OFFICIAL RECORD OF PROCEEDINGS

Thursday, 27 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 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

THE HONOURABLE JAMES TO KUN-SUN

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

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

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

THE HONOURABLE CHRISTINE LOH KUNG-WAI

THE HONOURABLE ROGER LUK KOON-HOO

THE HONOURABLE ANNA WU HUNG-YUK

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

THE HONOURABLE ALFRED TSO SHIU-WAI

THE HONOURABLE LEE CHEUK-YAN

ABSENT

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

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

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

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

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

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

MR PETER LAI HING-LING, J.P.
SECRETARY FOR SECURITY

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

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

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

MRS SHELLEY LAU LEE LAI-KUEN, J.P.
SECRETARY FOR HEALTH AND WELFARE

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

THE DEPUTY SECRETARIES GENERAL
MR RAY CHAN YUM-MOU AND MISS PAULINE NG MAN-WAH

Second Reading of Bill

MANDATORY PROVIDENT FUND SCHEMES BILL

Resumption of debate on Second Reading which was moved on 26 July 1995

Question on adjournment proposed.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, I speak to oppose the adjournment of this debate.

Undeniably, Hong Kong as an international city has not done enough in respect of retirement and provident fund. But if we did not do enough, this does not mean that we can never do anything. So today is a start and we have to come to discussions one day. I have already said that Hong Kong is, in fact, a society of equality and mutual benefits, for industrial business as well as financial sectors, and there are many opportunities open to the friends in the labour sector for making a fortune. Of course, as all have seen, many people did make use of Hong Kong's opportunities and get rich during the post-liberation period, from 1950's up to the present. Of course, one may even get richer later on. We should not give up our chances. Therefore, I personally think that discussions on provident fund or other mandatory provident fund schemes should be carried out as soon as possible. After a series of discussions, we would not only ask the Government for non-procrastination but also urge it to do promptly what should be done.

Mr President, these are my remarks.

MR MARTIN BARROW: Mr President, I have not intended earlier to speak at this stage of the debate which last night seemed to be descending into a political wrangle, but I do wish to make the point that I see no merit in further procrastination. I believe the Chief Secretary said a few months ago that the retirement schemes have been an issue swirling around the community for something like 35 years. It is time we got off the pot and made some decisions. I did have some reservations when the MPF proposal was first tabled, but having looked at it carefully and considered the various concessions and commitments which the Government has made, I believe we should now move forward with this framework legislation. In particular, the Government has made it very clear that there will be further rounds of consultation on the subsidiary legislation.

With these words, I oppose the motion.

MR WONG WAI-YIN (in Cantonese): Mr President, I speak to support an adjournment of the scrutiny of this bill. Yes, as Members of the Liberal Party say, the Democratic Party opposes the mandatory provident fund schemes, but support an adjournment as well because the Democratic Party will support any way that can prevent the passing of this bill.

In fact, today's motion to adjourn the debate on this bill, I think, offers some Members more choices in giving their votes. Indeed, it is unfair to us that such an important bill only allows so short a time for this Council's consideration. Actually are our colleagues' votes correct? I think some Members are struggling. The result of our voting will have an effect on the people of the territory scores of years later, therefore, some Members may feel embarrassed and hesitate to give a vote hastily when there is not enough time to consider this bill. So, an adjournment might give this Council more time to consider this bill and it would be fairer to some Members.

Mr President, I would like to make a brief response to what our colleagues said yesterday. The Honourable Mrs Selina CHOW said yesterday that the Democratic Party supported socialism. It seems that we are moving backwards, when compared with the Liberal Party's reproval for our being communist during the consideration of the Route 3 Bill at an earlier time. They also said that we supported nationalization and so on. Sooner or later the Democratic Party would be said to be communist. The Honourable Allen LEE said violently yesterday that we do not look after the workers' interests whereas his Liberal Party did look after the workers' interests.

The Mandatory Provident Fund Schemes Bill now is a money-saving proposal. Everybody knows that the Government has been opposing the establishment of a central provident fund scheme on the ground that such a scheme would be effective only after scores of years, or at least 20 years or so. Similarly, mandatory provident fund schemes also take time to bring about their effects and cannot protect the existing retired elderly. Moreover, our employment rate now has reached 3.1% with some 100 000 people being unemployed. How can these unemployed workers have money to contribute to the provident funds when they have no jobs at all? Therefore, at present, we have to solve the problem of retirement protection on one hand and, of course, have to ensure that the workers get jobs in order to make contributions.

To conclude, Mr President, the Honourable James TIEN highly praised the Honourable PANG Chun-hoi yesterday for being the only one who strive for the labour welfare. Is this true? I believe this is open to public judgment. But I would be very scared if the communist will speak well of me one day.

MR STEVEN POON (in Cantonese): Mr President, I do not understand why we are still discussing an adjournment of this debate on a bill which is very important to Hong Kong. In fact, after joining this Council, I feel that the legislators are doing very little to look after our people. I cannot understand

why I have been working in a company for scores of years where the managerial level looks after the staff very well, but many workers or even staff of smaller-scale companies are not being looked after. I really do not understand, Mr President, such jargons as "capital side" and "labour side". I was brought up in a very poor family, worked in a company since I was young and then became one of the higher-ranking staff. I think the difference between the management and the staff lies on the fact that the management has to look after the interests of all the staff. There is no such case as the capital side suppressing or oppressing the labour side. I have not seen such cases. Having worked for more than 20 years, I did not see the capital side particularly suppressing or oppressing the labour side. What I have seen is that many managerial staff tried all means to ensure fair treatment to the staff. To me, if there is no provident fund system, I will be empty-handed when I leave the company after 27 years' work. Of course, I am not very well-off, but at least, I can survive even if I am not paid as a Legislative Councillor.

Mr President, in the 80s, many of my colleagues emigrated and among them there were a tea lady, a rather senior staff at middle managerial rank who had gradually been promoted from the post of "boy", and an engineer who was a university graduate upon recruitment. Many of them emigrated in the 80s and they came to my office saying, "Mr POON, I have to leave tomorrow." Some even shed tears, but, Mr President, at least, they said to me, "Mr POON, thank you for fighting for our retirement protection scheme over the years. Now that I am emigrating I can still get some money to buy a house and live well." Some lady workers did not emigrate but left the company after working for 30 years. They were getting old and their children might not be able to look after them, but my company would still give them a sum of money upon their retirement.

Mr President, why are we still saying today that the issue could be left dragging on endlessly? The issue has been talked about for scores of years, and Sir Sze-yuen CHUNG talked with me about it on the first day I got to know him. Why are there still some Members saying so? The Honourable James TIEN said very clearly yesterday that the Honourable TAM Yiu-chung called for an adjournment of this debate. I believe this is simply a dispute caused by personal feelings. The Democratic Party called for a postponement probably because they hoped to fight for something better which may mean more welfare for some old people. But, Mr President, we are discussing retirement protection, we are discussing situations in which one cannot get any money after many years of service. Why do we confuse this with welfare matter? I find it very hard to understand.

I have looked after many staff, though my company has a strength of only 7 000 or so, on a scale much smaller than the Hospital Authority. Every day, I have to be concerned about my staff's living after they leave the service. I once had $6 billion at hand and that was their retirement money. I believe all of us know that the Honourable Marvin CHEUNG is a very experienced accountant. He is also a professional whom I respect very much. We have worked together and we all like to hear him speak. He does not talk much, but what he says is in-

depth. Yet what he does not understand is that we are not talking about the details, but a fundamental principle of having mandatory provident fund schemes or nothing at all. Without such schemes, it is useless to put the things in flowery language and we cannot proceed with the details. Once we have the schemes, we can discuss further and improve. Therefore, I do not agree to let the issue drag on.

MR ANDREW WONG (in Cantonese): Mr President, I think the Honourable Steven POON need not find it hard to understand. Basically we have voluntary occupational retirement schemes and any good employer should carry out these schemes of their own accord. The major problem now is that two debates were put forward at a meeting (I cannot recall the date of the meeting) before the presentation of this bill. One was put forward by the Government on mandatory private provident funds and another one was put forward by this or the Honourable YEUNG Sum on old age pension scheme. The crux of the problem is that which of the above is more desirable and which should be carried out first. I personally think the Government made a wrong decision right from the beginning. Mr Michael LEUNG should remember that I stood up several times asking him to point out which Member was the single one who gave full support to the old age pension scheme, and Mr LEUNG refused to answer at that time. As far as this issue is concerned, I think we should not give support hastily to mandatory private provident funds because they are not very good and their effect cannot be seen very soon. Moreover, it takes a rather long time to put them into implementation and it is a piece of vague and general legislation before us. Therefore, I think the best way is to adjourn the debate.

At yesterday's debate on the Court of Final Appeal Bill, some Members also suggested an adjournment. At that time, some Members said that we could adjourn the debate on the bill because there was no need to hurry and even if it was passed hastily, it might be amended in the next term. But in fact, we cannot amend the legislation in the next term because any changes in contravention with the Sino-British Agreement would not become legislation. But the bill on mandatory private provident funds on the other hand may be amended. If we pass the bill now and amend it later, we may be still "empty-handed". If we do not pass it now, we can discuss further and may get a better system.

Let me state my position now. I support an adjournment of the debate. At the Second Reading stage, I will oppose the Second Reading of the Bill. If I am unsuccessful, I will support, at the Committee Stage, the Honourable Marvin CHEUNG'S proposal that the date of implementation should be decided by this Council's resolution.

MR RONALD ARCULLI: Mr President, when an adjournment was moved on the Court of Final Appeal Bill, I think one of our colleagues here reminded us that we have certainly set procedures within this Council as to how we function. And may I take this opportunity to very briefly remind Members how we use

our time and how we are accountable to the public. The House Committee decided on the recommendation of some of our Bills Committees to terminate consideration of some Bills simply because we had too much on our plate. The MPF Bill was one of the ones that we decided to give priority to. And I think on that basis, I therefore appreciate Mr WONG Wai-yin being totally honest and frank today although I wished the Democratic Party was far more forthcoming when we discussed this matter in the House Committee. He said that they would use every possible technical means or otherwise, and I understand them to mean fair means not foul to delay and to defeat this Bill. They could have done so in the House Committee. With all the support that I am hearing today for the adjournment of this debate, I just ask Members to think what did we do in the House Committee? Why did we agree to give priority? Why did we agree to set up a Bills Committee? We could have killed the Bill there and then. Why after so many hours of Member's time and perhaps, you know, that is our duty to play politics. But think about our government officials, think about the people who actually came to this Council, to the Bills Committee to put in their views and opinions which Members took into account. We now are going to tell them that after, many many hours of work, and many years of prevaricating, this Council in its considered wise opinion this morning is going to adjourn this and put this back into the history books. Mr President, if that is the way how the Council operates, then God help Hong Kong. Thank you.

MISS EMILY LAU (in Cantonese): Mr President, I speak to support the Honourable TAM Yiu-chung's proposal. I wish to respond to what the Honourable Ronald ARCULLI has just said. As we remember, the House Committee agreed to give priority to this bill and the Court of Final Appeal Bill. On the part of the Members who may oppose or, like me, support mandatory retirement protection, we then wished to study this bill, but we did not guarantee that we could make it passed today or yesterday. At that time, we agreed to set up a Bills Committee and did spent a lot of time to study the bill and raise many questions. I believe that as a responsible Legislative Council, if we have identified many problems, and I quite agree to and respect what the Honourable Marvin CHEUNG has said, what is wrong when we say we want more time to study the bill? How can we say to others that the bill passed by us is full of loopholes and uncertainty and that we would make it up later; and is this a good explanation?

In fact, the Government has said that the schemes would not be enforced until two or three years later. So if we support an adjournment of the debate, the Government would have more time to do the preparation work and then present a whole package to the Council. Bills on matters other than mandatory retirement protection take a long time and this bill surely takes a considerably longer time. I myself think, if the Government present a more comprehensive package to this Council in the next term, the fortunate re-elected ones among us (Mr Marvin CHEUNG will not stand for next election) will study it with other elected Members. I think this is a responsible way of doing things.

I do not understand why Mr Ronald ARCULLI said that the House Committee's agreement to discuss the bill meant passing of the bill after 40 discussion meetings in three weeks. I believe no Members made such commitment, and they just tried to do their best. Many Members turned up at the meeting, though some of them might be unable to attend because of a clash in meeting schedule. We found that we could not agree on many matters and the Government did not provide answers to all our questions, therefore, some Members are proposing an adjournment of the debate.

For these reasons, Mr President, I support Mr TAM Yiu-chung's motion.

DR YEUNG SUM (in Cantonese): Mr President, I speak to support the Honourable TAM Yiu-chung's motion. Having heard the Honourable Ronald ARCULLI's speech at an earlier time, I think if the case was true, there would be a "norm" at the House Committee thereafter, that is, whatever bills on the priority list cannot be adjourned. Do we have such "norm"? Do we have this "consensus"? We are responsible, so we fully participate in the formulation work and conducted discussions and when we have identified problems during discussions, how can we continue to "move on"? Of course, we have to "brake".

As all of you have seen, actually the Government is unable to answer so many questions raised by the Honourable Marvin CHEUNG, who, with his professional knowledge, found many loopholes in the Bill. If we still insist on passing the Bill despite its loopholes, are we thinking about the workers' interests or not?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, today should be the joyous occasion for the workforce of Hong Kong. It should be the day when employees and the self-employed receive what they have been seeking for so long — the certainty of financial security upon retirement. Instead they are facing last minute uncertainty of not knowing whether debate on this Bill will be able to continue. If this is frustrating for them, then it is certainly frustrating for us and all those who have the genuine welfare of workers at heart. If they cannot understand the reasons for some Members to propose adjourning this debate, they are not alone in Hong Kong.

Members of this Council are fully aware that this Bill is essentially an enabling one. That is not to say it is a hollow shell, as claimed by some. What it does is to provide a framework for the subsidiary legislation which will set out the details of how the system will be regulated. Members will be by now quite familiar with the main provisions of this Bill. These have been described on a number of occasions since the motion debate on 8 March this year. It is fair to say that there are no surprises in the Bill. The subsidiary law will be the subject of further detailed consultation with Members of this Council and all sectors of the community over a longer timeframe. In their perhaps misguided enthusiasm to bring a debate on this Bill to a premature stop at least for the current Session,

some Members may well have overlooked the reasons why we are here today with this particular piece of legislation. This is not simply a case, as perceived by some, of the Administration pushing forward a Bill on its own volition and for no other reason.

Let me refresh Members' memories on the history of this subject, perhaps as far as I can, briefly. The question of how best to provide retirement protection for the workforce has been the subject of intense debate for more than a generation. The discussion has been especially concentrated in the last three years. While we have all been in agreement that employees and the self-employed deserve to be able to live in dignity and financial security during their retirement years, the best way of providing for such retirement protection has always eluded us until now.

The MPF provides a good, pragmatic answer to this question and has wide support within the community. It also addresses many of the points of criticism that arose during the public consultation exercise on the Old Age Pension Scheme (OPS). It is not true to say, as claimed by some Members that the community has had inadequate time to consider the MPF. It was the community that supported the MPF in the first place. Submissions on the OPS indicated that there was now likely to be greater public acceptance of a mandatory privately managed provident fund system, and such a system should be set up as soon as possible.

The community, Mr President, wanted reality in the shape of a real retirement protection system, not a further round of inconclusive consultation. Intensive consultation with those most directly affected by the MPF, that is, employers' and employees' representatives both before and after the motion debate on 8 March, reinforced our view that we are moving in accordance with the community's wishes.

This two-stage approach which we are now taking in drawing up the necessary legislation is a positive response to public demands for the Bill to be enacted as soon as possible. This response has also met with public approval.

Some Members have indicated that they would prefer to consider the MPF Bill at a more sedate pace. Some other Members have said that the Bill should be considered together with the subsidiary legislation. They believe, therefore, that discussion should be deferred until the next Legislative Session.

Let me remind them that time is not on our side. As in many other parts of the world, the elderly in Hong Kong are living longer and forming an increasingly larger percentage of the population. For example, in 1991, life expectancy at birth was 74.9 years for males and 80.5 years for females, while life expectancy at 65 is 15.4 years for males and 19 years for females. The estimated number of persons aged 65 or above will increase from the present 560 000 to one million in the year 2016, and 1.9 million 20 years after that.

Expenditure on Comprehensive Social Security Assistance payments to the elderly aged 60 or above continues to increase: from $1,564 million in 1993-1994 to $2,193 million in 1994-1995, and a projected level of $2,778 million in 1995-1996. Unless we make sensible advance provisions now for these people, we will be faced with a considerable and ever-growing welfare burden. We cannot afford to wait any longer.

The MPF will ensure that the workforce will have financial security in their old age and thus reduce the numbers who may potentially fall into the welfare net. Members will realize that by the year 2036, when nearly 20% of the Hong Kong Special Administration Region population will be 65 or over, the first batch of the youngest group of MPF contributors will be reaching retirement age.

One last point on the need for early enactment of the Bill. May I remind this Council that just four and a half months ago on the 8 March debate, Members voted in favour of the motion that this Council urges the Government to introduce as expeditiously as possible a mandatory privately managed occupational retirement system with provision for the preservation and portability of benefits.

In our efforts to enact the MPF Schemes Bill during the current Legislative Session, we are acting in accordance with Members' wishes.

Some Members believe that adjourning the debate and thus allowing the Bill to lapse will provide a further chance for re-consideration of the OPS, a Central Provident Fund (CPF) or some hapless hybrid of the two. They are wrong. If this Bill lapses, there is the real possibility that the community will not have any retirement system at all. We do not intend to revisit the OPS which found little support within the community.

As for the CPF, our views remain unchanged. It is not an option for Hong Kong. It offers no freedom of choice, tends to produce low returns on investment and results in an over-concentration of funds under one authority. We hold this view both in respect of a CPF on its own and a CPF artificially put together in an uneasy relationship with any other form of retirement protection.

Those Members who yearn for a CPF must know that it cannot work without government funding which most definitely will not be forthcoming.

I would urge any Member who feels inclined to support the motion to adjourn in the hope that it may lead to a revival of the first defunct OPS or even a CPF to think again. It will not happen.

Mr President, I am surprised to hear some Members claim that this Bill is hollow, lacks substance and should not be discussed further, while others say that the debate should not proceed as the Bill is complicated and they have had

inadequate time to examine it. I disagree with both opinions and wonder whether in fact Members are talking about the same piece of legislation!

From the outset of our consideration of the MPF, it has been our stated intention to deal with the primary legislation first, then the secondary legislation later. This is in keeping with the community's wish to see a mandatory retirement protection fund system established as soon as possible.

As I said in this Council during the debate on 8 March and I quote: "We will also start drafting legislation and come back to this Council with the primary legislation. The timeframe: we will try to get the initial report from the consultants by the end of April and to come to this Council with the primary law before the end of this Session if Council endorses my motion this afternoon".

Early enactment of the primary legislation will also provide adequate time for trustees and insurance and fund management industries to introduce the necessary products, and for employers and the self-employed to arrange for retirement schemes to meet their obligations.

We have always made it very clear that there would be certain necessary provisions in the primary legislation. These are reflected in the contents of the Bill to be discussed today.

Far from being an empty shell, the Bill does what it intends to do. It provides a sound framework on which we can build. It establishes the Mandatory Provident Fund Scheme Authority. It provides for a Compensation Fund and for the establishment of Residual Provident Fund Scheme. The MPF Schemes Bill tells employers, employees and the self-employed how much they need to contribute and what their future obligations will be. It is clear from the Bill, and it will be clearer still after we move a number of Committee stage amendments later on, who is covered and who is exempt. This is no empty shell, and there is definitely no reason to defer debate on such spurious grounds.

On the other hand, it is equally unreasonable to demand that debate be adjourned because the Bill appears to be too complicated and that there had been inadequate time to consider it in detail.

The main points of the primary legislation have been known for some months now. We have made it very clear that the specific components of the MPF will be dealt with in the context of discussing the subsidiary legislation. There have been many rounds of discussion both with Members of this Council and with concerned groups and individuals, on the principles and main points of the legislation.

It is patently absurd to claim as some have done, that the Bills Committee to study the MPF Schemes Bill had inadequate time and opportunity to carry out its deliberations. The Bills Committee met on 10 occasions. Some clauses were

debated ad nauseam. In addition, there was a session to go through the Administration's Committee stage amendments, and a meeting of a subgroup to examine the Bill clause by clause. The fact that the meetings were held within a short timeframe does not detract from the fact that the Bill was discussed in great detail and with great care — reflection, of course, of the due responsibility of Members of this Council to study it in great detail and care. In fact the only area of the Bill that was not put under the microscope were the Committee stage amendments proposed by Members of this Bills Committee.

It is clear to me, Mr President, and I hope it is clear to most Members of this Council, that this attempt to derail discussion of this most important subject on the grounds of over-complexity is nothing more than a smoke screen for those who are against the MPF and who clearly do not want the Hong Kong workforce to have a retirement protection system anytime in the near future.

I would like to take issue with Mr TAM Yiu-chung on some of the points he made at the beginning of his address yesterday night. He challenged me on the points which he made on the debate concerning the MPF as to why such points were not answered and whether my letter addressed to Members of this Council were in fact not giving enough reasons for going ahead with this Bill.

Let me take these points one by one. First he said this Bill is only a shell, a framework. There is nothing to work on. I totally disagree. The Bill is certainly a framework but it is far from empty. It reflects the necessary provisions for setting up the MPF system. The community agrees with our approach of dealing with the primary legislation first. As I said earlier on, the Bill establishes the MPF Scheme Authority, provides for a Compensation Fund and setting up of the Residual Provident Fund Scheme system. These are important and basic points to vote on. It is definitely not an empty shell with nothing to hold on.

On the second point, Mr TAM advocated that we should first study both legislation, primary and subsidiary, before voting. But as I said earlier on, the history of this subject has gone on for over 30 years. The community is aging. The community cannot wait any longer. The community agrees with our approach of dealing with the primary legislation first as this is the most effective way of starting the MPF as endorsed by this Council on 8 March as soon as possible. Time is not on our side or on the community's side if we delay this debate any longer. As I said, the elderly in Hong Kong are growing in numbers and are living longer and we must not forget this important fact.

Mr TAM made a third point about there being far too many technical problems, that these are difficult to change unless the subsidiary legislation were voted on later on and looked at together. This is not the case. We have always made it very clear that subsidiary legislation will be made in wide consultation especially with Members of this Council. Members will be able to approve all subsidiary legislation up to the date of coming into force of section 6 of this primary Bill in its entirety. If we discover problems later, and of course we do

not deny there could be technical problems of details of one kind or another, then there is no reason why we cannot change them later on, and there is no reason whatsoever for this particular problem later on to defer a debate on this Bill today.

Mr TAM also said that it would be misleading to say that delay will decrease benefits. This is certainly not the case. It is clearly necessary for an employee to start contributing sooner now rather than later, as it means that, by the time that he or she retires, he or she would have accrued more benefits. It is obvious the earlier benefits start, the better.

The final point made by Mr TAM that early passage is in conflict with the previous points made. I do not see why. Early passage of the Bill will give us time to set up the MPF Scheme Authority and begin discussions on the subsidiary legislation. In other words, we just cannot start anything on the MPF without the primary Bill being established as soon as possible. Insurance and the fund management industries are not likely to develop new products without the existence of the primary legislation, and this is why we must proceed with the debate on the primary Bill as soon as possible.

In conclusion, Mr President, I should like to call upon those who support deferring debate on this Bill to consider where their action may lead. They will go down in history, I am sure, if they were successful in deferring this Bill indefinitely. They will be held accountable by Hong Kong's community and the elderly in Hong Kong for what they have done today. So think again. The reality of a retirement protection system, a real system in the form of an MPF, is clearly what the community needs. If this motion to defer the debate is carried, we will need to consider very carefully where to go next.

Mr President, the MPF Scheme Bill is a good, practical and workable means of providing our workforce with a retirement protection system which it deserves. Members of the Bills Committee have worked hard together with the Administration to produce what we believe is an effective and workable enabling Bill. To adjourn the debate at this stage would deny Members and the community in Hong Kong the chance to discuss the Bill on its merits, and to vote accordingly. Mr President, I call upon Members of this Council to vote against the motion to adjourn.

MR TAM YIU-CHUNG (in Cantonese): Thank you, Mr President, I move an adjournment not out of impromptu thoughts, nor as a sequence to the trend of yesterday's Court of Final Appeal Bill. The fact is absolutely a different thing. I have thought very clearly before moving this motion and I did openly mention about this. I also stated the reasons for adjournment yesterday and I have heard many views. Now I would like to respond to some points.

First, some Members were concerned that whether the adjournment of this debate would disappoint the elderly. I have engaged in union work and fought for labour interests for over 20 years. I did say in this Council on several occasions that I would pursue the greatest improvements and the quickest achievements in striving for improvements to the labour interests or labour welfare. The quickest achievement is very important. I once used the metaphor of "a horse in the hand is worth more than hundred in the bush". But why do I not apply it to the existing Mandatory Provident Fund Schemes Bill? Let us see the actual problem. What we are discussing and have to pass today is simply a principal ordinance. I already said yesterday that the proposal would not be implemented tomorrow once we passed the Bill today and the old people would not be given protection immediately. In fact, if you think so, this may be due to a pretty misunderstanding or the Government's misleading publicity. Actually, even if we have passed the principal ordinance, it might take two years, as the Government said, before the introduction of the subsidiary legislation to this Council in 1997. In fact, to adjourn the debate now is not — at least I am not — procrastinating, but I want to compel the Government to expedite the work. On the contrary, I am worried that the Government would slow down the work because it thought the general situation was settled after the passing of the principal ordinance. The subsidiary legislation may be introduced after 1997 and whether you like it or not is your business because the Government, under British rule, has already done its job for retirement protection. But if the principal ordinance is not passed, the Government may be forced to present the subsidiary legislation to this Council as soon as possible if it really intends to solve the problem of retirement protection. If the Government really wants to do something, it should do in this way — presenting the principal ordinance as well as the subsidiary legislation to this Council as soon as possible, and then this Council could negative or amend the Bill, which is its right or responsibility to do so.

In addition, I would also like to respond to the arguments just put forward by Mr Michael LEUNG. He thought my act would give him a blow, and they would be frustrated or those who are concerned with labour interests would be disappointed. I think this would not be the case. I already said in yesterday's speech that anything which the Government intends to do would be done very quickly and anything which it does not intend to do would be dragged on for 20 or 30 years or even for a longer time. Mr LEUNG also admitted that the issue had been debated for 20 to 30 years. In fact, the debate was quite straightforward. Our society and labour sector called for the establishment of retirement protection but the Government kept on saying there was no need and it was unnecessary. The Government did not want to do, so it procrastinates for 20 to 30 years. It is not true that the Government has kept on saying that it will do something for 20 to 30 years and yet our society did not want to do anything. This is not the fact. You may check all the documents, information, history and records, which show that the Government did not want to do anything at all in the past 20 to 30 years. Now, the Government changes its mind. It took an initiative to move a motion on 8 March saying, "Well, we have decided to introduce a mandatory provident fund system" and then asked this Council to

pass it. But I wish to remind the Government of a motion on old age pension which was passed by this Council, I think both motions should be mentioned and we should not just do or mention one thing. As regards the question of delegation of authority, I think it is unnecessary. As this Council has passed the motion and supported the Government in its deliberation, the Government should proceed. I think if a whole package were presented in great details at this stage, Members would certainly welcome it very much and do their utmost to study it. Mr Michael LEUNG emphasized that time was running short because of the aging of our population and we had to act promptly. But he may wish to note that what we are talking about is mandatory private provident fund schemes. Even if the schemes are to be implemented and have contributions collected tomorrow, even if there is no problem in passing the Bill, and all of you may think that there is no problem at all and TAM Yiu-chung was the only Member who delays it without good reason, the benefit will still be obtained only after 20 to 30 years. We must be aware that under the provident fund system, the employers and employees make contributions which are saved up and then returned to the employees upon retirement. Therefore, the Bill cannot address to the existing needs of the elderly and the retirees or the retirees-to-be. Therefore, there will be entirely no difference if the subsidiary legislation is to be presented, studied and passed several months later. So in my opinion, something is wrong with Mr LEUNG's arguments.

The Honourable Marvin CHEUNG is a Member whom I respect very much because he is actually an expert in retirement protection, especially in provident funds. Why do I say so? Because he and I once joined the ad hoc group (at that time it was not called Bills Committee, but a group) to study the Occupational Retirement Schemes Bill and we studied the Bill for a year. When the Government first submitted the Bill, we rejected it as a whole because its wordings were too complicated and totally incomprehensible. Later the Government submitted a second bill, then over a hundred meetings were held, and after studying it for more than a year, legislation was drafted to require all the voluntary provident funds to register before 15 October this year. Even after endorsement, the draft legislation was amended several times, and one can imagine its complexity. I wish to point out that this is a voluntary provident fund schemes ordinance to regulate the existing provident fund schemes which are run on voluntary basis. There will be greater complexity for the mandatory ones. Therefore, some Members say it is complicated. They are actually saying that it would be rather complicated to enforce legislative control if the provident fund schemes are run on a mandatory basis. As the schemes are mandatory, they are required by law. This does not mean that they can be carried out or not at one's wish. But how are the voluntary provident fund schemes combined with the mandatory provident fund schemes? Why is it possible that two systems might appear in the same company? These are very complicated indeed and the Government has failed to resolve many other more complicated issues. This is an undeniable but understandable fact. The Government has to put forward its proposal in two to three months' time. I also admire the Government, for it can produce certain results if it throws its whole body to work. But what it produces is not comprehensive and has failed to

solve the problem. It just gives us a mere shell and ask us to eat it first. We said that we could not eat the mere shell first, but the Government insists that we have to "accept delivery". I think there is nothing wrong for the Government to submit the whole package because anyway the schemes cannot be implemented immediately. The issue is as simple as that.

