluable time of the seven CMI members could have been saved; for in the interim, they have held numerous meetings, working hard for the rest of us to table a motion for debate. Their time could indeed have been saved for what we are discussing now is after all a matter of principle which many people seem to have found unacceptable. I take it that in any debate, "both sides would claim to be justified", and as the debate unfolds, there will definitely be a grain of truth in

both sides' arguments. However, this reflects to a very great extent the immaturity of this assembly as any mature assembly will have no fears for self-regulation. The American assembly has an "Ethics Committee", whereas its Canadian counterpart has a formal mechanism for self-regulation. This is because they protect the reputation, conduct and moral standard of the parliament as a whole very seriously and solemnly. I feel rather regrettable and heart-stricken that we lack in Hong Kong this standard of collective protection of the assembly's reputation as a whole, for there are certainly some fundamental ethical standards that each and every one of us would wish to protect, despite our diversity in political partyism, political backgrounds and political views.

Moreover, if we can elect some of our colleagues as chairmen of certain committees, or chairmen or leaders of certain special mechanisms, why can we not elect some colleagues to protect the overall reputation and ethics of this Council? That we are so fearful of giving power to some colleagues when what they would do is only helping us in our self-regulation and maintenance of ethical standards reflects distrust among ourselves, or the assertion that none of us is qualified for the job, or even the lack of confidence that someone could be qualified for the job. I think we should cast a reflection on this. As an assembly, day in and day out, we call for the setting up of various committees to knock down other people. But we dare not knock down ourselves once we become the target of suspicion. In fact, it is perhaps not a matter of only knocking down people, for indeed, there might be times when we would be arguing for the rehabilitation of innocent Members who have been treated unjustly.

As to the Honourable Miss Emily LAU's opinions, I have some disagreements. I do not think the CMI should discipline a male colleague who has made a rude remark about a female colleague for we all enjoy freedom of speech. Besides, this particular male colleague could have already been snubbed on his nose and drawn considerable flak upon himself. However, there must be a bottomline for certain conduct. While voters may not vote for the questionable Member next time, so the usual comment goes, there is a term for the Member's office. It is undesirable that if any problematic Member should have to hide himself or find all sorts of cover-up from the very start of his term. However, it could also be the case that a certain Member has been framed up, only to find no channel of redress to his avail. In fact be it a positive or negative revelation, what such a mechanism offers is an opportunity to present all the facts by way of the assembly which is trusted by the public and which observes certain ethics.

I personally support such a mechanism. But given the circumstances today, I believe that the motion may not necessarily be approved. Somehow it does not matter, for it is the maturing process of an assembly. I hope that one day — though I have no idea when this day will come — this Council could genuinely face itself squarely and shoulder the responsibility of self-regulation,

that it would have no fears or apprehension in giving power to colleagues, in facing the rest of the world and in making itself accountable.

Just now, a certain Member mentioned about secret police and the damage to a Member's reputation once such a case is disclosed. I feel that we should trust the judgement of Members, for reputation is very important to a person and Members would respect the other people's reputation. Nothing has shown that we would blatantly disregard other people's reputation in the transaction of Panel businesses. Members are held responsible, they have to be responsible to colleagues and to all the other people. If we were to exercise the power so conferred, we need to exercise it responsibly. Hence, I feel very regrettable that we could not have this mechanism in place. But I do respect your choice. However, I feel that honourable colleagues, especially those who have strongly opposed this motion throughout the debate, should follow the example of the Honourable Michael HO in apologizing to the Honourable Mrs Miriam LAU and members of the CMI for having wasted so much of their time and effort. All along, we have kept our silence, expressing no strong opinions and reserving our severe criticisms until after they have done so much work, and questioned at this moment the purpose behind this whole exercise, imputing ulterior motives upon them. I find this unfair to the CMI. I of course hope that this motion would gain majority support from the Members, but otherwise, Mrs LAU should not feel excessively heart-broke either.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, first of all, I want to express my strong objection to the setting up of the committee in question. If Dr the Honourable LAM Kui-chun is not going to stand in for the coming Legislative Council election, he will attend three more sittings only, but I think, the courage with which he boldly criticized some of his colleagues just now is indeed very admirable.

In fact, all of us are just fellow Members of the Legislative Council, however, some tend to regard themselves as "lady housekeepers" and want to meddle with everything. In order to show that they are superior, they show absolutely no respect for even Branch Secretaries of the Government. This attitude of theirs has very severely damaged the executive-led system in Hong Kong.

Mr President, first of all, let me defend what I said once again and let me make yet another apology in public. I did in fact remarked that "ten men out of ten are salacious", though, Mr President, I did not refer to you. However, why did I say so? As an ancient Chinese saying goes: Eating and sex are but the instincts of human beings. While it is considered proper for people in the past to say so, when again I expressed the message of the saying in the language of our time, everybody found it so unacceptable. Why? I did apologize for what I said many times before, and I also apologized to Miss M Y CHEUNG. However, she told me that she would not listen to me, saying instead that it was most appropriate for me to make an apology on television. Now that the

television camera should be focussing on me, I hereby make my formal apology in public. I hope that this would not affect my chance in the coming election because in my constituency, one must consider many factors, amongst them, ability and performance should have been the most important factors to be considered. Some people have said more discreteness is required in future. However, is not total silence even better? That way, they would not say anything wrong at all. The Honourable LEE Wing-tat remarked a moment ago that I would certainly lose if I stand in for the coming election. I think that is not necessarily the case. However, since I do not take part in the elections in geographical constituencies, I do not want to argue with him. That is the reason. I may not necessarily lose in the election, only that no one can tell because I am not going to take part there.

Mr President, the Honourable Mrs Selina CHOW said just now that the committee in question had been working for almost a year. Is not an ox even more hardworking? What is the use of labouring fruitlessly around when only results would count? I have no intention of opposing others. But, I must say that I can observe bias and pomposity inherent in the opinion expressed so far. Since people in the past had different criteria in regard to integrity, Elizabeth TAYLOR was still highly regarded in foreign countries despite her six marriages, but for a Chinese person, a record of six marriage would have made him the subject of much condemnation. Therefore, fundamentally there are differences, and in many cases, we have to conduct some self-review.

I myself believe that the main issue involved is whether Legislative Council Members are entitled to any privileges. MTR construction works are in progress everywhere in Central, and I want to tell you that so far I have been fined twice for traffic offences, each time having to pay $450. I cannot do anything because Legislative Council Members are not entitled to any privileges over such things. The only special treatment is a quicker immigration clearance process at the airport. Apart from that, there are no other privileges. I can also tell you that despite my long service in the Legislative Council as a Member, the Securities and Futures Commission has been conducting investigations into the listed companies under my name all the time. So, do I have any privileges? Therefore, the only thing that should be done is that if Legislative Council Members want to be more elevated and more representative, they should draw up some mechanisms under which, for example, Members are required to behave properly in their private life. This is the only proper thing to do. What reasons can one advance to justify the supervision over other Members? Members who advocate this should first assess their own worth to see whether they are really capable of performing this task. Some of them may not even be capable of "controlling" their husbands, and yet they would want to control other people; or some others could not even manage their wives, but they want to manage others. I believe that this is merely wishful thinking which is absolutely infeasible.

Of course, I also appreciate that the committee has been working for quite a long time. However, their scope of study has been extremely over-specialized, and so, how can we make them regain their awareness? Then, even inside the committee, many people oppose the idea. I think we should respect these dissenting voices. Why did the two to three Members to whom we listened oppose the idea so strongly? Since their strong opposition is not a minority view formed overnight, I think we must give it our due respect. Hence, Mr President, if we are just talking about imposing more demands on Members, I would give my support. But, if there is no specific and defined scope, I would say that the whole thing is against the rules.

I recall that Governor Chris PATTEN's political reform package included a proposal on the setting up of a Government-LegCo Committee. I myself opposed the proposal very strongly at that time because it would reduce the powers of Members. I once said that if the Government really pressed ahead with the proposal regardless of opposition, I would institute appropriate legal actions. Of the nine proposals made by Governor Chris PATTEN, this is the only one that has failed to be put into practice. What we should uphold is a code and a kind of spirit that can serve a pre-emptive purpose. I do not think that it is appropriate at all to carry out investigations or take any other unnecessary actions after something has happened. With this standpoint in mind, I totally oppose the proposal contained in the Motion. However, I hope that people can understand the intention of my opposition. I oppose the proposal not because I want to be pompous and lax in the conduct of my affairs as a Member. Quite the contrary, I want Members to achieve a higher degree of self-discipline. To me, what matters most is that we must draw a clear line between our private and official capacities.

Just now, the Honourable Eric LI said that there were several examples. However, can he really give any good and appropriate examples? The Legislative Council Members of Hong Kong are not above the law, nor does their status exempt them from obeying the law. All of them must abide by the law. The only thing is that Members will not be held legally liable for the views and opinions they express at the sittings of this Council. Apart from that, in all other matters, Members do not enjoy any privileges which can enable them to break the law or commit an offence without being penalized. If they ever break the law or commit an offence, they would be subject to the control of the law as well. Hence, the whole matter under discussion today simply illustrates the pomposity of the Members concerned. Mr President, referring to the instances of some Members asking their Filipino domestic helpers to serve as their drivers, do you think such Members should be criticized? Some other Members have been openly advocating 60 directly elected seats in this Council. Actually, it is stipulated clearly in the Basic Law that the composition of the Legislative council returned by the election held in 1995 should be in accordance with the ratio: 30:20:10. Such an advocation of 60 directly elected seats by a Member is in itself a violation of the spirit that the Basic Law should be supported. Therefore, I am sure that they will certainly have to "alight" after 1997, and

they will not be eligible for any elections. But, back to their advocation, I can say with certainly that it is already a formal challenge to the law.

Mr President, perhaps I am a bit irritated today. But since some Members have misinterpreted what I said, I hope to take this opportunity to defend myself. Even though some people may not like my opinions, they still have to respect my right.

MR SZETO WAH (in Cantonese): Mr President, I want to clarify what is meant by "Eating and sex are but the instincts of human beings" so as to do justice to the saying.

The saying is a quotation from Confucious on the two major basic instincts of animals, and the message imparted is a very serious one. "Eating" refers to the consumption of food for the purpose of sustaining one's physical life. One must consume food; otherwise, one will certainly be starved to death. On the other hand, one is bound to die, despite the food consumed, because for human beings, there is no such thing as eternal life. One's life can be perpetuated only by one's offsprings, and "sex", as it is cited in this instance, refers to our reproductive capacity, something which is not as simple as being "salacious".

The saying imparts a very serious message. It is my pleasure to do justice to its true meaning.

MRS MIRIAM LAU (in Cantonese): Mr President, it takes great courage for one to exercise self-discipline or to subject one's conduct to a monitoring system, and it is by no means an easy task. The conduct of the Legislative Council Members has always been regarded as a sensitive issue by our colleagues, and they would try to evade the subject whenever the issue was being mentioned. I am well aware of this fact, and the Committee on Members' Interests (the "CMI") was therefore particularly cautious when deliberating on the issue. In addition to in-depth studies, the CMI has also adopted the principles of transparency and open-mindedness as far as possible, conducting consultation exercises and affording all possible opportunity for expression of views on the issue. We have invited Members to give their views, but no submission was received. It is our hope that the recommendations could accomodate colleagues' views, and be recognized as well as supported by this Council after a comprehensive consultation exercise has been conducted.

Just now the Honourable Mrs Selina CHOW advised me not to feel so sad about the matter. After listening to the speeches delivered by the Members of this Council, I understand that the motion I am moving today will not be agreed to. Yes, I am sad, but not because of this understanding. What makes me feel so sad today is the attitude my colleagues have been adopting when handling this matter. The CMI has never volunteered to lay hands on this matter, it was the House Committee which invited us to deliberate on the issue.

Ten Honourable Members have spoken, and I would like to name three of them whom I am going to criticize. The three of them are members of the CMI, namely, the Honourable Michael HO, Dr the Honourable LEONG Che-hung and Dr the Honourable LAM Kui-chun. I will only have a few criticism against Dr LAM Kui-chun, because as I have pointed out in my first speech, he has already expressed his concern during the course of the CMI's deliberations. His concern was that the CMI might operate like a secret police. We have taken on board his concern and did try our best to make amendments in accordance with his views. I have also asked him in private if he was not in favour of what the CMI had been doing, his reply was to the negative. However, he did suggest us not to overdo anything and pointed out that what we had been doing was already enough. We have never been asked not to handle the issue so far.

Members of this Council have delivered their eloquent speeches today and Dr LEONG has voiced out his strong objection. In addition to voicing out his strong objection, Mr Michael HO also mentioned that the Democratic Party would also object to this motion. Just now I have looked over the Legislative Council Minutes no. 11, but nobody had ever mentioned this issue during that sitting. Could the way in which they have been treating their colleagues be considered as appropriate? Is it appropriate to function in this Council with such an attitude? They are in fact not paying any due respect to this Council and its Members. They themselves are members of the CMI and have discussed this issue with other members of the committee. All members of the CMI have agreed to the draft Guidelines and agreed that public consultation exercise should be conducted and followed up by further discussion, we have also agreed that the issue should be brought to the House Committee for consultation purpose. We have all agreed to these decisions in the CMI, the proofs could be found in the relevant records. I have never forced anybody to accept anything. I feel so sad today, because I have to criticize fellow members of the CMI like this. If you have such comments, why did you not raise them out in May last year, just like Mrs Selina CHOW has said? Why did you have to make the CMI members hold 11 hours-long meetings, read through numerous files, and spend hours at home reading papers and documents. What kind of a parliamentary system are we having? How are we going to describe this attitude of our Honourable Members?

Certainly, it is up to each Member to choose whether an motion should be carried or negatived, but I do think that the parliamentary system we are adopting should be reviewed in detail. One point which needs looking into, in particular, is that Members should be advised to read the relevant papers before rising up to speak and criticize. The Honourable Frederick FUNG has mentioned in his speech issues like social standard, moral standard, and even smoking as well as the requirement to wear a necktie. If he has read the draft Guidelines prepared by the CMI, he would not have said such things. Our draft Guidelines have absolutely nothing to do with those things. Our draft Guidelines concern only the enhancement of Honourable Members' credibility. Things like "keeping a mistress" are simply not our concern, we are not talking about that kind of moral standard.

The Honourable CHIM Pui-chung alleged us of being self-important, we are in fact self-abased. We are abased because our colleagues have been making a fool of us. I have a strong feeling that the CMI is very lowly, Members of this Council would make a fool of us like this. Yes, we laboured like oxen, but we are also Members of this Council. We do not mind working as hard as beast of burden like oxen and horses, yet we should be treated with due respect. Would this request be entertained? Some Members object to my views, I certainly respect their decisions. However, I wish they would have raised their objection in May last year, or during the consultation exercise conducted in February this year. I do not understand why we received no objection at that time, but are confronted with so many strong objection now. Why do you have to insult to such an extent?

I knew this motion would not be carried, and that was why I came here with the hope that you will be convinced to vote for the motion. Nevertheless, if there are Members who choose to vote for the motion, I would be very grateful, and I will also congratulate them for being courageous enough to subject their conduct to a monitoring system. I am sure the credibility of the Members of the Legislative Council will be greatly enhanced if this motion is carried; on the other hand, if this motion is negatived, everything said and done by each Member as well as each individual's choice would be noted down for record purpose. Should there be any complaint about a Member's misconduct in the future, Members who have voted for this motion as well as I should never be blamed for having done nothing to study the issue, to express concern, or for not devoting any effort to deliberate on this issue. Would Members be reminded that they should not complain about the absence of a mechanism to monitor the problem. If there are any criticism in the future, Members who are going to vote against the motion will have to be responsible for the consequence brought about by the decision they make today. Thank you, Mr President.

PRESIDENT: Mr HO, you have asked if you could speak again but that really is only if you have been misunderstood. Have you been misunderstood?

MR MICHAEL HO (in Cantonese): Mr President, I would like to make a brief elucidation. Just now the Honourable Mrs Miriam LAU, chairman of the CMI, mentioned that I had made some strong criticisms. I hope my colleagues would understand that my criticisms were made against the issue itself, not against the CMI in any case. I would also like to apologize for not giving any proper response during the consultation period.

Question on the motion put.

Voice vote taken.

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

MISS EMILY LAU: I claim a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: We seem to be one short of the head count. Are there any queries? If not, the result will now be displayed.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr HUI Yin-fat, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Marvin CHEUNG, Miss Emily LAU, Mr Eric LI, Mr Steven POON, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN and Mr Alfred TSO voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr LAM Kui-chun, Dr Conrad LAM, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr Henry TANG, Mr TIK Chi-yuen, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted against the motion.

Mr TAM Yiu-chung abstained.

THE PRESIDENT announced that there were 20 votes in favour of the motion and 28 votes against it. He therefore declared that the motion was negatived.

PRESIDENT: I have accepted the recommendations of the House Committee as to the time limits on speeches for the two motion debates and Members were informed by circular on 17 July. The movers of the motions will have 15 minutes for their speeches including their replies.

At this point, some Members started to leave

PRESIDENT: I think Members owe me the courtesy of remaining in place while I announce the position as to time limits. 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.

FORMULATION OF COMPREHENSIVE BROADCASTING LEGISLATION

MR MAN SAI-CHEONG moved the following motion:

> "That this Council urges the Government to expeditiously complete the formulation of comprehensive broadcasting legislation and to lay down detailed guidelines deregulating the subscription television market, in order to secure a broadcasting environment which is well-planned, monopoly-free, competitive, and open, as well as to promote Hong Kong as a broadcasting centre in Asia."

MR MAN SAI-CHEONG (in Cantonese): Mr President, today I move a motion in the hope that the Government will expeditiously review and improve the local broadcasting environment. The Hong Kong broadcasting environment is changing at a terrific pace, and the development will be more rapid in the foreseeable future. Even when we have Asia in mind, the development of the broadcasting industry will be an important economic segment in both the end of this century and the 21st century. But the local laws and policies relating to broadcasting no doubt have failed to keep pace with internal and external changes. In the end, Hong Kong's laws on broadcasting are yet to be updated, and the pace of opening up the subscription TV market is also very slow. Such a situation may eventually hamper the development of the local broadcasting industry and make Hong Kong lose the chance of striving to become a broadcasting centre in Asia.

I would like to start with the issue of opening up the subscription TV market. I will also explain the importance of formulating comprehensive laws, and my colleagues will put forward suggestions on how Hong Kong can strive to become a broadcasting centre in Asia.

First of all, let me speak on the issue of subscription TV. No doubt the opening up of the subscription TV market is aimed at bringing in competition and enhancing programme diversity, which will eventually benefit the consumers. I reckon nobody will oppose this goal, but the problem is what steps the Government should take to open up the market.

Wharf Cable Limited was granted a licence by the Government in June, 1993, with its exclusive franchise expiring in mid-1996. The Hong Kong Government has long been of the view that as Cable TV has only been in operation for two years, detailed information has to be collected on both the rating and the progress of network installation of Cable TV, before a study on the opening up of the subscription TV market can be conducted at the end of 1995.

However, the opening up of the subscription TV market not only has implications for Cable TV but also involves other important issues, such as how the market can be opened up, how many licences should be issued and what restrictions are to be imposed on the capital share of foreign investors. The Government is leaving the decision on planning to open up the subscription TV market until the review report on Cable TV is completed. Such an arrangement will only delay solving the problem, causing the industry to worry that the Hong Kong Government may intend to extend the exclusive franchise of Cable TV.

Also, if the Government does conduct the review at the end of 1995, there will be only six months left before opening up the market. The Government will not give enough time for the public and members of the industry to express their views on the opening up of the subscription TV market. It will not allow investors enough time to prepare the subscription services either. In the end, the pace of the opening up will be hampered or slackened.

The Democratic Party opines that the Government should work on the study immediately, examining the operation of Cable TV on the one hand and studying the impact of opening up subscription TV on various existing TV markets on the other. Apart from such a study, the Government should address other planning issues and form its policy stance. In this regard, the Democratic Party has some tentative suggestions:

(a) First of all, Hong Kong is a tiny place with a large population. District-based operation is not required for the area covered by the future subscription TV so that the public would enjoy the new TV services regardless of district boundaries.

(b) The Government should clarify the relationship between the "network operator" and the "programme provider". What the Government regulates are programme contents, not the transmission channel. Future subscription TV operators can therefore set up their own networks or lease networks from different network operators to transmit programmes. At present, both Wharf Cable and Hongkong Telecom own fibre optic networks. Satellite TV is also a transmission network. Thus, future subscription TV operators can well choose these networks to transmit programmes. Regarding network operators, it is desirable for the Government to put in place similar provisions which require them to transmit and carry programmes and to be in line with the fair competition provision. As for programme providers, they need to apply for a separate licence and to abide by the rules and regulations laid down by the Government on areas such as programme contents and corporate structure.

(c) On the source of financing, future subscription TV should rely on the subscription fee as the major source of income. We do not object to the airing of commercials on subscription TV, but for the fear that the subscription TV market, wireless terrestrial TV and satellite TV might totally rely on the same source of income, we think that the Government should impose stringent restrictions on subscription TV channels regarding their commercial time slots.

(d) No doubt the opening up of the market is aimed at offering more choice of programmes. To attract Hong Kong viewers, future subscription TV operators, whether they are foreign-owned or not, need to offer localized programmes. Thus, the relaxation of control on the capital share of foreign investors will not damage the interests of local viewers but will even attract the inflow of more capital which will foster the development of the subscription TV market. If the Government establishes proper restrictions on cross-media ownership, the problem of monopolizing the market can be avoided.

The opening up of the subscription TV is only an area of broadcasting planning because certain areas of planning mentioned above, such as the ratio of foreign ownership and cross-media ownership, also require a proper legal framework and an effective regulatory body. Unfortunately, the present regulatory laws are scattered in different Ordinances. For instance, wireless terrestrial TV and subscription TV are regulated by the Television Ordinance, whereas satellite TV is regulated by the Telecommunication Ordinance. The scattering of regulatory laws not only causes the public not to have a thorough understanding of the local broadcasting laws but also makes it difficult to formulate comprehensive provisions on cross-media ownership and promotion of competition.

Take the example of provisions aiming at promoting competition. The Government claimed that relevant provisions have been incorporated in the licensing conditions of Cable TV and Star TV. But the two terrestrial TV broadcasters all along were not subject to restrictions in this regard. The Government did not try to lay down relevant conditions on the two commercial TV stations until it was conducting a mid-term review of the commercial TV stations last year. We are still waiting to see the results. But obviously, this sort of patching up and piecemeal approach is not an effective way to enforce the provisions on promoting competition.

The planning and regulation of cross-media ownership also face the same difficulties. The present laws only deal with individual medium. Regarding wireless terrestrial TV, such restrictions include: (a) those preventing the licensee from forming a monopoly; and (b) those imposed by the Broadcasting Authority, through approving outward investment activities of broadcasters, to restrain them from owning other broadcasting corporations or investing in other businesses. The existing legislation governs only cross-media ownership between the electronic media but does not regulate cross-media ownership between the electronic media and newspapers.

Although the Government has indicated its intention of pitching cross-media shareholding at 15%, this "one slice-off cut" method has its merits and demerits. The advantage is that it is simple and clear, but it cannot offer a flexible approach to handle media of diverse nature and different degrees of influence. In early 1995, the United Kingdom announced a new proposal on the

regulation of cross-media ownership, setting the restriction standard on the basis of the market share of different media. This direction is worth noting. As a matter of fact, the Hong Kong Government has neither consulted the public nor officially declared its stance on promoting fair competition and restricting cross-media ownership. Neither has it come up with measures to achieve these goals. As a result, the Government has been dragging its feet over this issues for exactly a year without any sense of direction.

Another issue relating to broadcasting planning is the role and the terms of reference of the Broadcasting Authority. Apart from monitoring the enforcement of broadcasting laws and the compliance of the licence conditions concerned, the Broadcasting Authority is responsible for submitting proposals on broadcasting affairs to the Government. But at present, the Broadcasting Authority does not have an independent secretariat and cannot play a more independent role in broadcasting affairs. Secondly, since there will be close links between telecommunications and broadcasting businesses in the future, the Broadcasting Authority must step up its co-operation with the Telecommunications Authority or set up a joint study group to cope with rapid changes in the broadcasting business. Moreover, the Broadcasting Authority has not carried out strategy studies that often, and its internal meetings are seldom open. Thus, there is a need to promote a more active role for the Broadcasting Authority and to formulate a strategy for the development of the broadcasting industry when local broadcasting planning is being reviewed and improved. At the same time, the transparency and representatives of the Authority should be increased, while its independence, professionalism and decision-making power should be strengthened.

As the broadcasting environment is rapidly changing, the existing broadcasting media tend to merge into one another. Different forms of media, such as satellite TV, cable TV and interactive TV, are finding their way into the life of the general public through different technological advancements. Thus, the provision of a comprehensive and complete set of laws is an important step in coping with the future development of the broadcasting industry. Moreover, if the Government has to achieve the goal of promoting competition and preventing monopoly, it must also rely on clear and proper legislation. Since the Government has claimed the draft of the comprehensive broadcasting legislation has been completed, the Democratic Party calls on the Government to immediately submit it to this Council for consideration or to publish the draft legislation so that the public can know whether the Government stands on several issues.

I hope that the legislation concerned can improve the local broadcasting environment with a view to enabling the territory to make a stride forward in planning. In the face of the development of the broadcasting business in the 21st century, local broadcasting planning must head for the road of opening up the market. It must also be flexible, promoting competition and preventing monopoly. Otherwise, Hong Kong cannot maintain its competitive edge over

other Asian countries in broadcasting and may be surpassed by these countries. In the end, it is the interests of the territory's viewers which will be harmed.

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

Question on the motion proposed.

Mr HOWARD YOUNG (in Cantonese): Mr President, Hong Kong has been proud of being the centres of all sorts of things, like we often hear people saying Hong Kong is a "financial centre", a "manufacturing centre" (but that's something of the by-gone days). Now this afternoon when we are debating the Airport Authority Bill, Hong Kong is often referred to as the "aviation centre", and Hong Kong is also a "shipping centre". Now while the manufacturing industry of Hong Kong is on the decline, there is a trend of emergence of all sorts of service industries.

I feel that the concept of "broadcasting centre" is worthy of promoting. In fact, broadcasting industry is an important segment of the services sector. Hong Kong has sufficient infrastructure to become the broadcasting centre of Asia or Southeast Asia. Now besides the original telephone network, we also have an fibre-optic network gradually in the making. Hong Kong itself, when seen in the context of the whole Asian market, is not a very big market, with only a population of 6 million, which is very small. That is why in respect of the concept of "broadcasting centre" we should not aim only at serving this market of 6 million people, rather, we should seek ways to make Hong Kong become the service base for the whole of Asia. With today's technology, to broadcast from a place to neighbouring places, there are technologies for paid or non-paid service. Hong Kong now applies a number of standard, especially in restricting broadcast, but they are laid down long before the coming into existence of these new technologies and new possibilities, for example, the ownership by foreign capital of media, restriction or non-restriction on cross-media ownership, and advertisements. I guess that many of these were due to the consideration at that time of preventing the media being monopolized or owned by a minority, which might have too great an influence on public opinion. What we are talking today is actually not the same sort of problem. If Hong Kong develops into a centre for wireless and cable TV networks, that will help raise our production level, which, in a way, can be another intangible export. I therefore feel that there are insufficiencies in the current broadcasting ordinance that requires review and to which the Administration should pay close attention.