Two Members of the Liberal Party consistently emphasized that my motion to move an adjournment of this debate has something to do with the Preliminary Working Committee. I wish to point out that I asked the Legal Advisor, Secretary General and others of the Legislative Council on 14 July in order to understand the procedural matters. I also discussed with Mr Marvin CHEUNG of the Liberal Party. As I said, in the present circumstances, I do not wish to vote down the provident fund system in the first instance, and a better way is, I think, to give the Government more time to formulate a comprehensive bill and then submit it for our scrutiny. The meeting of the Preliminary Working Committee is held on 21 instant, therefore, my motion has nothing to do with the Preliminary Working Committee at all. Besides, I did not attend that meeting of Preliminary Working Committee's Economic Affairs Sub-group. It was reported by the press that the Economic Sub-group supported the idea of mandatory provident fund, both in principle and in spirit. Therefore, the Preliminary Working Committee's decision actually has nothing to do with the motion moved by me today. I have not started out from this aspect. My starting point is: how to get things done well if they are to be done? I do not want to commit ourselves very rashly when there are still so many outstanding problems. I think this is unfair to this Council and the Members. We think the Government is irresponsible so such doing.

Mr President, I do not wish to speak too much because today's agenda is quite long. In fact, after a lapse of one night, I think all of you have made up your mind in voting on this motion. I believe it may be insignificant for me to speak anymore now. Thank you, Mr President.

Question on the adjournment put.

Voice vote taken.

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

Mr TAM Yiu-chung claimed a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

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

Mr Martin LEE, Dr David LI, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Marvin CHEUNG, 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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Ms Anna WU and Mr LEE Cheuk-yan 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 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 CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Mr Howard YOUNG, Miss Christine LOH, Mr Roger LUK and Mr James TIEN voted against the motion.

THE PRESIDENT announced that there were 25 votes in favour of the motion and 31 votes against it. He therefore declared that the motion was negatived.

Question on Second Reading proposed.

MR PETER WONG: Mr President, the public debate over the general principles of retirement protection for Hong Kong people, which has been staged over a span of at least 25 years, hopefully, is now, at an end. The Bill has gained general support from members of the Accountancy Functional Constituency who endorse its principles of assisting people to save for their old age through the Mandatory Provident Fund Scheme (MPF). However, we envisage a rough-ride ahead for the detailed implementation of the Bill in two areas — operation and monitoring.

Accountants, many of whom are directly involved in the setting up of private provident fund schemes, are quick to point out that problems will arise from the interface of old and new MPF schemes. With the requirement for new provident fund schemes to be set up for new employees, there is likely to be a two-tier MPF. Significant changes will have to be made to the existing myriad of schemes.

The portability of accrued scheme benefits is another source of frustration of employers. For one thing, the Bill does not specify how scheme benefits will be transferred, rendering uncertain the portability of benefits. More

importantly, rapid turnover of staff will simply make the calculation of benefits a nightmare for scheme administrators. Companies will probably end up hiring more staff to deal with their provident funds. In this regard, I agree with the accusation that the scheme has significant loopholes. The accountancy profession believes that provision should be introduced to allow existing schemes to quality as MPF schemes by appropriate modification of their rules on vesting, preservation and portability.

Concern has also been expressed over the risk factor of scheme funds. Under the provisions of the Bill, there is no guarantee for a good return rate for scheme investments needed to cover inflation, administration cost and the compensation levy. A 13% return rate is considered necessary for cost recovery purpose. However, I think that such guarantee has to come from the trustees and fund managers rather than the Government. Having said that, I think it is not enough for the Government to only provide a mechanism for retirement protection — it is not enough to provide a stick without a carrot.

At the moment, small businesses in Hong Kong with fewer than 10 employees, are being put off by the high cost of running a provident fund scheme. While the proposed residual scheme will play a useful role, the Administration, of necessity, has to make the MPF Scheme attractive to small companies, of which some 250 000 are registered. For instance, incentives could be given by making employees' contributions tax deductible, and providing employees with the choice of schemes with different investment risk profiles.

Let me now turn to the monitoring problems of the MPF Scheme. Despite a $5 billion grant for the Scheme's setting up cost and recurrent expenditure, and another $300 million allocated for the Compensation Fund, the Scheme will have an inspection team of only 110 staff. This immediately casts doubts on the Authority's ability to effectively enforce compliance by employers and the self-employed. We only have to look at the Occupational Retirement Schemes Ordinance — now well into the end of its two-year grace period, only half of the estimated 14 000 schemes have come forward to register. As such, it is feared that the MPF Scheme's administration cost will increase, which will eventually have to be passed onto Scheme participants. This in turn would mean more cost for the employers and less benefits for the employees. It behoves the Administration to examine the role and strength of the Authority to ensure that a sound monitoring system is in place before launching the MPF Scheme.

Mr President, the accountancy functional constituency believes that there can be no perfect retirement protection scheme that adequately meets all the needs of different sectors of the community. We find the compulsory, decentralized, earnings-related MPF Scheme acceptable in view of the income protection it offers to the working population and the self-employed. Hence we support the Bill before us with a view to facilitating the early drafting of the subsidiary legislations. We consider that the proposed residual scheme for small companies necessary for the reasons stated above and would urge the

Government to guarantee that such a scheme will be set up. It is necessary for the Government to provide a benchmark and allow the private insurance companies to compete in a free market.

Before closing, I wish to express my concern over the MPF Scheme benefits. While the Secretary for Education and Manpower has forecasted that a worker earning $3,000 per month will, after 30 years of service, get 51% of his final salary for monthly pension, a renowned consultant (Watson Wyatt) predicted that under the Scheme about 40% of workers will receive only 30% of the median salary. We would need assurance from the Government that under the MPF Scheme, an acceptable level of benefits will be provided for employees. Further, overseas countries are now increasingly aware of the dangers of early withdrawal of lump sum benefits being squandered by the recipients. I would therefore suggest that the Government considers annuity as an alternative, or limiting lump sum payments to a percentage of benefits. This will enable recipients to have greater income security during their retirement.

Having said all that, we must not forget to keep the Scheme simple. It must be simple so that everyone understands its working. But more importantly, simplicity cuts down the amount of administration and the number of potential errors which have to be corrected. Administration costs will eat into that margin between the rate of investment return and wage inflation. It is quite a thin margin and costs due to excessive options given in the name of social equity may be counterproductive in the end.

Mr President, I wish to reiterate my call for an income safety net for the needy aged put forth in my previous addresses on retirement schemes delivered in this Council. In my view, the MPF Scheme must go hand in hand with comprehensive social security for the elderly. I hereby pledge my support for the Bill with the proviso that the Administration should provide a means-tested social security programme funded by the Government to meet the needs of Hong Kong's growing elderly population.

MR VINCENT CHENG: Mr President, first I would like to declare an interest as Chairman of two insurance companies and that my employer has a large fund management operation with about US$32 billion and I certainly hope that this figure would double after the passage of MPF.

I am also grateful that you give me a chance to speak before Mr Marvin CHEUNG because if I hear him speak again I may change my mind again. He is the real expert in this field and unfortunately yesterday, I heard in this Council some rather unfair attack on him personally, attacking him as one who does not really know anything. But I have seen him at work and I think this remark is not worthy of this Council.

Mr President, when I voice my support for the concept of MPF in the previous debates, I supported it on the basis that the new MPF arrangements will be similar to the present private sector arrangements which have worked so well. However, the MPF Scheme proposed by the Government is very different from the one I have preferred.

The MPF Scheme proposed is actually quite complicated, rigid and expensive. Under this Scheme, not only do members of MPF have to give up their right to use their accumulative savings during their career, they also have to wait until 65 or when bad-luck strikes. We also have to set up a huge bureaucracy to manage the programme. This goes against this society's long-cherished principle of freedom to choose and small government. It would also absorb massive public funds which could be put to better use. There is no evidence that the private sector schemes have any problem. Indeed, all private sector schemes at present provide much better benefits than the proposed MPF. Why can the Government not follow existing arrangements and do it the simple way? This I would regard as typical bureaucratic overkill.

Furthermore, the Bill itself is so full of holes that my respective friend, Mr Marvin CHEUNG, has pointed out. I fully agree with him. However, I will give the Government the benefit of doubt and accept that they will fill the holes after further consultation in the next Legislative Session.

I have come to the conclusion to support the Bill because the Government has committed that existing schemes will be able to operate and take on new members if they meet certain conditions. Many private sector schemes provide much better benefits than that required under the MPF, so why should we force these schemes into extinction by forbidding them to take on new members?

The other feature of the MPF which I have strong negative views is preservation. Under MPF, an employee could only get his benefits when he reaches the age of 65 or retire or under some very stringent conditions. This really goes against the spirit of a free society. All private schemes in Hong Kong allow employees to take their benefits when they leave. It is administratively simple and also allows the individual to use his savings in a way he feels most appropriate. I hope that the Government would introduce flexibility and allow people to use part of their savings to invest in ways they see appropriate such as buying shares or property at certain time during their career.

My other reason for supporting the Bill is that the Administration today is in such a weak political position that I cannot really blame myself to vote against it.

Furthermore, we have debated this subject long enough and there is no chance of any consensus. We have to put an end to it and make a decision to move on, and therefore I will support the Bill.

MR MARVIN CHEUNG: Mr President, I have on a number of previous occasions expressed my views on the various proposals, including MPF put forward by the Government, on retirement protection. I have not changed my view on these matters. Whilst I have no wish to dwell on the arguments for or against MPF again, it is evident that certain of the Members and in particular the Honourable Allen LEE have not heard what I said on previous occasions, so you will permit me to very quickly summarize the various reasons why I objected to an MPF proposal.

Firstly, the Government has failed to provide any convincing facts and figures to substantiate the nature and extent of the problem. An increase in the aging population does not automatically mean that those who are aged are in financial difficulties.

Secondly, without a clear definition of the problem, it is not possible to determine what is the cause of the problem and whether MPF or any other proposal is the appropriate remedy.

Thirdly, MPF is unnecessary for people who are employed and earn a reasonable level of income. As according to our Honourable Financial Secretary, the people of Hong Kong are the best savers in the world.

Fourthly, MPF is of little help to those who are already retired, near to retirement or have no income or low levels of income as the available benefits is directly linked to the level of earnings.

Fifthly, contrary to the Government's assertions that funds under management will in the long term produce returns in excess of inflation thereby, as the Secretary for Education and Manpower said today, ensure financial security for people in their old ages, the truth is that there is a high risk that inflation will erode the real value of savings as evidenced by the plain fact that no fund manager is prepared to guarantee returns linked to, let alone exceed, inflation. Nobody is prepared, to even guarantee that they will produce returns, say 2% below inflation. So any thoughts that by putting money with investment mangers will protect yourself against inflation may be misplaced.

Sixthly, MPF is unworkable unless very draconian provisions are included which will have significant adverse consequences on the Hong Kong economy. Accordingly, I urge fellow Members to reject MPF and vote against the reading of this Bill.

Quite apart from my objections to MPF as a means of providing for retirement protection, I believe that Members who support the concept of MPF should nevertheless reject this Bill on the grounds that it is incomplete in all material respects.

Let me hasten to add that my comments on the deficiencies of the Bill are in no way a criticism of the performance of the Deputy Secretary for Education and Manpower or her colleagues who have, in the extremely limited time available, done as good a job as is humanly possible in tackling this monumental task. The available time is simply not sufficient to consider all aspects of this complex legislation, to consult the relevant interested parties, to formulate detailed policies and to reflect the policy intent clearly in legislative form.

Contrary to what the Secretary for Education and Manpower has claimed that the Bill is not a hollow one, the major issues which have not been dealt with in the Bill but have been deferred to subsidiary legislation include the establishment and modus operandi of the MPF Authority, the arrangements for existing retirement schemes registered under the ORSO, the method of determining the contribution of self-employed persons, the arrangements for the portability or transferability of accrued benefits, the arrangements for the withdrawal of benefits, the establishment and *modus operandi* of a Compensation Fund, the arrangements to recover default contributions, the criteria for the approval of trustees, the conditions for the approval of retirement schemes as MPF schemes, and the establishment and modus operandi of a Residual Provident Fund Scheme.

Each and every one of these matters are critical for a fair evaluation of the desirability or otherwise of MPF. In the absence of any details concerning these matters, it is impossible for Members to properly assess the overall impact of the MPF proposal. The proper course of action should be deferred to discussion on the matter until all the relevant details are known. Unfortunately the motion to adjourn the debate has been defeated.

In addition, the Administration has glossed over some very important but difficult issues. I do not know if this is because the Government has failed to recognize them and has therefore failed to either address them properly or provide adequate arrangements to deal with them in the future. Alternatively, if these issues are addressed, it may be evident that the real problems on implementation of MPF will be unpalatable.

Examples of these include the ambit of the legislation. The Administration has failed to clearly articulate its legislative intent on the ambit of the legislation and to justify its policy intent in this regard. As Hong Kong is an international business and financial centre, many employers, employees and self-employed persons are not solely based in Hong Kong. The Bill fails to specify what are the relevant factors relating to an employment or self-employment in determining its applicability to the law.

Another example is the lack of definition for important terms. The Bill or the Committee stage amendments to be moved by the Government contain terms such as "persons entering Hong Kong for the purpose of being employed" and "permanently leaves Hong Kong" for which no definitions are provided. In the

absence of definitions, it is impossible to properly interpret a number of key provisions in the Bill.

Thirdly, the Residual Provident Fund Scheme. The Bill requires all employers to secure and approve a trustee to operate an MPF and assumes that there will not be one single case where an employer will be unable to do so. A government-run Residual Provident Fund Scheme has been rejected as there is a risk that it will become in effect a Central Provident Fund. Whilst the Government has now agreed to move a Committee stage amendment to provide for the establishment of a Residual Provident Fund Scheme, there is no assurance that a private sector operator will be prepared to act in this capacity, and no provision has been made for this eventuality.

Next, investment guidelines. The Government has not made it clear how and what it seeks to achieve by investment guidelines. MPF may result in very significant resources being channelled in the hands of a very limited number of trustees and fund managers. The full impact of this phenomenon on our securities and financial markets as well as the linked exchange rate system has yet to be fully assessed. It may result in a need for very draconian measures to control the operations of these persons. Such measures may include some form of exchange control which could have major repercussions on Hong Kong as an international financial and banking centre.

Many of these issues are complex with a number of possible alternative solutions, each of which will involve some elements of cost or negative side effects. Members are asked today to consider the merits of an MPF in the absence of all the relevant facts.

Some of the provisions in the Bill which are controversial has not been fully debated. The proposed arrangements may not represent the most acceptable alternative. An example of this was the ORSO scheme. The Bill originally provides specific arrangements to deal with existing ORSO schemes. As a result of discussions during the Bills Committee and representations from certain quarters, the Government now intends to move a Committee stage amendment to delete this provision, leaving detailed arrangements to subsidiary legislation. Surely, this matter must be thoroughly debated and the final solution agreed before we adopt the MPF proposal.

Another example is the Compensation Fund. The arguments for the establishment of such a fund has to be considered in the light of the effectiveness of the vetting process and the continuing monitoring of trustees, both of which cannot be assessed in the absence of the relevant details. Some of the arrangements in the Bill are fundamentally flawed and these will render the MPF unenforceable. Examples of these are overseas retirement schemes. In the original Bill, there is an Item 8 in Part I of Schedule 1 which provides for persons from a place outside Hong Kong who are members of any retirement scheme overseas to be exempt. In the absence of an appropriate definition for the term persons from places outside Hong Kong, there does not appear to be

anything to prevent a large percentage of the working population who are born outside Hong Kong to claim exemption under this provision by simply joining an overseas retirement scheme which only provides nominal benefits. This will surely destroy the whole basis of MPF.

Although the Government now acknowledges this problem and will move a Committee stage amendment to delete this item, no solution has been found. The matter is simply being deferred to subsidiary legislation.

Another example is early withdrawal. The Bill envisages that persons who have not reached retirement age may obtain early withdrawal of accrued benefits under MPF on permanent departure from Hong Kong. Despite raising this with the Government on numerous occasions, the Administration has refused to acknowledge this will potentially allow every single employee on terminating an employment to withdraw the accrued benefits. This is because no proof of permanent departure from Hong Kong could be expected from Chinese nationals alleging to be leaving Hong Kong to take up residence in China. Other nationals will likewise not be expected to produce any substantive proof of their alleged intention of returning to their country of origin or citizenship. With this blatant loophole, what purpose will be achieved by the implementation of this law.

Next, vetting of trustees. The Administration has asserted that the Authority will be able to ensure that only persons who satisfy very high standards will be approved as trustees of MPF, based on the experience of other regulators in Hong Kong such as the Monetary Authority or the Securities and Futures Commission. I do not share the same optimism that the proposed process of vetting will be effective in ensuring only fit and proper persons are approved without making the vetting criteria totally unreasonable.

Due to the complexity of the subject and the limited time available, it is impracticable to attempt to identify all the imperfections in the Bill and to make substantive changes thereto. I have attempted to draw to the attention of the Government and my colleagues in the Bills Committee to solve the more obvious gaps and errors in the Bill. Whilst the Administration has attempted to respond to my queries, many of the matters raised have not been properly dealt with.

The Administration are moving a number of Committee stage amendments. I have not asked for these even in respect of areas where it is clear to me that the Bill is unworkable or is otherwise flawed. It would have been impossible to deal with these properly within the time available.

For the reasons set out above, I urge Members to reject the Bill. In the event that the majority of Members support the Bill even with all its imperfections, I would urge that you should support the three amendments which have been proposed by me and endorsed by the Bills Committee and will in due course be moved by the Honourable Henry TANG.

The amendments are necessary to ensure that the Legislative Council retains its proper power to scrutinize and, if necessary, amend or reject proposed legislation put forward by the Administration in relation to these incomplete proposals. I am grateful for the kind words expressed by Members of this Council in this debate and in the earlier debate on the adjournment about my contribution towards this piece of legislation. I hope that I have been able to offer some of my thoughts on the subject. I do respect your individual choices and your views on this matter. We would hope that collectively we can produce the right answer for the people of Hong Kong in the long term. With these remarks, I do not support the motion.

MR ERIC LI (in Cantonese): Mr President, the "warm up" debate to this Bill has been held yesterday and today, but in fact debates on this subject has been held in this Council for a number of times. Since 1991, when debates on the subject began, I have a special liking for an Mandatory Provident Fund (MPF) which has a complementary fund as its backing. That is why at the Second Reading when the principles of the Bill are debated, it is a matter of course that I should support the passage of the Bill. In yesterday's debate on the Court of Final Appeal, many Members advised us that we had to stand by our principle, irrespective what the result would be. The Honourable Marvin CHEUNG did not give the details, but was already very clear with his stand. He would be against any retirement scheme. In fact, in the Legislative Council, there are Councillors whose stands are very clear and who would stand by their principles, and there are also Councillors like Mr Marvin CHEUNG who, with his professional knowledge, can see clearly all the details. At a time when the Legislative Council is required to give a clear stand, he is one of those rare species. I think we will miss him in the next Legislative Council.

Now the Administration has set down the menu, but we cannot do anything without any resources. The Administration is asking for a miracle when it requires officials of the Education and Manpower Branch and the Financial Branch to prepare such complex legislation and policy within two or three months. I completely agree with Mr Marvin CHEUNG in that the present Bill is riddled with blunders. I am also in agreement with the Honourable Tam Yiu-chung that we should not put the blame on the officials concerned. In fact, their being able to produce such a result shows that they have been working very hard, and after that they also have a lot of lobbying work to do. Their diligence and loyalty really move me. If a blame is to be laid, then it should be said, as the Honourable Miss Emily LAU commented during the debate on the Court of Final Appeal, that the Administration carried out political reform in 1991, but now it shows no trust of the 1995 Legislative Council. Once again it gives us a bill that has only the skeleton but not the flesh, asking us to make an important decision that has not been well thought through.

If I am to make a rational decision, Mr Marvin CHEUNG's arguments are clear, sound and convincing, showing the sort of responsible attitude a Councillor should have. Reflecting on the efforts this Council made in the past

four years in respect of retirement protection, we find that all those efforts were fruitless. If we were to re-consider those abandoned plans and re-implement them in all their details, it would be easier said than done. Actually, this MPF is a plan that requires the least legislative amendment. If we were to re-consider other plans, any form of social protection would remain always on the horizon, with the costs to the society even higher and the community at large suffering the most. However, unlike some Councillors, I would not say that if there is no retirement scheme, either the labour side or the employers would be at an advantage. I feel that, from the long-term perspective of Hong Kong, any scheme would only be a good scheme if it is beneficial to both the employers and the employees. I think that the MPF is a scheme beneficial to both the employers and the employees as well as the whole society. I therefore hope that the citizens would understand that the Administration and this Council are not here mumbling empty words with no concrete actions. We are determined to work for the citizens; the Executive Council and the Legislative Council would not be passing bucks, with nothing being achieved at the end.

I hope not only that this Bill can be passed, but also that all the Councillors can urge the Administration to continue with the other subsidiary legislations in the same urgency as we have seen in the past few months so that we do not have to wait for another two years to have a complete, "with flesh and bone", retirement protection scheme. As this Bill itself still lacks specific content, even if the basic framework is passed, it will not be able to escape from the "five-finger mountain" of Mr Marvin CHEUNG. His "five-finger mountain" of course is his three amendments which will bind up the Administration tightly, leaving the next Legislative Council with the controlling power to continue supplementing the content to its full satisfaction. I do not want to spend time leveling criticisms on the details, like the Honourable Peter WONG, Mr Marvin CHEUNG and the Honourable Vincent CHENG did, which I think the Legislative Council still has the opportunity to do in the future.

I understand that Mr Marvin CHEUNG's amendment has great constitutional significance, but I think that such a basic and simple framework should not be supported without any condition attached. I feel that it is a situation of "contingency action for a contingency". If we are to have a plan that has legislative protection and gives protection to the Legislative Council as well, I feel that we can only support Mr Marvin CHEUNG's amendment before we can support the Bill. However, with this sort of amendment that takes away executive-led power, I will not always support or give any support in principle. I will not treat it as setting a precedent, that is it is "an exception rather than the rule", and then consider it selectively.

Besides explaining my stand in casting my vote, I hope that the officials concerned will not be discouraged even with all these criticisms and hindrance. I also hope that the officials would understand that though we have been debating from morn till night for a whole day, I have heard that for this particular Bill they have had many a sleepless nights. With such a high morale, I think the Administration, as an employer itself, should first take care of the

retirement protection of the civil servants. It is not the first time I say these words. In the previous debates, I have already said twice. If the public purse is to be used to protect other private retirement protection scheme, the Administration, as an employer, should give priority to the protection of civil servants' retirement. Now this Bill is submitted to the Legislative Council, and is about to be passed. In support its passage, I hope once again that the Administration, in particular the Financial Secretary, can propose to the Chinese side that on 1 July 1997, from the almost $100 billion of reserve accumulated from land sales, $8 billion can be put aside as a second injection into the civil servants' retirement protection reserve. I believe that this reserve of $15 billion can only maintain civil servants' retirement payment for more than one year but not more than two. In the debate on the Court of Final Appeal, I also mentioned that there were already legislative and judicial arrangements ready for transition, I hope that this Council can work with everyone in Hong Kong to maintain the confidence and morale of the civil servants during the transition period. If this message can be conveyed to the civil servants at this time, I believe that it will bring about some positive responses.

MR ROGER LUK (in Cantonese): Mr President, during the debate on the Governor's Policy Speech last October, I pointed out that there must be consensus on the political, policy and procedural fronts before any legislation can be successful. At that time I cited the controversies surrounding the general retirement protection scheme as an example.

Retirement protection for the elderly can be looked at on three plains: individual, family and social. In every country, because of different political and socio-economic factors, the relative importance of each of the three will also be different. With the Chinese race, because it has been under the influence of Confucian thinking and familial ethics has been the pillar of the Chinese society, and what is more its national economy is based on agriculture, so any retirement protection for the elderly is mainly family-based. That is why "piety comes first among the five human relationships, and to show our gratitude we should repay the hardwork of our parents and be kind to our uncles and aunties so as to come to a recognition of Bodhi together"; and "the elderly can live to a natural end, the able-bodied can apply their skills, the young can grow happily, and the widower, the widow, the orphan, the childless, the disabled and the sick can all be taken care of" is the highest ideal of a harmonious society in the Chinese culture.

Hong Kong, a place where the East meets the West, inherits the Chinese culture. With the population aging and more nucleated families emerging, there is a positive need to promote individual retirement protection to supplement the traditional role of the family. The occupational retirement protection system put forth by the Administration in 1992 was a response in the form of a policy to this political consensus. At that time the Legislative Council asked the Administratioin to provide limited underwriting so that if any of the protection scheme collapsed, the interests of the beneficiaries would still be ensured. As

the Administration refused to provide any sort of underwriting, the political parties did not give their support to the plan and turned their attention to the Central Provident Fund. To relieve the political pressure, the Administration put forth the controversial Old Age Pension Scheme. Because the society could not come to a consensus on this Scheme, the Administration naturally had to withdraw the plan and return to the 1992 proposal of mandatory occupational retirement protection system. Nevertheless, the Mandatory Provident Fund (MPF) as promoted now is different from the 1992 proposal both in its coverage and the manner of operation. The question now is whether a consensus can be reached amongst the various sectors of the society in respect of the MPF. Because the Administration first passes the primary legislation before carrying out studies for the subsidiary legislations, this unnecessarily causes much procedural disputes.

What makes the consultancy report of MPF and the Bill so controversial naturally is that the existing voluntary retirement protection is to be replaced by the proposed MPF. The thinking behind the whole plan actually was to so operate a privately managed provident fund that it could have the effects of an MPF. This is the so-called privatized central provident fund, because if a provident fund system without a standardized fixed contribution is used. especially with the transfer and retention of benefits, it would be impossible to implement. Actually, defined interests system and defined contribution plan are premised on two different bases; it would not only be impracticable, but also technically impossible to implement, if interchange between the two is allowed. The problem is this would, in a guise, stripping the citizens the right to a defined interest retirement system, but on the other hand, the retirement scheme of the civil servants is adopting the latter. So is it fair if "the magistrates are free to burn down houses, while the common people are forbidden even to light lamps"? After the scheme is proposed, those political parties which have been in support of a central provident fund all oppose the Administration's scheme, while those which have been against become keen supporters. What a great political irony!

If the MPF is conceptually only an extension of the current voluntary system, and a lowest condition is set, I cannot think of a reason to prohibit schemes which can meet the least requirement to continue and not to allow new beneficiaries to join unconditionally. Moreover, the design, contribution and benefits of most current schemes are above the least requirements of the Bill. Any MPF therefore must have the preservation and continuation of the current occupational retirement protection scheme as its major premise. We must not forget that the number of beneficiaries under the current schemes represents 30% of the workforce. If an MPF is to be implemented, its objective should be to incorporate them rather than to replace or eliminate them.

With the current occupational retirement protection schemes, if set up by the employers, most of them will have the employers and employees as joint trustee, who will also act as the fund manager. The greatest drawback of such an arrangement is that non-professionals are allowed to handle investment

management, and that there is no countercheck measures between the trustee and the fund manager to protect the beneficiaries. If a mandatory retirement protection system is to be implemented, the trustee must be a recognized body corporate and the trustee and the fund manager must be two separate entities so that effective control can be ensured.

The Mandatory Provident Fund Scheme Authority shoulders great responsibilities. However, whatever control will be either too lax or too tight. Too lax will make the system open to abuse and too tight will make it too harsh. The critical point is to find a way to balance the protection for the beneficiaries and the investment flexibility to achieve the best return. There is a tendency for any supervisory authority to self-expand, so finding a way to prevent the Authority becoming an overstaffed bureaucracy is also an important topic. In the past 10 years, the supervisory authorities for banks and securities and futures have expanded to such a degree that many people in the trades are worried that if Hong Kong will follow the footsteps of other countries in having too much supervision.

Mr President, for many years we have been making turns on the road to having a retirement protection policy, but in the end we are still back to square one. I believe that extending the current voluntary schemes to mandatory ones will be a compromise that will best take care of the basic requirements of all parties. If attempt is made to privatize the Central Provident Fund in the hope of attending to the demands of every party, that will only render the scheme to be too cumbersome to be effective. Mr President, during the debates on the Bill, the Administration has been very receptive to the views of the Councillors. I hope that the Administration can make it clear what direction the policy will take and record it on file so that we can have a basis for making the related regulations.

The federal government of the United States of America practises division of the three powers: judicial, legislative and executive. Two of the founders of the United States had much discussion over what system the congress should adopt. Washington advocated adopting the bicameral model, while Jefferson preferred a monocameral one. When they had come to a stalemate, Washington asked Jefferson why tea cups instead of teapot were used when we had tea. Jefferson answered that so doing would cool down the tea for ease of drinking. Washington then pointed out that that was the good point of having a bicameral model. To legislate was to set limits on one's action and freedom, and it was not any matter that we could dismiss offhandedly. Careful consideration must be given to it before adopting any action. For more than 200 years since then, the Congress of the United States has been a bicameral one.

Mr President, it is not really desirable to have the Bill legislated in stages, and such a practice should never repeat again. Moreover, the Administration has been trying to please everybody in its policy, and when it comes to the problem of the coexistence with current schemes, it is too wishy-washy, what is more it is too concerned with the transferability and retention of interests and

overlooks the technical difficulty in practice, thus only to find itself ending up with a thankless task and making the examination of the Bill even more complicated. Actually, if it were not for individual Councillors who are experienced in the operation of retirement protection scheme and gave very strong arguments at the Bills Committee, our voting the primary Bill probably would only be a futile exercise. I hope that the Administration will learn from the lesson. Finally, I would like to restate that any protection for the retiring elderly must have the individual, family and society all working together, it would not help with only one working. Hong Kong should try to implement this from the individual level.

MR MICHAEL HO (in Cantonese): Mr President, the Democratic Party objects to the Second Reading of the Bill. We do not support such an Mandatory Provident Fund (MPF) Scheme mainly for the following reasons:

Firstly, we find that the Scheme, being not for general coverage, only covers those who are employed, without any coverage for the elderly, housewives, disabled or those suffering from chronic illness.

Secondly, the Scheme cannot provide adequate protection to those in the low-income group. What these people can get after contributing for 30 or 40 years is very minimal. This Scheme actually cannot give them adequate protection for their life after retirement.

Thirdly, the administrative cost for the Scheme could be very high, which might hit those in the low-income group badly. Small already is their contribution that if it has further been eaten into by the administrative cost, they would have no idea how much they can get back on retirement.