What is urgent at the moment is that the franchise of Cable TV will expire in the middle of next year. However, it takes a long time to construct a large scale telecommunication or broadcasting network and involves funds, technology transfer, importing equipment and training of production staff. If a company was really interested in investing on the expiration of the franchise and providing service to the consumers, it still need sufficient time to consider

the whole matter. If the rules of game, the advertisement ownership and cross media ownership restrictions can only be made known shortly before the expiration of the franchise, that, I think, will be too late and will make those who are considering entering the market feel unfair. But, Mr President, do not be mistaken, I did not say that competition is omnipotent, and I did not mean that we have to open the market, without any restriction, before a franchise comes to an end. It is because competition can sometimes be vicious. If, after careful study, we think that the market cannot support that much advertisement, or that the audience find that there are too many programmes, which will only result in damages and miseries for both sides or three sides, we would end up with nothing. There is already a precedent in our broadcasting industry. If we really feel that, before the franchise of Cable TV expires, there is sufficient reason not to open the market for more people to compete, then I hope that early announcement should be made, so that the investors would not be led to believe that the market would be opened and that they could invest in constructing the network. When they are "holding the wolf by the ears" and find that they can do nothing, that would mean a waste of resources.

Mr President, actually we have already seen signs of competition recently. A company recently introduces a video-on-demand service. Is it or is it not a cable TV service? What kind of service is it? Legally though it is not a paid TV service, it resembles one. Actually we see that a lot of conglomerates are already pitching against each other. I feel that if we are not to turn this competition into a vicious one, and at the same time give the consumers more choices, we should make known to the public the rules of the game as fair and clear as possible so that the market will have a clear idea and the investor will know, if Hong Kong is to become a broadcasting centre of Asia, whether it has the right conditions and ambition and whether it is feasible.

I support the motion.

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

MRS SELINA CHOW (in Cantonese): Madam Deputy, the broadcasting industry of Hong Kong has undergone rapid development in recent years. With Metro Broadcast becoming the second commercial radio of Hong Kong, Star TV and Cable TV have also begun operating. Though I would not say that it is a boom, it's already a very competitive market.

The Administration has been supervising to a certain extent those broadcasters that would have great influence on the public. However, it's up to each person's opinion whether such control is enough. I believe that these companies should be given a certain degree of flexibility and autonomy. What the Administration should do is to provide a positive environment and framework that would foster a healthy and responsible development of the broadcasting industry.

Though it is said that the Administration has all along been exercising supervision over individual broadcasters, Hong Kong Telecom's plan to provide video-on-demand service causes controversies over supervision. This seems to be a squabble of an isolated case, but in fact it reveals the problem that the Administration does not have a comprehensive, up-to-date broadcasting policy at all.

Hong Kong's broadcasting industry has undoubtedly led us to become the most professional production centre of the Asia-Pacific region, and has also guaranteed us a free information link with the world. However, how can we maintain such a role and how can we have more efficient and systematic development? Could the opportunity for further development be suppressed or even missed through our lack of a comprehensive long-term plan?

I believe that the Administration would also like to see Hong Kong continues to play a leading role in broadcasting, but if Hong Kong is to keep such a role, not only have we to have a comprehensive broadcasting policy, such a policy has to be implemented through legislations, and what is most important is that it can straddle 1997 and lead Hong Kong into the 21st century.

The Liberal Party believes that only if we have a set of clear and consistent broadcasting policy and legislations can the investors be made to have confidence in developing broadcasting business in Hong Kong. To ensure implementation of such a policy, it must at least have the approval and understanding of China. Just now Mr MAN Sai-cheong urged the Administration to formulate a broadcasting policy, to which we could not agree more. However, if we do not take into consideration the important factor that it must be able to straddle 1997, it would be a plan lacking long term outlook.

For the long term interests of Hong Kong, we think that the Administration should decide what sort of policy and direction of development Hong Kong should have, then submit the idea to Joint Liaison Group (JLG) for discussion. Actually we all know about the Bill that embodies the broadcasting policy, and Hong Kong has already had a ready-made version. We also learn from the officials of the Administration that they have spent much time on it and have made it as perfect as possible. If the Administration thinks that it is feasible, it should be discussed with the Chinese side by submitting to the JLG. Messages as released earlier by the Administration seemed to be conflicting. On the one hand, the Administration seemed to be hesitant in bringing forth a broadcasting bill at this stage, but on the other hand there was an about-face turn. Today we would like to listen to what exactly the Administration intends.

Now we all feel that the Sino-British relation has turned for the better. I believe this is the appropriate moment for the Administration to take the initiative to make a proposal and let the British and Chinese Governments discuss it. It is because only with such discussion can the policy be assured a continuous implementation.

Madam Deputy, I would like to stress that asking the JLG to discuss this policy does not mean inviting Chinese intervention in the broadcasting affairs of Hong Kong. We all understand that around the world, the development and promotion of broadcasting and information business within a sovereign state are all matters taking place within that state. The job of Hong Kong's broadcasting industry not only is to provide broadcasts locally, but also to establish Hong Kong as an international broadcasting centre. If Hong Kong is to be made to play such an important role in international broadcasting and no hiccups is to arise in the political transition, this undoubtedly is a very forceful guarantee and will enable Hong Kong to have a smooth transition and is also a symbol of confidence.

I believe, and sincerely hope, that the Chinese Government will adopt an open attitude in handling the development of broadcasting business in Hong Kong. By giving express guarantee in respect of such development, it will enable the broadcasting industry of Hong Kong to have greater achievement and will also give the investors a shot of encouragement.

As to the direction the broadcasting policy should take, I think that we have to have regards to the following principles. Firstly, the matter must be considered from the point of view of running a business, and there should be fair competition; and introduction of new technology should be considered within the context of the actual needs of Hong Kong and the affordability of the market, and of the balance between technological development and the trade environment, and of the influence on the original broadcasting network. Secondly, there should be a comprehensive management framework and a system that will ensure fair bidding, and there must also be a system to ensure investors in the broadcasting industry will have a sense of responsibility to Hong Kong. Thirdly, consideration must be given to the appropriate pace of taking in the required personnel which must not be too hurried so as not to affect the development of the whole industry.

I support the motion.

MR CHAN WAI-YIP (in Cantonese): Madam Deputy, the local broadcasting business gives people the impression that it is undergoing very lively development. Hong Kong has two wireless TV stations, providing on average over 560 hours of TV programmes per week to the citizens. Hong Kong also has satellite TV service which around 400 000 households can receive. Other satellite TV services like Chinese Television Network and Chinese Entertainment Television also beam their services to other Asian regions through the telecommunications facilities in Hong Kong. Moreover, Hong Kong can also choose to tune to cable TV. Since licensed by the Administration in mid 1993, Cable TV now has an estimated subscribers of 150 000.

As to the variety of services, in a city with a population of only 6 million, we have wireless TV, satellite TV and cable TV, altogether about 30 channels, which is a remarkable achievement in Asia. As to TV production, we are second only to Taiwan in terms of quantity.

However, we cannot take for granted that such a favourable environment for our broadcasting industry would remain forever. In the past when local and overseas capital invested in the broadcasting industry, it was not only because they found the business profitable, but also because Hong Kong could provide the sort of planning, infrastructure and personnel to meet the needs of these broadcasters. However, the broadcasting environment in recent years has undergone rapid development and there have been great changes too, and the broadcasting industry in Hong Kong must rise up to the challenge of the Asian broadcasting market. It is doubtful whether the services can meet the local needs. If the Administration still sticks to its old ways, thinking that the planning, and such conditions as the government policy, personnel, technology and skills can meet the future needs, we would lose our status as being the centre of broadcasting in Asia through our fault of blowing our own trumpet.

By the end of this century and by 21st century, the broadcasting environment in Asia will become an important pillar for economic development. It is estimated that by the year 2000, the number of satellite transponders for the Asia-Pacific region will increase to 800. The competition in the satellite TV market will be very furious then. The Administration should make Hong Kong a centre of satellite broadcasting so as to give the citizens more programme choices and increase revenue for the Government.

Hong Kong, as a centre for Asian broadcasting, is actually facing the challenges from other Asian countries. In August 1994, Singapore completed its comprehensive broadcasting legislation, providing a comprehensive framework for licensing cable TV and satellite TV, ownership of broadcasting agency, programming code and supervisory agency. In order to attract other countries to develop satellite TV in Singapore, a series of concessionary policies are put in place so as to provide such assistance as loans and infrastructure facilities to overseas investors.

The broadcasting environment in Taiwan is also undergoing rapid development. It is estimated that by the end of 1995, Taiwan will have 157 new broadcasting stations. Channel 4 of Taiwan's Cable TV plans to provide more channels, which means more room for development for cable TV of other regions. Compared with Hong Kong, the development of broadcasting in Taiwan is far more ambitious and systematic. In early 1995, the Executive Yuan of Taiwan adopted an action plan to develop Taiwan into a media centre of the Asian-Pacific region by the year 2002. Under the plan, Taiwan will make available land for the construction of a media park, in which production centres will be established for broadcasters. Moreover, in order to attract foreign capital to invest in Taiwan, the Taiwan Government will provide concessionary loans for start-up funds, import tariff exemption and rent

reduction to investors. When this plan completes, Taiwan will take the leading role of Hong Kong in broadcasting business.

The Administration has been stressing such objectives as providing greater variety of TV programmes to the citizens, providing an environment for fair competition and promoting Hong Kong as a centre of broadcasting in Asia, but so far it is still much cry and little wool. There is no concrete and specific plan and measures, which is very disappointing.

In A Study for Promoting the Hong Kong Services Sector released by the Trade and Industry Branch at the end of 1994, it was clearly pointed out that in the coming five years, the media market, including television, movie and advertisement, would see an annual growth of 13%. However, as to how to promote the development of the industry, especially TV broadcast, the Administration still does not have any specific plan.

The Democratic Party thinks that the Administration should follow the following lines in reviewing and formulating the broadcasting policy:

(1) the future broadcasting policy should aim at promoting Hong Kong as a television broadcasting centre of Asia;

(2) an open and flexible broadcasting environment should be shaped for fair competition and with ways to stop monopoly;

(3) A free and pluralistic broadcasting industry should be maintained and promoted;

(4) Hong Kong should be promoted as the centre for technological research and training of personnel for broadcasting; and

(5) Infrastructure that will facilitate the development of the broadcasting industry should be provided and transference of foreign capital, technology and experience should be encouraged.

The Democratic Party thinks that if the above objectives are to be achieved, the Administration should formulate a comprehensive and long-term plan and policy. The specifics of the plan should include: the Administration should carry out studies as to the strategies to be adopted, and draw up a feasible plan and strategy for the development of Hong Kong's broadcasting industry; moreover, the Administration should complete the comprehensive broadcasting legislation as soon as possible so as to consolidate and rationalize the disjointed state of the current television broadcasting legislations. The Administration should pass open and flexible laws to go along with the new trends in broadcasting development in order to provide room for development for the TV media and interactive TV.

I firmly believe that only if review and improvement are made to the long term strategical development, planning, infrastructure, technology and personnel training of broadcasting can the factors facilitating the development of Hong Kong's broadcasting industry be continued. An official of the Recreation and Culture Branch has already expressed that for certain reasons, the comprehensive broadcasting legislation has become an unbaked chestnut cake because someone has turned off the gas. I would like to add that if the Administration ignores the factors that make the Hong Kong broadcasting industry develop, and does not grab hold of the opportunity to improve the current environment, the oxygen that supplies the development of the broadcasting industry would be cut, suffocating it to death!

I support the motion.

MS ANNA WU: Thank you, Madam Deputy. Broadcasting is not just a medium of entertainment which permits millions of people to listen to the same joke at the same time. Because of the pervasive nature and the direct impact broadcasting has on people's points of view, the public interest argument requires broadcasters to provide balanced and diverse points of view. More importantly, the public should not have to risk starvation by an information blackout or indigestion as a result of having bigoted opinions stuffed down one's throat.

In addition to preserving public interest, a broadcasting policy also should be designed to help the industry to be more efficient, competitive and responsive to audience needs. Recent advancements in technology have made it possible to provide broadcasting services using different modes of delivery. A competitive policy must ensure that technology options are made available to the consumer quickly, and the law must be redefined to make this possible.

Both Hong Kong's Television Ordinance and its Broadcasting Authority lag behind technology, resulting in a piecemeal approach to the regulatory regime. Similarly, the Broadcasting Authority lags behind technology. While the Broadcasting Authority is empowered to make recommendations to the Governor in Council on licensing applications, it does not have adequate professional and technical support in view of the developments in the broadcasting industry.

In real life, telecommunications and broadcasting are converging and the line is becoming less distinct. But as far as the Hong Kong Government is concerned, the Television Ordinance and the Broadcasting Authority are under the charge of the Recreation and Culture Branch, while the Telecommunications Ordinance and the Office of the Telecommunications Authority are under the Economic Services Branch. Quite clearly, the Government needs to update its law to meet new technological development and to rationalize the two regulatory regimes and authorities relating to broadcasting and telecommunication services.

Further, Hong Kong's unclear licensing procedures have been cited as the reason why some satellite operators turn to other places to establish their Asian broadcasting operations. The entire decision-making process must be made more transparent and accessible. It is only then that we can establish level playing fields for operators. Transparency and public participation are the best instruments for enhancing fair play and sensitivity to market demands. Ultimately an aware and alert public is the best bet for ensuring a healthy and open broadcasting regime.