Fourthly, the protection against investment risk and legislative monitor are fundamentally flawed. Some have said that it is difficult to give any guarantee against investment risks, which is correct, but we must not forget that the present mandatory scheme is to make every one contribute. While there is no protection against investment risks, the Administration only promises to set up a Compensation Fund for losses due to fraud or misconduct. As to how compensation is to be made, it is still a problem which the Honourable Marvin CHEUNG has also referred to just now. In countries like Australia and Chile where MPF is also implemented, there is also systems in place to protect against investment risks. Of course, this involves a lot of technical difficulties and up to now it is still a blank sheet. The Administration has not promised to carry this out.

The Democratic Party thinks that the best retirement scheme for Hong Kong should be the Central Provident Fund. To protect the elderly population in Hong Kong, we also need a comprehensive social security scheme which we hope can co-exist with the old age pension scheme. Mr President, I know that it is not an easy matter, or totally impossible, to convince our colleagues in today's

debate to vote against the Second Reading of the Bill, but we hope that they try to look into the matter again. Just in the short span of a few months, the Administration made up this Bill and submitted it to the Legislative Council in June. It was severely attacked in the Bills Committee by Members of this Council who understood the financial and accounting operations. They had raised many points and pointed out many flawed areas, saying that the whole Bill was still full of traps today. Risk is already very high with a private MPF Scheme, now with so much inadequacies in this Bill, the risks involved would be even higher. During the month when this Bill was considered, our colleagues in the Bills Committee had found a lot of problems and flaws. After rushing through the whole Bill in a short time, the Bills Committee made scores of amendments. I remembered the media had asked us why we had to make so many amendments. I would like to tell you that they were not too many, it is only because we did not have enough time for closer scrutiny, or else I am sure that we could find out more problems. Given only one month to consider the Bill, the Bills Committee actually could not effectively scrutinize the Bill for the flaws. I am sure that only a very rough piece of work was done during that one month given for considering the Bill. Of course, I agree too that our colleagues and the officials concerned were all very committed to their work and hardworking during the month of meetings, but having only one month to study a bill of such complexity was definitely insufficient and unsafe. If we were to pass this Bill today, I can tell you that we are not sure how many flaws there are still waiting to be found. Members of this Council have to be responsible to the citizens. If we pass a Bill without giving it careful consideration, just as the Secretary for Education and Manpower has just said, we have to be responsible. It is exactly because we have to be responsible, therefore I do not think we should perfunctorily pass a Bill of such complexity without giving it careful scrutiny. I remember that we took a year to examine the Occupational Retirement Schemes Bill. The present Bill definitely would not be anything simpler than the Occupational Retirement Schemes Bill.

The problems associated with this Bill are mainly in a number of areas. On the one hand the Administration has not made clear arrangement in a number of parts in the Bill, for example, the bridging of the MPF Scheme with the existing provident schemes. When we finally could not come to an agreement, it was agreed that it be left hollow. Matters which we could not agreed were left untouched until being dealt with in the subsidiary legislation. Other problems relating to the portability of savings, transfering mechanism, trustees and fund managers or the operation of the Compensation Fund have all not been clearly dealt with. On the other hand, government officials know very little of these schemes and the operation of the relevant provisions. Ms WILLIS and her colleagues have my sympathy in respect of this Bill because actually no civil servant has any experience in running a private MPF, and within such a short time, we have raised so many questions that they just could not cope with.

Let us look at the problem of monitoring. Now we force people to put aside something for the future, but what if after scores of years something happened that made them lose everything? Look at the monitoring of the banks now. Hong Kong now has a very stringent system to monitor the operations of the banks. But when we have made so much contribution, which, according to the Honourable Vincent CHENG, may amount to US$32 billion, and we do not have a good system to monitor the Scheme, what would happen? I really hope that we make it clear to ourselves if our consideration given to this Bill so far is enough and safe. If we think that it is not enough, so is it a responsible act on our part to pass this Bill today? The Democratic Party thinks that this Bill is still riddled with flaws and we are not going to let it pass and we shall vote against it during the Second Reading. However, if at the Second Reading it was passed, we would, at the Committee Stage, support the amendments proposed by the Honourable Henry TANG and the Honourable LEE Cheuk-yan and some of the amendments proposed by the Administration. If a Bill riddled with so many flaws was still passed, we hope that such flaws could be reduced as far as possible. We would also vote against the amendment proposed by the Honourable James TIEN of the Liberal Party.

Mr President, I would like to respond to a few points raised by the Secretary for Education and Manpower. Firstly, the Secretary for Education and Manpower asked that why we had to propose an adjourment. I have made it very clear just now that if the Bill is not yet fully considered, it should then be adjourned. This is a responsible Legislative Council, we are here to legislate, so this is what we should do. The Secretary for Education and Manpower mentioned that many of the technical problems could be left for future discussion and amendment. Of course these can all be done until a later day, but with this Bill, there are too many technical problems and too many flaws in it. We are not expecting that every piece of legislation is hundred percent perfect, and that there is no flaw which require our amending it later. That is not what we ask for. But we clearly know that there are still so many problems with this Bill and there are many questions which we cannot answer ourselves, then there is no reason we should pass it today. This is our responsible attitude.

Finally, on behalf of the Democratic Party, I would like to express our thanks to Mr Marvin CHEUNG for all the contribution he made at the Bills Committee.

Mr President, these are my remarks, and the Democratic Party will vote against this Bill.

MRS ELSIE TU: Mr President, It has always been my belief that Hong Kong needs a provident fund, as the elderly population increases while the younger workers decrease as a result of better family planning.

Not being an economist, I might have preferred a Central Provident Fund (CPF), as being more trustworthy with the workers' funds. But if the economic difficulties with the CPF are insurmountable, the second best is a private mandatory provident fund. I was a member of the Bills Committee and consider that the proposals in this Bill before us today have not been well worked out. First, they offer no detailed solutions to the many issues involved, which I shall not repeat as they are certainly being repeated during this debate. These difficulties should have been ironed out before the Bill was put before us. There was plenty of time for the Government to do so as we have talked about the subject for years. Secondly, there is the problem that the Bill will not come into operation until 1997. No one needs to be reminded of the transition of sovereignty in that year, yet there has been no consultation with China. There is little point in spending time, effort and money setting up a scheme that could be scuppered in July 1997. Consultation should take place at once.

I am prepared to vote in favour of this Scheme today on the condition that no steps will be taken without thorough scrutiny of the subsidiary legislation by this Council, and with the agreement of China on a matter that could have an economic impact on the territory after 1997.

There are some who will try to delay this Scheme once again for political gain. It is an unfortunate fact that nowadays everything that comes before this Council is turned into a political power struggle. That is far from my idea of democracy, which should be people-based, not party-based. Political struggle does nothing for the good of our community, and seems to be aimed at destabilizing it. The public should not be misled by the political party that will promise a better scheme for next Session, in the hope of gaining more seats on this Council. It is easy to make promises when one does not have to take the responsibility of carrying out those empty promises.

One point that is not in the Bill but which has been my theme-song for years and can be implemented this year is for the elderly who have already retired to share in our prosperity, as they were the ones who worked hardest to lay its foundation. I ask again that first priority should be given to doubling the CSSA payments made to the able-bodied but needy retired, with additional benefits for those among the elderly who are not so able-bodied. It is shameful when an old person has to tell us, one person did tell me this, that he enjoys a bowl of soup at a cheap teashop, but he can no longer afford to buy one. Or when an elderly person tell us that she is waiting for an operation but cannot afford the medicine she needs to relieve her suffering while waiting for her appointment with the government doctors so as to get free treatment. Yes, such things are happening, and nothing I can say will change that as long as the Government dilly-dallies on the needs of the elderly while rushing to spend money on spectacular and prestigious projects. It is inexcusable and I ask the Government once again to remove this shame from our consciences.

Mr President, in view of these amendments proposed by the Bills Committee and accepted by the Government, I support the Bill as primary legislation and urge the Government to push ahead speedily with subsidiary legislation, taking into account all the problems that are mentioned by Members today. Thank you.

MR WONG WAI-YIN (in Cantonese): Mr President, I think we do not have a quorum.

The Chairman directed the Clerk to summon Members to the Chamber.

MR FREDERICK FUNG (in Cantonese): Mr President, there are people who still wear worn out shirts that have been patched up. Some people would say that it is a thrifty and useful habit that will help us put aside something for our later life. Some would even say it is all out of one's "nostalgia", which, of course, would have the appreciation of many people. However, with all the patch-up work the Administration made to the Mandatory Provident Fund (MPF), I personally and many old folks and citizens are far from happy about the Bill. No matter how hardworking those involved in the formulation of this Bill have been, it does not mean that they are doing the right thing. Now matter how many sleepless nights they have gone through, they would still have to bear the blame of those affected if the direction taken was off the mark, leaving them with no assistance whatsoever. In fact from the very beginning, the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I are opposed to the privately managed mandatory provident fund scheme, and have made representations on a number of occasions. Notwithstanding that the Administration has made amendment to a scheme with so many holes in it, ADPL and I think that it is still unacceptable.

I feel that I need to restate my stand here again. The Administration and the society has the responsibility to set up a general social security system so that the basic livelihood of every citizen in his old age can be ensured. A general social security system of course must include a central mandatory provident fund and an old age pension system. The spirit of the social security system is in its general application, with the Administration being the ultimate underwriter. However, the privately managed MPF as proposed by the Administration cannot even live up to this basic spirit.

On this point, I have to put the blame on the Administration. It has proposed and implemented an old age pension scheme, with eagerness far exceeds that for other proposals. There were even TV ads giving strong impressions to the citizens and the elderly that these were not ads but actual policies. According to what was depicted in the ad, almost every aged one would be able to apply for money the next day. This has left a very deep impression on the elderly and the retired. Though the elderly had all sorts of

opinions and reactions at that time, they were not against the system of old age pension but opinions given in the hope of making it even better. However, for no obvious reason, the Administration made an about face turn in its action, and used this MPF to replace the Old Age Pension Scheme (OPS). How can the citizens and the elderly accept such a sudden change in such a short time? We also cannot see what assistance such a change can give us.

The OPS is to benefit the elderly, what is more, it is to let them benefit immediately, no matter if he or she is a salaried worker or housewife. On the other hand, the MPF only makes people save up for their old age when they are young. They can only have the money back 30 or 40 years later. The two systems are therefore two different unrelated matters. What unrelated means is that how can those with no job for 40 years or having not worked for 40 years, for example, one who is 40 or above, benefit from this scheme? This privately managed MPF is therefore an elderly savings plan, the effects of which can only be seen 40 years later; it is not a general social security system. The Honourable Michael HO has just raised points which I also agree to but I do not want to repeat, especially on the large resources to be used, hefty costs in implementing the system and the lack of protection against risks. It is very worrying when a salaried worker puts his hard-earned money into this privately managed MPF every month but has no protection whatsoever against risks. They may only get back very little on their retirement. With the Administration promoting the system with such aggression, and this Bill being a skeleton without any flesh on it, we are told to support the passage of this Bill even without the details. I would say solemnly that if even we ourselves have no idea what the future would be, then those who support the passage of the Bill are betraying the salaried workers and pushing them into a deep abyss. I feel that if the Councillors are voting with their conscience, they should not support this Bill.

Much patching-up opinions as well as patching-up amendments have been made on this Bill. As to these amendments, though some people have said that the system will be made better with the amendments, thinking that a little more is added to the framework, it is still something without any flesh in it. I do not find all these patching-up work meaningful. With or without the cosmetic surgery, I see no difference. Working within the confines of a legislature, I find that my such stand has created a dilemma. If I support these patching-up opinions or amendments, I would actually be falling into the trap of supporting a system which I oppose. If I oppose, my opposition would make no difference to all those opinions. If I abstain, I will be like not having declared my stand. I therefore can only press the button that shows my presence, but I will not vote. My abstention from voting is to show my protest. The only amendment proposal to which I can give my support is that of the Honourable LEE Cheuk-yan.

The Employment Ordinance permits the employers to set off the contribution for retirement schemes against the severance payment or long service payment. This ordinance is unfair to the employees as the provision for

a severance payment and a long service payment is to ensure that the employees will be given reasonable compensation on being dismissed, and such a provision is not for retirement purpose. Being so different in nature that the two should be handled separately. Though the Administration expresses that the setting-off arrangement has been in operation for a long time, or that it is not appropriate for the Labour Advisory Board (LAB) to conduct research or make any amendment prematurely in respect of it, having been in operation for a long time does not mean that it is a proper one, nor is it a reasonable one, nor giving any labour protection. I feel that amendment can be made to it. The LAB is only a consultative, not a decision-making, body, and the Legislative Council has the power to decide on legislation. This has been mentioned a number of times by the Administration when the British and Chinese sides at odds with each other. That is why the Legislative Council comprises both employers and employees. The Legislative Council, before making any decision, can conduct consultation and discussion with the employers, and in the process, consider the opinions of the LAB. All these can be done. I therefore support the amendment motion of Mr LEE Cheuk-yan, which is to preserve the entitlement of the employees to severance payment and long service payment.

The ADPL and I think that the MPF Scheme is like a lemon which is, sour in taste and small in size. It is outright unpalatable. No matter what changes this lemon will undergo, it will not become a sweet orange. No matter how this lemon is to change, there is no way for it to make the elderly happy. No matter how this lemon is to change, it will not be sweet to those "salaried workers" above 40.

With these remarks, I support the amendment motion of Mr LEE Cheuk-yan, and, to show my protest, will not vote in respect of such patchy amendments.

MR ANDREW WONG (in Cantonese): Mr President, during the debate on the adjournment motion, I had briefly said something, which I think should be further elaborated to give full expression to what I feel.

As I just said, I would take whatever action as long as it can beat down the privately managed Mandatory Provident Fund (MPF). I think that Administration had made a wrong decision, a wrong judgement back in 1994, whereby the Old Age Pension Scheme (OPS) was abolished, thus backtracking to the pension scheme which we now have and is not much different from the scheme introduced in 1992. The situation at the moment is that the Administration seems to think that it will surely win because of the support from more than half of the Councillors, so its language becomes more threatening, hoping that it can win by a greater margin with more Councillors supporting. It even resorts to such intimidating tactics that if the MPF Scheme Bill was to be voted down, the Councillors would have to be blamed. What Mr Michael LEUNG said just now was such intimidating words; if there was no passage, there would be nothing. I hope that he can re-read the debates of 1994

and 1995. The date which I said slipped my memory is 8 March, and the Honourable TAM Yiu-chung pointed that out just now. During the debate on 8 March, I had pointed out again and again that Mr Chris PATTEN, the Governor, and Mr Michael LEUNG had said that only one Councillor was in support of the OPS, but it was wrong and they did not respond. Just by checking the debates on the 1994 Policy Address and the relevant debates, we can see that most of the Councillors tended to support the OPS, and as long as the Administration was determined to have it, it would succeed. That was my judgment at that time, regrettably the judgment of the Administration was different from mine.

I therefore must make a comparison between the OPS and the provident fund as to which is the better. At that time, that is on 8 March 1995, I had already made myself very clear, and I remember that I had given an analogy of sour lemon or something like that, that is fishball vermicelli or wonton noodle, I said it was fish and bear paw. However, where exactly is the problem? There are still so many holes in this Bill. Mr TAM Yiu-chung said that it is an empty shell, but I would say that it is an empty pot. If one was given an empty pot, one would have to wait for 30 years to have anything to eat. If we were to vote it down, we would be blamed for caring for the young people, that is those aged 30 or 35 now, instead of the elderly. What those aged 30 or 35 then get may not be as good as the arrangement of the OPS. People now aged 20, if working till 65, may get something comparable to that of the OPS.

At that time, I said that there were two speeches, and two debates too, one on the motion of the Administration and the other on the motion of Dr the Honourable YEUNG Sum. I said that I could not support a privately managed MPF which did not give general coverage and bring immediate effect, and with little benefit, high risk, no protection, high charges and great instability. If we are to pass it today, I would not want to have anything more to say about it, you only have to refer to the Hansard of this Council, that is the Hansard of the sitting on 8 March, from page 137 to 138. If this MPF is to be implemented, and if we all agree to its implementation, I still think that we must consider its implementation with the OPS. At that time, I said that with fish and bear paw, it was not necessarily that we could not have them both together, we could have. If I were to make a choice as to which one should go first, I would choose to have the OPS first instead of the MPF. If the two were to be implemented, I would choose to have it first. If we were only to have one, I would prefer the OPS to the MPF.

At that time, Dr the Honourable LAM Kui-chun in proposing some amendments to Dr YEUNG Sum's motion, made an analogy, saying that the OPS was like a bowl of wonton noodle, which in its gradual development would be left with only noodle but no wonton, then further down the road, only soup but no noodle, finally only an empty bowl. I then said, if it was so, the OPS was like fishball vermicelli which we could eat immediately, and if I was also given wonton noodle, I would eat it too, even though I might have nothing to eat in the future. However, a privately managed MPF only gave us an empty bowl,

not an empty shell, which would only be filled with wonton, noodle and soup 30 years from now, so what is the point of having it?

I therefore can frankly say that I would try whatever means to beat down this Bill, so that the Administration can be forced to implement the OPS, that is, anyone reaching 65, be they rich or poor, can be benefited. The Liberal Party is capitalist, saying that this scheme is socialist, but it is not. Frankly speaking, it is a collective insurance for protecting the livelihood of the elderly, and what each old person can get is roughly equivalent to 30% of the median income then, it does not provide comprehensive protection. This does not mean that they cannot join any voluntary retirement protection scheme, rather we should encourage more employers to organize such schemes. I would not oppose completely to the implementation of a MPF later. The situation is all very simple. If the Administration is not to listen, and the other Members are not to listen, an empty-shell scheme, that will take a long time to bear any fruit, will be passed. We should therefore enact schemes that will enable people to have protection immediately, and have them implemented right away.

I have said that the idea of making contribution as put forth by the Administration in respect of the OPS is wrong and misleading. It in fact is a kind of tax. I am very happy to give 1.5% of my salary for caring the elderly only if the Administration honestly says that it is a tax. With the knowledge I have of the political system of Hong Kong, I know that the Councillors cannot propose any motion or bill that will have an implication on public finance, but the Councillors are entitled to propose introduction of new tax. It is not possible in the United Kingdom, but possible in Hong Kong. With the return of the next Legislative Council, I therefore would propose a new tax. Every one will have to pay a 1.5% tax, which will be taken from the total salary of an employee who is on the payroll of an employer. As to its use, I would say that it is for the use now under discussion but it cannot be expressedly put down for use as such, and I think every one knows that it is for this scheme. I am seriously making a promise that I will carry out this work.

Mr President, with these remarks, I am against moving the Second Reading.

MR SZETO WAH (in Cantonese): Mr President, in the debate in respect of the motion to adjourn debate on the Mandatory Provident Fund Scheme Bill yesterday, I had said a few words, yes, only a few words, not more than half a minute. Now I would like to repeat what I said. I said that earlier the Honourable James TIEN had praised the Honourable PANG Chun-hoi highly as the true labour representative .....

PRESIDENT: Mr SZETO Wah, please keep your remarks to the merits and principles of the Bill. That is what this debate is supposed to be about; not about irrelevancies, not about party politics.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, the debate today marks the culmination of discussions that have gone on for more than a generation about how best to provide financial security for members of our workforce when they retire.

I am grateful to Member who voted against an earlier motion to adjourn discussions of this most important issue until the next Session.

The community needs to know now where it stands on the subject of retirement protection. Members deserve the opportunity to vote for the MPF Bill on its merits.

Retirement protection is an issue which both the Government and the community have taken seriously. In 1992 we proposed a community-wide retirement protection system. In 1994 we proposed an Old Age Pension Scheme. Neither met with full community support. From submissions on the Old Age Pension Scheme though, it became clear to us that what the community wanted was the early introduction of a mandatory privately-managed provident fund system. Such support was underlined by many rounds of consultation within the community earlier this year, and on 8 March this year, Members indicated their clear support for the concept of what we now call the MPF Scheme by passing the motion.

After seeking independent advice as to the feasibility of our approach, we announced in May this year the main points that would be covered in the MPF legislation. The MPF Bill was introduced into this Council on 14 June. I am most grateful to the Honourable Henry TANG, Chairman of the Bills Committee, to study the MPF Bill and other Members of the Bills Committee for the time and effort they have put into scrutinizing this Bill.

Over the past few weeks, we have worked hard to reach general agreement on the provisions of the Bill. We have considered very carefully the views of Members of the Bills Committee as well as helpful suggestions and submissions received from various employers and employees groups, professional organizations and deputations received by the Bills Committee. Where possible, we have tried to accommodate many of the suggestions that have been put forward. The Committee stage amendments which I shall move later on reflect the outcome of that consideration.

I should now like to turn to the key changes we propose to make to the Bill during the Committee stage as well as to comment on those areas where we believe the Bill should remain unchanged.

It is our stated aim for the Bill to cover as many persons in the workforce as possible. At the same time, we do not want to upset participants in existing schemes, whether these are statutory in nature or schemes registered under the Occupational Retirement Scheme Ordinance (ORSO). Under Schedule 1 of the Bill therefore, any employers and employees who are contributing to an

Occupational Retirement Scheme a sum not less than the statutory minimum MPF contribution, of which the employer's contribution must not be less than half the statutory minimum, will be exempt from the MPF. This provision has been the cause of much debate among employer organizations. Although we believed it to be a simple solution to the question of interface, since the publication of the Bill, many employers have said that they have invested a great deal of time and resources in complying with ORSO requirements. They have asked for more flexibility in the exemption arrangements. In particular, they have expressed concern about the need for ORSO schemes to have to use the MPF definition of relevant income before they are qualified for exemption, and about our requirement that such exempt schemes will be closed to new members.

After listening to the views expressed by Members of this Council and by the various deputations, we are now prepared to take a second look at whether the exemption should be widened to meet the requirements of the genuinely generous employers.

However, in taking this second look, I must make it clear that further exemption would only be considered on condition that the fundamentals of the MPF system would not be compromised. Our policy intention is that both defined contribution and defined benefit schemes are acceptable as MPF schemes. Indeed, this Bill does not restrict the choice of the employers and employees on the types of schemes. It is acceptable for an employer to set up for the purpose of meeting the MPF obligation, a defined benefit scheme for its employees provided that the contribution in respect of each member in the scheme works out to be 10% equivalent of the relevant income of the relevant employee.

Accordingly, we will be moving an amendment to the effect that persons who are members of relevant ORSO schemes, whether defined benefit or defined contribution, can be exempt from the provisions of the MPF legislation and provided they satisfy requirements specified in regulations to be made under the Bill. We shall then be able to discuss further with the organizations concerned the details of the exemption requirements arrangements and consider further the conditions under which new members may be admitted to such schemes.

Obviously, there are regulatory issues which are specific to defined benefit schemes, such as those relating to solvency. Again the provisions in the Bill are adequate to enable detailed regulations and rules to be made for defined benefit schemes as well.

The definition of relevant income has also given rise to much discussion. Under existing ORSO schemes, contributions are usually a percentage of basic salary, and there have been proposals for the same usage to be applied to MPF schemes. However, we believe that to make such a change would not be in the best interests of the workforce. It would mean that persons whose income

consisted of a low basic salary and the rest in commissions would lose out in terms of contributions, and eventual retirement benefits. There would also be the risk that some less scrupulous employers might re-define the employment terms of their employees so as to reduce their liability for MPF scheme contributions. This is not an area where we intend to make any changes.

Another area of exemption deals with those persons who are assigned to work in Hong Kong intermittently, but who are never really part of the Hong Kong workforce. There is no good reason for bringing such persons under the scope of the MPF. Accordingly, the Bill provides that persons from outside Hong Kong who come here to work shall be exempt from the provisions of the MPF if they leave Hong Kong permanently before the expiry of a period of 180 days. Also excluded in a separate provision are those persons who come here from overseas to work and who are already covered by a retirement scheme outside Hong Kong. This is because it might cause a person financial difficulties if he had to contribute to two schemes, one in his own country and one in Hong Kong.

We have been told, however, by some Members of this Council that these provisions do not make it sufficiently clear as to who is exempt and on which occasions. Accordingly to place the matter beyond doubt, we are replacing the subclauses which deal with this as well as the item in Schedule 1 with a more general provision which would exempt persons coming to Hong Kong from overseas for the purpose of limited duration employment or self-employment or those who come here from abroad and who are already members of a retirement scheme outside Hong Kong from the MPF, subject to rules to be made by the Authority. The rules would deal with such issues as the definition of limited duration, and whether there should be a limit on the number of days or times each year when such an exemption could be applied.

Schedule 1 of the Bill also exempts a relevant employee who has been employed under a contract of employment for a continuous period of less than 30 days. This is in recognition of the fact that if an employee is going to resign, he is more likely to do so in the period immediately after he starts a job. So there is no point in incurring the administrative work of setting up a scheme for him.

Some Members have asked whether it would be possible to extend the 30-day exemption period to 90 days on the grounds that many employees give notice during that period. We have considered this, but do not think that such a long exemption period would be appropriate. To extend this period to 90 days would lead to contribution and benefit gaps where employees had a history of moving from job to job before the three-month period was over.

We do appreciate, however, that there may well be employees who give notice at the end of the first month of employment and thus leave at the end of the second month. We shall therefore move an amendment to change the 30-day exemption period to 60 days. In the event that the employee remained in

employment longer than that, then the employer will have to back date both months' MPF contributions, while the employee would need to contribute only in respect of the second month's relevant income.

A final amendment on exemption and coverage is that we have always been aware that there will be particular classes of employees or self-employed persons whom it will be administratively difficult to bring into the MPF at least in the early years. The Bill provides for such persons to be specified in Part II of Schedule 1, and there is provision for such specification to be varied, altered or repealed. That is when the administrative difficulty had been overcome, the classes of persons could then be brought under the MPF.

We believe even at this stage that it would be administratively difficult and problematic for two particular groups to be brought into the MPF at an early stage. These are self-employed hawkers and domestic employees irrespective of their place of origin. We shall therefore be moving an amendment to include both categories of worker as exempt persons under Part II of Schedule 1.

Clause 1(2) provides for the Ordinance to come into operation on a day to be appointed by the Governor by notice in the Gazette. This is a traditional legislative provision. It is all the more surprising therefore that some Members are asking for the appointment of this day to be subject to a resolution of this Council. I must say I do not see any necessity for such an unusual provision which I understand to be without precedent in Hong Kong.

Let me explain why. In practice we would not want to nor would we bring the Ordinance into effect until the relevant items of subsidiary legislation were in place. As part of this process, we would wish to see the early establishment of the MPF Scheme Authority so that it could be involved fully in the preparation of the necessary subsidiary legislation as well as in the process of approving trustees and registering schemes. Nor would we be advising the Governor to introduce clause 6 of the legislation requiring employers to arrange schemes for their employees and the self-employed to make parallel arrangements until the necessary legislation was in place.

The provision in clause 6 are unenforceable in isolation. They require subsidiary legislation to be in place. Given that Members would need to be satisfied with the specific provisions of subsidiary legislation on which they would have been consulted in any case before these could be enacted by positive resolution of this Council and on this I shall speak further in a moment, I cannot understand the reasoning behind this demand.

Some Members have pointed out that there is a precedent in the United Kingdom for the date of coming into operation of a piece of legislation to be subject to the prior approval of the legislature. That is so. The Easter Act 1928 does indeed make such provision. I shall not speculate in this Council on the

reasons for such a provision. What I shall point out however is that the legislation itself has never been brought into effect.

I cannot understand, Mr President, how it can be in the best interests of those who will benefit from this Bill to introduce such a provision. It seems to me that it could be used to delay its coming into operation indefinitely. I have no intention of changing the existing clause 1(2) of the Bill and I urge Members not to support any amendment to do otherwise.

Even more disturbing is the suggestion that there should be a statutory provision linking the bringing into operation of the Ordinance with the implementation of related regulations and rules. This is objectionable. It introduces the element of uncertainty to the statutory power to commence that is contained in clause 1(2). If it was necessary to consider, on each occasion that it was proposed to use the power in clause 1(2)whether the related rules and regulations provided in clauses 44 and 45 had been made, we would be faced with a number of problems.

First, it may not be easy to determine whether or not clauses 44 and 45 actually provide for the making of regulations or rules in respect of a particular provision. For example, it would be difficult to relate the general powers in clauses 44(1b) and (1h) to individual provisions.

Secondly, even if this issue could be resolved, the question will remain of whether the requirement to make all necessary regulations and rules had been satisfied. For example, what the position would be if some but apparently not all regulations and rules had been made in relation to a particular provision. What would happen if a legal challenge was made on these grounds to the very essence of the MPF, that is, clause 6? Allowing for decisions based on opinion leads only to uncertainty. Our workforce deserves better than that. It is clearly unacceptable that the power to apply statutory provisions of public importance should be subject to such inherent uncertainty, and I urge Members to oppose any Committee stage amendment that might be moved to that effect.

I turn now to portability or transferability of accrued benefits. It has been our policy intention to allow persons changing jobs the choice of leaving their accrued benefits in the form of individual accounts with the trustee who runs the master trust scheme of their former employer, or to transfer their accrued benefits to the scheme run by the trustee for their new employer. No one would therefore be compelled to leave a master trust scheme run for his former employer which has been doing well and may produce a higher rate of return. Similarly no one would be forced to move to a scheme operated on behalf of the new employer which might not be doing so well. We think that this will reduce the frequency of transfers of accrued benefits.

We believe that clause 13 of the Bill as drafted provides for that choice already. Some Members however, have contended that the clause does not reflect our policy intention. To put the matter beyond doubt, I shall move a Committee stage amendment later on.

Some Members have expressed concern that transfer costs might be significant. Now the process of transfer is straight-forward and should not incur any significant cost. However, for the better protection of accrued benefits, we can make sure that the subsidiary legislation will provide that, except for the incidental costs and expenses of remitting the money involved, no deductions shall be made against the accrued benefits under transfer.

I now turn to withdrawal of benefits. One of the provisions in clause 14 of the Bill deals with circumstances for the early withdrawal of accrued benefits from a registered scheme. These include provision for the purpose of set-off as prescribed in the Employment Ordinance, in respect of that part of the accrued benefits which are derived from a current employer's contributions (quantified in accordance with rules made by the Authority under clause 45) at such time as the relevant employee becomes entitled to severance payments or long service payments. This is in line with our policy intent to enable the long-established set-off procedure under the Employment Ordinance in respect of schemes under ORSO to continue for MPF schemes. We have made it very clear that employers are not expected to pay twice under this new system.

Some Members I know are not in favour of retaining this policy for the MPF, and I understand one Member will move a Committee stage amendment later on with the aim of delinking contributions to MPF schemes from statutory obligations in respect of long service or severance payments.

We do, of course, realize in the longer term the interface of long service payments and severance payments with the MPF need to be examined, but it will take time to consider this important issue given its widespread implications for both employers and employees.

The Labour Advisory Board (LAB) which provides the best forum for employer and employee representatives to discuss labour matters of mutual concern will be consulted. It will be preferable therefore to await the advice of the LAB before taking our next step.

I now turn to the MPF Schemes Authority. We envisage that the MPF system will be both efficient and streamlined. The trustees who have primary responsibility for the operation of the MPF schemes will be providing their services under consistent and transparent operational rules to be provided by the MPF Schemes Authority — the MPFA. Thus neither will the service providers in the MPF system become gigantic bureaucracies, nor will the MPFA grow into a monstrous regulatory body. The monitoring of schemes and trustees will be carried out by teams of professional staff having intimate knowledge of how the market operates. We expect the MPFA to be a streamlined body. It would

carry out random inspections and monitor the schemes' books and accounts. The MPFA will be establishing guidelines on investments. These guidelines will lay down broad investment principles such as avoiding over-concentrations of risks and restrictions on the use of derivatives for hedging purposes only. We need to strike the right balance so that we do not over-regulate and stifle the ability of the industry to maximize investment returns. But at the same time we need to protect the interest of scheme members by ensuring that their retirement benefits are secured adequately.

I now turn to the Residual Provident Fund Scheme. Members will recall that the consultants have advised that there would be sufficient individuals and companies in the market interested in becoming approved trustees and that as such it would probably not be necessary to provide a Residual Provident Fund Scheme. The industry also agrees with the consultants. We have, nevertheless, included in the Bill a provision for these schemes to be established. However, some Members are concerned that clause 22 as drafted will not require the Authority to provide for such a scheme before the coming into operation of section 6 of the Ordinance and, as such, may not provide sufficient comfort to individuals who are unable to find a scheme in the market. To meet these legitimate concerns, even though we believe that the market will provide schemes for all who need them, we will be amending clause 22 of the Bill to require the Authority, prior to the commencement of any of the provisions of section 6, to take all necessary steps to cause to be established the Residual Provident Fund Scheme. The principal purpose of that scheme would be to provide membership as a scheme of last resort to those persons who have been unable to find a scheme themselves and where the Authority had also been unable to obtain access to a registered scheme for them. I shall move a Committee stage amendment to this effect later on.

I turn now to the important issue of approval of subsidiary legislation. We have always been committed to full consultation with Members of this Council and other interested parties in the community when drawing up the subsidiary legislation. In order to reflect this spirit of consultation, we are happy to agree that until such time as clause 6 of the Bill is brought into operation, all subsidiary legislation made under clauses 44 and 45 and notices made under clause 46 should be made by positive resolution of this Council in accordance with section 35 of Cap. 1. In the light of this amendment which I shall be moving later on, I must stress once again that I cannot see any reason whatsoever for the additional requirements for approval proposed by some Members, about which I spoke earlier.

Some Members have expressed concern that the exemptions in Schedule 1, Part I, as drafted, exempt those persons listed from all provisions of the MPF under all circumstances. This is not our intention and we shall be amending as necessary to reflect the fact that the persons described are only exempt in respect of relevant income derived from employment which is the subject of these provisions.

Mr President, some Members have called this Bill hollow and have claimed that it is without substance. I must disagree. Even though the Bill is enabling, and although it is our intention to provide the details in a subsidiary legislation that will be the focus of wide public consultation in the months to come, the Bill itself is far from empty. On the contrary it provides a sound framework on which we can continue to build. It provides for the establishment of the MPF Schemes Authority. It provides for a Compensation Fund and the basis for a Residual Provident Fund Scheme. Employers, employees and the self-employed will know what their obligations are. It is already clear who will be covered by the MPF and who will be exempt. Mr President, the workforce of Hong Kong deserves the certainty of financial security upon retirement. The enactment of this Bill will give to the workforce what they have been seeking for so long, and so richly deserve. With these remarks, Mr president, I commend the Bill to Members.

Question on Second Reading of the Bill put.

Voice vote taken.

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

Mr Marvin CHEUNG and Mr Andrew WONG claimed a division.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: 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 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 CHIM Pui-chung, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Mr Howard YOUNG, Miss Christine LOH, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Ms Anna WU and Mr LEE Cheuk-yan voted against the motion.

Miss Emily LAU abstained.

THE PRESIDENT announced that there were 32 votes in favour of the motion and 23 votes against it. He therefore declared that the motion was carried.

Bill read the Second time.

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

Committee Stage of Bill

Council went into Committee.

MANDATORY PROVIDENT FUND SCHEMES BILL

Clauses 3, 5, 7, 8, 10, 15, 17, 20, 23, 24, 27, 32 to 38, 42, 43 and 47 were agreed to.

Clauses 2, 4, 9, 11, 12, 13, 16, 18, 19, 21, 22, 25, 26, 28 to 31, 39, 40 and 41

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circulated to Members.

The definition of "accrued benefits" as drafted in the Bill refers to the "proceeds of" investments. As investment returns may be negative at times, I propose to amend the definition to the effect that the benefits will include "income or profits arising from any investments thereof, but taking into account any losses in respect thereof". The same amendment is proposed to clause 11(2).

The amendment to the definition of "self-employed person" makes it clear that only those self-employed person whose relevant income derived in Hong Kong will be covered by the Bill.

The amendments to the definitions of "exempt person", "master trust scheme", "relevant employee" and "relevant income" in clause 2 are for the purposes of verifying the meaning of those terms. The amendment to clause 4(1) is a technical one.

Some Members have expressed concern that clauses 4(3) and 4(4) as drafted in the Bill may not reflect adequately our policy intention to exclude from the MPF persons who come here from overseas to work intermittently, and those who come here from abroad to work and are already members of retirement schemes outside Hong Kong. The amended subclauses (3) and (4) should put this beyond doubt, while the new sub subclause (4) will allow the Authority to make rules to specify the circumstances in which this exemption will apply, and the new subclause (5) will specify the meaning of "limited period".

The amendments to clauses 9, 12, 18, 19, 21, 25, 26, 28, 29, 30 and 31 are technical in nature, being mainly for the clarification of the relevant provisions in the Bill.

Clause 13 as drafted in the Bill provides for the transfer of accrued benefits from scheme to scheme when a relevant employee changes employment. Our policy intention is to cater for all possibilities, but some concern has been expressed that the clause fails to provide for all situations of changes in employment status.

To clarify our policy intention beyond doubt, I propose to amend this clause by replacing subclause (1), amending subclause (2) and adding a new subclause (3) to make it clear that employment includes self-employment and that the clause not only requires the expeditious transfer of accrued benefits but also provides flexibility for relevant persons to retain their benefits in master trust schemes upon change of employment should they wish to do so.

Clause 16 of the Bill deals with the Compensation Fund which would deal with losses arising from fraud or misfeasance. The amendment to clause 16(1) and the addition of a clause 16(1A) will provide for the MPF Scheme Authority to apply to the Court for a determination in respect of lost benefits. The Court will be able to rule whether or not the losses have occurred in the circumstances described.

In response to suggestions from Members of this Council, I am deleting clause 16(7) and instead will move amendments to Schedule 9, sections 1 and 2 to make consequential amendments to the Bankruptcy Ordinance and the Companies Ordinance, so that this particular debt becomes a preferential one.

At present, clause 22 of the Bill allows the MPF Schemes Authority to authorize a corporate trustee to be the trustee of a Residual Provident Fund Scheme if the Authority thinks it is desirable among other things to effect access

to a registered scheme for persons who are otherwise unable to obtain such membership.

Some Members have expressed concern that as drafted clause 22 will not require the Authority to set up such schemes until after section 6 was in operation and this might not provide sufficient comfort to individuals who are not able to find a scheme in the market. To allay these fears, I am amending clause 22 so that the Authority may take all necessary steps to cause a Residual Provident Fund Scheme to be established prior to the commencement of any of the provisions of section 6. The purpose of the scheme would be to provide membership as a scheme of last resort to those persons who have been unable to find a scheme themselves and where the Authority is otherwise, unable to find one for them.

In response to Members' suggestion to enhance the secrecy provisions in the Bill in respect of reports made to the MPF Schemes Authority by self-employed persons under clause 6, I am making two amendments to clause 39 and one amendment to clause 40. Amendments to clause 41(1) are in line with Members' helpful suggestion that the offences should refer back to the relevant requirement in the Bill. I am also taking this opportunity to include a new clause 41(1A) which says that any statement or declaration made to the MPF Schemes Authority for the purpose of clause 22, that is, the clause that deals with the Residual Provident Fund Scheme, shall not be evidence against the person making that declaration or statement.

Finally, Mr Chairman, I am moving a technical amendment to clause 41(3) by substituting the words "scheme member" and "scheme members" for "relevant employee" and "relevant employees" and adding a new clause 41(4) to provide for an offence where a trustee fails to comply with a limitation or prohibition made under section 28.

Proposed amendments

Clause 2

That clause 2 be amended —

(a) in the definition of "accrued benefits", by deleting "proceeds of any investments thereof" and substituting "income or profits arising from any investments thereof, but taking into account any losses in respect thereof".

(b) in the definition of "exempt person", by deleting "specified in Schedule 1" and substituting "construed in accordance with section 4".

(c) in paragraph (b) of the definition of "master trust scheme", by deleting "and" and substituting "or".

(d) in the definition of "relevant employee", by deleting ", but does not include an exempt person".

(e) in the definition of "relevant income" -

(i) in paragraph (a), by adding "or payable" after "paid";

(ii) in paragraph (b), by adding "prescribed and" after "person" in the second place where it appears.

(f) in the definition of "self-employed person", by deleting everything after "a person" and substituting

"whose relevant income (otherwise than in the capacity as an employee) derives from his production (in whole or in part) of goods or services in Hong Kong, or his trade in goods or services in or from Hong Kong;".

Clause 4

That clause 4(1) be amended, by adding "to the extent described therein" at the end.

That clause 4 be amended, by deleting subclauses (3) and (4) and substituting —

"(3) Subject to subsections (4) and (5), any person entering Hong Kong for the purpose of being employed or self-employed -

(a) for a limited period only; or

(b) who is a member of a provident, pension, retirement or superannuation scheme (however described) of a place outside Hong Kong.

shall be exempt from the provisions of this Ordinance.

(4) The Authority may make rules under section 45 for they purpose of this section and those rules may include provisions specifying the circumstances in which the exemption of a person referred to in subsection (3) shall apply.

(5) In this section, "limited period"（有限期間）means a period determined in accordance with the rules referred to in subsection (4).".

Clause 9

That clause 9 be amended, in the heading by deleting "level" in the second place where it appears.

Clause 11

That clause 11(2) be amended, by adding "(but taking into account any loss arising in respect of any such investment)" after "registered scheme".

Clause 12

That clause 12(a) and (b) be amended, by deleting "section 14" and substituting "the provisions of this Ordinance".

Clause 13

That clause 13 be amended, by deleting subclause (1) and substituting —

"(1) Where a relevant person changes or ceases employment, then the relevant person, his former employer (if applicable), his new employer (if applicable) and the trustees of the registered schemes concerned shall, for the purpose of transferring accrued benefits to, from and between registered schemes or, alternatively, for the purpose of retaining accrued benefits within registered schemes which are master trust schemes, comply with regulations made under section 44 to achieve that purpose (as appropriate) as expeditiously as possible.".

That clause 13(2) be amended —

(a) in paragraph (a) -

(i) by deleting "employees" in both places where it appears and substituting "persons";

(ii) by adding "or cessation" after "changes".

(b) in paragraph (b), by deleting "employee's" and substituting person's".

That clause 13 be amended, by adding —

"(3) In this section -

"employment" includes self-employment;

"relevant person"（有關人士）means -

(a) a former relevant employee who becomes a self-employed person;

(b) a former self-employed person who becomes a relevant employee; or

(c) a relevant employee.".

Clause 16

That clause 16(1) be amended —

(a) by deleting "The" and substituting "Subject to subsection (1A), the".

(b) by adding "determined by the court on the application of the Authority" after "conduct".

That clause 16 be amended —

(a) by adding -

"(1A) An application under subsection (1) shall only be made to the court by the Authority -

(a) where the Authority has reasonable grounds for believing that a loss in respect of accrued benefits has occurred in the circumstances described in that subsection; and

(b) in accordance with rules made by the Chief Justice for that purpose and those rules may include provisions as to procedure or otherwise.".

(b) by deleting subclause (7).

Clause 18

That clause 18(1) be amended —

(a) by adding "for the purpose of ensuring compliance with the provisions of this Ordinance and for no other purpose" after ", may".

(b) in paragraph (b) -

(i) by adding "or any other person" after "place";

(ii) by adding "or otherwise in that other person's possession or under his control" after "Ordinance".

Clause 19

That clause 19(6)(a) be amended, by adding "likely to be" before "able".

That clause 19(9)(a) be amended —

(a) in subparagraph (iii), by deleting "executive".

(b) by deleting subparagraph (iv).

Clause 21

That clause 21 be amended, by deleting ", so far as is practicable,".

Clause 22

That clause 22 be amended, by deleting the clause and substituting —

"22. Residual Provident Fund Scheme

(1) The Authority shall, prior to the commencement of any of the provisions of section 6, take all necessary steps to cause to be established a registered scheme (being a master trust scheme), to be known as the "Residual Provident Fund Scheme", for the principal purpose referred to in subsection (2) and shall authorize a corporate trustee to be the approved trustee thereof.

(2) The principal purpose of the Residual Provident Fund Scheme established under subsection (1) is to provide, as a last resort only, membership of that Scheme to a relevant employee of an employer, or to a self-employed person where that employer or self-employed person, as the case may be -

(a) (i) in the case of the employer, declares in writing to the Authority that he has not, through his own efforts or otherwise, been able to comply with the requirements of section 6(1); or

(ii) in the case of the self-employed person, declares in writing to the Authority that he has not, through his own efforts or otherwise, been able to become a member of a registered scheme as required under section 6(3);

(b) authorizes the Authority to assist him in obtaining access to a registered scheme for the purpose of compliance with the requirements referred to in paragraph (a), as applicable;

(c) provides to the Authority all information and assistance as may reasonably be required by the authority for that purpose, and

in respect of that employer or self-mployed person, as the case may be, the Authority has not succeeded in obtaining access to a registered scheme which would otherwise enable compliance with the requirements referred to in paragraph (a).

(3) If, in the opinion of the Authority, it is desirable to do so, the Authority may authorize the Residual Provident Fund Scheme to have the following additional purposes -

(a) to facilitate portability or transferability of accrued benefits to, from or between registered schemes;

(b) to provide for any unclaimed accrued benefits; and

(c) to achieve any other purposes of this Ordinance.

(4) The Authority may make rules under section 45 for the purpose of this section for the efficient and effectual operation of the Residual Provident Fund Scheme.

(5) In this section "employer"（僱主）includes a prospective employer, and "self-employed person"（自僱人士）includes a prospective self-employed person.".

Clause 25

That clause 25(a)(ii) be amended, by deleting "normally expected" and substituting "required".

Clause 26

That clause 26(2) be amended —

(a) by adding -

"(da) the duty to give to the Authority any information or document in the approved trustee's possession or under his control as may be required by the Authority;".

(b) in paragraph (f), by deleting "correctly".

Clause 28

That clause 28(2) be amended, by deleting "relevant employees or other".

Clause 29

That clause 29 be amended —

(a) by deleting subclause (3).

(b) in subclause (4), by deleting "or (3)".

Clause 30

That clause 30(1) be amended, by deleting paragraph (b) and substituting —

"(b) circumstances may exist which may be prejudicial to the interests of scheme members; or".

That clause 30 be amended, by adding —

"(10) Nothing in this section shall require disclosure to an inspector appointed under subsection (2) -

(a) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) by an authorized institution within the meaning of the Banking Ordinance (Cap. 155) relating to the affairs of a customer unless -

(i) that customer is a person who the inspector has reason to believe may be able to give information relevant to the investigation; and

(ii) the Authority is satisfied that the disclosure is necessary for the purposes of the investigation and certifies in writing that this is the case.".

Clause 31

That clause 31(1)(b) be amended, by deleting "regulations made under section 44" and substituting "section 19(8)".

Clause 39

That clause 39(1) be amended, by adding "(including any information contained in any report referred to in section 6(5)(d))" after "information" where it first appears.

That clause 39 be amended, by adding —

"(2A) Subsection (2) shall not apply to any information contained in any report referred to in section 6(5)(d).".

Clause 40

That clause 40 be amended, by adding —

"(2A) Subsection (1)(d) and (e) shall not apply to any information contained in any report referred to in section 6(5)(d).".

Clause 41

That clause 41 be amended, by deleting subclause (1) and substituting —

"(1) It shall be an offence for an employer without reasonable excuse -

(a) to fail to comply with section 6(1);

(b) to fail to comply with section 6(1A);

(c) to fail to comply with section 6(2)(a);

(d) to fail to comply with section 6(2)(b);

(e) to fail to comply with section 6(2)(c);

(f) in the case where a relevant employee receives less than the minimum level of income in respect of his employment and elects to contribute to a registered scheme, to fail to remit to the approved trustee of that registered scheme the statutory minimum contribution payable in respect of that relevant employee;

(g) in the case where this Ordinance confers upon a relevant employee an option to contribute to a relevant scheme, to impose upon that relevant employee, as a condition of his employment, a requirement that he shall not exercise his option to contribute.

(1A) Any declaration or statement made to the Authority for the purposes of section 22 shall not be evidence against the person making that declaration or statement.".

That clause 41(3) be amended, by deleting "relevant employee" and "relevant employees" and substituting "scheme member" and "scheme members" respectively.

That clause 41 be amended, by adding —

"(4) It shall be an offence for an approved trustee to fail to comply with any limitations or prohibitions on the investment of the assets of registered schemes in any restricted investments referred to in section 28.".

Question on the amendments proposed.

MR MARVIN CHEUNG: Mr Chairman, as explained in my speech in the Second Reading debate, Members of the Bills Committee and the Council did not have the chance to look at the final version of the Committee stage amendments to be moved by the Administration before the deadline date and therefore had no opportunity to check them for acceptability.

Further, although I agreed to chair a technical subgroup to conduct a clause by clause examination of the Bill, many of the Members of the Bills Committee were unable to participate due to the limited time available and their other commitments. There was in any event no time to fully examine each section of the Bill to ensure that all defects in the drafting had been identified and corrected.

Whilst many of the amendments are technical in nature, there are a number which involves important policy matter which have not been fully discussed by the Bills Committee. An example of this is the amendment to clause 2 to the definition of self-employed persons. The original version of this definition leaves it totally uncertain as to who would be included in the ambit of MPF. During discussion of the Bills Committee, the Government has explained that it is their intention that MPF is meant to apply to persons who carry on a trade or business in Hong Kong and does not apply to persons whose business are carried on elsewhere.

The questions of residence and domicile are irrelevant for this purpose. Thus a self-employed person living, for example, in the United States who happens to own a business in Hong Kong, will be required to contribute to a Hong Kong MPF when he has no right of abode here and have no plans to reside here. Conversely, a person who lives in Hong Kong and intends to reside in Hong Kong for the rest of his days will not be required to contribute if his business is carried on in, say, Shenzhen. What is the logic of this policy? In the haste to pass this legislation, this and other important policy issues are being brushed aside. The actual amendments to the definition introduces new uncertainties which will make the ambit of this law very much unclear. Terms such as "trade and goods or services from Hong Kong" is unique and are not to be found in other legislation such as the Inland Revenue Ordinance. As amounts involved are unlikely to be material as to justify a judicial process, we are in effect delegating powers of legislation to the Administration.

Another example is the amendment to clause 4 by the introduction of subclauses (3), (4) and (5) and the corresponding deletion of Item 8 in Part I of Schedule 1. The original Item 8 of Part I in Schedule 1, if left unchanged, would have created a loophole so large as to render the MPF proposal totally unenforceable. The amendments moved by the Secretary for Education and Manpower acknowledge the problem but defer the solution to subsidiary legislation. We do not know if the problem can be fixed and if so would the medicine be so strong as to make it unacceptable. How can we accept the MPF proposal under these circumstances? For these reasons, I will abstain from the motion relating to these amendments.

MR FREDERICK FUNG (in Cantonese): The Administration has already dumped the Old Age Pension Scheme. When the Administration first proposed this Scheme, the elderly and the Hong Kong Association for Democracy and People's Livelihood were the first to support it. At the rally held by the elderly to show their support for the Scheme, an old person fainted and died in hospital afterwards. I feel that despite all the patching up amendments proposed by the Administration in respect of privately managed mandatory provident fund, there is no way to patch up the elderly's expectation of the Administration. These amendments in no way can realize the hope of the elderly of the Administration. These amendments also cannot win the support of the elderly and improve the image of the Administration. These amendments cannot offer any assistance to the elderly now. I will not vote as a gesture of protest.

MR MICHAEL HO (in Cantonese): Mr Chairman, as I said during the Second Reading of the Bill, it has been considered in a very slipshod way.

When the committee considering the Bill first received the draft of the committee stage amendments, a meeting was called, during which we found a lot of problems. As to the final draft of the committee stage amendments, there was no adequate time for the committee to consider. The Democratic Party therefore feels that these amendments may in principle be able to patch up some of the holes in the original provision, but we think that they are not safe amendments. This Council and the Bills Committee actually did not have enough time to consider the final amendments. The Democratic Party therefore will abstain on the vote in respect of this series of amendments.

MR TAM YIU-CHUNG (in Cantonese): Mr Chairman, since my motion for adjournment debate was voted against, I have been very clear that the Second Reading of the Bill will pass. Outside this Chamber, I saw that the officials concerned were in a relaxed mood, clearly showing that the Second Reading of the Bill would definitely breeze through. Now we are up to the Committee stage amendments, we find that the series of amendments proposed by the Administration have serious problem amongst which are the views put forth by the Honourable Marvin CHEUNG, who in fact is an expert in this respect and is

always consulted by the Administration. He told us that many of the problems had not been well thought through and had no best way to get around yet. I also believe that Mr Marvin CHEUNG is not playing with politics. He and I had been working together for sometime on the Occupational Retirement Schemes Ordinance, and I respected highly his opinions which I believed were very precious. I shall therefore abstain on the vote in respect of the amendments proposed by the Administration. I am worried, too, with these amendments made so hurriedly, if they had been well thought through. I hope that if the Bill is passed, the consideration given to the subsidiary legislations should be more careful as they will have extensive and far-reaching effect on three million workers.

MR HENRY TANG: Mr Chairman, I do not deny that this piece of legislation has been put together with great haste and many of the Members of the Bills Committee raised many valuable points regarding this essential piece of the legislation that has not been fully thought out. But on the other hand, I believe what the Secretary for Education and Manpower has just said has a lot of merits, that this Bill has to be put forward now. This enabling legislation is what it is said to be, enabling legislation. It put together the building blocks necessary to build on in the future. All the views that had been put into account are being put forward by the Administration in these amendments and I would support them.

DR YEUNG SUM (in Cantonese): Mr Chairman, I just want to leave a record. The Democratic Party would like to show strong opposition to the Administration's hastily making this proposal. I only received the document saying that the Administration would make last-minute amendment in respect of domestic helpers from the Secretariat this morning. With amendment made in such a haste and the Bills Committee having no chance to consider it, we are asked to consider and pass the Bill. This is just a simple example, but it is enough to reflect that the Legislative Councillors can hardly have any counterbalancing and supervising effect on today's whole drafting and consideration process. The Administration has pulled out stops to lobby the Councillors to pass this Bill, but to which I would like to register my regret.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, as I said this morning, Hong Kong now needs a mandatory provident fund scheme. Of course, the Administration has to face the reality by treating others to meals. The situation is like the Administration treating us to meals and we are asked whether we go or not. However, it is unreasonable to ask for the menu first before deciding to go or not. That is why I can only say that the Administration has the sincerity to do something. Of course, at the meal, we may find that some of the food are not to our taste, some are too greasy. We can make some constructive amendments that are beneficial to our health.

We understand that the Old Age Pension Scheme mentioned earlier is not feasible. We believe that the industrial and commercial sector and the financial sector definitely would not deny or repudiate that the Administration can put this social security fund to good use. Our concern is for a general social atmosphere under which if I have to get the benefit, I would have to have it with dignity and my rights. However, I hope that we all understand that a balance must be struck in the society so that the industrial and commercial sector will have confidence in social development. The more they invest in Hong Kong, the more tax we can have. This not only makes the Mandatory Provident Fund (MPF) operate better, the future benefits will also meet the needs of the citizens. Of course, I represent the financial sector which also includes the insurance sector, I am a bit selfish as passing the MPF will benefit them in the future. I therefore give my support to the question under discussion with the hope of getting more votes.

Mr President, these are my remarks.

MR JAMES TIEN (in Cantonese): Mr Chairman, in respect of this Mandatory Provident Fund (MPF) Bill, the Honourable Marvin CHEUNG of course is an expert. He thinks that a lot of details are still unresolved. In respect of the primary Bill, every one has raised a few questions and the Administration has also made its stand known. For example, someone has asked if contribution has to be made to this pension fund scheme, how much? The answer is both the employers and the employees contribute 5%. Again for example, under the scheme, if an employee resigns or is dismissed, can he get back this sum immediately? For example, the Administration has already made it clear in the primary Bill that it is not possible under the so-called "Occupational Retirement Schemes Ordinance" scheme, an employee can only take back his contribution on retirement at 65. Another example, in case of bankruptcy or some problem arises in the Fund, under what circumstances could the authority supervising the MPF be responsible for compensation? All these questions which every one is so concerned about have been answered. Of course, Mr Marvin CHEUNG said that a lot of details were still unresolved. Even if the primary Bill is passed, and a different group of Councillors will take their office in the new Legislative Council in September, I feel that they will be just as diligent in monitoring the Administration to make each one of the subsidiary legislations come into effect. By that time those questions may still take some more years to resolve. By looking at the major issues, which the Administration has already raised, the industrial and commercial sector and the Liberal Party support the amendments made by the Secretary for Education and Manpower.

MR LEE CHEUK-YAN (in Cantonese): Mr President, the Honourable CHIM Pui-chung just alluded to the question of being invited to dine without looking at the menu. Now with the Mandatory Provident Fund, it is like we go out to dine but what we are given is just fish bones, which will only make us choke if we eat them. What if we die of choking? I feel very disappointed because Mr

CHIM Pui-chung just said that more job opportunities should be created for the insurance brokers and that is one of the issues we have worries about. If too many people are selling this scheme, the employees or the employers will be made reeling around, raising the administrative cost. Finally it is the insurance brokers who reap the real benefits, not the workers. This also reflects the ontological deficiency in the election of the old functional constituency where the scope of interest is very narrow.

Thank you, Mr President.

CHAIRMAN: Let us focus on the amendments and not deal with the irrelevancies.

MR ANDREW WONG (in Cantonese): Mr President, what the Honourable LEE Cheuk-yan just said was in response to the speech of the Honourable CHIM Pui-chung, but I feel that it is not thorough enough. When you are invited to dine, you do not have to pay. And if every dish is just fish bone, you just would not eat. I therefore hope that we can make it clear to ourselves that we are not opening the public coffers and handing out money to the people, and then discussing how to distribute the money. Even if we are to distribute the money, we still have to be clear of what we are doing, not to mention that we have to pay now. I hope that Mr CHIM Pui-chung can be more careful with his words, even if it concerns interests of his constituency, he should not have gone too far.

Mr President, I will vote only in respect of the commencement of the Bill, as to others I will not vote.

Question on the amendments put.

Voice vote taken.

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

MR MARVIN CHEUNG: 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.

The Chief Secretary, the Attorney General, the Financial Secretary, Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr PANG Chun-hoi, 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 CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Mr Howard YOUNG, Miss Christine LOH, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted for the amendments.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Dr LEONG Che-hung, Mr Albert CHAN, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Ms Anna WU and Mr LEE Cheuk-yan abstained.

THE CHAIRMAN announced that there were 30 votes in favour of the amendments and no vote against them. He therefore declared that the amendments were carried.

Question on clause 2, 4, 9, 11, 12, 13, 16, 18, 19, 21, 22, 25, 26, 28 to 31, 39, 40 and 41, as amended, proposed, put and agreed to.

Clause 1

MR HENRY TANG: Mr Chairman, I move that subclause 2 of clause 1 be amended as set out under my name in the paper circulated to Members. Clause 1(2) of the Bill states that "This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette, and different days may be so appointed for different provisions and for different purposes". In view of the fact that many key provisions of the MPF have not been properly dealt with in the Bill, the majority Members of the Bills Committee proposed that its provisions should only come into effect subject to the approval of the Legislative Council. The Administration argues that in practice, it will not be possible for the Ordinance to be brought into operation until the relevant pieces of subsidiary legislation are in place. Notwithstanding such argument, the Bills Committee would like to provide the Council with adequate opportunity to ensure that this will indeed be so by means of the positive approval procedure.

Mr Chairman, it is equally important for me to express not just the views of the Bills Committee as its Chairman, but also my own views. To this end, I would like to express my reservations towards this particular amendment. As the Secretary for Education and Manpower will later on submit that all subsidiary legislation made require to the approval of the Legislative Council, I

would agree with the Administration that such positive approval procedure will be adequate in terms of protecting public interest and this amendment would therefore be excessive. Furthermore, such an amendment would set a dangerous precedent to the mechanism of our legislature. The integrity of our executive-led government and Administration must be maintained and must not be compromised. My view on this issue is that we have already taken prudent measures to ensure that there is adequate check and balance between the executive and the legislature. I would therefore urge Members of this Council to vote against the amendment.

Proposed amendment

Clause 1

That clause 1 be amended —

(a) in subclause (2), by adding ", subject to the approval of the Legislative Council," after "to be appointed";

(b) by adding -

"(3) Without prejudice to the generality of subsection (2) in relation to the approval of the Legislative Council, the Legislative Council may not approve the appointment of a day for the coming into operation of a particular provision or purpose of this Ordinance if, where section 44(1)(a) to (j) or 45(1)(a) to (r) provides for the making of regulations or rules in relation to that provision or purpose, it considers that such regulations or rules have not been made with the approval of the Legislative Council in accordance with this Ordinance in relation to that provision or purpose.".