In June 1988, the Government decided to bring Hong Kong's broadcasting legislation, covering wireless, satellite, subscription television as well as sound broadcasting services, within one framework. The drafting process of the omnibus bill started two years ago and apparently the Bill is now 180 pages thick. Recent remarks by different government officials have indicated a certain amount of disarray within the Government. The Acting Secretary for Recreation and Culture indicated that the bill had been shelved, with the Deputy Chief Secretary at that time immediately correcting him the following day. The bill was originally scheduled for discussion in the Legislative Council by July 1994. The bill remains not introduced, and the date of introduction also remains uncertain. There is a saying that whenever science makes a discovery, the devil grabs it while the angels are debating the best way to use it. The Government cannot forever be harping about the best way to control the traffic in the sky. Technology has exceeded the conventional boundaries of broadcasting and we must update our law.

Thank you, Madam Deputy, and I support the motion.

MR LEE CHEUK YAN (in Cantonese): Madam Deputy, I would like to look at the comprehensive broadcasting legislation from the point of people's right to know. We all remember that there were instances where TV stations had withdrawn news clip about China from their news cast. First it was TVB which had bought a documentary about MAO Zedong but refused to show it, then, I think everyone remembers, it was the incident of "the Six Gentlepersons", which had its cause from a news clip about the June 4th incident. All these show that Hong Kong people's right to know is under threat.

Broadcasting is a mass medium most easily acceptable and understandable by people. With electric wave, we can receive information from around the world, and information about Hong Kong will also be sent around the world at the same time. With satellite, images of happenings around the world are also brought before us. Because broadcasting can be so influential and influence people's thought so readily, the first thing some autocratic countries would do if they want to suppress people's thoughts is to clamp down on the broadcasting industry.

Though Hong Kong is very advanced in broadcasting technology, there is much to be desired about its broadcasting policy. Up to now the comprehensive broadcasting legislation is still in the making. It takes the investors of broadcasting operations to exercise self-discipline and their understanding of broadcasting to promote Hong Kong's broadcasting business.

In less than two years, Hong Kong will return to the rule of China. Because China and the United Kingdom hold different views on the functions of broadcasting, if Hong Kong is to continue to enjoy freedom of expression with the right to know ensured, the comprehensive broadcasting legislation should be able to play a part.

I feel that the importance of a broadcasting ordinance is to safeguard the citizens' right to know on the one hand, and to protect the freedom of expression, thereby preventing those in power from interfering with the freedom of broadcasting on political grounds on the other, and to regulate the service quality of broadcasters.

I hope that the comprehensive broadcasting legislation we are to make will stop monopoly, promote competition and open the market, and in addition, will safeguard our right to know, freedom of expression and service quality. I hope that we can begin with the interests of the audience.

Thank you, Madam Deputy.

SECRETARY FOR RECREATION AND CULTURE: Madam Deputy, I fully note the views expressed by Members at this debate and entirely share Member's desire to establish a broadcasting regulatory environment in Hong Kong that is open, fair, competitive and well-defined, and conducive to promoting Hong Kong as a broadcasting centre in Asia. I would like to state at the outset that this has been the cornerstone of our broadcasting policy. Contrary to what some Members said and understood, we have already provided such an environment for the broadcasting industry to develop, and Hong Kong is fast moving towards becoming a broadcasting centre in Asia.

Let me first describe our broadcasting policy and regulatory framework to give Members a clear idea of the kind of broadcasting environment already in place. Our broadcasting policy centres on the simple aim of providing the widest possible choice of programmes to the public at a reasonable cost. To achieve this policy aim, we have set up a broadcasting regulatory environment embodying the following principles:

- The first is to open up the market to as many forms of broadcasting as the market can bear and to provide a level playing field for all broadcasters to freely pursue their business in a fair and equitable

environment with the minimum necessary control from the authorities. Our aim is to encourage fair competition within an open and simple regulatory framework, where each licensee knows clearly where he stands. Thus different licensing conditions are imposed on different forms of broadcasting to take account of their special circumstances, but all are required to observe certain common rules, such as those governing free competition, programme standards, advertising standards, technical standards, and customers services standards, and so on. In this regard, I should point out that different codes of practice governing these areas are applied to terrestrial TV, subscription TV, satellite TV and sound broadcasting to reflect the difference in nature of their operations.

- The second principle is to safeguard freedom of expression and information. In this regard, we have abolished pre-censorship and have laid down clear rules guarding against extensive cross-media ownership which may lead to monopolies, as well as against excessive foreign control of any local broadcasting stations (as opposed to regional or global ones) through foreign ownership restrictions.

- The third principle is to protect viewers' interests. This is achieved partly by the first principles whereby the diversity obtained will ensure that viewers are offered the widest possible choice of programmes through as many different broadcasters as the market can sustain, and partly through requirements of the broadcasters to observe strict codes of practice relating to technical quality, programme contents and customer services issued by the Broadcasting Authorities from time to time as part of the regulatory framework.

As a result of the broadcasting regulatory environment set up basing on the above principles, the Hong Kong broadcasting industry has undergone rapid and significant development and growth in the last year years. In 1990, we had only two terrestrial TV stations broadcasting four free-to-air channels. Now we have a total of 28 TV channels available to the Hong Kong viewers. These include four terrestrial free-to-air channels, four free-to-air satellite channels and 20 subscription channels. All these broadcasters have their licenses straddling well beyond 1997 and these licenses have been fully endorsed by the Chinese. So we do have the Chinese acknowledging our licensing environment and framework. In addition, we have six foreign and local broadcasters using Hong Kong as a base to uplink their TV services to the Asia Pacific Region through satellites serving the region. Two highly reputable international broadcaster, namely CNN and CNBC, have chosen to set up their production centres in Hong Kong. This rapid development and growth of the broadcasting

industry in Hong Kong in a short space of five years is a clear testament to the soundness of our broadcasting policy, and the attractiveness of our broadcasting regulatory environment. If our broadcasting regulatory environment is not well-defined, clear, open and fair, we would not be able to attract so many local and foreign broadcasters to establish their services in Hong Kong. The fact that so many of them are now established in Hong Kong is a clear indication that we have already become a broadcasting centre in Asia. I would like to say at this point that the Broadcasting Authority has played a very active and constructive role in helping to set up this attractive regulatory environment. I wish to thank the Broadcasting Authority for its contribution in both advising the Administration on policy and in regulating the broadcasting industry. I would like to point out that the Broadcasting Authority has both the common sense and the technical know-how and expertise to deal with all technical matters. The Director of the Office of the Telecommunication Authority is a member of the Broadcasting Authority and the whole of the Telecommunication Authority and its expertise is behind the Broadcasting Authority in giving advice.

However, we are not resting on our laurels. We fully realize that our existing broadcasting legislation, being technology based, is wanting. Furthermore, as it is scattered in three different Ordinances, namely, the Television Ordinance, the Telecommunication Ordinance and the Broadcasting Authority Ordinance, it is difficult for any new broadcasters to focus. We have therefore started examining our broadcasting legislation some two years ago with a view to bringing about a comprehensive and more up-to-date piece of legislation to regulate the industry. The result of this exercise is the recent production of a first draft of a piece of legislation which aims to achieve the following:

First, to bring all relevant legislation governing the licensing of all types of broadcasters under one comprehensive piece of legislation;

Secondly, to turn the fundamental philosophy of regulating the broadcasting industry from one based on technology to one based on programmes to ensure that the legislation could cope with the rapid technological changes in the industry in future; and

Lastly, to deal with and further clarify the issues of foreign and media ownership to reflect the status of Hong Kong as the broadcasting centre of Asia.

We are now carefully studying this new piece of draft legislation with a view to bringing it forward to this Council in the next Session for consideration and debate after we have consulted the industry. Some Members have criticized us for not moving fast enough, and have said that part of the delay was due to difficulties arising from consultation with the Chinese. I fully appreciate Members' sentiments here, and would just like to say that this is a highly complex and difficult piece of legislation to draft; a task made more difficult by the rapid development and changes, especially in technology, in the industry in the last few years. The slow progress is entirely the result of this factor and has nothing to do with difficulties arising from consultation with the Chinese. Indeed, we have not started consultation with the Chinese on the draft legislation. We are not ready yet, but we will certainly have to consult them at some stage before finalizing the legislation for enactment. I would however like to assure Members that we have now got a clear working draft, and I shall exert my best endeavour to bring this piece of draft legislation to this Council in the next Session for Members' scrutiny.

Mr President, we are also aware that there is still potential for growth in Hong Kong's broadcasting industry, especially in the subscription TV market. Let me remind Members that it is our declared policy to deregulate the subscription TV market in Hong Kong after Wharf Cable's exclusivity ends on 31 May 1996. However, we do not want just to throw open the market to all. To do so would be acting irresponsibly as it is likely to create confusion and chaos. We should first assess what impact deregulation of the subscription TV market would have on the Hong Kong broadcasting industry as a whole and then decide how best the market should be deregulated in a structured and orderly manner, with minimal impact on both existing and potential broadcasters.

To do this, we have decided to carry out a major review with the help of an independent consultant. We expect this review to be completed in early 1996, in time for us to license new subscription TV broadcasters once Wharf Cable's exclusivity runs out. The important policy issues to be examined in the review include the following:

(a) whether new subscription TV licenses should be issued and if so how many should be issued and at what pace;

(b) whether district based subscription TV licenses within Hong Kong should be issued, and if so at what pace;

(c) whether the existing cross ownership restrictions should be relaxed to permit existing TV licensees to branch out in the subscription TV business and vice versa;

(d) what restrictions, if any, on review of the foreign ownership should be imposed on existing and prospective broadcasting licensees;

(e) whether SMATV operators should be allowed to provide subscription TV services;

(f) whether the advertising ban on Wharf Cable should be lifted or only permitted on terms, and if so, on what terms;

(g) whether new subscription TV licensees should be allowed to carry advertisements or only permitted on terms, and if so, on what terms;

(h) what potential financial impact, if any, the deregulation of subscription TV will have on existing broadcasters;

(i) whether there should be any restriction on the number of channels per operator allowed; and

(j) whether fixed telecommunication network services licensees and cable network operators should be required to rent out their spare transmission capacity to potential subscription TV operators in a fair and non-discriminatory manner.

Members can see from that list that this review covers a very wide-ranged and highly complex issues. And clearly it would take time to complete. We hope this review will provide us with the necessary parameters to determine the basis for the deregulation of the subscription TV market in Hong Kong next year.

Mr President, let me close by re-emphasizing that Hong Kong already has a well-defined, open and clear broadcasting regulatory environment and that Hong Kong is fast becoming a broadcasting centre in Asia. This notwithstanding, we are taking action to address the issues which are of concern to Members and to the industry, namely, the drafting of a comprehensive piece of legislation to bring our broadcasting law more up-to-date and making it more user-friendly, and to determine a detailed and structured approach to deregulate the subscription TV market after May 1996. We fully appreciate the need to expedite action on these issues so that the momentum we have gained in the past few years in assisting the development of the broadcasting industry in Hong Kong is not lost.

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

THE PRESIDENT resumed the Chair.

PRESIDENT: Mr MAN Sai-cheong, you are now entitled to reply and you have three minutes 28 seconds out of your original 15 minutes.

MR MAN SAI CHEONG (in Cantonese): Mr President, I must thank you, my colleagues, for your speeches on such an important issue. After listening to the long speech of Mr SO, the only thing that makes us feel glad about is that he supports the motion. It is certainly an improvement on last time when I raised the establishment of a community channel and public broadcasting, the Administration abstained from voting. However, after listening to all that Mr SO has said, I feel that a lot of what he said is very familiar, in fact many of which are a replay of old themes. We have been listening to it so many times that it is like listening to an old grammophone record that keeps on playing the same old tune. What makes us feel glad about is that Mr SO makes it known to Hong Kong people that the comprehensive broadcasting legislation will eventually be tabled at the Legislative Council, and it would be in the next legislative year. This may take away some of the doubts of the citizens. I hope that this would not be a "crying wolf" story, that is that the story would not be told again and again but without achieving anything in the end. I really hope to see the tabling of the legislation at the Legislative Council.

Today Mr SO gives us a new piece of information. We finally know that an independent company will act as consultant in respect of the schedule for relaxing subscription TV, and proposals will be made early 1996. I think the way we handle it now is similar to that when subscription TV was first introduced to Hong Kong. I think under fair and just condition where investors all clearly know what to do before making their investment, that is fair competition. I also support this way of going about things.

Finally, I would like to make some response. The speech of Mr SO seems to suggest that the current regulatory legislations and the overall broadcasting framework are all very complete and adequate. However, broadcasters recently blasted the Administration for its muddled policy, some even felt that the Administration still showed no sign of admitting its fault, which is not the sort of attitude we would like to see.

Finally, I have to thank you for your speeches on this important issue, especially in respect of the freedom of expression and the rights of the consumers, and in particular Ms Anna WU for her speech on the openness and transparency of the Broadcasting Authority. I hope that Mr SO can make a more positive response because broadcasting business is a business with a very high value-added and economic effect, and I hope that Hong Kong can grab hold of the opportunity and do even better.

Question on the motion put and agreed to.

ACCOMMODATION PROBLEM OF SINGLE ELDERLY PERSONS

MR LEE CHEUK-YAN moved the following motion:

> "That, in view of the increasing number of single elderly persons and in order to avoid the frequent occurrence of incidents of clashes, fights and casualties arising from disputes amongst single elderly tenants sharing the same public housing flats, this Council urges the Government to allocate additional resources for the provision of suitable accommodation for single elderly persons as well as proper care for their physical and mental well-being."