Question on the amendment proposed.

MR MICHAEL HO (in Cantonese): The Democratic Party will support the amendment. Earlier I said that the Bill had been hurriedly considered. We hope that after this amendment, the Legislative Council is better ensured to have more effective control of future legislations. The Democratic Party therefore supports the amendment.

MR MARVIN CHEUNG: Mr Chairman, I rise to support the amendment proposed by the Honourable Henry TANG which empowers the Legislative Council to control the commencement date of the MPF Scheme.

Why should the Legislative Council need to control the commencement date? To put it briefly, there are three reasons.

First, there is simply insufficient time for this Legislative Council to fully debate the MPF proposal. The MPF Bill was only introduced into the Legislative Council on 14 June. Members have just over one month's time to scrutinize this very complex issue. In response to queries raised in the Bills Committee meetings, the Administration is proposing a whole host of amendments, notice of which was given just one week ago on the deadline date. The Bills Committee therefore had no opportunity to consider the final version of the Committee stage amendments.

Moreover, I do not believe that the proposed Committee stage amendments adequately address many of the problems left unanswered in the Bill. Without the power to control the commencement date the Legislative Council will have little influence over the Government in dealing with these outstanding but important issues. The Government has skated around all the known uncertainties and controversies but deferring decisions to subsidiary legislation. Given more time to study the implications of the Bill, further problems with many of the provisions of the Bill, are bound to be identified. The danger is that many of the problems may not be capable of being remedied by means of subsidiary legislation. With control over the commencement date of the legislation, the Legislative Council will be able to effectively ensure that these matters are properly addressed before the law is implemented.

The second reason for the amendment is that many details of the MPF Scheme have not been formulated. Some of these will be provided for by subsidiary legislation. However, some will not need subsidiary legislation. One example I have pointed out during the Bills Committee deliberation was the arrangement with the existing Occupational Retirement Scheme Ordinance (ORSO) schemes. As a result, the Government has now agreed to move an amendment to delete this specific provision concerning existing ORSO schemes and to defer consideration of this matter at a later date via subsidiary legislation.

Another example I have pointed out during Bills Committee meetings is the provisions concerning investment guidelines. The Bill provides for investment guidelines to be drawn up by the MPF Authority, but as in the case of many other provisions, does not provide any details as to the legislative intent of such a provision — how the guidelines are to be drawn up, the criteria of the exercise, and so on. However, unlike other hollow provisions which will be supported by subsidiary legislation to be drawn up in the future, there is no provision for any subsidiary legislation to govern the formulation and enforcement of investment guidelines. This means that even if all subsidiary legislation will be positively approved by the Legislative Council on a perpetual basis, hollow provisions of this kind will not be subjected to vetting by the Legislative Council when the Government finally decides on what it wants to do with these powers unless the commencement date of the Bill itself requires the approval of the Legislative Council. The simple fact is that we cannot be sure

there are no more landmines such as these. I for one will confess that I simply did not have sufficient time to examine each part of the Bill to look for such items. I doubt if any other Member has the time to fully examine each part of the Bill for this purpose. The consequences are clear. Unless the Legislative Council retains control over the commencement date, it will not have the power to ensure that matters which are being overlooked at this stage due to the severe time constraints will be properly addressed in the future.

Thirdly, there is a need to take a complete look at the entire MPF proposal when all details are known to assess the logical coherence, their acceptability to the community, and so on. The Legislative Council needs to control the commencement date if it is to ensure that the final shape of the MPF Scheme put into operation will be feasible in practice and acceptable to the community. We cannot rule out the possibility when all the problems of the Bill are known the community may not want MPF because the price is too high.

The Administration's reasons for rejecting this amendment are not valid and are misleading.

First, the Administration has argued that positive vetting of subsidiary legislation will provide sufficient safeguards so that this amendment is unnecessary. This is invalid on three counts.

First, under the Government's proposal, the power of positive vetting will automatically lapse upon the Governor's decision to announce the appointed date, and there is no guarantee that the Governor's decision will take into full account the views of the Legislative Council regarding the status of the subsidiary legislation at that time. The Legislative Council therefore needs the control over the commencement date if the Legislative Council is genuinely serious about the need for positive vetting.

Second, as I pointed out earlier, not all provisions which are now left hollow are covered by subsidiary legislation. There is a danger that many definitive provisions in the Bill will not involve subsidiary legislation, the implications of which have not been fully understood by the Legislative Council, the community or even the Administration.

The third reason is that positive vetting alone will not provide sufficient safeguard as there may be no opportunity to view the entire scheme as a whole package when the details are known.

The second reason for the Administration's rejection to the amendment is the alleged challenge to the constitutional principle of executive-led government. Legal advice sought by this Council has, however, confirmed the otherwise. The Government's own legal adviser has admitted to the Bills Committee that the amendment causes no constitutional problems. Our Government will remain as executive-led as it has been. Unless the Administration is of the view that an executive-led government should also legislate on behalf of the legislature, I see

no reason why the Administration should have complained about the Legislative Council attempt simply to do its job properly.

The purpose of the amendment is to restore to the future Legislative Council the opportunity to properly scrutinize important provisions of the MPF which this Council is deprived of by the hasty manner in which the Administration has pushed through the legislative process today.

The third reason for the Administration's rejection is that there is no precedent. As admitted by the Secretary for Education and Manpower during a debate earlier this morning, there is precedent in United Kingdom law.

With the above remarks, I urge Members to reject the amendment moved by the Secretary for Education and Manpower in due course and to support the amendment proposed by the Bills Committee to allow the Legislative Council to approve the commencement date of the Bill. Thank you.

DR YEUNG SUM (in Cantonese): Mr Chairman, and my colleagues, you have just voted in favour of the Bill so that it could pass the Second Reading. This actually is a matter of course. However, I would like to tell you that the Administration went about very slovenly with the Bill. This is a description of the fact, not a moral judgment. If the monitoring and check and balance functions of the Legislative Council are to be maintained, you should consider supporting as far as possible the amendment that is presently proposed because so doing will bring such functions of the Legislative Council into full play, and I am saying this from the constitutional point of view.

Furthermore, the Honourable Henry TANG has earlier mentioned that so doing will compromise our executive-led government, but in practice this would not be the case. Under the current constitutional system, all proposed policy and bills must be presented by the Administration, and Private Members' Bill is only an exception. The executive power always reside with the Administration and we cannot make any change to it. What we are looking at now is a jig-saw puzzle, and the question in fact is very simple: the date all the pieces of the puzzle are placed before us is the commence date of the Bill. However, at the moment apart from the bits and pieces, we do not have this puzzle. We are not asking a lot from the Administration. We just ask the Administration to give us all the puzzles so that we can have a clear idea of what the whole picture is like. When every one is satisfied, then that is the commencement date. I think that I am making a very reasonable demand, and I hope that those Members who earlier showed support of the Bill can also support this proposal.

MR ROGER LUK (in Cantonese): Mr Chairman, I said just now that there are three planes to an old age protection scheme, which are the individual, the family and the society. What Hong Kong lacks is that of the individual and this Bill comes in rightly to fill up that gap. The Honourable Marvin CHEUNG has

already reminded us again and again that there are still a lot of technical problems with the Bill that we may still do not know. If we are to decide on filling this gap for the workforce in Hong Kong by setting up an individual retirement protection scheme, we need to be ascertained on three aspects whether this Bill is feasible: firstly, if we have consensus on the policy direction; secondly, if the technical provisions are all in order; thirdly, if we can achieve the legislative goal.

With the framework as given by the Bill, I think no one Member can be certain of anything. Under such a situation, the Legislative Council needs to reserve the power to reconsider the whole Bill and to have the power to decide on the commencement date. Mr Marvin CHEUNG reiterated just now that there is no constitutional problem caused, as there are precedents overseas, but in the context of Hong Kong, this may possibly be setting a precedent. However, under very exceptional circumstances, there is really such a need. If the Legislative Council did not have control over the commencement date, I think those Members who vote for the Bill today might in future be blamed for having acted irresponsibly.

Mr Chairman, thank you.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I support the amendment because it will give the Legislative Council the right to press the button. We all know that the Hong Kong Confederation of Trade Unions (CTU) is against the private Mandatory Provident Fund (MPF) Scheme. If the Legislative Council is given the right to press the button, we hope that the Legislative Council will not have to press the button. Some people often ask us why we are against the MPF, and many people often said that it is better to have it than to have none at all. This is like the Honourable Andrew WONG's saying "pee is better than sea water" in yesterday's debate on the Court of Final Appeal Bill. I do not mean to say that MPF is like pee, which is toxic. MPF is not toxic, but it is like a punctured water bag. If we keep on pouring water into it, the provident fund of the workers will be drained away through the puncture.

I feel that the reason to give the Legislative Council "the right to press the button" is to give it the right to object. Once the MPF Scheme is passed, that would be the nail that is hammered into the coffin of the Old Age Pension Scheme. We do not want to see that the nail being hammered in, we would like to have Old Age Pension Scheme at the end.

Yesterday the Honourable Mr Allen LEE of the Liberal Party said agitatively that his party was being vilified. In fact, when the Administration supported the implementation of the Old Age Pension Scheme and the labour bodies, trade unions, the Democratic Party and the elderly were in favour of the implementation, the Liberal Party was against. This is a fact known to all, because of your voting against it, now the elderly in Hong Kong do not have an old age pension system. If you did not vote against it, what should be tabled at

this last meeting of the current Legislative Council would be the Old Age Pension Scheme but not MPF Scheme. The Liberal Party is certainly the one to be condemned by history. It would not mend anything even with Mr LEE referring to the Honourable LAU Chin-shek.

I said repeatedly just now that I do not want the Legislative Council to press the button. Another reason is that if the Legislative Council was to press the button, we would not be able to get the Old Age Pension Scheme. If the Legislative Council left the button untouched, we would keep on fighting for it. I would like to remind you all that some people have asked what the elderly could do if the MPF Scheme was not passed. Well, even if we can only get the Old Age Pension Scheme 10 years later, it would still be better than to have MPF today. The reason is that under the MPF Scheme, those in the low-income group might not be paid a pension comparable to that of the Old Age Pension Scheme 20 to 30 years later. I have done some calculations, after 30 years, a person earning $6,000, according to the consultancy report, would get $1,560 30 years later; a person earning $8,000 would get $2,080, whereas with the Old Age Pension Scheme, they could get 30% of the median salary. So, if we leave the button untouched, and our lobby for the Old Age Pension Scheme succeeds some 10 years later, it would even be better than what we have today. If the button is pressed today, Hong Kong will never have an old age pension system, so I feel that this button should be left untouched.

Thank you, Mr Chairman.

CHAIRMAN: Your remarks should be confined to the amendments, please, Mr LEE, otherwise, there will be no end of this debate on amendments.

MR JAMES TIEN (in Cantonese): Mr Chairman, because during the Second Reading, the Honourable LEE Cheuk-yan and I were not in the Chamber, and that was the Secretary for Education and Manpower's turn to speak, so my content of my speech seems to be still in the Second Reading stage. Mr Chairman, as you ask Mr LEE Cheuk-yan not to dwell on those questions and concentrate instead on the amendment, I would talk mainly on that question and not on others.

Mr Chairman, the amendment is basically similar in meaning to the Honourable TAM Yiu-chung's earlier proposal to adjourn the debate of the Bill. The Honourable Marvin CHEUNG and I were both on the Bills Committee and were of the same mind with him, but it was only raised by the Honourable Henry TANG during consideration of the Bill. What exactly is the problem if the Legislative Council is to pass the Bill and has the right to press the button? This has the same objective as adjourning the debate on the Bill till after December. If it was not adjourned, we would have Second and Third Reading today. In the next session of the Legislative Council, there would still be opportunity to discuss the so-called hollows of every provision and the traps of

the subsidiary legislation. The Administration actually has also made concession. At first the Bill was to be negatively passed. According to the Gazette of the 28th, if nothing special arose, the Bill would come into effect. Now the Administration has proposed amendment, requiring positive vetting for the Bill. This means that we can all the same set up a Bills Committee to examine the subsidiary legislations in detail. Should Members of the democratic camp, independent Members or Members of the Liberal Party have any views, they can raise them at that stage. We can still use half a year, a year, a year and a half or two years for examination, and it can still be done. At that time, we can make ourselves completely satisfied before the Administration can put them into operation. I cannot imagine that the Administration can pass a subsidiary legislation today and put it into force, and a month later pass another and put it into force. Subsidiary legislations must be passed in general before the Administration can put them into force. The conclusion is thus whether the Legislative Council is to activate the bell for the passage of a subsidiary legislation or to pass the all the subsidiary legislations together for the subsidiary legislations to come into force, even if the Administration has the permission of the Executive Council. If the right to activate the bell is to return to the Legislative Council, then it will be a waste of effort with this debate, because at that time we shall have to raise our hands again. Even if the subsidiary legislations are passed now, they may be rejected by an activation of the bell.

Mr Chairman, on this basis, the Liberal Party will vote against the amendment made by Mr Henry TANG as the Chairman of the Bills Committee.

MR ALLEN LEE (in Cantonese): Mr Chairman, I seek your permission to respond to the remarks the Honourable LEE Cheuk-yan made just now.

CHAIRMAN: Since it was totally irrelevant, I do not think you need to reply; nor would your reply be relevant, Mr LEE.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, I support the motion for the amendment.

I said just now that I was against the Mandatory Provident Fund Scheme, therefore any proposal to oppose, stop or postpone this Bill will have my support. This Bill not only stops the bringing into force of the Old Age Pension Scheme, but also makes the Central Provident Fund inoperable. The Administration is actually trying to use this to strike down all other feasible old age retirement protection systems. However, I would like to make one thing clear: just now the Honourable LEE Cheuk-yan referred to Old Age Pension Scheme, actually at the very beginning, only three small parties clearly and openly supported the Administration.

MR PANG CHUN-HOI (in Cantonese): Mr Chairman, I vote against this amendment.

Now we are all squabbling over whether we should pass this Bill, but we are having the Second Reading debate. Even if it is passed in the Second or Third Reading, you can still vote it down. As long as you have the confidence to come back, you can vote it down. Not only is that the old age pension can be drawn by your children, but your living expenses now can also be obtained from the Administration. You have the ability to raise any objection in the Legislative Council. However, things should not go that way, do not think that you are different from others just because you are a Legislative Council Member? People have eyes to see.

These are my remarks.

MR JIMMY McGREGOR: Mr Chairman, I am simply to correct some of the information and admonition just in the last few minutes and I oppose the amendment, and in doing so I want to draw your attention to the fact that I think Mr TAM Yiu-chung, Mr Federick FUNG and myself were the three people embarrassed with the three organizations strongly supporting the old age pension, Mr Chairman. I think, it seems strange to me now they listen to Mr LEE Cheuk-yan, making the claim that his party and himself were strongly supporting old age pension at the time when the Hansard records were showing very clearly who supported it and who did not. So, Mr Chairman, in regard to the question that while I support old age pension at this stage, this Council very resoundingly spoke strongly against it and voted against it, the Government was forced to withdraw it. So, at this stage, I do not think anybody should start claiming credit for having all these pensions approved. Mr Chairman, on that basis, I disagree with the amendment and I will vote against it.

MR CHIM PUI-CHUNG (in Cantonese): Mr Chairman, I rise to oppose the amendment. It is unreasonable to give others the power but retain it at the same time. Should any problem arise in the future, we shall have discussion then.

Earlier, the Honourable LEE Cheuk-yan posed himself as the saviour. On behalf of my constituency, I will not allow him to attack my views. Like the Honourable Andrew WONG, I am also speaking on behalf of my constituency, not his. Please remember, I have my rights.

MR ANDREW WONG (in Cantonese): Mr Chairman, I think agitated feelings should be suppressed. We all speak with good intentions, hoping that some plan can be devised in respect of retirement protection in Hong Kong so that the elderly can lived happily and peacefully in their old age. We have been procrastinating on this matter for 30 years, and I hope that there can be an early solution.

Even though it so happens that I think that the old age pension is better and that Mandatory Provident Fund (MPF) Scheme is not so good, there is no point in attacking others as capitalist, socialist, only thinking of the rich or exploiting the poor. In the heated exchanges, many of the issues are confused. Obviously when the Honourable Frederick FUNG mentioned the support of the three small parties, he was jeering at the Democratic Party. Earlier, the Honourable MacGREGOR referred to the Honourable LEE Cheuk-yan and the party he belongs to, but Mr LEE Cheuk-yan actually is not a member of the Democratic Party. A lot of things thus get confused. Mr Frederick FUNG referred to the three small parties, but he forgot to mention that the one to which Mr MacGREGOR belonged has already switched allegiance. It is clear that many of the things have not been clearly made out.

I would like to make it clear that my stand is crystal clear and would try every means to stop this Bill. If not possible, I would try to bring it down with an unofficial member's bill in the next session of the Legislative Council. In such a case, another unofficial member's bill would be drafted, for example, to raise the tax. This might pose a problem, but if it could be drafted tactfully, the President would not see it as incurring expenditure on or using public funds.

Giving his views, the Honourable Marvin CHEUNG was completely against any form of mandatory retirement scheme. He therefore was against the Old Age Pension Scheme, and was also against the MPF Scheme. He is in principle against all schemes. The arguments they put forth however were not completely on this matter, and they just pointed out that the Bill was hollow in content. Hollow it may be, but still we have to pass it despite the little time we were given. Can the subsidiary legislations have the approval of the Members before the Legislative Council passes a resolution for their implementation, and can the commencement date be set by the Members?

Passing a resolution on the commencement date may also imply using the public funds. A resolution therefore must be proposed by the Administration, and if the Administration does not propose it, we would not be happy. If the Administration does propose it, and we are not happy with its content, not approving of its implementation may satisfy those Members like me, who try all means to stop the Administration, and those Members like Mr Marvin CHEUNG who think that the Bill must be generally perfect, and the content must not be too sloppy and hollow.

Other Members put forth such argument as executive-led. I think that under our constitutional system, a lot of things are to be initiated by the Administration, and these things should have priority over others. There are things, like public expenditure, which can only be raised by the Administration. Having an executive-led system does not mean that we can only eat what the administrative authority cooks. This is not executive-led, it is executive hegemony.

I hope that we can make it clear to ourselves and I fully support the views put forth by Mr Marvin CHEUNG. My objectives may not be the same as his, but I fully support the reasons he gave.

Thank you, Mr Chairman.

MRS SELINA CHOW (in Cantonese): Mr Chairman, I want to take this opportunity to correct the wrong information given by the Honourable LEE Cheuk-yan earlier, and this is not his first time. The old age pension he raised in the Legislative Council is only glossing over the actual matter, and actually would lead Hong Kong down the road of welfarism. He said that the Liberal Party was against this, against that, but I would like to remind him that it was the Legislative Council which cast the against vote. I hope that he will respect the Legislative Council and the democratic process. The reason for the Legislative Council to vote against something is because there are views from within and without. On this matter, of course, there are greatly diverse views and a lot of controversies. I hope to make it clear that do not level any attack only on the Liberal Party. If every time he says anything that will mislead, I would make clarification each time too.

The Liberal Party supports a two-prong approach and absolutely takes care of the needs of the elderly and would strengthen the assistance given to them. These are the things we have been lobbying for. However, we also advocate that the youngsters and those people with a job now have to prepare themselves for their old age, hence the establishment of a mandatory provident fund. The employers should also make contribution like these people, so that the whole society will support and make preparation for the elderly now and in the future.

I hope that the Members will not aim their attack at the Liberal Party. If they are of a different view from others, they can state the matter clearly but do not try to mislead and confuse the issues. I also hope that they will not use it to attack other parties, this is not the right way to go about things. We should bring an open and objective mind to any discussion, which should not be turned into a forum for attacking others.

Thank you, Mr President.

MRS ELSIE TU: Mr Chairman, when this amendment was first suggested in the Bills Committee, I had the impression that the purpose of it was to try to make sure that the Legislature Council would see that the Bill would put through in an orderly fashion and would not be neglected. Now, after hearing some Members speaking, it seems clear to me that their purpose is sabotages, and their side, I could never support. If we sabotage this Bill, there will be no OPS in any case because if the OPS is going to be brought forward by a private bill, there will be charging effect and I do not think it will go through. So it is either this Bill

or nothing, and if we do not want the OPS, we would not have anything at all, then I am very much surprised and very disgusted. We have to support this Bill and make sure that there is something for the elderly, otherwise there is going to be nothing. I am against this amendment.

MR HOWARD YOUNG (in Cantonese): Mr Chairman, while commenting on the amendment, many Members mention the stand of various political parties or organization. I would like to look at the matter from another angle.

I am an employee, and ever since I began working, I have never been an employer. I am lucky that I am among 30% of the people working for a conscientious employer that have set up provident fund early in the day. Among my friends are white collar and blue collar workers, and I have heard from none of them that they are not satisfied with this system, some even welcome it. But I also understand that many employees in Hong Kong do not have the protection of any provident fund. I feel that in our society today, this one third of the workforce (mainly white collar, with some blue collar) also hope that the other employees would also have the same sort of protection.

I think that if this amendment is carried, it will go against the objective of the Bill, therefore we should not accept this amendment.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, the Bills Committee's Committee stage amendment is based on the fallacious assumption that the Administration does not know what it is doing and would act in an arbitrary manner in bringing into operation the provisions of the Bill. Such doubts or fears are totally unfounded and are unworthy of Members. It is unthinkable that the Administration would act in a way which is contrary to the public interest.

Furthermore, it would not be possible in practice for the Ordinance to be brought into effect until relevant items of subsidiary legislation are in place. As part of this process, we wish to see the early establishment of the MPF Schemes Authority so that it can be fully involved in the preparation of necessary subsidiary legislation.

Some Members have suggested that this additional resolution requirement is necessary as they do not know the shape of the subsidiary legislation to come and they have no confidence that the MPF system in its entirety will actually work. May I remind them that we receive detailed expert advice from consultants on the technical aspects of the MPF Scheme. May I also remind them that there are similar retirement systems operating abroad successfully.

Furthermore, as I said earlier in my speech, the Governor would not exercise his powers under section 6 of the Ordinance until everything is in place. Subsidiary legislation would be enacted only by resolution of this Council. Given that Members would need to be fully satisfied with the subsidiary legislation before it could be enacted, I see neither logic nor purpose in requiring the effective date of operation to be subject to an additional resolution of this Council, unless it is an attempt to undermine the executive-led nature of this Government.

Mr Chairman, the Official Members will oppose this amendment and I urge Members to do likewise.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR MARVIN CHEUNG: Mr Chairman, 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, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr Simon IP, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, 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 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 CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr

Samuel WONG, Mr Howard YOUNG, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 27 votes in favour of the amendment and 27 votes against it. In accordance with convention, the Chairman voted for the "Noes" and declared that the amendment was negatived.

12.55 pm

CHAIRMAN: We shall now break for lunch. I will be grateful if Members did return after 45 minutes and I now suspend the sitting.

2.07 pm

CHAIRMAN: I am sorry that there has been a delay but I have a request from Mr Michael HO for leave to move an amendment to Part II of Schedule 1 which would effectively reinstate the amendment which the Secretary for Education and Manpower was going to move to Part II of Schedule 1. Members were informed earlier this morning by the tabling of a notice that the Secretary for Education and Manpower had obtained my leave to put in a fresh amendment to Part II of Schedule 1. In view of that short notice, I thought it proper that Mr Michael HO should have leave to move the amendment which was originally on the Order Paper. The script is being rewritten and I hope that the position will be clear when we come to this part of the Committee stage amendments and I will explain further when we get to that portion of the proceedings.

We are turning now to clause 1. As Mr Henry TANG's amendment to subclause (2) of clause 1 has not been agreed, I will not call upon Mr TANG to move the addition of subclause (3) to clause 1, as it is inconsistent with the decision already taken.

Question on clause 1 standing part of the Bill put and agreed to.

Clause 6

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move the amendment to subclause (1) of clause 6, the addition of subclause 1(A) to clause 6, the amendments to subclauses (2), (3) and (6) of clause 6 as set out under my name in the paper circulated to Members.

To clarify our policy intention that it shall be a requirement for all employers and self-employed persons to secure a retirement scheme for their employees or themselves respectively both on and after the appointed day, I am

moving an amendment to clause 6(1), and consequential amendments to clauses 6(2) and 6(3)

In response to Members' views that the word "irrevocable" was too restrictive in clause 6(1), I am moving an amendment to delete it.

Members will be aware that Schedule 1 of the Bill as drafted now exempts from the MPF a relevant employee who has been employed under a contract of employment for a continuous period of 30 days. Some Members have suggested that this period should be extended because the probation period of many jobs often exceeds the first 30 days, or employees may work for 30 days then give 30 days' notice. I agree that the 30-day exemption period can be changed to 60 days. An appropriate amendment will be moved later on to Schedule 1.

The new clause 6(1A) will provide that if the employee remains in a job longer than 60 days, the employer will have to backdate contributions for the entire period, whereas the employee will only pay in respect of the last 30 days. I am also moving related consequential amendments to clauses 6(1) and 6(6).

Three other technical amendments are also being moved in respect of clauses 6(2) and 6(3) to link the contribution amount to the minimum and/or maximum income levels as stated in the Schedules.

Proposed amemdment

Clause 6

That clause 6(1) be amended —

(a) by deleting "Every employer shall, on or before the appointed day," and substituting "Subject to subsection (1A), every employer shall".

(b) by deleting "irrevocable".

(c) by deleting "30" and substituting "60".

That clause 6 be amended, by adding —

"(1A) Where the relevant employee of an employer referred to in subsection (1) has been in the employ of that employer for a period of 60 days or more -

(a) the employer shall contribute to the registered scheme in accordance with this section for the whole period of the employment of that relevant employee, including the first 60 days of that employment; and

(b) the relevant employee's contribution shall apply to the whole period of the employment of that relevant employee, excluding the first 30 days of that employment.".

That clause 6(2) be amended —

(a) by deleting ", on or after the appointed day".

(b) in paragraph (a), by adding "subject to section 9," before "contribute".

(c) in paragraph (b), by adding "subject to sections 8 and 9," before "deduct".

That clause 6(3) be amended, by deleting everything before. "contribute" and substituting —

"(3) Subject to sections 8 and 9, every self-employed person shall become a member of a registered scheme and shall".

That clause 6(6) be amended, by adding "(1A)," after "(1),".

Question on the amendment proposed, put and agreed to.

CHAIRMAN: Both the Secretary for Education and Manpower and Mr Henry TANG have given notice to move an amendment to subclause (7) of clause 6. I will call upon the Secretary to move his amendment first in accordance with Standing Order 25(4).

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that subclause (7) of clause 6 be amended as set out under my name in the paper circulated to Members.

Subsequent to the amendments made to clauses 6(1), 6(2) and 6(3) which have brought into effect that the MPF is a requirement for all employers and self-employed persons, both on and after the appointed day, subclause (7) becomes superfluous. Furthermore there is already reference to the day the Ordinance comes into operation in clause 1(2). I therefore propose to delete this subclause.

Proposed amendment

Clause 6

That clause 6 be amended, by deleting subclause (7).

Question on the amendment proposed.

CHAIRMAN: I will call upon Mr Henry TANG to speak on the amendment proposed by the Secretary for Education and Manpower as well as his own amendment, but will not ask Mr TANG to move his amendment unless the Secretary's amendment has been negatived. If the Secretary's amendment is agreed, that will by implication mean that Mr TANG's proposed amendment is not agreed.

MR HENRY TANG: Mr Chairman, I propose that clause 6(7) be amended as set out under my name in the paper circulated to Members.

As explained earlier, many key features of the MPF are not specified in detail in the Bill. They will, in due course, be dealt with by subsidiary legislation. A number of the Schedules to the Bill also appear to be completely empty or incomplete. In these circumstances, it will not be acceptable for the Legislative Council to approve the key features particularly in relation to clause 6 of the MPF Bill merely by negative approval. The Bills Committee therefore proposes that the setting of the appointed day be approved positively by the Legislative Council under section 35 of the Interpretation and General Clauses Ordinance (Cap. 1)

I shall now change hat and take off my hat as Chairman of the Bills Committee and put on my hat as an individual. As I have mentioned before, I personally do not share the view of the Bills Committee. The positive approval procedure of all subsidiary legislation should be more than enough of a safeguard. Additional approval of the commencement of section 6 by the Legislative Council would therefore be redundant and excessive.

Thank you, Mr Chairman.

CHAIRMAN: Members may now debate the amendment moved by the Secretary for Education and Manpower as well as the amendment proposed by Mr Henry TANG.

MR MARVIN CHEUNG: Mr Chairman, I rise to oppose the amendment proposed by the Secretary for Education and Manpower and to support the amendment to be moved by the Honourable Henry TANG. The amendment to clause 6(7) moved by the Secretary for Education and Manpower would have the effect of depriving the Legislative Council of any opportunity to control the date when the most important element of the MPF comes into operation. The reasons why the Legislative Council requires to retain control over the commencement date had been dealt with when we debated the amendment to clause 1(2) and I do not wish to repeat them here. Given the many gaps in the current legislation, it is absolutely necessary for the Legislative Council to control the commencement date in order to ensure that all the critical elements of the proposals have been fully debated and solutions to the problems found. I thus urge Members to reject the amendment moved by the Secretary for Education and Manpower and to support the Bills Committee's amendment.

MR MICHAEL HO (in Cantonese): Mr Chairman, the amendment proposed by the Administration would delete clause 6(7). If the amendment was to be passed, the amendment to be proposed by the Bills Committee, that is, with the addition of a control on the commencement by the Legislative Council, could not be put forth. The Democratic Party therefore opposes the amendment of the Administration, and support that of the Honourable Henry TANG.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, my reasons have already been given, but I would like to repeat them again: I would support any amendment that can prevent or put off the coming into effect of this Bill. I therefore support the amendment of the Honourable Henry TANG and oppose that of the Administration.

MR JAMES TIEN (in Cantonese): Mr Chairman, just like clause 1 which we debated on just now, the idea of this amendment was actually also that of the Honourable Marvin CHEUNG, but was later made by the Honourable Henry TANG as the Chairman of the Bills Committee. Similarly, based on the reasons I gave just now, the Liberal Party will not support this amendment.

2.18 pm

CHAIRMAN: There is a point of procedure that I am afraid I have not applied my mind to. I am going to suspend the sitting for a few seconds.

2.28 pm

CHAIRMAN: I have come to the conclusion and rule that Mr Henry TANG's amendment to subclause (7) of clause 6 is in fact inconsistent with the decision

already taken under subclause (2) of clause 1 and I therefore rule it out of order. We will proceed to the next amendment.

Question on the amendment, put and agreed to.

Question on clause 6, as amended, proposed, put and agreed to.

Clause 14

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I move to amend Clause 14, which amendment has been listed in the papers circulated to the Members.

My proposing such an amendment is to unpeg the Mandatory Provident Fund (MPF) from the long service awards and severance pay under the Employment Ordinance. Clause 14 of the MPF Schemes Bill allows an employee to draw from his provident fund account the severance pay or long service awards that his employer has to pay, that is to say, after making his contribution to an MPF Scheme, an employer would not have to make severance payment or long service awards, and such amount would become deductions from the provident fund. To the mingling of two totally different policies by the Secretary for Education and Manpower, I, on behalf of Hong Kong Confederation of Trade Unions (CTU), express the greatest dissatisfaction and the strongest opposition. I therefore propose this amendment also on behalf of CTU.

We must make it conceptually clear that the severance pay, long service awards and the MPF all serve very different policy objectives and functions. The provision for the payment of severance pay was made in 1974, and it was to minimize the hardship the workers faced when they were made redundant through retrenchment. If an employee was made redundant after working for two years, he would have some money to help him tide over the difficult times. The provision for the payment of long service awards was made in 1985, and it was to provide some sort of compensation to employees with certain seniority, who might have been dismissed unfairly. At that time, I remember, we often criticized that employees, who had served a company for 30 years, were dismissed neither because of dissolution nor through retrenchment, and were paid not a cent. It was under such a situation that a legislation was made to provide for the payment of long service awards to workers with certain seniority so that they would not end up with nothing after working for a couple of decades. This is related to dismissal compensation. Further provision was made in 1988 that should a worker die during service, his dependents could also be paid that money, and if he could not work through chronic illness, he could also be paid that money on reaching 65 years of age. This provision was added to the ordinance in 1988. It is therefore very clear that be it severance pay or long service awards, the two are related to dismissal, whereas the MPF serves very different purpose.

We all know that any MPF scheme is just a forced employee savings scheme, so that an employee on reaching retirement age can have a sum of savings. If an employee's severance pay and long service awards are to be set off against his provident fund, it would go against the original intention of setting up a mandatory provident fund. The consultant engaged by the Administration also put it very clearly in its report that from the MPF policy point of view, the severance pay and long service awards should not be set off against any provident fund. This is said by the Administration's own consultant report.

The only argument the Secretary for Education and Manpower could put forth to refute my view is that the existing Employment Ordinance allows long service awards and severance payment to be set off against any private provident fund. Why is setting-off allowed? This is because the two things have a common policy objective. The long service awards and severance payment, just as the private provident funds, are taken at the time of dismissal. As both can be taken at the time of leaving service, so they can be set off against each other. However, under the MPF Schemes, the provident fund can only be taken on retirement, so why the setting-off? There is completely no ground for doing so. We have to be clear why the current Employment Ordinance allows setting-off. I have made it very clear that both are meant to give protection to people on leaving their jobs, but not so for MPF. We have to remember that the MPF is a kind of protection that we can only realize on our reaching the retirement age of 65.

Some people would ask if I can successfully unpeg the relation between the two, whether the employers would have to pay twice, that is paying both the severance pay and the retirement protection. If the two are different, why cannot it be paid twice? Do I have to abolish all the provisions, except that for retirement protection, of the Employment Ordinance? The Employment Ordinance also provides for a payment in lieu of dismissal notice, and a pro rata payment of double pay on dismissal. Should all these be set off against the pension? Should they be deducted from the pension? That is impossible, and there is no reason for doing so as they are all different matters. An employer of course has to pay twice because the two are completely different, it is not possible for us to allow setting off just because we do not want the employers to pay twice. The two are matters of completely different nature.

If the Members are not prepared to support my amendment, what would be the result? The MPF would be reduced to fund for paying severance pay and long service awards. If an employee is dismissed a number of times, and every time he is to draw a sum of money from the pension in accordance with the legislation, then when he turns 65, what is left in the pension is the 5% contribution he makes, without anything from his employers. Is that what we want? I would like to ask the Administration if the MPF a severance pay fund.

If it is so, it should be named accordingly. However, it is not a severance pay fund, but MPF, a protection which can be obtained when one retires at 65. If you vote down this amendment, the scheme would be reduced to a severance pay fund, resulting in a shrink in the amount of pension a worker can get.

The Secretary for Education and Manpower has expressed that the matter be referred to Labour Advisory Board (LAB) for discussion. I would like to ask, if it is to be referred to LAB for discussion, why we have to legislate before referring it to LAB. Why are we not to let LAB discuss it first before deciding on it? I do not quite see if there is any specific meaning in our present discussion if the Secretary for Education and Manpower often said that he would refer it to LAB for discussion. This makes one feel that my amendment should be passed as passing my amendment would mean leaving the provisions in this regard blank, and it would be fair to LAB when it discusses the matter.

Those who are perceptive enough will see that the reason behind the Secretary for Education and Manpower for all this might be a deal with the Liberal Party in exchange for its support. As the Honourable James TIEN has expressed that if the Administration made no provision for setting-off, the industrial and commercial constituent would not support. The Secretary for Education and Manpower though has said that politics is an art of compromise, but to me, what is compromised is the interests of the employees, what is in the deal is the interests of the employees. This is one of the unethical deals in the whole Bill, I would talk about another later. I hope that you will all remember what I just said: do not mix up the two legislations which serve different policy objectives, and let one set off against another.

Thank you, Mr Chairman.

Proposed amendment

Clause 14

That clause 14 be amended —

(a) in subclause (3), by deleting", or, in respect of that part of accrued benefits which are derived from a current employer's contributions (quantified in accordance with rules made by the Authority under section 45), at such time as a relevant employee becomes entitled to severance payments or long service payments under the Employment Ordinance (Cap. 57) for the purpose of set-off as prescribed in that Ordinance";

(b) by adding -

"(3A) For the avoidance of doubt a registered scheme shall not be considered as a retirement scheme for the purpose of set-off with severance payments or long service payments under the Employment Ordinance (Cap. 57).".

Question on the amendment proposed.

MR JAMES TIEN (in Cantonese): Mr Chairman, this amendment has to do with severance pay, long service award and pension.

A very complicated relationship exists between an employer and an employee. Basically, an employee works for an employer for a salary. When an employee resigns, he can quit like that, of course there is no such thing in this world that an employee would pay compensation to an employer, Conversely, if an employer was to dismiss an employee, what would happen? According to the earliest thinking, if a worker was to be dismissed, whether he is a 20-year-old or 30-year-old, he is given a sum of money to tide him over the hardship of living for a short period of time.

The day an employee leaves his post, his employer will have paid him a sum of money. The employee may use this sum during the short time he is still looking for a job, or he can put it into his savings account and use it when he retires at 65. Of course, as the Honourable LEE Cheuk-yan put it, these are two different matters. However, from the point of view of the paying employer, he has already paid a sum, whether it is used now or during retirement, it is all up to the individual as every one has his own philosophy of managing finance and understands his own financial arrangement. Some people would think that it is better to use the money now, for example, paying for older children's university education, so that on graduation the children can earn a better salary to support their parents. Thus they have the right to use this sum of money earlier.

Presently long service awards and severance pay are completely off-set under the Occupational Retirement Scheme Ordinance (ORSO) scheme. Off-setting means additional payment will be made if the amount is not enough. In fact, they are not two different matters, but one. Would the situation be like what Mr LEE Cheuk-yan said, if this requirement is made, neither the employee nor the employer would benefit? In fact it is not so, it is a middle-of-the-road approach. I would like to explain why. Now if an employee resigns, and he has not reached 65, he will get nothing. However, if he is dismissed by his employer, it will be different. Should a company have no business and have to close down, the employer would have to pay severance pay to the employees. If an employer is not happy with the work of an employee and fires him and recruits another one to fill the vacancy, he will not have to severance pay but has to pay the long service award. At present there is little controversy because

the methods of calculation for the two situations are very similar. The amount as calculated for making severance payment is more or less the same as that calculated for making long service award payment. However, the situation will be different in the future, and there is much room for controversy. Should the payment be for severance payment or long service award? Should a position be cut because of shrinking business or a person be found to fill the vacancy? According to the current scheme, an employer will pay for an employee for a number of years, after which, the employee can still take the money even if he resigns.

The unofficial member's bill put forth by Mr LEE Cheuk-yan has been debated and Mr LEE himself has withdrawn the proposal that money can be drawn after 10 years' service. Now with the Mandatory Provident Fund, whether the employment is for 10 years or five years, an employee can still draw the contribution made by his employer and his own. This is different from the current severance payment; now when an employee resigns himself, he cannot make any drawing.

Actually, to the employers, joining this contribution scheme is already a step forward. With long service awards, severance payment and MPF in place, whether we are providing double insurance or making double expenditure or giving double benefits, it is all a matter of points of view. From the point of an employer, when the inflation rate still remains high and an annual 10% pay increase is expected, he will have to pay 5% more with the passage of the MPF, and some people even say that the 5% employee contribution will, to a certain extent, be subsidized by the employer. However, the present economy does not look bright. Maybe we can say that after the passage of this Bill, and then some more years lapse before the subsidiary legislations coming into effect, it is hoped that the economy will turn for the better. Can all the employers shoulder the burden? If they cannot, would the scheme make the employers consider their financial situation or give a smaller pay rise? Thus the Administration is taking the first step forward with the current proposal, and is to pass the MPF so that on the one hand the employers shall have to contribute 5%, and on the other, keep the setting-off provisions in the ORSO unchanged.

Mr Chairman, the Liberal Party opposes the amendment proposed by Mr LEE Cheuk-yan.

MR TAM YIU CHUNG (in Cantonese): Mr Chairman, I speak in support of the amendment moved by the Honourable LEE Cheuk-yan.

Though according to current legislations, voluntary provident funds may set off against any severance pay and long service awards, I feel that the voluntary provident funds as currently implemented and the Mandatory Provident Fund (MPF), if implemented, are two different matters. I therefore think that in implementing the MPF, it should not be set off against the payment of any severance pay and long service awards.

Perhaps it is because the employers think that there could be the so-called setting-off, so they are non-committal as to the implementation of MPF; no matter how, they still have to pay all the same, but only under different names. The employers therefore do not show any opposition as the amount they have to pay is still the same.

I feel that the Administration is rather equivocal on the problem; it only says that it can wait for a solution, or let the Labour Advisory Board to consider it. This problem actually needs no further consideration, we all know the stand of the labour side. We think that in front of us are two different sums, two different matters, they should not be mingled together. Mingling the two will only do injustice to the labourers. What we are discussing today is an issue of great importance, I hope that we can give it due consideration. Take the severance pay for example, having legislation enacted to provide for the payment of severance pay is because workers may face unemployment as a result of the company they work for carries out retrenchment or closes down, the severance pay may help them tide over the hardship. I think that this problem and retirement protection are totally different matters. We think that they should not be set off against each other.

Thank you, Mr Chairman.

MR MICHAEL HO (in Cantonese): Mr Chairman, the Democratic Party supports the amendment proposed by the Honourable LEE Cheuk-yan. We only want to point out one thing. If we allow the long service awards or severance pay to be related with a provident fund, as is arranged under the Bill, an employee, when he resigns or is dismissed, would have his provident fund deducted in a guise. This would make the employee, on his retirement, end up with a lesser amount than as expected under the provident fund. Such a situation exactly goes against the original intent of the Mandatory Provident Fund which we are discussing today. Mr Chairman, we therefore support the amendment of Mr LEE Cheuk-yan.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, the Hong Kong Association for Democracy and People's Livelihood and I both think that any retirement plan and the payment of severance pay and long service awards are two different matters and should not be given due consideration without neglecting any one of them. I therefore support the amendment moved by the Honourable LEE Cheuk-yan in the hope that what employees should enjoy may continue, and any other retirement protection system is another matter.

MR JAMES TO (in Cantonese): Mr Chairman, I have not spoken on the Bill, but I would say that I strongly believe that this is an immoral deal of the Administration to try to win votes from the Liberal Party. And on such a deal I shall condemn. This Administration, which is on its way out and has already

sold Hong Kong short on the Court of the Final Appeal Bill, goes so far as to commit such an immorality. Shame on the Government.

MR ROGER LUK (in Cantonese): Mr TO needs not be so agitated. Just now I listened to the amendment proposed by the Honourable LEE Cheuk-yan, and the story of the long service awards and severance pay as told by the Honourable James TIEN. This whole matter shows that the Bills Committee does not have enough time to look clearly into the matter to decide on the direction to take.

After listening to Mr LEE Cheuk-yan's speech, I feel that he has been talking sensibly. If this is retirement protection, why should it be set off against severance pay and long service awards? Mr TIEN just said that from a historical point of view, when there was no long term retirement protection, they really had the function of providing retirement protection so that when an employee left service and could not have a job, they could provide some sort of protection. What exactly is the relation between the two?

The current system is a voluntary reitrement protection scheme with the employers voluntarily providing retirement protection. Under such a situation, an employer's responsibility is set off against the severance pay and long service awards, which is reasonable enough. However, when things are made mandatory, the Administration has not given the Bills Committee any clear policy direction as to where the dividing line between the two should be put. At the Committee meeting, I asked the Deputy Secretary for Education and Manpower what the difference between the two was and I was not given any clear indication. Mr James TIEN's speech on the difference between the two was totally different from the explanation given by the Administration.

Under such a situation, I would vote against it, but I am not opposing the proposal of Mr LEE Cheuk-yan, it's only that we cannot help but to maintain the *status quo*.

Thank you, Mr Chairman.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, Members will be aware that the set-off practice dealt with in this clause is a long-established arrangement, understood fully by employers and employees alike.

At present, the employers' contributions to a retirement scheme may be set off against any amount paid out for severance payments or long service payments. It is not appropriate to expect employers to pay twice. Severance payments and long service payments are designed as alternatives rather than supplements to retirement schemes.

I totally refute the allegations made by a few Members that we have made an immoral deal with the Liberal Party. This is certainly not the case, and I demand that Member to withdraw that statement unless he can prove that this deal did in fact happen.

Having said that, the policy does require review. We appreciate that the provisions for both long service payments and severance payments need to be examined in the light of the MPF. We have, therefore, invited the Labour Advisory Board to conduct such a review as early as possible. Until the review is complete, Mr Chairman, it would be premature to introduce any changes. The Official Members will, therefore, vote against the amendment and I urge Members to do likewise.

MR LEE CHEUK-YAN (in Cantonese): First of all, I hope that the Honourable Roger LUK needs not be so dejected by his helplessness, what is the most important is how he votes.

Just now the Honourable James TIEN said that the severance pay can be saved up by a worker for use during his retirement and the management of this money should be left to the worker himself. Well, if a worker does not have to face any immediate hardship and can put aside the money till he is 65, then there is no need for Mandatory Provident Fund (MPF). The purpose of having MPF is that it is already hard to make a living, in case of being disbanded or dismissed, they would face greater hardship. I urge you to make it clear that MPF is retirement protection, not job-leaving protection.

Finally, I would like to make a response. I remember that the Honourable Allen LEE said last night that he loved the working class. I am now inviting him to show his love for the working class.

Thank you, Mr Chairman.

Question on the amendment put.

Voice vote taken.

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, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Marvin CHEUNG, 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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, 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 LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, 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 PANG Chun-hoi and Mrs Elsie TU abstained.

THE CHAIRMAN announced that there were 24 votes in favour of the amendment and 29 votes against it. He therefore declared that the amendment was negatived.

Question on the original clause 14 standing part of the Bill put and agreed to.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, as Standing Order 46(4) and (5) stipulate that any proposed new clause shall be considered after the clauses of a Bill have been disposed of, may I seek leave to move that Standing Order 46(4) and (5) be suspended in order that new clause 4A may be considered ahead of the amendments to clause 44.

CHAIRMAN: Secretary for Education and Manpower, as only the President may give consent to move a motion without notice to suspend Standing Orders, your request cannot be dealt with in Committee. I therefore order that Council will now resume.

Council then resumed.

President: Secretary for Education and Manpower, you have my consent.

SECRETARY FOR EDUCATION AND MANPOWER: Mr President, I move that Standing Order 46(4) and (5) be suspended to enable the Committee of the whole Council to consider new clause 4A before the amendment to clause 44.

Question proposed, put and agreed to.

Council went into Committee.

New clause 4A Exemptions in respect of occupational retirement schemes

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

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that new clause 4A as set out under my name in the paper circulated to Members be read the Second time.

The interface with the existing schemes registered under the Occupational Retirement Schemes Ordinance is a subject of major concern. As I have said in the main speech, our policy intent is very clear. While it has always been our aim for the MPF to cover as many persons in the workforce as possible, we do not want to interfere with existing contractual obligations between employers and their employees who are covered under existing registered schemes.

Some have said that this is not stated clearly in the Bill as drafted. Some have expressed doubts as to whether defined benefit schemes could be covered by the exemption arrangements, while others have urged us to consider whether exempt schemes should be open to new employees.

After carefully considering deputations from a number of organizations and the views of the Bills Committee, we are prepared to move an amendment to the effect that persons who are members of relevant ORSO schemes, whether they are defined benefit or defined contribution, can be exempt from the provisions of the MPF legislation, provided that the fundamentals of the MPF system are not compromised.

The new clause 4(A) will provide for this, as long as the schemes to be exempt can satisfy requirements to be specified in regulations. We look forward to discussing the details of the exemption regulations with all concerned parties.

Question on Second Reading of the clause proposed.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, I would not vote in protest of a patchy bill as such.

MR LEE CHEUK-YAN (in Cantonese): This amendment is related to the existing Occupational Retirement Scheme. I would like to remind you that I am very worried that if those employees covered by the existing Occupational Retirement Scheme were exempted, especially if the new workers and employees were exempted, the whole society would be so divided that one-third of the people would be those who participate in the existing Occupational Retirement Scheme and would be able to draw their pension before 65, and two-thirds would be those who have to wait till they turn 65 before they could have any benefit. This is a very chaotic situation. I very hope that the Administration would treat the whole matter with the greatest care.

MR MICHAEL HO (in Cantonese): Mr Chairman, this clause 4A is only arrived at after much lengthy discussion of the Bills Committee and finding no better way out. This would be left to further discussion in the future when the subsidiary legislations are discussed. To such an arrangement we feel very helpless and can only accept it as the best solution so far.

Mr Chairman, the Democratic Party will abstain on the vote.

MR ROGER LUK (in Cantonese): Mr Chairman, under the existing Occupational Retirement Scheme there are two types of schemes, which, in terms of the amount of contribution and benefits, are far better than the Mandatory Provident Fund (MPF) as proposed by the current Bill. These schemes can be transferred to the new scheme very easily. Though some of these schemes cannot yet meet the requirement, they can be made to comply with the required standard after some adjustment. It is therefore very important when setting the policy direction that those schemes that are not yet up to par should be dealt with. If the Administration think that MPF should cover the general population, and that it be made our minimum requirement, then those schemes that cannot meet the required standard should be made to meet the required standard. If there were two sets of supervisory systems, it is not only a waste of resources, but could create conflicts that make people feel at a loss of what to do. The two schemes actually have one common objective. If MPF is the standard that the Administration think we now should have, existing schemes should actively try to comply with this standard, instead of being rejected through being frozen or natural elimination.

Thank you, Mr Chairman.

MR JAMES TIEN (in Cantonese): Mr Chairman, as to how the existing ORSO schemes can be merged with Mandatory Provident Fund schemes, we have also had discussion at the Bills Committee. The Liberal Party has put forth a lot of ideas or possible ways of going about it. However, in view of the time constraint, the Liberal Party supports deferring the matter till discussion is to be held in respect of the subsidiary legislations.

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

Clause read the Second time.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that new clause 4A be added to the Bill.

Proposed addition

New clause 4A

That the Bill be amended, by adding —

> **"4A. Exemptions in respect of occupational retirement schemes**
>
> (1) Any person to whom this subsection applies who is a member of an occupational retirement scheme within the meaning of the relevant Ordinance (and whether that scheme is a defined contribution scheme or a defined benefit scheme registered under the provisions of that Ordinance or is the subject of an exemption certificate issued under section 7(1) thereof), and the employer of such a person, shall be exempt from all or part of the provisions of this Ordinance in accordance with regulations referred to in subsection (2).
>
> (2) Subsection (1) shall apply to a member of an occupational retirement scheme referred to in that subsection who satisfies the requirement of any regulations made for that purpose under section 44 and those regulations may include provisions specifying the circumstances in which all or part of the provisions of this Ordinance shall apply or not apply, as the case may be, to that member, or any person within a class of members so specified, or to his employer.".

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

Clause 44

CHAIRMAN: The Secretary for Education and Manpower has given notice to move the amendment set out in paragraph (a) of his amendments to clause 44(1)

and the addition of subclause (1A) to clause 44. Mr Henry TANG has also given notice to move an amendment to clause 44. I will call upon the Secretary for Education and Manpower to move his amendment first in accordance with Standing Order 25(4).

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move the amendment as set out in paragraph (a) of my amendments to clause 44(1), and the addition of subclause (1A) to clause 44 indicated under my name in the paper circulated to Members.

The Government has always agreed that there will be full consultation with Members of this Council when drawing up subsidiary legislation on the MPF. To reflect this, I am moving the amendment as set out in paragraph (a) of my amendments to clause 44(1) and shall add clause 44(1A) to the Bill to the effect that all subsidiary legislation made under clause 44 should be made by positive resolution in the Legislative Council in accordance with clause 35 of the Interpretation and General Clauses Ordinance, until such time as clause 6 of this Bill, which requires employers to arrange registered schemes for their employees and the self-employed to make parallel arrangements, is brought into operation in its entirety.

It is our every intention to have all the subsidiary legislation in place before triggering off the commencement of clause 6. Furthermore I should like to emphasize that not only would it be impossible for this Bill to be brought into effect until the relevant items of subsidiary legislation were in place, but also we would not want to take such a step in any case.

Proposed amendment

Clause 44

That clause 44(1) be amended, by deleting "The" and substituting "Subject to subsection (1A), the".

That clause 44 be amended, by adding —

> "(1A) Prior to the commencement of section 6 in ts entirety, regulations made under this section shall be subject to the approval of the Legislative Council.".

Question on the amendment proposed.

CHAIRMAN: I will call upon Mr Henry TANG to speak on the amendments proposed by the Secretary for Education and Manpower as well as his own amendment, but will not ask Mr TANG to move his amendment unless the Secretary for Education and Manpower's amendment has been negatived. If the

Secretary for Education and Manpower's amendment is agreed, that will by implication mean that Mr TANG's proposed amendment is not agreed.

MR HENRY TANG: Mr Chairman, as this amendment is very similar to the one I tried to move in clause 6(7) which you have ruled out of order, can I seek your ruling whether this will be consistent with the decision already taken on clause 1?

3.07 pm

CHAIRMAN: This same point has occurred to me, Mr TANG. I will suspend for a few minutes.

3.12 pm

CHAIRMAN: I am satisfied that there is no inconsistency as the amendment has to do with the method by which the regulations are to be enacted.

MR HENRY TANG: Mr Chairman, I propose that clause 44 be amended as set out under my name in the paper circulated to Members.

As explained earlier, many key features of the MPF are not specified in detail in the Bill. They will in due course be dealt with by subsidiary legislation. A number of the Schedules to the Bill also appear to be completely empty or incomplete. In the circumstances, it would not be acceptable for the Legislative Council to approve any subsidiary legislation which may contain some key features of the MPF merely by negative approval. The Bills Committee, therefore, proposes that regulations made under clause 44 be approved positively by the Legislative Council under section 35 of the Interpretation and General Clauses Ordinance.

The Administration is happy to submit all regulations made under clause 44 up to commencement of clause 6 in its entirety to be approved by resolution of the Legislative Council. The Bills Committee is generally not satisfied that positive approval of regulation is only up to the commencement of section 6 and thinks it should be on a perpetual basis. The proposed amendment is to this effect.

As a Member of the Liberal Party, my own view is that the amendment moved by the Secretary for Education and Manpower has already ensured that the entire process of subsidiary legislation development would be under the close monitoring of the Legislative Council by way of the positive approval procedure. The result would be that with the commencement of clause 6 all rules and regulations shall be to the satisfaction to all parties concerned. As the

revision of the subsidiary legislation would be a continuing process, responding to different needs at times, such revision would also be subject to the monitoring of the Legislative Council by way of the usual channel of scrutiny and amendments. The requirement of continuous approval by the Legislative Council of all subsequent rules and regulations, no matter how trivial, would be unnecessary and undoubtedly be a less than optimal way of utilizing the valuable time of this Council.

I will, therefore, support the Administration's amendment that the approval of the Legislative Council on all subsidiary legislation be required only up to the commencement of clause 6.

Thank you, Mr Chairman.

MR MARVIN CHEUNG: Mr Chairman, I rise to oppose the amendment moved by the Secretary for Education and Manpower to clause 44(1) and the addition of subclause (1A) to clause 44, and support the amendment to clause 44(3) to be moved by Mr Henry TANG on behalf of the Bills Committee.

The purpose of these amendments is to ensure that subsidiary legislation in the form of regulations made by the Governor in Council under the main legislation will not be enacted without the deliberation and approval by this Council. In our normal process of enacting legislation, all major provisions will have been provided for in the main legislation. Thus the full details of the law will have been thoroughly considered by the Legislative Council, revised and amended if necessary, before being enacted into law. Subsidiary legislation are normally used to cater for minor and technical details for which negative approval by the Legislative Council will suffice.

However, in the case of the MPF legislation, we have totally departed from this practice. The Bill the Administration put forward a month ago is full of gaps and lacks many of the major and important contents. Whatever is important and controversial is being deferred to subsidiary legislation in the form of regulations and rules. The Legislative Council does need to scrutinize and approve these regulations as much of their contents should have been part of the main legislation.

The Administration agreed to the need for the Legislative Council to scrutinize subsidiary legislation, but insisted to limit such powers up to the date of commencement of the legislation. Such limitation is highly unsatisfactory, as the date of commencement is to be decided on by the Governor in Council. There is therefore no safeguard that the power of positive vetting will not be prematurely removed by the Administration. I believe Members appreciate the need for scrutiny and approval of subsidiary legislation in this case and that the Legislative Council's power should not cease upon the commencement date. I therefore urge Members to vote against the Secretary for Education and

Manpower's amendment and to support the Bills Committee's amendment in due course.

MR MICHAEL HO (in Cantonese): Mr Chairman, I speak to oppose the amendment of the Administration, and support the amendment proposed by the Honourable Henry TANG, the Chairman of the Bills Committee.

Clause 44 provides that we have to make under the legislation regulations that will provide for such important matter as the retirement age, forms and the operating funds. Though being contents of such great importance, they are still in lack and there is no way for us to examine. We therefore support the proposal of the Bills Committee to add a third provision in clause 44, that is, approval of the Legislative Council must be obtained before commencement.

Mr Chairman, these are my remarks.

MR JAMES TO (in Cantonese): Mr Chairman, I agree to the speeches of the Honourable Michael HO and the Honourable Marvin CHEUNG, especially the first part of Mr Marvin CHEUNG's speech, which has pointed out a constitutional problem. On this constitutional problem, it is with a lot of legislations and their subsidiary legislations, including the subsidiary legislation on noise pollution from planes which I mentioned one or two years ago, that important details should be covered in the main legislation and not to allow only the minor or technical matters be dealt with in the subsidiary legislations. In this legislation, I am aware that during the course of examination, all the key features are missing in the main legislation. Based on this constitutional reason, I hope that the Administration should learn a lesson from this Bill for the future, especially with the Bills to be submitted to this Council next year.

Whether this Bill can be passed, this constitutional problem will affect all legislations after 1997 as well as the relationship between the legislative and the executive. I hope that when a more democratic Legislative Council is elected, especially in 1995, the Administration has a greater need to balance this constitutional principle.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, I agree to all the views expressed just now in support of the Honourable Henry TANG's amendment because I feel that a Bill that has "the skeleton but no flesh" basically cannot provide us with a clear idea of what sort of pension scheme it could be. I therefore feel that the Legislative Council should have the right to examine each and every provision.

MR JAMES TIEN (in Cantonese): Mr Chairman, the amendment to clause 44, that is the Honourable Henry TANG's amendment, is actually the idea of the Honourable Marvin CHEUNG and is exactly the same as those put forth just now.

I would like to say again that this is certainly not the same as the two just now because what we are talking here is subsidiary legislation. The Administration has made it clear that maybe next year or the year after next it would spend an extended period of time to study the subsidiary legislations, and it may be that till 1997 or before the handover, the subsidiary legislation may still not be passed and the citizens may not have to contribute. Under such a situation, the power will still be with the Legislative Council. This important piece of legislation is submitted in the form of subsidiary legislations, the examination of which requires the setting up of a dedicated committee. Members of this Council will have ample opportunity to examine each one of them and we can have as many meetings as we like. Just as the meetings of ORSO at which Mr Marvin CHEUNG was also present, the Honourable TAM Yiu-chung also said that he had a couple of dozen meetings which extended over a year and could go on and on. Members from the Democratic Party can have careful scrutiny. If subsidiary legislations can be passed in this way, why it is said that the power is not with the Legislative Council? Having said this, it should not worry us any more, after the subsidiary legislations are approved by the Legislative Council, whether the commencement date should be decided by the Legislative Council or the Governor in Council.

Mr Chairman, the Liberal Party supports the amendment of the Administration, and oppose Mr Marvin CHEUNG's amendment as put forth by Mr Henry TANG on behalf of the Bills Committee.

MR ANDREW WONG (in Cantonese): Mr Chairman, I rise to oppose the amendment of the Administration and support the amendment proposed by the Honourable Henry TANG in the capacity as the Chairman of the Bills Committee, which amendment in fact is the Honourable Marvin CHEUNG's.