MR LEE CHEUK-YAN (in Cantonese): Mr President, it is indeed sad "when one wants to provide for one's parents but they already passed away", it is saddest however to get old with no children to depend upon and no place in which to take shelter. Just imagine, an elderly person who has gone through all the hardships of his life still has to struggle for his living all by himself, alone in this world, in the final years of his life. How could a thing like this be tolerated by our society and our Government? When we talk about living and working in peace and contentment, those who are worst off in these respects are often the elderly people in our society.

The territory has 800 000 elderly people, of whom there are singletons in three categories who are to be accommodated in public housing:

The first category comprises elderly people who are to be rehoused due to redevelopment and clearance of temporary housing areas and squatter areas. According to the Housing Authority's estimation, there will be around 8 000 people in this category by the year 1997.

The second category comprises elderly people already on the waiting list and there are 4 200 of them at present. The Government has made promise that they will be housed by 1997. But according to the Housing Authority's estimation, there will be 3 000 more applicants on the waiting list by then. Together with about 700 applicants expecting compassionate rehousing, single elderly people in this category will reach 8 000 by the year 1997.

The third category comprises single elderly people who live scattered all over the territory in simple private accommodation including caged homes, partitioned rooms and bedspaces and so on. There are 27 000 elderly people in this category and they are a bunch of poor and lonely people with no one to depend upon.

The three categories abovementioned mean a total of 43 000 single elderly people who need to be accommodated in public housing. But according to the Housing Authority's programme, they can only provide 6 929 one-person flats, 2 749 places under the Sheltered Housing Scheme and 976 places in hostels for the elderly up to the year 1997. Even by 1998, there will just be an increase of 1 084 one-person flats and 820 Sheltered Housing Scheme places and there is still a shortfall of some 30 000 accommodation places for single elderly people as compared with the actual demand.

The original meaning of the idiom "just around the corner" is to let people maintain a good hope for the future. But to elderly people, how long can they wait to get "around that corner"? Under the Housing Authority's policy, applicants for sheltered housing (that is the sharing type) will be allocated flats after a waiting time of two years; but if they apply for one-person flats, they have to wait for as long as seven years. So far as elderly people are concerned, seven years simply is a merciless waiting that they cannot afford. It follows that, in order to get early allocation of flats, they can only choose shared accommodation. The results? As we all know, there have been endless disputes arising from elderly people living in shared accommodation. A horrifying tragedy in which three elderly persons involved in a mixture of killing and suicide just happened last month, the place of incident was in Fu Heng Estate near my home.

The Sheltered Housing Scheme is just like the tragedy of "arranged marriage". A few persons not knowing each other were put to live together. It is great of course if they get on well with each other, but if by any chance that they are incompatible, then they only have their fate to blame. It is obvious truth that young couples who had their marriage arranged are relatively easy in nourishing affection for each other because they have not seen much in life; but for those elderly people who have experienced so much in life and who have established their life style and outlook on life, how can it be easy for them to start afresh with strangers and adapting to each other's way of life? It is learnt that those sheltered housing for the elderly were managed by wardens only and there are no social workers to provide counselling or assistance with regard to elderly people's needs and problems between elderly people. I believe that the generation of problems in such a large scale is due to insufficient communication and co-operation among government departments which deprived elderly people of proper attention to their physical and mental well-being.

Single elderly people are lonely indeed as the majority of them have lost their spouses and have no children to depend upon. For this reasons, some people think, out of good intention, that arranging elderly people to live together can have their loneliness eliminated. I once asked an old man, Uncle LAM, who is 75 years of age and who once lived in sheltered public housing but frequently fell out with flatmates, of what he through about the arrangement. Perhaps you might think that their quarrels are all for trivial matters such as complaining others for forgetting to flush toilet after use, finding out that cooking utensils had been used by others, sundry items such as seasoning being consumed without prior knowledge, slamming doors and too much noise from the radio and so on. At the end, however, Uncle LAM could take no more and he gave up the place that once gave him hope in favour of living by himself. Then he felt freer and happier. He would rather give up public housing to live in private lodging and paid more rent. It can be seen how dreadful it was for him to live with others.

No transfer is allowed under existing policy of the Housing Department except in the circumstance of "on police record", for example, for cases that were reported to police because of dispute and fighting and so on. It is still that stage that the Housing Department would permit the transfer. But who can guarantee that one can live in peace and quiet with new flatmates after the transfer? Therefore, elderly people would not apply for transfer unless there had been serious clashes. Should they wish to apply for one-person flats, they have to give up their sheltered housing and join the waiting list again upon moving back to private lodging.

The great demand for one-person flats can be seen from two surveys conducted by voluntary organizations. One survey on "Housing Demand of the Elderly in Eastern Kowloon Redevelopment Area" conducted in August 1994 revealed that 90.8% of elderly people there would choose to live by themselves for reasons such as avoiding clashes with flatmates, more freedom, own privacy, having got used to live by themselves, not fitting in to live in shared flats and feeling more peaceful. In another survey on "Sheltered Housing for the Elderly" conducted in Heng On Estate in December 1989, it was found that 47.4% of the elderly people had disputes with flatmates, the causes of which were mainly related to problems arising from kitchen sharing, toilet waiting, not happy with cleanliness of common areas, incompatibility, noises, privacy and so on. They all wish to live in their own accommodation.

At present, there are over 30 000 elderly people to be accommodated in one-person flats, far exceeding the supply of those flats by the Housing Department. Thus, I urge the Government to find suitable flats as well as reserving one-person flats in public estates under construction and make arrangement for elderly people to move in as fast as possible so that they can settle down.

You might worry that elderly people living by themselves would be left unattended. Uncle LAM whom I mentioned just now told me that, elderly people with illnesses would have already moved into homes for the elderly; those capable of looking after themselves need no special care. I too agree that what the able-bodied elderly need is psychological care and special aid. Within the same day in June this year, two elderly persons living by themselves were found dead for quite some time in Shek Pai Wan Estate and this really was disturbing. The Samaritans revealed last month that the suicide rate in the age group of 55 to 69 was 23 per 100 000 people, and it is shocking that the increase in suicide rate in that age group is greater than other groups.

The incident occurred in Shek Pai Wan Estate revealed the serious negligence of the Social Welfare Department. Elderly residents of that estate said that there had been no visits by social workers for a long time, and some said that they saw no social workers at all. Had these elderly people been regularly visited by social workers from outreaching teams to attend to their psychological problems and timely resistance had been provided upon knowing their physical problems, I believe that, with the care of social workers, the possible occurrence of suicide, sudden death and dying alone in respect of elderly people living by themselves would drop accordingly.

At present, the whole territory is served by only two outreaching teams based in Chai Wan and Tsuen Wan respectively. It is indeed ridiculous to serve 800 000 elderly people with such manpower. I solemnly request the Government to set up an individual outreaching team for the elderly in each of the 20 administration districts at least before the end of 1995 so as to provide service to elderly people who need it most.

In order to take care of elderly people living by themselves and provide them with safety measures, I urge the Government to install "emergency alarm" at one-person flats as quick as possible so that elderly people can get timely rescue in case of emergency. The Government refused to install "emergency alarm" at one-person flats on the ground that they were unable to recruit sufficient estate liaison officers; I am at sea about this reasoning because the alarm will serve to alert the neighbours as well. Moreover, I really cannot comprehend why the Government failed in their recruitment of estate liaison officers.

For elderly people to get the services they really want, their opinion should be sought. My suggestion is to let them have freedom of choice. Therefore, the Government might as well let elderly people freely choose one-person flats or shared flats and provide sufficient residential units according to their needs. The waiting time for those two types of accommodation should be the same instead of separate waiting lists with different waiting times as it is at present. As regards shared flats, we consider that common facilities should be reduced to minimum with toilets and cookers separately provided so as to reduce unnecessary clashes.

Seven years is far too long. Elderly people should be rehoused before 1997 and this is the obligation of the colonial government before its withdrawal.

With these remarks, I move this motion.

Question on the motion proposed.

MRS ELSIE TU: Mr President, Mr LEE Cheuk-yan's motion echoes what I have been saying for many years at meetings, and in writing to the Housing Authority. I hope this motion will have more success than I have witnessed in the past.

What I find frustrating is the fact that government officials, especially those involved in welfare services, have admitted that the problem exists. Yet, the Housing Authority still gives the elderly the choice of living with co-tenants or waiting for a very long time for allocation of singles in housing. The consequences have often proved unsatisfactory, and in some cases, tragic. There have been serious fights resulting in injury or even death. There have been elderly persons left living in utter misery with incompatible co-tenants, and there have been cases where the elderly have had to live on the streets to escape their fear or misery.

Not all elderly people become senile. But the fact is that some people do become senile and difficult to live with. This may take the form of the extreme of both dementia to the disoriented, to the persistent rubbish cellectors, or just the somewhat impatient old people. People who get on well together when they are young may find that weakness of mind or body changes their old friends' attitudes. They should not be compelled to continue living together.

Surely it is not too much for us to ask that elderly people be given their own room with a kitchen and toilet if they wish to live alone, so that they may pass their sunset years in peace.

Mr President, I agree with everything that Mr LEE Cheuk-yan has said that I see no point in repeating it now. So I fully support his motion.

MR HUI YIN-FAT (in Cantonese): Mr President, with high population density and crammed living environment in Hong Kong, a pessimistic view of looking at things is that it is easy to give rise to interpersonal clashes and friction that may even result in tragedies. The bloody incident that occurred in a unit that housed three senior citizens in Fu Heng Estate, Tai Po, is a case in point. Though such incidents only happened sparingly in the past, and I believe all were isolated cases and there is no evidence pointing to an increasing trend, the communal facilities within the unit have exacerbated the negative factors that shared accommodation brings, and this has become the focus of public attention.

The way to conduct oneself in society is a highly profound art. There are grudges, jealousy, indignation, rejection, and loneliness; there are also forgiveness, tolerance, care, mutual assistance and acceptance. It depends on the individual person's disposition whether or not to live with positive and optimistic attitudes. Similarly, sharing of public housing units by elderly people does not necessarily only have negative results.

From the end of 1993 to the middle of last year, I had the opportunity to participate, in the capacity of chairman of the ad hoc committee, in the review of the policy on accommodation for the elderly by the Housing Authority (HA). The recommendations the committee proposed in its report were not only supported by HA, but were accepted by the Working Group on Elderly Services appointed by the Governor, and adopted as the backbone of the existing policy concerned. One of the targets that was reaffirmed is that HA should, through the various priority programmes in housing allocation, encourage and assist elderly people to live with their families, so that they can get the best family care.

As a matter of fact, speaking as a social worker, I think we should encourage old people to mix with each other. Only thus can they establish their social circle, get integrated into the community and enjoy their twilight years among helping friends and in harmonious surroundings. According to the experience of Western countries where the problem of aging population was more serious and emerged earlier than Hong Kong, old people living together help focus community strength, not only helping themselves solve their basic daily-life problems, but through some organized activities also enabling them to make continued contribution to society, thus lighten the burden of the Government in an indirect way.

Therefore, I think that any policy relating to elderly housing should not encourage our senior citizens to live alone in a unit, that will intensify old age loneliness, unless they have no family links or support or require to live alone for psychological reasons. In fact there are a total of 85 000 singleton or doubleton families living in HA housing units, 30% of whom in single

accommodation and the rest in two- or three-member shared units. Besides, there are those living in elderly housing schemes with wardens and emergency assistance services. It can be seen that in its policy aiming to achieve fair allocation of the housing resources, HA has not ignored the right of choice of elderly people. Furthermore, in the past three years, among the shared elderly units, there were a total of only 50 cases for decantation, reflecting that the problem of having shared accommodation is not as serious as people have imaged. Naturally we should ask the authorities to further increase professional staff and strengthen support services to prevent tragedies.

Mr President, single units carry a higher construction cost than shared units, but cost effectiveness is not the main thing I have in mind. On the contrary, I am more concerned about in what living conditions our elderly people can be helped spend their old age with positive and optimistic attitudes. All in all, I have always supported HA in getting the Government to grant more land for the construction of various types of public housing. As to the allocation of resources, I believe that the current priority policy in favour of old people is basically acceptable, HA should have greater commitment towards the applicants on the waiting list.

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

MRS PEGGY LAM (in Cantonese): Mr President, it is really a very sad thing for old people sharing the same accommodation to assault each other because of disharmony of living together, or even to kill their room-mate and then kill themselves. This further illustrates the existing difficulties we have over the problem of elderly housing. This problem is no doubt worth the attention of the Government as well as the community. However, the motion moved by the Honourable LEE Cheuk-yan seems to have treated this complicated problem by simply putting the blame on the unsatisfactory elderly housing arrangements of the Housing Department. This is a severe case of policy "short-sightedness", and is not conducive to solving the problem.

The causes of elderly violence are complex. Apart from the effects of the living environment, relevant factors include, to a certain extent, the psychological and emotional troubles of the old people. Therefore any comprehensive remedy must be "two-pronged", improving both the living environment and the mental health of the elderly.

Hong Kong is a very small place with a huge population. To relatively poor single old people, having caged space or a plywood-partitioned room as a home is their Hobson's choice. Caged space and partitioned rooms are perforce jammed, easily giving rise to clashes over daily-life details, quicker tempered ones can become violent. Therefore the imminent task of the Government is to arrange to accommodate these destitute old people in public housing, and even place those in need into homes for the elderly.