I would like to point out that there is a little difference between the speech of Mr Marvin CHEUNG and those of the Honourable Michael HO and the Honourable James TO. What Mr Marvin CHEUNG said is that under a mainly executive-led government, many of the details should rather not be added through a positive resolution procedure. Of course, many of the so-called blank areas in the existing Bill are ones of principle which should be included in the legislation itself. However, with regard to certain details, the Administration is obviously using this to negotiate with certain political parties or trick them into making concessions. Therefore, with the commencement date, Members may be asked to concede, but not to become a situation where the Members are to decide. That is what I feel about the whole issue.

Mr Marvin CHEUNG said that he does not intend to allow the executive-led system to be eroded, he just wanted to point out what a correct system should be like. If all trivial matters that could be approved by a negative process, were to be approved by a resolution, I think the Administration itself is making inroads into the executive-led system.

I just want to point this out as there is great difference in the whole matter. It is not that when a member rises to oppose, he is going against the Administration. This is wrong. Mr Marvin CHEUNG's speech has clearly expounded on what a truly executive-led system is. Thank you, Mr Chairman.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, as I have already indicated while moving the amendment to this clause under my name, we are happy to submit all regulations made under clause 44, prior to the commencement of clause 6 in its entirety, for the approval of this Council by resolution. We believe it would be superfluous to extend that power beyond that time. The official Members will therefore vote against the Bills Committee's amendment, and I urge Members to do likewise.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Mr Howard YOUNG 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 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 CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN and Mr Alfred TSO voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, 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 Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted against the amendment.

THE CHAIRMAN announced that there were 28 votes in favour of the amendment and 28 votes against it. In accordance with convention, the Chairman cast his vote with the "Noes" and declared that the amendment was negatived.

CHAIRMAN: As the Secretary for Education and Manpower's amendments have not been agreed, I will call upon Mr Henry TANG to move his amendment now.

MR HENRY TANG: Mr Chairman, I move that clause 44 be amended as set out under my name in the paper circulated to Members. I have explained the reasons for this amendment earlier on and I would not bore Members with them.

Thank you, Mr Chairman.

Proposed amendment

Clause 44

That clause 44 be amended, by adding —

"(3) Regulations made under this section shall be subject to the approval of the Legislative Council.".

Question on Mr Henry TANG's amendment put.

Voice vote taken.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: As we do have a novel situation, if Members wish to consult, I will not require you to vote as yet.

MR JAMES TIEN: Mr Chairman, may I request a two-minute adjournment?

CHAIRMAN: Yes, I will suspend the sitting.

MR LEE WING-TAT: Mr Chairman, I would like to know the reason for the adjournment.

CHAIRMAN: This will simply be a suspension to enable Members to decide how to vote because if we do get another tie, I want members to consider what the consequence of that will be as I will have to vote for the "noes" in which case both amendments will be defeated and the original clause would stand unamended. I will simply remain in the Chair and Members may deliberate amongst themselves.

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

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Mrs Peggy LAM, Dr LEONG Che-hung, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, 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 Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, 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 LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN and Mr Alfred TSO voted against the amendment.

Mr PANG Chun-hoi and Mr Timothy HA abstained.

THE CHAIRMAN announced that there are 30 votes in favour of the amendment and 24 votes against it. He therefore declared that the amendment was carried.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move the amendments as set out in paragraphs (b), (c) and (d) of my amendments to subclause (1) of clause 44, and the amendment to subclause (2) of clause 44 indicated under my name in the Paper circulated to Members.

Two technical amendments are proposed to clause 44 (1)(c) to extend its coverage to all kinds of withdrawal of accrued benefits. Another technical amendment to subclause (1)(g) is made so that regulations may be made to provide for the approval of a trustee as an approved trustee. The amendment to clause 44(2) is to remove a typing error. A previous amendment to add a new clause 4A makes it necessary to move a consequential amendment to clause 44(1)(j). Another amendment to clause 44(1)(j) is made to make good the omission of reference to clause 26 in the Bill as drafted.

Proposed amendment

Clause 44

That clause 44(1) be amended —

(b) in paragraph (c) -

(i) by deleting "early";

(ii) by deleting "before he attains retirement age".

(c) in paragraph (g), by deleting "the revocation of".

(d) in paragraph (j) -

(i) by adding "4A," before "6,";

(ii) by adding "26," after "23,".

That clause 44(2) be amended, by deleting "contravations" and substituting "contraventions".

Question on the amendment proposed, put and agreed to.

Question on clause 44, as amended, proposed, put and agreed to.

Clause 45

CHAIRMAN: The Secretary for Education and Manpower has given notice to move the amendment set out in paragraph (a) of his amendments to clause 45(1) and the addition of subclause (1A) to clause 45. Mr Henry TANG has also given notice to move an amendment to clause 45. I will call upon the Secretary

for Education and Manpower to move his amendment first in accordance with Standing Order 25(4).

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move the amendment set out in paragraph (a) of my amendments to clause 45(1) and the addition of subclause (1A) to clause 45 indicated under my name in the paper circulated to Members.

Similar to my previous amendments to clause 44, I propose to make amendment as set out in paragraph (a) of my amendments to clause 45(1) and add clause 45(1A) to the Bill to the effect that all subsidiary legislation made under clause 45 to be made by positive resolution of the Legislative Council in accordance with clause 35 of the Interpretation and General Clauses Ordinance until such time as clause 6 of the Bill, which requires employers to arrange registered schemes for their employees and the self-employed to make parallel arrangements, is brought into operation in its entirety.

I repeat, it would not be possible for the Ordinance to be brought into effect until relevant items of subsidiary legislation, after being approved by Legislative Council, are in place nor would we choose to do so.

Proposed amendment

Clause 45

That clause 45(1) be amended, by deleting "The" and substituting "Subject to subsection (1A), the".

That clause 45 be amended, by adding —

"(1A) Prior to the commencement of section 6 in its entirety, rules made under this section shall be subject to the approval of the Legislative Council."

Question on the amendment proposed.

CHAIRMAN: I will call upon Mr Henry TANG to speak on the amendments proposed by the Secretary for Education and Manpower as well as his own amendment, but will not ask Mr TANG to move his amendment unless the Secretary's amendments has been negatived. If the Secretary's amendments are agreed, that will by implication mean that Mr TANG's proposed amendment is not agreed.

MR HENRY TANG: Mr Chairman, for the benefits of some of the Members who may be lost by now, we are at the bottom of page 58 of our script. Mr Chairman, I propose that clause 45 be amended as set out under my name in the paper circulated to Members.

As explained earlier, some of the key features of the MPF are not specified in details but will be dealt with by subsidiary legislation. In these circumstances, the Bills Committee of the Legislative Council finds it not acceptable to approve legislation by negative approval and finds that it will be necessary to have all rules made under clause 45 be approved positively by the Legislative Council under section 35 of the Interpretation and General Clauses Ordinance.

The Administration is happy to submit rules made under clause 45 up to the commencement of section 6 in its entirety to be approved by resolution of the Legislative Council. The Bills Committee is not satisfied that a positive approval of rules is only up to the commencement of section 6 in its entirely. The proposed amendment is to this effect.

Mr Chairman, I beg to move.

CHAIRMAN: Members may now debate the amendment moved by the SEM as well as the amendment proposed by Mr Henry TANG.

MR MARVIN CHEUNG: Mr Chairman, I rise to oppose the amendments moved by the Secretary for Education and Manpower and to support the amendment to be moved by Mr Henry TANG on behalf of the Bills Committee. The reasons for so doing are similar to those applicable to the amendment to clause 44 and I do not wish to repeat them.

With these remarks, I urge Members to oppose the Secretary for Education and Manpower's amendment and to support Mr Henry TANG's.

MR MICHAEL HO (in Cantonese): Mr Chairman, the Democratic Party opposes the amendment proposed by the Administration and supports that proposed by the Honourable Henry TANG.

This amendment is similar to the original amendment, only that the original one was a regulation, and this is a rule which includes matters pertaining to the management, maintenance and trustees. This amendment will be like the one just now, that is if Mr Henry TANG's amendment is approved, it will be incorporated into the Bill to become a provision with the approval of the Legislative Council.

These are my remarks.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, I would support the amendment of the Honourable Henry TANG and oppose that of the Administration.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, as mentioned earlier, we are happy to submit all rules made under clause 45 prior to the commencement of clause 6 in its entirety for approval of this Council by resolution. We believe it would be superfluous to extend that power beyond that time. The Official Members will therefore vote against the amendment proposed by Mr Henry TANG.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

MR RONALD ARCULLI: Division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: We are 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 NGAI Shiu-kit, Mr PANG Chun-hoi, 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 CHIM Pui-chung, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN and Mr Alfred TSO voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, 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 Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr

TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted against the amendment.

Mr Timothy HA abstained.

THE CHAIRMAN announced that there were 27 votes in favour of the amendment and 28 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: As the Secretary for Education and Manpower's amendments have not been agreed, I will call upon Mr Henry TANG to move his amendment now.

MR HENRY TANG: Mr Chairman, I move that clause 45 be amended as set out under my name in the paper circulated to Members. I have explained the reasons for this amendment earlier on.

Mr Chairman, I beg to move.

Proposed amendment

Clause 45

That clause 45 be amended, by adding —

"(4) Rules made under this section shall be subject to the approval of the Legislative Council.".

Question on Mr Henry TANG's amendment put.

Voice vote taken.

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

MR JAMES TIEN: I call a division.

CHAIRMAN: Committee will proceed to a division.

3.48 pm

CHAIRMAN: I fear that there is now a mechanical failure because there is no print-out of the last division and I fear that if we proceed to a division now, Members will not know how the vote went electronically on the last occasion. I will have to suspend the sitting again until we get the print-out delivered on the last division.

3.54 pm

CHAIRMAN: Would Members please vote on Mr Henry TANG's proposed amendment to clause 45?

CHAIRMAN: We seem to be one short of the head count. Are there any queries? If not, the result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, 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 Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong, Miss Christine LOH, Mr Roger LUK, 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 LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN and Mr Alfred TSO voted against the amendment.

Mr Timothy HA abstained.

THE CHAIRMAN announced that there were 29 votes in favour of the amendment and 25 votes against it. He therefore declared that the amendment was carried.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move the amendment set out in paragraph (b) of my amendments to clause 45(1) indicated under my name in the paper circulated to Members.

The amendment will provide for a new subclause (oa) to be added under clause 45(1) to the effect that rules be made for the transfer or withdrawal of unclaimed benefits.

Proposed amendment

Clause 45

That clause 45(1) be amended, by adding -

> "(oa) providing for the transfer or withdrawal of unclaimed accrued benefits to, from and between registered schemes;".

Question on the amendment proposed, put and agreed to.

Question on clause 45, as amended, proposed, put and agreed to.

Clause 46

CHAIRMAN: Both the Secretary for Education and Manpower and Mr Henry TANG have given notice to move amendments to clause 46. I will call upon the Secretary for Education and Manpower to move his amendments first in accordance with Standing Order 25(4).

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that clause 46 be amended as set out under my name in the paper circulated to Members.

This amendment is related to my previous amendments to clauses 44 and 45. The Government has always agreed that there shall be full consultation with Members of this Council when drawing up subsidiary legislation. To reflect this, I propose that clause 46 be amended to the effect that all notices made thereunder should be approved by positive resolution of the Legislative Council in accordance with section 35 of the Interpretation and General Clauses Ordinance until such time as clause 6 of this Bill, which requires employers to arrange registered schemes for their employees and the self-employed to make parallel arrangements, is brought into operation in its entirety. We believe that it would not be possible for the Ordinance to be brought into effect until relevant items of subsidiary legislation, after being approved by this Council, are in place.

Proposed amendment

Clause 46

That clause 46 be amended —

(a) by renumbering the clause as clause 46(1).

(b) in subclause (1), by deleting "The" and substituting "Subject to subsection (2), the".

(c) by adding -

"(2) Prior to the commencement of section 6 in its entirety, notices published under this section shall be subject to the approval of the Legislative Council.".

Question on the amendment proposed.

CHAIRMAN: I will call upon Mr Henry TANG to speak on the amendment proposed by the Secretray for Education and Manpower as well as his own amendment, but will not ask Mr TANG to move his amendment unless the Secretray for Education and Manpower's amendment has been negatived. If the Secretray for Education and Manpower's amendment is agreed, that will by implication mean that Mr TANG's proposed amendment is not agreed.

MR HENRY TANG: Mr Chairman, I propose that clause 46 be amended as set out under my in the paper circulated to Members.

As explained earlier, many of the key features of the MPF have not been specified in detail in the Bill but will in due course be dealt with by subsidiary legislation. In these circumstances, it would not be acceptable for the Legislative Council to approve any subsidiary legislation which may contain key features of the MPF merely by negative approval. The Bills Committee therefore proposes that all Schedules made under clause 46 be approved positively by the Legislative Council under section 35 of the Interpretation and General Clauses Ordinance.

The Administration has agreed to submit all Schedules made under clause 46 after the commencement of section 6 in its entirety to be approved by resolution of the Legislative Council. However, the Bills Committee is not satisfied that the positive approval of Schedules is only up to the commencement of section 6 and thinks that it should be on a perpetual basis. This proposed amendment is to that effect.

Mr Chairman, I beg to move.

CHAIRMAN: Members may now debate the amendment moved by the Secretary for Education and Manpower as well as the amendment proposed by Mr Henry TANG.

MR MARVIN CHEUNG: Mr Chairman, I rise to oppose the amendment moved by the Secretary for Education and Manpower and to support the amendment to be moved by Mr Henry TANG on behalf of the Bills Committee. Clause 46 deals with the Schedules to the Ordinance and the Schedules cover the definition of the exempt persons, the maximum level of relevant income, minimum level of relevant income, the percentage contribution, the covenants to be implied in governing rules, decisions which may be the subject of an appeal, age ratified for the purposes of section 14(2), definition of associate and other consequential amendments. All these may have a significant impact on the whole MPF Scheme. For the reasons stated in moving the amendment to clause 44, I do not think it would be adequate for the Legislative Council simply to approve these on the positive basis up to the date of commencement of section 6. Therefore, I urge Members to oppose the Secretary for Education and Manpower's amendment and to support the amendment to be moved on behalf of the Bills Committee.

MR MICHAEL HO (in Cantonese): Mr Chairman, the Democratic Party will oppose the amendment moved by the Administration and will support the amendment of the Honourable Henry TANG.

The major difference in Mr Henry TANG's amendment is that in the future any amendment made to any of the eight Schedules shall have to be positively approved by the Legislative Council, so we support Mr TANG's amendment.

These are my remarks.

MR JAMES TIEN (in Cantonese): Mr Chairman, having gone so far, a number of us are like playing the same gramophone record over and over again. In respect of the amendment made to clause 46, the Liberal Party will support the Administration and oppose the Honourable Marvin CHEUNG's proposal as put forth by the Honourable Henry TANG on behalf of the Bills Committee.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, I would support anything that would oppose, stop or delay this policy.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, as mentioned earlier on several occasions, we are happy to submit all notices made under clause 46, prior to commencement of clause 6 in its entirety, for approval of this Council by resolution.

We believe it would be superfluous to extend that power beyond that time. The Official Members will therefore vote against the Honourable Henry TANG's amendment.

Question on the Secretary for Education and Manpower's amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Mr Howard YOUNG 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 LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, 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 Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, Ms Anna WU and Mr LEE Cheuk-yan voted against the amendment.

Mr Timothy HA abstained.

THE CHAIRMAN announced that there were 26 votes in favour of the amendment and 28 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: As the Secretary for Education and Manpower's amendment to clause 46 has not been agreed, I will call upon Mr Henry TANG to move his amendment now.

MR HENRY TANG: Mr Chairman, I move that clause 46 be amended as set out under my name in the paper circulated to Members. I have already explained the reasons for this amendment earlier on.

Thank you, Mr Chairman.

Proposed amendment

Clause 46

That clause 46 be amended —

(a) by renumbering it as section 46(1);

(b) by adding -

"(2) Amendments made under this section to Schedules 1 to 8 shall be subject to the approval of the Legislative Council.".

Question on Mr Henry TANG's amendment put.

Voice vote taken.

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, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Vincent CHENG, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Timothy HA, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr Samuel WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr Roger LUK, 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 LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Peggy LAM, Mrs Miriam LAU, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr CHIM Pui-chung, Dr LAM Kui-chun, Mr Steven POON, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 29 votes in favour of the amendment and 26 votes against it. He therefore declared that the amendment was carried.

New clause 29A Information and documents

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

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that new clause 29(A) as set out under my name in the paper circulated to Members be read the Second time.

A technical amendment is proposed by adding a new clause 29A — Information and documents, to empower the MPF authority to serve written notice on an approved trustee to require him to provide information or documents as required. An approved trustee who fails to comply with such a notice commits an offence.

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

Clause read the Second time.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that new clause 29A be added to the Bill.

Proposed addition

New clause 29A

That the Bill be amended, by adding —

"29A. **Information and documents**

(1) The Authority may by notice in writing served on an approved trustee of a registered scheme require the approved trustee to give to the Authority within such period as may be specified in the notice any information or document in the approved trustee's possession or under his control as may be specified in the notice and which relates to the registered scheme.

(2) Any approved trustee who without reasonable excuse fails to comply with a notice in writing referred to in subsection (1) commits an offence and is liable on summary conviction to a fine at level 6.".

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

Schedule 1

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that Part I of Schedule 1 be amended as set out under my name in the paper circulated to Members.

The amendment to change 30 days to 60 days to item 7 is a consequence of a previous amendment to clause 6 of the Bill. The proposed deletion of items 8 and 10 is also made necessary by previous amendments to clause 4 of the Bill. The amendment to item 9 is consequential to the amendment made to item 8.

A new class of exempt persons is added as item 11. This exempts any person employed in the European Union Office of the European Commission in Hong Kong.

The three notes proposed to be added at the end of Schedule 1, Part I are to clarify the extent to which the exemption is applied to the persons concerned.

Proposed amendment

Schedule 1, Part I

That Schedule 1, Part I be amended —

(a) in item 7, by deleting "30" and substituting "60".

(b) by deleting items 8 and 10.

(c) in item 9, by deleting "8" and substituting "7".

(d) by adding -

"11. Any person employed in the European Union Office of the European Commission in Hong Kong.".

(e) by adding at the end -

"Notes:

(1) In respect of items 1 to 5 and 11, the person described in those items is an exempt person only to the extent that the relevant statutory provisions apply to his relevant income derived from employment the subject of those provisions, and not to other income (if any) derived from other sources which may be otherwise subject to the provisions of this Ordinance or to any obligation under this Ordinance in his capacity as an employer, if applicable.

(2) In respect of item 7, the relevant employee described in that item is an exempt person only to the extent of his relevant income.

(3) In respect of item 9, the employer described in that item is an exempt person only to the extent of the relevant income of persons or relevant employees described in items 1 to 7 and not to other income (if any) derived from other sources which may be otherwise subject to the provisions of this Ordinance.".

Question on the amendment proposed, put and agreed to.

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

CHAIRMAN: I hope all Members have the revised page 63 of the script. The Secretary for Education and Manpower has requested leave be given under Standing Order 45(2) for him to move a Committee stage amendment to Part II of Schedule 1 in place of his original Committee stage amendment to the same part set out in the paper under his name circulated to Members. Mr Michael HO has also requested that leave be given under Standing Order 45(2) for him to move a Committee stage amendment to Part II of Schedule 1. As I indicated earlier, this would have the effect of reinstating the original amendment which the Secretary was going to move but has superseded with the present amendment. I have given the leave requested under Standing Order 45(2). The Secretary's new amendment as well as Mr Michael HO's proposed amendment are set out in the paper laid before Members. I will call upon the Secretary to move his amendment first as he is the public officer in charge of the Bill. I will just point out that Mr James TIEN, having been consulted on these revisions, has confirmed that he has withdrawn his proposed amendment.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that Part II of Schedule 1 be amended as set out under my name in the paper circulated to Members.

We have always been aware that certain classes of employee or self-employed persons will be difficult administratively to bring into the MPF, at least initially. Even at this stage, we believe that two classes of people, namely, domestic employees, irrespective of their place of origin, and self-employed hawkers should be a provided exemption under Part II of Schedule 1 of the Bill. The amendment I propose to this part will bring this into effect.

Proposed amendment

Schedule 1, Part II

That Schedule 1, Part II be amended by adding —

"Item	Description
1.	Any person who is a domestic employee in respect of a contract of employment as such.
2.	Any self-employed person who is a hawker.
3.	Any employer of a person specified in item 1.

Note:

In this part -

"domestic employee"（家務僱員）means an employee whose contract of employment is wholly or substantially for the provision of domestic services in the residential premises of the employer;

"hawker"（小販）has the same meaning as in the Public Health and Municipal Services Ordinances (Cap. 132).".

Question on the Secretary for Education and Manpower's amendment proposed.

CHAIRMAN: I will call upon Mr Michael HO to speak on the amendment proposed by the Secretary for Education and Manpower as well as his own amendment, but will not ask Mr HO to move his amendment unless the Secretary for Education and Manpower's amendment has been negatived. If the Secretary for Education and Manpower's amendment is agreed, that will by implication mean that Mr HO's proposed amendment is not agreed.

MR MICHAEL HO (in Cantonese): Mr Chairman, Part II of Schedule 1 mainly states whether domestic employee and hawkers can be exempted from being subject to the Mandatory Provident Fund (MPF) provisions.

It only came to my surprise knowledge at 11.45 this morning when I found on my desk a notice that there would be a new Committee stage amendment. This could be a record for us because when I received the document, we were actually at the committee stage and discussing amendments to the various provisions, but then I received notice of new amendment.

Mr Chairman, in respect of such an arrangement, I am not pointing my finger at the Secretariat or anyone, but when we are already at the committee stage, considering the provisions, we are suddenly given new amendments to some provisions. I hope in the future the Legislative Council should take note of such an unsatisfactory arrangement, because we would not have sufficient time to have a clear understanding of the amendments and to consider what consequence the amendment would bring about. This situation also shows that in respect of this Bill, the whole examination process, from the Bills Committee up to today, has been a very shoddy one, with things changing everyday.

Mr Chairman, the amendment I propose today actually is the proposal the Administration originally put in the committee stage amendment. I would like to explain the difference between my amendment and that of the Administration. The amendment as proposed by the Administration is to exclude all domestic

employees and hawkers from the ambit of this Bill. Of course, I know that, during the discussion, some people suggest that some foreign domestic helpers working in Hong Kong may not work until their retirement. This could be the idea behind exempting these domestic employees.

However, we must not forget that domestic employees are not necessarily foreign workers. There are still locals working as domestic employees, though I am not sure of their number, there must be a sizable number of them. If we are to support such an arrangement of the Administration, all domestic employees would be excluded from the MPF, which I think is not fair.

My amendment, being more flexible, requires these domestic employees to request in writing their employers to join or not to join the Mandatory Provident Fund. This at least gives the flexibility to enable an employer and his employee to negotiate.

Mr Chairman, I hope that my explanation has given the Members a clearer idea of the difference between the two amendments, and the Democratic Party will vote against the amendment of the Adminstration.

These are my remarks.

MR MARVIN CHEUNG: Mr Chairman, I have no particular strong views on either of the two versions of the amendment, one being proposed by the Secretary for Education and Manpower, the other being moved by Mr Michael HO. But I would like to draw Members' attention to a technical error in the drafting of this amendment. Schedule 1, Part II of the Ordinance arises out of the enabling provision in clause 4(2) of the Bill which reads: "The Governor in Council may, from time to time, specify in Part II of Schedule 1 the persons or classes of persons who shall be exempt from all or part of the provisions of this Ordinance (as identified or contained in this specification), and may vary, alter or repeal that specification. Neither in the Committees stage amendments given to us before the meeting or those tabled this morning contain any specifications about what aspect of the provisions of the Ordinance are being exempted by the persons specified therein. I wonder what is the effect of passing such an Ordinance. In raising this matter, I am in no way criticizing the Law Draftsman or the legal advisers of the Government for overlooking this matter. After all, we are all doing in a rush and therefore mistakes like this will occur. I am merely pointing this out as an example of the many errors that are being crammed into this piece of legislation. But if Members feel that they can live with this and are prepared to pass a law like this, so be it. Thank you.

MRS ELSIE TU: Mr President, just on a point about the hawkers being included, I think I was the one who raised that point, but I said "illegal hawkers" because I wondered how the Government was going to take Mandatory Provident Fund payments from illegal hawkers without arresting them, stopping

them from hawking. Now I see all hawkers are included. I would like to ask the Administration if they would clarify the point, whether they mean all hawkers, some of whom are licensed and therefore could be included or whether we are only talking about illegal hawkers who could not be included unless they were arrested for illegal hawking?

MR JAMES TIEN (in Cantonese): Mr Chairman, it seems that we have been making a number of turns in respect of the amendment of Part II of Schedule 1. The Administration's initial exemtpion included the domestic employees, saying that if the domestic employees were willing to contribute, then the employers would have to contribute. In fact, whether it is the Administration's amendment, or the Honourable Michael HO's amendment, or the amendment that I have withdrawn, there is nothing changed with the hawkers, which is just as what was originally suggested. Thus what we have been discussing is whether domestic employees should be included in the Schedule for exemptions. Our view is that as most of the domestic employees come from other countries or have no right of abode here, and with every contract lasting for about one year, they mostly would work for two, four or six years or some would work for eight or 10 years, but on retirement they would return to their families, husbands (because most domestic employees are female) or children, and would not stay here for good. Under such a situation, these foreign domestic helpers or employees should not be included in this legislation. Even if they want to contribute and their employers have to follow suit to make a contribution, it should not be so.

It was the Administration's initial stance that these employees should contribute but only to withdrew it later and agreed to my proposal and made one small step forward. That small step is that no matter whether they have the right of abode here, all domestic employees are excluded. What difference does this small step make? These domestic employees actually are those who are in full-time employment as domestic worker. In the olden days, these workers were mainly unmarried maids working as domestic helpers. How many of them are still in existence in Hong Kong nowadays, even Mr Michael HO could not tell. There might be a lot of other people working part-time, for example, those giving piano lessons at home, or working as gardener for a few hours. The figure should not be very great. Now the Administration makes such an amendment, all domestic employees in the future will be exempted.

I would like to know, from the legislative point of view, if this is feasible. At the committee meeting, the Administration admitted to us that in practice it was hard to carry out. We now have 100 000 households employing 140 000 to 150 000 domestic employees, that means for each household, the monthly contribution paid by an employer may be less than $200, and a similar amount of contribution would also be paid by the employee. The statutory lowest pay now is $3,750. Most employers are not professionals like the Honourable Marvin CHEUNG or businessmen like me, so how can an employer, after collecting the $187.5 contribution from an employee and making his own

contribution as well, be made to turn this $375 over to an investment company to invest on his behalf? Just the administrative cost, which has been the concern of many Members, would have eaten up all the money injected.

Basing on the above reasons, the Liberal Party think that as the salaries of most domestic employees are under $4,000, and the majority of them would not retire to live in Hong Kong, they should be exempted. Since the Administration has already amended the point that includes both the overseas workers and the small number of local workers, the Liberal Party will support the Administration's amendment and withdraw the amendment which I propose on behalf of the Liberal Party, and will oppose Mr Michael HO's rehashing the original amendment of the Administration.

Thank you, Mr Chairman.

MR LEE CHEUK-YAN (in Cantonese): I have just said that I would cite more examples to show that the Administration has struck an immoral deal. Here it is.

History is very clear. Originally it was blank in Part II of this blue-cover book. The Honourable Mrs Elsie TU was right, hawkers originally were not included but now they are. This Part originally was blank, and when it was so, someone had already asked at the Bills Committee what to do with the overseas domestic employees. This gives rise to much controversies because these employees will not retire in Hong Kong, so should they pay or not pay? The Administration therefore proposes that both overseas and local domestic employees, if they wish to join, would have to so request in writing. In fact, if a request in writing is required, I believe many overseas domestic employees would not care to do so. It is because in most situations there is only one employee under one employer, if the employee expresses in writing that he wants to join the scheme, the employer would not be very happy. So would the employee raise the matter? I doubt how many overseas domestic employees know that we are today discussing this Bill. The problem in respect of the overseas domestic employees would have been resolved.

Then there comes an amendment from the Honourable James TIEN, saying that all overseas domestic employees should not join. He has a reason. He thinks that they will not work in Hong Kong for long and they will not retire in Hong Kong. He has a reason here. However what I feel most dissatisfied is that the Administration then proposes this immoral deal, or in another words, this immoral proposal, which forces the local domestic employees to join the overseas domestic employees and says that they are not qualified too. There may not be a lot of local domestic employees, and there may not be a lot of housemaids, but there are still some gardeners and private tutors, or there may also be some private nurses. Should they all be grouped with the overseas domestic employees? Why should they be so grouped? If we feel that the overseas domestic employees should not join, then let us stick to this problem.

The Administration says that it is racial discrimination if only the overseas domestic employees are not allowed to join, so what with the present situation? This is class discrimination, occupation discrimination. If we purposely neglect a group of people, is this not also a kind of discrimination? What is more, a lot of people are being discriminated, so is there a reason for this? Is it all because the Administration wants Mr James TIEN to withdraw his amendment that it has to put forth an inferior amendment? I therefore hope that the Members will oppose the Administration's proposal. Even if the Members vote down the Administration's proposal together with the Honourable Michael HO's proposal, at least there will still be a clean slate for future discussion. But the most important thing is that I urge you to oppose the Administration's proposal because you now all learn that it has been such an ignominous process with such an unreasonable result.

Thank you, Mr Chairman.

MR JAMES TO (in Cantonese): Mr Chairman, I think that the latest amendment as proposed by the Administration will violate the Bill of Rights. I anticipate that there would be law suits proceeded under the Bill of Rights. I want to put this on record for future reference.

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I totally refute the allegation made by Mr LEE once again in what was termed "immoral deal". Unless a Member has any substantive proof that this allegation can be proved, I will ask him to withdraw it. Language such as this reflects poorly on the Members of this Council and I deplore that.

There are several reasons why we want this amendment to be as it is for this Council, and I thank Members' indulgence on accepting this amendment as tabled this morning.