The elderly housing at present provided by the Housing Department, though not entirely satisfactory, is decent accommodation as compared to caged space or partitioned room. It is said that two old folks sharing one kitchen and one toilet is the cause of elderly violence, therefore the solution is to let each old folk have his or her own unit. My opinion is that this way of putting things is only half right. Naturally, it would be ideal and best to let each elderly people enjoy exclusive use of facilities. However, in view of the limited housing resources, and the fact that many old people are still waiting for public housing in their caged space or partitioned rooms, if two people sharing a kitchen and a toilet will help the Housing Department provide more elderly units to the benefit of more old people, are such arrangements truly unacceptable?

As a matter of fact, those elderly people unwilling to share accommodation with others at present can choose independent singleton's elderly housing units, though they will face longer waiting time. On the other hand,, those willing to live with co-tenants can get allocation sooner. So this arrangement is a "short-cut" to get accommodation for co-tenants. If it is rigidly set that all elderly units are singleton ones, is it fair to those old people who wish to get early housing and do not mind shared accommodation?

Though I do not support the provision of singleton units at the expense of the supply of housing to the elderly generally, it does not mean that the departments concerned can take this as their excuse to shirk their responsibility in improving the quality of elderly housing. In future when resources so permit, the authorities should examine the possibility of converting the existing doubleton units into separate singleton ones. In respect of the layout design inside the units, as old folks generally cook only simple food, the kitchen can perhaps be made a simpler affair so as to squeeze out more space for other purposes.

Furthermore, the Housing Department should, through its liaison personnel in the various housing estates or the wardens of elderly housing schemes, closely monitor the elderly units so that decantations can be arranged if the elderly co-tenants are not getting along with each other well. Old people are different from public housing families at large and thus need outside assistance in solving the various problems in their daily life. The parties

concerned should take better care of the elderly and be more flexible in approving decantations.

To prevent elderly violence, improvement to living environment is but one of the ways. I believe that most of the old people who have resorted to violence in resolving troubles in daily life do to a certain extent suffer from psychological and emotional problems. Shocking elderly violence incidents in the past did not only occur between old and single co-tenants, but also between old couples or other aged relatives. Therefore to prevent elderly violence, another approach is to deal with old people with emotional problems by way of suitable counselling.

Mental health and physical health are of equal importance to the elderly. The Government has only recently begun the elderly mental health out-reaching services which have yet to be done in a full scale. Elderly accommodation and elderly housing schemes under the Housing Department, being concentration points of old people, should be places where such services will be easy to implement, the Government should see these places as the key targets for those services.

It is good that Members of the Legislative Council show concern for the needs of the elderly. However, we need a practical attitude and a cool head to solve problems. Mr LEE Cheuk-yan does not seem to understand the causal relationship between elderly violence and accommodation, and thus fails to touch the crux of the problem. However, the spirit of his motion is worth our support.

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

MR ALLEN LEE (in Cantonese): Mr President, a tragedy occurred in Hong Kong on 20 June that both shocked and pained the community. Three old people in an eldering housing unit in Fu Heng Estate, Tai Po, met horrible deaths, possibly as a result of problems arising from living together. To understand the actual scene as well as the view of the public over this incident, I not only visited the old folks living near the deceased there on that very day, but also lost no time in convening a residents meeting to collect the main points of concern of the residents and their views for onward transmission to the Government, with a view to avoiding a repetition of such incidents. We have also conducted an opinion survey after the incident to find out the difficulties experienced by the elderly.

According to the findings of our survey on Island East District old people's centres and elderly hostels, nearly 70% of them are in shared units where four or more people live together and among them 30% said that they had had disputes with co-tenants, mainly over the use of toilet and kitchen facilities and because of their different ways of living. The point of our utmost

concern is that 70% of the interviewees have maintained silence and only 10% have been willing to speak to the wardens and social workers about their problems.

Having studied the various views, we have the following recommendations to made. The first is to solve the problem of housing for old people. It is becoming clear by the day that the Hong Kong population is aging, so accommodation for retired single old people has become an important welfare service. Naturally, if the rate at which the authorities are building elderly hostels can catch up with the demand, it will be most ideal. However, the fact is that at present there is certain difficulties in achieving that goal. Therefore I propose that the Government consider subsidizing the welfare agencies that are prepared to participate in elderly hostel schemes, so that they can help the Government solve this problem.

The second is about staff establishment. Now that singleton elderly housing units are insufficient, the Government should consider setting up an elderly concern section to be staffed by experienced social workers to more closely monitor the needs of our old people. In the allocation of units, the wish and way of thinking of the old people concerned should be ascertained beforehand. Those wishing to live alone, for example, should be given singleton units as far as possible and those who like the company of other people should be grouped with other similarly disposed people. One of the crucial reasons leading to the Fu Heng Estate tragedy is that one of the old people who did not like shared accommodation was not immediately moved to another unit. Therefore, I urge the Government to actively monitor the attitude, response and requests of the old people within the six months after the allocation of the housing units, and to deal with some special problems expeditiously so as not to deepen grudges or to avoid personality clashes among the old people.

Thirdly, most of the old folks living in these housing units told me the same story, pointing out that clashes were mostly caused by the use of the communal facilities in the units. Therefore they proposed that more toilet and kitchen facilities should be provided so as to minimize such conflict. In fact, the majority of the old people feel that it is very important for them to have their personal washrooms and kitchens as they spend relatively more time within the units and this increase the chance of fighting for the use of such facilities.

The last is the issue of psychological counselling and recreational activities for these single old people. To have to live alone at old age, some of the old folks very much need the careful attention and understanding of others. The authorities need to provide them suitable psychological counselling and recreational activities to make them feel they are not forgotten by society. To some unsociable old people, such services are even more crucial. As a matter of fact, some subsidized voluntary agencies are promoting a mutual care and help

scheme among the elderly and the results have been proved good. Under the scheme, some senior citizens of a cheerful disposition and better health visit the more introvert and less healthy old people with a view to making, through communication, the latter learn interpersonal relations skills as well as ways of defusing conflict, so that they can live with others in elderly housing.

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

MR FREDERICK FUNG (in Cantonese): Mr President, for a long time, how the elderly people in public housing estates cope with each other has been a worrying issue. There are always a few homicide cases among old people in public housing estates every year. According to information supplied by the Housing Department, 17% of all public housing residents are over 60; and four of the 10 estates with the largest number of old tenants are in Sham Shui Po where the problem of aging is most serious. These four, in order of their percentage of old people among the top 10, are: No. 1, Cheung Sha Wan Estate, 38.9%; No. 4, Shek Kip Mei Estate, 31.1%; No. 5, So Uk Estate, 30.8% and No. 6, Pak Tin Estate, 26.9%. Obviously, these dilapidated estates should be rebuilt. But before that happens, how should the Government provide adequate support services? The Housing Authority (HA) must not ignore the problems and must avoid a repetition of old people killing each other as a result of clashes and conflict, as was the case in the elderly housing unit in Fu Heng Estate, Tai Po.

HA in fact has a number of ways to improve the situation that leads to such clashes. The permanent cure is of course, as the mover of this motion suggested, for the Government to grant more land to build more singleton units. However to build more such units. I feel that HA should in fact make available more resources to its overall rental public housing programme. Apart from getting more land for more units, thus increasing the overall public housing resources, rental public housing should be given the leading position regarding the ratio between rental housing and Home Ownership Scheme (HOS) housing. Therefore, the present ratio of one-to-one should be discarded and be replaced. I propose, with one of two-to-one, that is, two parts of rental housing to one part of HOS.

Our experience from personal contact with the elderly tells us that old people are extremely unwilling to live with strangers. However, they reluctantly accept the co-tenancy in view of insufficient number of singleton units. The existing co-tenancy elderly units include elderly housing schemes and those units converted from singleton units, that is, what are commonly called “cut rooms”. Besides, temporary housing areas also include units shared by single persons. The Association for Democracy and People’s Livelihood and I are both of the view that HA can consider improving the existing situation along the following ways.

Firstly, though wardens are on duty on a shift rotation basis in elderly housing schemes, they are not professionally trained and lack adequate knowledge and skill to counsel the old folks when disputes arise among them. This will keep the problems hidden and unsolved; or increase the frequency of clashes, and the old people sharing the accommodation cannot live in peace. At present there are over 200 old people's centres throughout the territory where the social workers on duty have to receive and cater to the old people there, as a result, they do not have sufficient manpower for out-reaching work to assist the old people in estates or those in singleton or "cut rooms" units to resolve the various problems these old people encounter in their daily life. Therefore, I feel that the Government should allocate more resources to social welfare programmes to enable some non-governmental organizations and agencies to have adequate resources to hire professional social workers for elderly out-reaching work. Furthermore, professional social workers should be employed to serve as wardens in elderly housing schemes to counsel the old people.

The second point concerns the issue of "cut rooms" in some estates under the management of HA. The so-called "cut rooms" are independent units that were partitioned by HA into two to three bedrooms to accommodate two or three singletons or old persons, but the toilet, kitchen and living room are shared. These are what are called "cut rooms". As a matter of fact, problems generated by the "cut rooms" are more numerous than by elderly housing schemes. Most old-folk homicide cases or disputes in the recent years all took place among the elderly living in such units. The reason is that the Housing Department place two or three old persons who are complete strangers within the same unit. Though they have their own bedrooms, because they have to share the use of the kitchen and toilet, and because of different habits in daily life, without social workers to counsel them, quarrels and tragedies can be resulted. The units in question should quickly be converted to singleton one, so that the tenants can enjoy exclusive use of the toilet and the kitchen. I propose that when one of the tenants vacate the unit, whether as a result of death or transfer, the partitioning boards of the bedrooms should be removed, and the unit converted into a singleton one. At a meeting of the Management and Operations Group of HA in the middle of last year, I in fact raised this issue and was at that time supported by other members, but subject to availability of resources. Though this proposal was agreed, it up to now is only accepted in principle. As to the implementation, the Housing Department has repeatedly cited resources as the reason for not converting these so-called "cut rooms". I regret this is the case.

Thirdly, to solve the problem of removing the loneliness of old people living alone, I think that the Housing Department should consider hiring housing estate liaison officers to maintain contact with old people living alone, help and encourage them to take part in community activities to keep their outside link.

With these remarks. I support the motion.

MR LEE WING-TAT (in Cantonese): Mr President, I rise to voice my support of the Honourable LEE Cheuk-yan's motion.

Just now many Members have expressed many different views, which I would not repeat. But few Members touched upon the policy aspect. This is because to the Housing Authority (HA) and the Housing Department, singletons' right to public housing is a very new issue. If I have not got it wrong, or, the Honourable Frederick FUNG may have a better memory than I have, until 1983 singletons were not entitled to public housing. They could be admitted to public housing only through a flat-sharing policy. It was not until 1993 that the HA realized that singletons should not be subject to discrimination in respect of the right to public housing, and it was only at that time that housing policy for singletons was devised. Obviously, that was not a problem that could be solved in a short period of time, so in the first few years. singletons, including elderly singletons, were housed in units of some aged estates. In order to satisfy the potential demand more effectively with less resources, units were "cut", as Mr Frederick FUNG mentioned, to encourage two elderly persons to share a unit. That was not quite an encouragement in fact, because if they should refuse they would have no place to live. This is the history of the policy. As a result, there are now many singleton elderly people living in some aged estates sharing a unit with someone else. These are people who basically do not know each other, nor are they relatives.

I certainly agree with the Honourable HUI Yin-fat when he said it would be best if the elderly can live with their children, relatives or friends and are taken care of by their own families. Apart from accommodation, their daily lives have to be taken care of. But some singletons are not so blessed. These people may need special care.

I think we should treat this issue from several directions. The first thing is to look for ways to expedite supply, which has a history of lagging far behind the demand. I agree with the several Members when they said the HA had made little progress on this issue. Of course, if strictly and more comprehensively speaking, it is not only on the issue that the HA's supply policy fails by a large margin to match the demand. Take the issue of the Waiting List as an example, if I have not got it wrong, this issue was debated in this Council two or three times. There are currently still 130 000 to 140 000 families on the Waiting List, and waiting there too are residents living in Temporary Housing Areas, squatter areas and caged dwellings. Therefore, when we talk about inadequate supply, it applies not only to housing supply for singletons but also to other categories of people who have a demand for housing.

But according to the report of a working group which Mr HUI Yin-fat delivered at the HA last year, or according to information provided by the working group or the Housing Department, in the coming five years the actual demand for singleton units will reach 50 000, whereas the net supply will only be around 30 000. That is to say, in these five years there will be a shortfall of 20 000 units. I always have a suspicion about these figures, because the HA and the Housing Department work on different kinds of demand, one is called potential demand and the other called effective demand, and effective demand is always lower than potential demand. Therefore, assuming that the potential demand is 80 000, and according to calculations made by the Housing Department and our statisticians, not all of these 80 000 people will lodge an application, because not all of them may have a demand for housing, so the effective demand may only be 50 000, It is by this kind of deduction and other means that we suppress the demand, and therefore after such calculations the effective demand, as it is called, will only be 50 000. Now even if we take this figure. as correct, there will still be a shortfall of 20 000 units before the problem can be solved. If what I described as a historical problem is added to it, this figure of 50 000 is actually a grave under-estimation of the effective demand.

In addition to supply problems, the next thing is how to tackle problems left to us by history. When I was working in the estates as a District Board Member as part of my regional work, I always received complaints that the housing managers would not handle disputes until two elderly persons broke out into a very heated row; and even if they did handle the matter, they would not give the elderly people any assistance. Firstly, because they were not trained as a social worker, and secondly, because they were not keen on getting involved in such matters, given the nature of their job and the constraints of resources. So when would the matter be handled? Only when fighting broke out. But that is not to say that new arrangement for housing could be made once the dispute parties reported their dispute to the police. It was only when the dispute became critical and blood was spilled that the housing manager would agree that the two elderly persons could no longer share a flat and arrange them to live in different estates. But that is not a good way of doing things. Some elderly people had to get seriously wounded, their blood spilled, and eventually admitted to hospital before the manager at the estate office was convinced that there was sufficient reason to arrange these old people to live separately. My advice is that when handling elderly residents' housing disputes, hopefully the Housing Department, the Housing Branch and the Social Welfare Department will cease taking housing managers as the only source of professional advice. This is because housing managers are not trained to be social workers. Even if they have been taught some of the skills required of a social worker, they are not professional social workers after all. It would be difficult for a housing manager to judge whether it would be appropriate for two elderly persons to keep living together. Therefore, I suggest that the Housing Department and the Social Welfare Department should consider letting professional social workers or the Social Welfare Department themselves play a role in reconciling such matters.

Mr President, I would also like to talk about the provision of social welfare facilities in housing estates. Welfare facilities are of course provided to housing estates according to their different population density, but we have to recognize the fact that many elderly people are rather passive in utilizing the facilities, such as elderly centres or recreational centres which are available in the community. Therefore, we have to expand in large proportions the number of out-reaching social workers for the elderly, so that they can take the initiative to visit those flat-sharing elderly people living in old estates, and try to spot the difficulties they are facing and try to solve or at least mitigate the problems as best as they can before there are injuries or even fatal incidents.

Thank you, Mr President.

DR TANG SIU-TONG (in Cantonese): Mr President, in June this year, a homicide case occurred in a flat shared by three elderly co-tenants in Fu Heng Estate of Tai Po. In the tragedy all the three elderly persons in the flat died. After the incident, the Government said that it was just an isolated case and they do not intend to scrap or review the existing Elderly Persons Priority Scheme because of this incident. The Government is no doubt adopting an ostrich policy and does not have the courage to face the reality. The incident at Fu Heng Estate is surely not the first one nor will it be the last one. If we turn a blind eye to the seriousness of the problem. it will be very difficult for us to avoid similar tragedies from happening again in future.

The Elderly Persons Priority Scheme introduced by the Housing Department aims at solving the housing problem of the elderly singletons and hope that they can look after and help each other by living in the same flat. The purpose itself is good. But regrettably, since the scheme was implemented eight years ago, there have always been reports of discord among the elderly singletons sparked off by quarrels and arguments. During the 16 months from February last year to June this year, there were four fatal and injury cases in which the co-tenants were either injured or killed due to quarrels among themselves. The inherent danger of the Elderly Persons Priority Scheme is thus revealed and has to be improved urgently.

In a shared flat in which two, three or even more elderly persons live, the tenants have to share the toilet, kitchen and the sitting room although each tenant has his/her own bedroom. Since each tenant has different background, character, hobby and living habits, even the volume of the radio may spark off a quarrel, and not to mention the disputes arising from the use of common facilities. As the saying goes “It is good to meet each other occasionally but difficult to live together”, one can easily imagine the situation. Wardens are on duty by three shifts 24 hours a day in elderly housing schemes. They are responsible for co-ordinating with welfare organizations, arranging recreational activities for the elderly and dealing with emergency cases. But since they have not received any professional training in social work, they lack the experience and skill for handling the disputes among the elderly co-tenants and hence find it

difficult to prevent and deter tragedies from happening. What is more, the manpower ratio of the wardens is as high as one warden to 130-150 elderly persons each shift. The wardens therefore do not have sufficient manpower and time to settle the disputes among the co-tenants. The decantation of quarters can no doubt solve the problem temporarily. But owing to the administrative delay of the Housing Department and insufficient single flats available, the application for decantation of quarters cannot be arranged expeditiously. This situation will easily sow the seed for the tragedies. The tragedy which has just happened in the shared flat in Fu Heng Estate is an example. The elderly person concerned in fact applied for decantation and his application was approved. But the tragedy occurred before he could be transferred. The Housing Authority should review their policy in this aspect.

At present, there are 34 000 elderly singletons living in the housing estates. Among them, more than 27 000 persons are living alone, and the rest of the 7 000 persons are dwelling in about 2 400 shared flats under 17 Elderly Persons Priority Schemes. These co-tenants are mostly referred by the Social Welfare Department (SWD). At present, unless the elderly people who have been allocated a shared flat under the Elderly Persons Priority Scheme have special needs for welfare assistance, otherwise the SWD will not send any social worker to follow up the case after the elderly persons have been settled in those flats. After that, it will be the Housing Authority which will be responsible for handling the disputes and requests for decantation if any. I have found the way the SWD has handled things inappropriate. It is a policy of doing half the job. The SWD should send some social workers or through the help of other volunteer organizations to contact and visit these old people regularly so as to understand their living conditions and their relationship with other co-tenants after resettlement. It is irresponsible of the SWD to pass this important responsibility to the Housing Department.

In fact, the crux of the whole problem is that the Housing Department has insufficient single flats for the elderly singletons. According to a survey of the Housing Authority, about an extra 18 900 flats have to be built in 1997-98 to accommodate all elderly singletons who need a single flat due to various reasons. However, the Housing Authority can only provide 11 400 flats for the elderly in the coming five years, among which, 7 100 will be shared flats. There is obviously a big gap between the number of single flats available for elderly singletons and the actual need for them. Building more shared flats can no doubt ease the pressure on the housing need of the elderly. But a policy of paying attention to the quantity instead of the quality is not an ideal one. The reason is that it will intensify the inherent danger of having old people living together. It will be an invisible bomb in the community that will explode at any time. In the long run, the fundamental solution is to build more single flats for the elderly. Nevertheless, I have to point out that while single flats can no doubt avoid the possible conflicts among the co-tenants, the elderly singletons who do not have families to take care of them and are feeble in looking after themsleves will find themselves lonely and helpless in the face of difficulties. Therefore, apart from building more single flats, the SWD should also make other suitable

arrangements for the elderly such as sending more home helpers to help the elderly, expanding the outreaching service for the elderly, building more social centres and co-ordinating with other volunteer organizations for providing all necessary services for the elderly.

It is understandable that the objective to build more single flats cannot be achieved instantly. Hence, the short-term solution will still be the shared flats. However, the Government should improve the management of these flats. In this respect, I have the following suggestions:

(1) the Government should expedite the arrangement of transferring those elderly persons who are not suitable to share a flat with others and should not wait until things have happened to our regret;

(2) the SWD or other voluntary organizations should regularly visit the elderly people who share the same flat and give them assistance where necessary;

(3) when allocating the elderly people to the shared flats, the department concerned should arrange them to know each other and have some communication first. If they were found unsuitable to live together, the department should not force it;

(4) increase the manpower of wardens and provide them with professional training so that they can grasp the skills in handling the relevant problems;

(5) improvement should be made to the design of the shared flats for the elderly. Each bedroom should have its own toilet and kitchen. This can help reduce the chance of having conflicts among the co-tenants; and

(6) provide recreational activities for the elderly. It serves to soothe their psychological pressure.

Mr President, it is already a misfortune for the elderly persons to spend their twilight years in loneliness without anyone to depend upon. We do not want the housing problem to give them further trouble. I sincerely urge the Government to scrap, as soon as possible, the Elderly Persons Priority Scheme. It is an invisible bomb in the community and will explode at any time. I urge the Government to build more single flats for the elderly people so that they can enjoy happiness in the rest of their days.

With these remarks, I support the motion.

MR FRED LI (in Cantonese): Mr President, I am not going to repeat what other Members have said. I only wish to speak on two aspects, the first is the issue of old people in the rebuilding areas of the old Type 3 to Type 6 housing estate, and the second is the elderly housing scheme.

In the rebuilding areas, many estates will not be rebuilt in the next five years, and others are to be rebuilt at a later stage. From my years of observation when working within the district, there have been proportionally more old people choosing old housing estate units that are to be rebuilt later, particularly in the last one or two phases of rebuilding in each housing estate, this is because there have been no singleton and independent units to accommodate the elderly in the past several phases. I remember there is something called the "precipitation effect" where the number of old people keeps increasing, with the largest number of old people in the last phase when 20% of the residents are singleton or doubleton old people. The Housing Department in fact has not solved the problem, it has just kept pushing the problem back.

Now we can see that problems surface in these housing estates. Old people living in housing estates about to be rebuilt in several years' time or in the next couple of years have told me repeatedly that they are worried that they have to move away from the estate in which they have lived for the past 25 or 30 years. Whatever their transfer, they will remain in their original estates, with a hope that when the rebuilding is finally over, they will be given a new unit in their old estates, that is, Lam Tin for Lam Tin, Sau Mau Ping for Sau Mau Ping. However, it can now be seen that units are unfortunately sure to be insufficient, so they can only opt for renovated units. Now, what actually qualifies them to remain in their original estates? The requirement is that they must be over 75, and those old folks in their 60's and 70's told me that they were disqualified because they were not old enough. In view of inadequate resources, allocation has to be made according to age, this in a way neglects the housing right of the elderly people.

I believe that the Housing Department should build annexes to the harmony type of public housing estates. In some districts, for example, a piece of open land in Lam Tin was used for building Home Ownership Scheme (HOS) blocks instead of a school or for elderly housing. I feel that this signifies the neglect of the actual need of the district. Whether this was done for more profits, I am not sure. But HOS flats are more profitable than elderly housing. I have repeatedly voiced these views, but the Housing Department has never accepted them. As a result, many old people are worried about the location of their future accommodation when their present units are cleared. These old people will absolutely refuse to move into elderly housing schemes within the rebuilding areas, because they have always been living in independent units, and they will definitely refuse to live with other people in three-bedroom units. Therefore, independent units must be allocated to the old people in the rebuilding areas. This is the biggest problem of all.

The other possibility is to allow flexible handling of household registration. Is it possible to allow the re-registration of the children of these old people who were previously removed from the registration, if for example they are divorced? To let divorced and childless offspring return to take care of the old people, thus turning the household into a two- or three-member one, will make rehousing easier, and can also lighten the burden of the community. They do not have to immediately apply for comprehensive social assistance, nor will they take up much social welfare, just let the children of the elderly to take care of them. Can the Government handle household registration more flexibly?

I visited two elderly housing schemes recently, both within Lam Tin Estate. The old folks there said that they had had disputes from time to time, but did not speak up because even if the wardens were informed they would advise against pursuing the complaints. Just as the Honourable LEE Wing-tat said, if somebody slashes another person with a knife but draws no blood, the case will not be followed up. So long as no trouble is stirred up, quarrels should best be ignored.

Incidentally, I wonder if Mr Dominic WONG knows that some old people are not living in one-living-room-and-three-bedroom units. Generally speaking, they are such, but some have four bedrooms, that is, four bedrooms jammed inside one unit, but the size of the kitchen and toilet is exactly the same, so is the living room. One tenant in such a four-bedroom unit asked me why, while paying the same rent, he had to share with one more co-tenant, had to have one more person to fight for the use of facilities. I did not have the reply. Perhaps Mr WONG has the opportunity to answer that later.

I am of the view that the whole scheme of having these three-bedroom units, a total of about 140 units in the bottom two floors of the housing block, should in fact be reviewed. Areas to be reviewed including, first, tenants have to fight for the use of the toilet and the kitchen; second, the wardens are not trained social workers. I understand that the Government would let some voluntary agencies manage these schemes, I think this is a good start. I hope that with this experience, the management of the many elderly housing schemes will gradually be switched to voluntary agencies. At the same time. I propose that elderly housing schemes need not always be on the ground and first floors, because the old people have said that residents upstairs regularly dump large quantities of garbage down and they always see rubbish on the awning whenever they open the windows. Living in the bottom floors, they are also vulnerable to the disturbance by unlawful elements and thus feel helpless. I think the Government should consider providing elderly housing on the middle or middle-lower floors instead of the bottom two floors. I think this will afford them greater protection as the bottom two floors are too open, accessible to all people. These are all my views resulting from site visits. I hope that the Government will seriously deal with the problems I raised.

With these remarks, I support the motion.

MR WONG WAI-YIN (in Cantonese): Mr President, the recurrence of honricide involving elderly co-tenants draws Hong Kong people's attention to the problem arising from old people sharing the same flat. As a matter of fact, similar incident did happen every now and then over the past decade. The Honourable HUI Yin-fat said just now that it was only an individual case. I hope he was not trying to play down the seriousness of the problem.

The latest incident happened in Fu Heng Estate, Tai Po. A similar one happened in a home for the aged in Tsuen Wan some years ago. Deeply etched into my memory is yet another homicide and suicide case further back in time in Shun Tin Estate where an old person chopped dead another old person he himself plunged to his death. These are very upsetting incidents. Why cannot these elderly people live peacefully in their sunset years? What has gone wrong? The unsociability and eccentricity of the elderly people themselves? Or conflicts which occur so easily due to different living habits? Or what?

I am Vice Chairman of the Association for the Rights of the Elderly. The issue of flat-sharing by the elderly has always been my concern over the past 10 years. Ten years as a social worker for the elderly has given me a fairly thorough understanding of the character of the elderly. Living to such ages, particularly those who have been living alone for a long time, they are rather unsociable and eccentric, and do not trust people too. Therefore, when they live with another old person they will be at odd with each other just over some trivial daily life matters every now and then. Of course, given that there are 10 790 such co-tenants territory-wide - figures provided by the Government - this should not, I believe, be the majority of the cases, but we hope that there will no be homicide cases, even one is already too many.

I raised a written question in respect of this issue to the Legislative Council on 12 October last year. The Government replied that from the 10 000-odd co-tenants, they received 490 complaints in the preceding three years. In so far as rows between two old people are concerned, I have experienced what the Honourable LEE Wing-tat has related, that is, when their row is not so serious to the extent that they would exchange fists, more often than not the Housing Department would simply ask them to cut it out, and that would be it. In actuaity, if only the Housing Department would handle this matter seriously, such as making more detailed record on such rows, it would be rather easy to notice that such minor rows occur fairly frequently. But repetition of such rows easily turns the two elderly people into deadly antagonists. As a matter of fact, if only there is a better, more detailed, record in place, the Housing Department should be able to notice in advance which old persons can no longer share a flat and take early initiative to separate them.

In the reply given last year, the Government pointed out that over the preceding three years the Housing Department had only arranged 161 decantation cases. I think this figures is relatively low. That this has been the case might have something to do with the acute shortage of singleton units, that is, single-person flats. The Housing Department pledged to provide 38 000 singleton and doubleton small flats, newly built flats or renovated ones, in the four years from 1994-95 to 1998-99. I hope the Secretary for Housing Mr Dominic WONG will talk about whether this target can be reached under the current circumstances.

When I was engaged in social work, many flat-sharing old people always worked out their own solutions when such matters arose. How would they handle the matter? In order to stay away from a hot-tempered co-tenant, they would move out themselves. Although their names still appear in the tenant list, and they might or night not keep paying rent, these elderly people chose to sleep in streets or in parks so as to avoid further brushes. I believe the figure of the complaints the Housing Department received fails to reflect the seriousness of the problem. The Housing Department does make some efforts in these few years, which we welcome, but that is rather insufficient. The Housing Department launched the Estate Liaison Officer Scheme in two housing estates in 1990, but until now the progress is sluggish. The Housing Department plans to introduce this scheme to 10 housing estates every year, but I hope more resources and more manpower will be provided for this purpose. Although one Estate Liaison Officer in one housing estate cannot do too much, still it is better to have "one" than "none".

Second, the Emergency Alarm Systems. In the four years from 1991 to 1995, only 1 015 such systems were installed in public housing estates. Given that there are more than 34 000 singleton units for the elderly, I believe even the Secretary for Housing cannot deny that the figure is too low. Can the Government speed up the installation of these systems? Further, in the area of provision of outreaching social services and mental health services for the elderly, it does seem that the Social Welfare Department has yet to be provided sufficient resources for early solutions to many problems involving the elderly.

SECRETARY FOR HOUSING: Mr President, I have listened with interest to comments made by Honourable Members on the need to provide adequate accommodation and care for single elderly people, and I am grateful for their views and suggestions. I shall respond briefly to the main points raised.

Policy commitments

In the past two decades at least, the Government has placed great emphasis on providing accommodation for the elderly in public housing estates. In his policy addresses in 1993 and 1994, the Governor again stressed our intention to meet the housing needs of elderly people. Specifically, we have pledged to clear, by 1997, the backlog of about 4 000 single elderly people on the public housing Waiting List in 1993. We have undertaken to give priority to elderly people who apply for housing, and to families living together with elderly members. We will tackle the problem of some 27 000 elderly people living in substandard accommodation, who have not yet come forward to register on the Waiting List for public housing. This is an ambitious but still realistic programme.

Giving priority to the elderly

The Housing Authority fulfils these commitments by according priority housing allocation to eligible elderly people through three complementary schemes. First, under the Elderly Persons Priority Scheme, elderly people who are willing to share accommodation will normally be allocated a flat within two years after registration. Second, to encourage families to look after their elderly members, the Families with Elderly Persons Priority Scheme shortens by three years the waiting time for housing allocation to families with one or more elderly members. Third. priority is given to single elderly people applying for public housing. To date, half of the 4 000 single elderly registered on the Waiting List in 1993 have already been rehoused, and we will rehouse the remainder by 1997.

Types of public housing for the elderly

In providing accommodation for the elderly, we take into account their preferences and their state of health. Some elderly people want to live alone while others prefer communal living so that they can support one another physically, socially and emotionally. In order to cater for different needs, both self-contained and shared accommodation is provided.

The self-contained flats, which range in size from 10 to 25 sq m, are allocated to elderly singletons who wish to live alone. For those who are disabled, the flats are also provided with handrails and ramps for wheelchairs.

Shared flats are provided in response to demand from single elderly people. There are partitioned flats, with shared facilities. In recent years, specially designed flats are provided. Each tenant has a bedroom and shares a common living area, bathroom and kitchen with up to three other elderly tenants. A 24-hour warden service is provided, and wardens also help to promote mutual care and social contact.

I should point out here that the concept of shared accommodation is a deliberate policy to provide companionship and mutual help, which can enrich the daily lives of elderly people for whom loneliness may become a serious psychological burden. I am glad that the Honourable Peggy LAM generally supports this concept. It is true that some older people find it difficult to adjust to communal living, and relationships may break down. Housing Department staff will try to mediate and advise as far as possible. If professional help is required, staff will seek assistance from social workers based in nearby family services centres. If it then becomes clear that they can no longer share accommodation with others, separate accommodation will be arranged.

Like some Honourable Members. I was sorry to learn about the recent incident in Tai Po. I agree with the Honourable HUI Yin-fat that it is one of the rare cases, and all the more tragic since the problem had been identified and alternative accommodation had been arranged. In the past 10 years, the number of similar incidents known to us is very few. Such incidents do not invalidate the social benefits of the shared accommodation concept for the elderly. I say this because according to a survey conducted a few months ago, a very high proportion of respondents living in shared flats said that they were satisfied with the accommodation and facilities provided.

Catering for future demand

As part of our continuing commitment to improve the quality of life for elderly people, the size and quality of new flats will be further upgraded as from 1997 to provide larger bedrooms, more bathrooms and kitchens to reduce sharing, and more spacious living and common areas. I am glad that our course of action is in line with the Honourable Allen LEE's suggestion.

The Honourable LEE Cheuk-yan referred to demand. In order to increase the supply of flats suitable for allocation to elderly people, we are building on new urban sites, infill sites and on low-rise structures. A total of about 22 500 new units will be allocated for elderly people in the coming four years, in addition to refurbished units. We will of course review future demand and provision.

Services for the elderly in public rental housing estates

Turning now to services for the elderly in public housing estates, I would like to point out that there are services tailored to meet their needs. For example, the Housing Authority has introduced the Estate Liaison Officer Scheme under which staff are deployed to promote mutual help and foster community care among elderly tenants. Increased provision of such officers is being planned has already been suggested by some Honourable Members. Emergency alarm systems have gradually been installed in flats for single elderly tenants with a monitoring service being provided by estate office staff. I can confirm that consideration is now being given to implementing the concept of contracting out the management of flats for the elderly to welfare agencies, whose workers are well-trained to look after the personal and social needs of elderly people.

My colleague, the Secretary for Health and Welfare, has asked me to point out that there are 160 social centres and 24 multi-service centres for the elderly, providing important community support for all elderly persons in the territory, including those living in public housing estates. A major expansion of centres and services is being planned for the next two years. Elderly people who need extra help can also receive telephone counselling through the Social Welfare Department's Hotline Service. Later this year, I understand, that the Social Welfare Department will embark on a new programme, entitled "Older Volunteers Programme", which will mobilize elderly people to reach out to their peers in the neighbourhood, and to help in identifying those in special need.

Indeed when planning new housing estates, Mr President, the Housing Authority is very conscious of the need to consult other government departments to ensure that there is adequate provision of community facilities and welfare services, which also satisfy the social and emotional needs of elderly people.

Conclusion

In conclusion, Mr President, the Government already accords high priority to the housing needs of the elderly in the territory. Improvements in quality will continue to be made in future. The concept of "aging in place" (also known as "care in the community") is at the heart of the Government's approach in the provision of services to the elderly. Our aim is to enable elderly people to lead an independent and dignified life as part of the community as far as possible. I believe that we have a good track record, however, we welcome constructive suggestions from Honourable Members on future development.

With these remarks, Mr President, the Administration supports the motion. Thank you.

PRESIDENT: Mr LEE Cheuk-yan, you are now entitled to reply and you have four minutes 22 seconds out of your original 15 minutes.

MR LEE CHEUK-YAN (in Cantonese): I wish to thank the Members who have spoken. Thank you for your support, both substantial and spiritual support.

The Honourable HUI Yin-fat just said that the elderly should not be encouraged to live alone. I myself naturally also hope that old people can live with their families. But if that is not possible, we should not force one old folk, against his or her will, to live with another old folk. He mentioned that old people living together could be beneficial to grouping them together, giving them more interpersonal links. However, I think that, while the elderly need social life, and if they do, they can for example visit old people's centres or a park, they need a space of their own for mental and physical health, particularly if living with another old folk creates personality incompatibility, big problems will emerge. This motion aims entirely at preventing and avoiding these problems.

The Honourable Mrs Peggy LAM alleged that I failed to address the crux of the problem and mixed violence and accommodation. In fact, the fact is that the problems could be as simple as that, just a fight for the use of the toilet could lead to violence. I feel that if we were to continue this meeting through the night, we might tend to become somewhat violent as well. Therefore, people are sometimes that simple, that vulnerable, giving rise to unnecessary clashes, or even leading to vengeful killings. I think that the issue of violence and living environment should not be dealt with separately, because if clashes are common in such living environment, the residents will not be comfortable both physically and mentally, and this very easily bleeds a violent tendency.

In the Administration's response, the Secretary for Housing undertook to do more to reduce the need to use communal facilities. I believe this will bring some improvements. If the elderly people do not need to fight all day for the use of the kitchen or the toilet, less violence will take place. However, the most important thing is still to give the old people the true right of choice. Many Members and the Administration mentioned that the elderly in fact do have a choice of sole tenancy or co-tenancy. But I think that the choice is a false one. If they choose co-tenancy, accommodation can be available in two years, while it will be seven years before they can have a sole tenancy. The two waiting lists, one of two years and the other seven years, definitely do not represent any true choice. A true choice will really let the elderly choose and need not wait for such a long time and with such a big difference in the waiting time, whether the choice is for sole tenancy or co-tenancy. It will be a true choice if, in my mind, the old-people can, without any need to consider the waiting time, choose to live with other people if they so like or to live alone if they like living alone.

Further, the Administration said that there would be a supply of 23 500 new units. However, it is obvious that even when these 23 500 are available, the demand can still not be met. It is because, as many Members pointed out, the present demand is really still very big, and with the aging of the whole community in Hong Kong, the demand will further increase. Therefore, finally, I do hope that the Administration will do more in this area, and as the Honourable Mrs Elsie TU said, she has been following up this matter for many years and has been waiting for improvements to be made by the Administration for many years, and she has become very irritated in the course of waiting. I hope that the Administration will not make all Members irritable at the end of the day.

Question on the motion put and agreed to.

ADJOURNMENT AND NEXT SITTING

PRESIDENT: In accordance with Standing Orders, I now adjourn the Council until 9.00 am on Wednesday, 26 July 1995.

Adjourned accordingly at eighteen minutes past Eleven o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Magistrates Ordinance, Protection of Wages on Insolvency Ordinance, Trading Funds Ordinance, Interpretation and General Clauses Ordinance, Administration of Justice (Miscellaneous Provisions) (No.2) Bill 1995, Airport Authority Bill, Public Entertainment and Amusement (Miscellaneous Provisions) Bill 1995, Control of Obscene and Indecent Articles (Amendment) Bill 1995, Film Censorship (Amendment) Bill 1995, Public Order (Amendment) Bill 1994 and Supplementary Appropriation (1994-95) Bill 1995 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 Home Affairs to Rev FUNG Chi-wood's supplementary question to Question 2

Under the New Territories Land (Exemption) Ordinance, female indigenous villagers are entitled to inheritance of land and property in the New Territories. However, as the applications are made via practising legal professionals in the private sector, we do not have the figures as regards the number of successful applications.

Annex II

Written answer by the Attorney General to Mrs Elsie TU's supplementary question to Question 3

Of the 561 counsel on the Legal Aid Panel, 118 (21%) have not been assigned any cases. Under the Legal Aid Ordinance (Cap. 91), any counsel or solicitor holding a current practising certificate may join the Legal Aid Panel. No other qualification for example as regards years of experience are prescribed. It is possible that some of those who have not been assigned any cases are too junior to be instructed by the department, particularly in criminal cases; some are not known to be competent; and some although their names are on the Panel, are not available for legal aid work. There may well be other reasons. While it is the policy of the Legal Aid Department to make greater use of available resources on the Legal Aid Panel, there is no obligation for Director of Legal Aid to ensure that each and every one on the Panel are assigned cases.

On the other hand, the Director of Legal Aid has a responsibility under the Ordinance to look after the interest of legally aided persons. It is important therefore that the Legal Aid Department should endeavour to find the best counsel/solicitor within the various constraints for its clients. As far as possible, the Department aims to select a lawyer who is experienced, competent, efficient and available for the case. This notwithstanding, the Department maintains that all assignments should be conducted in a fair and equitable manner.

WRITTEN ANSWERS — *Continued*

Annex III

Written answer by the Secretary for Planning, Environment and Lands to Mr Edward HO's supplementary question to Question 6

In the last 10 years, Buildings Department has issued 4 420 occupation permits. This is an indication of the number of building projects handled by APs during the period.

According to the Commissioner for Labour, there were 568 fatal accidents in the construction industry in the last 10 years. While there is no breakdown between public works and private sector projects, a significant percentage took place in private sector projects for which APs had been appointed.

Most accidents on construction sites happen in an unfortunate set of circumstances, some of which might be beyond human control. Buildings Department considers, however, that at least in four or five cases, better supervision by professionally competent persons would have saved some lives. Please do not treat this or the number as a definitive statement or official statistics.

We have not prosecuted any AP for negligence in supervision mainly because there is no sanction for failure to provide any supervision under the existing provisions of the Buildings Ordinance.

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