First, as Members are aware, the purpose of designing this MPF system is simplicity and convenience. Since Members know we have been debating this for 30 years, this Council and the community wish us to have a system in place as soon as possible. So, one of the key features in designing the system is simplicity. Hence the guiding principle is that we wish to reduce any administrative problems to the minimum. This is why, on second thought, we think we should make the MPF system less complicated by excluding any particular classes of persons, at least initially, on the implementation stage, to be considered later on. Domestic helpers and hawkers are in this category.

Secondly, inclusion of an opting provision for domestic helpers will simply lead to more enforcement difficulties which, of course, will mean adding on to costs, administration and the bureaucracy and so on and so forth at the taxpayer's expense. I do not think this Council would wish to support any

spending which is not necessary. So, we are trying to avoid, at least initially, by exempting this particular group from the MPF.

Thirdly, I should assure Members of this Council, and of course employers and employees, that they are entirely free, employers are entirely free to provide for their domestic employees for retirement protection through a master trust scheme, if they so wish, and I do call upon employers in this Council who have domestic employees at their homes, to give generously to their domestic employees without any compulsion from the Government.

Finally, it is not our intention to exempt these categories of people forever. Once it is considered administratively possible and desirable to do so, we shall review the provisions and bring them eventually back into the ambit of the MPF. Thank you.

Question on the Secretary for Education and Manpower's amendment put.

Voice vote taken.

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 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 CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, 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 for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan voted against the amendment.

THE CHAIRMAN announced that there were 31 votes in favour of the amendment and 24 votes against it. He therefore declared that the amendment was carried.

CHAIRMAN: As the Secretary for Education and Manpower's amendment to Part II of Schedule 1 has been agreed, I will not call up Mr HO to move his amendment since his amendment is inconsistent with the decision already taken.

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

Schedules 2, 3 and 9

SECRETARY FOR EDUCATION AND MANPOWER: Mr Chairman, I move that Schedules 2, 3 and 9 be amended as set out under my name in the paper circulated to Members.

The amendments to Schedules 2 and 3 are technical amendments to make it clear what the amounts are per month. A paragraph is added to section 1 of Schedule 9 to include any sum and interest thereon payable to the MPF Authority in clause 38 of the Bankrupty Ordinance (Cap. 6) as a consequential amendment to that Ordinance. A similar addition is made in section 265 of the Companies Ordinance (Cap. 32) in section 2 of Schedule 9. As drafted, the content of the Companies Ordinance in section 2 of Schedule 9 of the Chinese text of the Bill is still in English. An amendment is proposed to provide an authentic Chinese text to this.

Proposed amendments

Schedules 2 and 3

That Schedules 2 and 3 be amended, by adding "PER MONTH" after "INCOME".

Schedule 9, section 1

That Schedule 9, section 1 be amended —

(a) in paragraph (a), by adding -

"(cj) any sum and interest thereon payable to the Mandatory Provident Fund Schemes Authority under section 16(6) of the Mandatory Provident Fund Schemes Ordinance (of 1995);".

(b) in paragraph (b), by deleting "and (ci)" and substituting ", (ci) and (cj)".

Schedule 9, section 2

That Schedule 9, section 2 be amended —

(a) in paragraph (a), by adding -

"(cj) any sum and interest thereon payable to the Mandatory Provident Fund Schemes Authority under section 16(6) of the Mandatory Provident Fund Schemes Ordinance (of 1995);".

(b) in paragraph (b), by deleting "and (ci)" and substituting ", (ci) and (cj)".

That Schedule 9 be amended, in the Chinese text, by deleting section 2 and substituting -

"2. 優先付款

《公司條例》（第 32 章）第 265 條現予修訂 —

(a) 在第(1)款中，加入 —

"(ch) 在《強制性公積金計劃條例》（1995 年第 號）下或按照該條例計算的款額、而該款額是正進行清盤的公司按照該條例的條文而在清盤開始前應已支付的；

但如就某名僱員而須支付的該款額超過$50,000，則佔超出額 50%的款額不得根據本款優先於任何其他債項予以償付；

(ci) 正進行清盤的公司爲向《強制性公積金計劃條例》（1995 年第號）所指的註冊計劃的核准受託人就該等有關僱員作出供款，而自其有關僱員的有關入息中扣除但又未曾撥付予該核准受託人的任何款項；

(b) 在第(3)款中，廢除"及(cg)"而代以"、(cg)、(ch)、(ci)及(cj)"。"

Question on the amendments proposed, put and agreed to.

Question on Schedules 2, 3 and 9, as amended, proposed, put and agreed to.

Schedules 4 to 8 were agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

MANDATORY PROVIDENT FUND SCHEMES BILL

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

Question on Third Reading of the Bill put.

Voice vote taken.

PRESIDENT: Council will proceed to a division.

PRESIDENT: Would Members please proceed to vote?

PRESIDENT: 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 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 CHIM Pui-chung, Mr Timothy HA, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Mr Howard YOUNG, Miss Christine LOH, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr TAM Yiu-chung, Mr Andrew WONG, Dr LEONG Che-hung, Mr Albert CHAN, Mr Marvin CHEUNG, Mr CHEUNG Man-kwong, Rev FUNG Chi-wood, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Dr Conrad LAM, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Dr TANG Siu-tong and Mr LEE Cheuk-yan voted against the motion.

Miss Emily LAU, Dr Philip WONG and Ms Anna WU abstained.

THE PRESIDENT announced that there were 31 votes in favour of the motion and 22 votes against it. He therefore declared that the motion was carried.

Bill read the Third time and passed.

Second Reading of Bill

PERSONAL DATA (PRIVACY) BILL

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

Question on Second Reading proposed.

MISS EMILY LAU (in Cantonese): Mr Chairman, I rise to support the Second Reading of the Personal Data (Privacy) Bill.

The Administration introduced this Bill into the Legislative Council on 19 April. It seeks to control the collection, processing and use of personal data by data users, in particular by the promulgation of the data protection principles set out in Schedule 1 to the Bill. It also enables any individual to request access to, and to request the correction of, any personal data of which he is the data subject. It also provides for the establishment of a Privacy Commissioner for Personal Data to monitor and supervise compliance with the provisions of the Bill and to promote awareness and understanding of the provisions.

On 16 May, a Bills Committee, of which I was elected Chairman, was set up to study the Bill. The Bills Committee has held 13 meetings with the participation of the Administration in all of them. It has received submissions from 12 organizations and groups and has met deputations from seven of them.

The Personal Data (Privacy) Bill is based on the recommendations of the Law Reform Commission in its report on the reform of the law relating to the protection of personal data. The Bill is not too long but quite complex.

Because the time allowed was very short, the Bills Committee had twice considered giving up studying the Bill and leaving the work to the next Legislative Council. However, most Members agreed to work as hard as they could, hoping that the legislation could be passed within this legislative year so that the Administration could set up the Office for Privacy Commissioner for Personal Data and start the relevant work.

Mr Chairman, earlier we have been saying that two Bills should be shelved. This Bill, I believe, can show that if Members feel necessary, they will work with the Administration. As long as we think that the Bill is worthy of passing into law, we would roll up our sleeves to work together. The 13 meetings held in the past two months shows loud and clear to the Administration

that if Members feel that something should be done and that the Administration is right, we would give all our support.

Mr Chairman, Schedule 1 of the Bill sets out six data protection principles and provides general guidelines on these principles.

Principle 1 — Purpose and manner of collection of personal data;

Principle 2 — Accuracy and duration of retention of personal data;

Principle 3 — Use of personal data;

Principle 4 — Security of personal data;

Principle 5 — Information to be generally available; and

Principle 6 — Access to personal data.

Clause 4 specifies that the provisions of the Bill override the principles. In respect of the legal status of these six principles, the Administration explains that if a data user violates any of these principles, the Privacy Commissioner for Personal Data may issue him an enforcement notice. A data user who does not comply with the enforcement notice commits an offence and is liable on conviction to a maximum fine of $50,000 and two-year imprisonment. An individual who suffers damage by reason of a contravention under this Ordinance could seek compensation from the data user concerned for the damage. In the Committee stage amendment that is to take place shortly, the Secretary for Home Affairs will put forth a series of amendments, which all have the support of the Bills Committee. Dr the Honourable HUANG Chen-ya and the Honourable James TO will also introduce their amendments.

Mr Chairman, according to clause 2, data user means "a person who, either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the data". At the meeting with representatives of the information technology industry, the Administration clarifies that the definition of data user does not cover data carriers as they do not control the collection, holding, processing or use of the data.

Furthermore, in respect of the concern expressed by the Royal Hong Kong Jockey Club, the Administration will add to clause 2 a provision, stating clearly that if the action of a person makes the Royal Hong Kong Jockey Club suspend or revoke his qualification, such action will be deemed to be "gross misconduct" and shall be exempted from this Ordinance.

After a discussion of the Bills Committee, the Administration agrees to amend the definitions of "matching procedure" and "adverse action". However, Dr HUANG Chen-ya is still not satisfied with the definition of "matching procedure" and he will propose his own amendment.

Clause 5 provides that the Governor shall, by notice in the Gazette, appoint a person to be the Privacy Commissioner for Personal Data, who shall only be removed from office by the Governor with the approval of the Legislative Council. Dr HUANG Chen-ya proposes that the appointment of the Commissioner should be with the approval of the Legislative Council and will move an amendment to that effect.

Clause 12 proposes that the Commissioner may approve and issue codes of practice for data users and provide practical guidance in respect of any requirements under the Ordinance. In relation to the Hong Kong Government, the Administration tells us that it does not intend to prepare a code of practice for use by the various government departments, which will have the discretion to decide for themselves if they need to draw up such a code.

The Committee is of the opinion that instead of giving the whole problem to the Commissioner, the Administration should take the lead by preparing codes of practice for the various departments, especially those holding sensitive material. If this Bill is to be passed today, I hope that the Administration shall begin working on this immediately and report the progress to this Council in October.

Clause 19 proposes that a data user shall comply with a data access request not later than 45 days after receiving the request. Members thinks that the period is too long. The Administration explains that different sectors of the society hold different views on this. The banking sector, for example, says that they process data once every 30 days. After considering all these views, the Administration decides that the period be shortened to 40 days.

Clause 30 proposes that a data user shall not carry out a matching procedure unless and until each individual who is a data subject of the personal data the subject of that procedure has given his prescribed consent to the procedure being carried out. However, the matching procedure may be conducted if it is required or permitted by other Ordinances. Members do not support such a practice and they think that the relevant ordinances should be listed in a schedule. The Administration proposes an amendment, requiring that the Commissioner to publish by notice in the Gazette the classes of matching procedure that belong to subdiary legislations.

Clause 34 deals with the use of personal data in direct marketing. A number of direct marketing companies, including Hong Kong Direct Marketing Group, American Express and Reader's Digest, oppose the requirement that a data user must erase any information in respect of the data subject. The representatives suggest adopting the internationally accepted principle of "opting out". Under such a situation, if a person decides that he does not want to receive in his mail any information from a direct marketing company, he may so request the company, which will put a mark in that person's record to indicate that no direct mailing will be sent to that person in the future. The direct marketers said that so doing is more effective than erasing the

information as even if the personal data is erased, the name of a data subject can still reappear in the files of a data user through other channels. The Administration accepts the direct marketers' suggestion and will introduce amendment accordingly by substituting "cease to" for the word "erase".

Mr Chairman, clause 42 deals with the Commissioner's power of entry on premises for the purposes of an inspection or investigation; the Committee was worried that the power of the Commissioner might be too great. After much discussion, the Administration agrees to revise this clause substantially so that the Commissioner has to apply to a magistrate for a warrant before he can enter any domestic premises, and the definitions for "domestic premises", "non-domestic premises" and "premises" are all clearly stated.

Clause 61 proposes that journalists be exempt from the provisions of data protection principle 6 and partially exempt from data protection principle 3. The Hong Kong Journalists Association believes that without a blanket exemption as requested in its earlier submissions, the imposition of data protection principles on the journalistic process would affect the proper functioning of the media and would make a free press impossible. Its representatives point out to the Bills Committee that as information gathered by journalists only comes into the public domain after publication, it is undesirable and unnecessary for an individual or the Commissioner to gain access to the information prior to publication, otherwise it could lead to a form of pre-publication or pre-broadcasting censorship. They also fear that if journalists are not fully exempt from data protection principles, they may be forced to disclose confidential sources or information.

The Administration thinks that the Association's request for a blanket exemption from the Bill would make the individual's right to privacy in respect of personal data entirely subordinate to press freedom, causing an imbalance between the two.

Regarding journalists' concern over the danger of being forced to reveal confidential sources, the Administration has clarified that the only personal data held for a news activity to which subject access requirement applies are the personal data that have been published or broadcast. Such data do not include the material from which the published or broadcast information is derived. Furthermore, where the interest protected by this exemption would likely to be prejudiced by compliance with the requirement on a data user under clause 18(1)(a) to confirm whether or not personal data relating to a particular individual are held, the data user is exempt from the requirement to so confirm.

To meet the Association's concern about the extent of the Commissioner's power to gain access to journalistic material, the Administration has agreed to Mr James TO's amendment which will be introduced shortly. The Commissioner must apply to the High Court for such a power.

Clause 54 deals with transitional provisions for employment. The clause proposes that an employee shall not demand certain personal data, including assessment provided by a third party to the employer in respect of the employee, from his employer even after a period of 10 years expires after the commencement of the Bill. Members query if a period of 10 years is too long. The Administration explains that this provision is to deal with those situations where employment information is provided in confidence before the commencement of this Bill so that any dispute or embarrassment can be avoided in relation to any personnel matter. It is hoped that any effect such information may have on the person concerned will dissipate through personnel changes over a period of 10 years. After discussion, the Administration agrees to shorten the period to seven years.

Clause 57 deals with security in respect of Hong Kong, which provides that personal data held for the purposes of safeguarding security, defence or international relations in respect of Hong Kong are exempt from the provisions. A document purporting to be a certificate signed by the Governor or Chief Secretary shall be evidence of that fact. The Governor or the Chief Secretary may also direct the Commissioner not to carry out an inspection or investigation.

Members are dissatisfied with this provision, thinking that it is too general and brief. The Administration explains that this provision deals with highly confidential documents relating to security which even the Commissioner would not be allowed to have access. Members thinks that it is dangerous and unacceptable for the Administration to refuse access to personal data on such grounds. Dr HUANG proposes to amend the schedule by having all the highly confidential files listed so that the scope of this provision is restricted. The Administration, however, only agrees to add "by or on behalf of the Government" in respect of personal data, and state in the certificate the reason why the Commission has no access to those documents. I believe that many Members do not agree to this and we will support the amendment of Dr HUANG.

Clause 59 deals with health, which proposes that personal data relating to the physical or mental health of the data subject are exempt from the provisions in any case in which the application of the provision to the data would be likely to cause serious harm to the physical or mental health of the data subject, so a patient may not be able to have access to information relating to himself. Members think that it is unreasonable for a doctor to hide the truth from his patient. A Member even suspects that the provision may be used to protect public bodies and to prevent the public from having access to personal data relating to health hazards such as radiation leakage and toxic waste. Dr HUANG will propose amendment by deleting clause 59(a).

Mr Chairman, Members all know that the study of this Bill has been examined in a great haste, but they all hope that it can be passed into law as soon as possible so that the Administration can start forthwith with the enforcement work.

There are at present 27 jurisdictions which have data protection laws. They include Australia, New Zealand, Japan and countries in Western Europe and North America. With the enactment of the Bill, Hong Kong will join the ranks of these countries.

With these remarks, I support the Second Reading of the Bill.

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, the Personal Data (Privacy) Bill does not attract the sort of public attention as the other two Bills that have just been passed, but it has such far-reaching effect that it should equally deserve our attention. It deals with how the privacy of citizen's data can be protected and how such privacy will not be infringed by the Administration and other bodies.

The one duty which the Attorney General gave the Law Reform Commission in 1989 was to study this problem. Three years later and after 56 meetings, the Commission issued a consultation paper, and then after another one-and-half-year consultation, a report was issued. I find it very ridiculous when the Administration only gives us a month to study and examine a legal problem that the Law Reform Commission required four and half years to study.

Mr Chairman, the year 1984 has become history, and luckily the brave new world as depicted by George ORWELL has not appeared. Unless we keep constant vigilance to prevent a totalitarian society where every one is under constant supervision and control from coming into existence, there is still the possibility that such a society would appear.

The purpose of the Personal Data (Privacy) Bill is to protect the privacy of individuals in relation to personal data. The legislative principle is to ensure fair collection, use, holding and disclosing of personal data and that data subject has to right to access and correct such data. Passing this Bill into law undoubtedly will give greater protection to citizens' personal data, however, there are regrettably still much to be desired in the Bill proposed by the Administration. Though the Administration has to a certain extent made a number of concessions, which we welcome, the Bill is still riddled with serious imperfections which the Administration does not want to make further improvement on. The Democratic Party therefore proposes corresponding amendments in the hope that the Bill can be made more complete.

There are three major areas which the Democratic Party is critical of. Firstly, the Administration is an important depository, as well as collector and user, of our personal data. The Census and Statistics Department, the Immigration Department, the Inland Revenue Department and the police all have in their control many of our important personal data. It should therefore be an important objective of the Bill to protect the privacy of the citizens and prevent any abuse and infringement of our privacy by the Administration. However, the Bill as proposed by the Administration cannot prevent any Government Departments from abusing their access to such data. An obvious example is that the restriction with respect to the matching procedure of personal data can in no way prevent the Administration from carrying out unreasonable supervision on the citizens. It is not at all difficult for the Administration to violate the principle of protecting citizens' privacy in the process of collecting and matching their personal data. The Democratic Party therefore hopes that by amending clause 2(1), all matching procedures carried out by the Administration can be better restricted, and also by amending clause 14, transparency can be enhanced so that there will be as little chance as possible for the Administration to secretly collect citizens' data.

Secondly, the sixth principle of data protection states that the citizens are entitled to ascertain whether a data user holds personal data of which he is the data subject and to request access to personal data. The second principle even expresses that the data subject has the right to request the user to rectify any inaccurate data. It is important to have in place the right to access and rectify data or else the files may contain a lot of hearsay and gossips which may be detrimental to the subject. It has been shown that such worries are not unfounded. Take the experience of a lady in Britain for example. She had been unsuccessful in her job applications. It was later found that she had once travelled with her family to Europe when the European police was trying to track down a German terrorist. According to the police, this lady's husband looked a bit like this terrorist, so he was being investigated. Though they were later proved to be just an ordinary English couple without any involvement in terrorism, no rectification had ever been made to the files held by the British police, and for a number of years the couple had been listed as being suspects of terrorist activities and she was made to suffer for something she had not done.

Moreover, there are innumerable instances where people of the same name are mistaken as criminals, and social activitists as dangerous persons. Miscarriage of justice would result if no mechanism was put in place for accessing and rectifying the files. Mr Chairman, I would like to tell you a small incident from my past. In arranging our wedding, my wife was to send out invitations. When a friend received the invitation, he thought that my wife was to marry an old fellow, because at that time there was also a HUANG Chen-ya, a military expert, of almost 90 years old. The friend thought that my 20-year-old wife was about to marry a 90-year-old fellow. I do not know if there is also a file on me, mistaking me for a military expert on the communist

party, but such coincidence could easily lead to inaccurate data in our personal files. Therefore there should be ways for accessing and rectifying such personal data. Experience of other countries have also shown that if a data user knows that a file may be accessed by the data subject, the user will be more careful with such data and the files will be written more objectively. Of equal importance is that if the citizens can access their own personal files, they will have the opportunity to know if the Administration has abused its power by secretly supervising information about the citizens, or if the various government departments have illegally swapped among themselves private information of the citizens.

The Bill permits that, under certain circumstance, government departments can be exempted by rejecting a citizen's demand for personal data. The Democratic Party thinks that a government department can only enjoy such exemption under situations that have been proved necessary, and that departments enjoying such exemption must make it public to the citizens so that the citizens know that the government, under reasonable situation, can refuse a citizen's access to his personal data. Only with such an arrangement can a reasonable balance be struck between the protection of the privacy of the citizens and the maintenance of effective operation of the government. The exemption as proposed by the Bill has given the Administration too great a power, which, without proper check and balance, would not only do harm to the citizen's privacy, but more importantly meet with no restriction in case of abuse of power by the Administration. Clauses 57 and 58 provide that the Administration can apply for exemption on the ground of safeguarding security or preventing crimes so that the data subject can be refused access to his own files. Clause 63 even enables the Administration to refuse disclosure whether it has possessed the files concerned.

In its deliberation in respect of the case *Linda vs Sweden*, the European Court of Human Rights considers that only when a country have sufficient and effective means to stop abuse of power can security be used as a ground for infering with one's privacy. In Sweden, its members of parliament will supervise the sensitive data; Britain's MI5 is under the supervision of the judges; CIA of the United States and the intelligence agencies of Australia and Canada are all under the supervision of their parliaments and the governments of these countries are all democratically elected. However, in the case of the Hong Kong Government, it is a colonial government over which the citizens lack any effective control. As the post-1997 Hong Kong Government is also not democratically elected, there is a lack of sufficient and effective control on abuse of power by its security and policing agencies. Under such a situation, the citizens are under a more serious threat and there is a greater possibility that the Administration would abuse its power. The Democratic Party therefore proposes a number of amendments in respect of exemption, requiring that the Administration can only enjoy such exemption when a reasonable situation exists. Of course, I would like to see in the future there are legislations like those in relation to Britain's MI5, or the United States' CIA or the intelligence agencies of Australia and Canada, whereby all security agencies, instead of

being secret independent kingdom, can be brought within legislative supervision.

Thirdly, as implementing the Personal Data (Privacy) Bill is in the interest of the citizens, the Privacy Commissioner for Personal Data and the Personal Data (Privacy) Advisory Committee, the two agencies charged with the implementation of this Ordinance, shall be responsible to the public and show the highest degree of transparency, otherwise the Commissioner would be assisting the Administration to maintain secrecy, instead of protecting the privacy of the citizens, and what is worse is that they would become the agents supervising the personal data of the citizens. The appointment of the Commissioner is therefore one of the items the Democratic Party would like to see amended. The Bill provides that the Administration shall appoint the Commissioner for a term of five years. The Democratic Party will amend those provisions related to the appointment of the Commissioner so as to enhance the independence of the Privacy Commissioner for Personal Data and to have more effective and forceful supervision on the various government departments.

Moreover, the composition of the Personal Data (Privacy) Advisory Committee is also another item that requires to be amended. The Bill provides that the Committee be established for the purpose of advising the Commissioner upon any matter relevant to the privacy of individuals in relation to personal data or otherwise relevant to the operation of the Bill. As personal data not only relate closely to the citizens' daily living, they also have extensive effect on the business and broadcasting sectors, the composition of the Committee should therefore have a higher degree of credibility and greater public participation. The Democratic Party thus proposes amendment in respect of the composition of the Committee to ensure that different views can be reflected on the Committee, thereby enhancing its credibility.

Finally, the appropriateness of the Commissioner's power is also a concern of the Democratic Party. Journalists generally have doubts about the Bill, they think that the power as given by the Bill to the Commissioner to require a person to provide information may force them to disclose the source of their information which would damage their principle of confidentiality. The Democratic Party also thinks that the Bill gives too great a power to the Commissioner in respect of gathering of evidence which could do harm to press freedom. In order to strike a balance between protecting the citizen's privacy and maintaining press freedom, the Democratic Party will propose amendment to relevant provisions. The amendments will be proposed respectively by the Honourable James TO and me and I shall later give the reasons and arguments for the amendments. I hope that the Members will support the amendments proposed by the Democratic Party so that the Personal Data (Privacy) Bill can be made better.

Mr Chairman, I would like to raise one other point. While considering the Bill, we found that the Bill did not provide for any penalty for stealing any personal data. Other than stealing computer data, which is commonly known as "hacking", Hong Kong does not have any related legislation. On the international scene, such crimes are not rare at all, and they bring about very grave consequence. In one of the most serious incidents, tax data of over 10 000 Canadian taxpayers were stolen. However, working under a tight schedule, we cannot deal with this problem now, but I hope that the Administration will in the future propose a legislation for it.

MR ROGER LUK (in Cantonese): Mr Chairman, there were two incidents recently within the performing and entertainment circle. Firstly, the artists launched a 72-hour campaign of silence in protest of the negative portrayal by the media which was an infringement of their privacy; secondly, the over-zealous efforts of the media to uncover the suspicious background of a candidate of a recent beauty pageant were met with public criticisms.

This Bill is not to prevent anyone from uncovering any personal information of others or to prohibit anyone from reporting anything that is unfavourable to a person, rather it is to control the collection, possession, handling and using of personal data, and confer a statutory right on a data subject to access and rectify any personal data of he himself, and to establish the office of Privacy Commissioner of Personal Data to supervise and control the implementation of this Ordinance.

Advanced countries of the world have already legislated to protect personal data. To ensure that Hong Kong can continue to exchange information, especially electronic data, with these countries, including Hong Kong's most important trading partners, Hong Kong must have in place corresponding legislations, which are of utmost important in maintaining and developing Hong Kong as the international centre for communication of the Asia-Pacific region. The community has already come to a very clear political and policy understanding in this regard.

Because the matter has such wide-ranging ramification, the Administration started a working group six years ago to begin extensive consultation and study, and the Law Reform Commission also studied the specific legislative details. I myself was once on the study group, taking part in the drafting of the legislation and carrying out consultation and study. The Bill which this Council studies today is the product of the effort of these two bodies.

Dr the Honourable HUANG Chen-ya of the Democratic Party has just proposed a number of amendments in respect of this Bill to further restrict the right of the Administration as a data user, especially in the matching procedures and in exemption with regard to possessing personal data for the security, defence and international relation of Hong Kong. The Democratic Party's amendment is based on a distrust of the Administration, which actually, like all

other data users, has to comply with this Bill. There is no reason for us to assume that the Administration would abuse its power and make use of the exemption provided by this Bill to infringe the privacy of the citizens. If it had to do so, it would have already done it. I believe that Hong Kong is not the sort of black society as depicted by ORWELL, if it were so, even this Personal Data (Privacy) Bill would be just an empty statute. There is also no reason for us to require that if the data user is the Administration, it would have to be subject to even stricter control. The example quoted by Dr HUANG Chen-ya just now of course shows the negative side of things, but if viewed positively, it shows that the British privacy protection legislation is effective, or else the lady would never be able to know why she always met with rebuff in her job application.

Of course, no one legislation can give hundred percent protection to anyone's interest at any one time, but as long as there is sufficient check and balance built into the mechanism, the legislation is already effective.

The Democratic Party also proposes amendment requiring that the appointment of the Privacy Commissioner for Personal Data be approved by the Legislative Council. Of course, such an amendment would not be as the Democratic Party says for enhancing the credibility or authority of the Commissioner, but could make the appointment a compromise amongst the various parties within the Legislative Council. Such a situation is not uncommon, which cannot be ruled out even in the selection of a university vice-chancellor. The Privacy Commissioner for Personal Data is the soul of the whole mechanism for protecting personal privacy. If his appointment is a result of compromise, his credibility and authority would be affected, which is just not what is intended. Will this be in the public interest?

As for the membership of the Advisory Committee, the Democratic Party's proposal is actually directed against the Government. I fear that it would make the Advisory Committee a watchdog over the Government. The credibility of the Committee depends on its composition. However, laying down rigid rules for defining its composition may not necessarily enhance its credibility. Instead, it might prevent the Committee from working effectively. Are we are to take this risk?

The Honourable Miss Emily LAU pointed out just now that this Bill was almost a stillbirth. I have taken part in this project for a number of years, it would be a pity if it falls short of success just for the lack of our final effort. I am very disappointed by the stand taken by some of the political parties. Division of labour should be an important function of a political party and should also be an objective of its establishment, but witnessing their acts just makes me throw up my hands in despair.

Mr Chairman, with these remarks, I support this Bill.

MR JAMES TO (in Cantonese): Mr Chairman, with respect to the protection of personal privacy, the Administration had, back in 1991 when we passed the Bill of Rights, specially promised the Members that there would be specific legislations to protect privacy and to outlaw discriminatory acts. The promise was made in exchange for Members passing the Bill of Rights (I remember that the chairman of the Bills Committee then was the Honourable Mrs Selina CHOW), so that the Bill of Rights would not be applicable to any action between individuals, thus restricting its application to actions between official agencies and agencies with official authority, and individuals. Since 1991, we in fact have only made one small step in respect of the protection personal privacy. Why I say so? It is because besides personal data, personal privacy also cover many other aspects like bugging telephone calls or other communications, which are still considered by the Law Reform Commission. I have time and again said in the Legislative Council Committee that the progress is too slow. This is especially so after the hearing of Alex TSUI's case; every one is concerned whether bugging one's telephone constitutes an infringement of one's personal freedom, and whether there is a better system to protect it.

Of course, as the Honourable Roger LUK just said, the performing artists being tailed by the so-called "paparazzi" could have been a case of unreasonable infringement of their privacy. Because they are all celebrities and the topic itself is interesting, the privacy discussion has been brought to another height of intensity. I could say that the Administration would like to this Bill passed into law as soon as possible because the Administration knows clearly that if by 1996 we still do not have such legal protection in place, the exchange of trade and commercial information would be greatly affected, especially when the European Union has already passed a resolution in this regard.

Just now the Honourable Miss Emily LAU mentioned that we have spent two months and held more than 10 meetings to discuss this Bill, but frankly, I feel that we were just rushing things through and had not given sufficient thought to the issues before us. A certain political party, a major one too, had even not attended over half of the meetings in the latter stage of our study. I do not know if this was to show their protest or they had difficulty in finding time or its is because it had other more important legislation to consider. I myself had not attended a number of the meetings because I had into consider the legislation for the Court of Final Appeal and other more important legislations. I therefore feel that my having not given deep enough thought into this legislation might have great impact on it. What I can say is that despite the many amendments proposed by the Democratic Party, we are just barely satisfied in the passage of this Bill. We cannot say for sure that we have studied the whole Bill in great detail because the time allowed was just too little.

Secondly, I would like to respond to Mr Roger LUK's speech in relation to our amendments. First of all, Mr Roger LUK said that our Committee stage amendments to be later proposed by Dr the Honourable HUANG Chen-ya were imposing stricter requirement on the Administration than other data users in order to give the citizens greater protection. Why is it so? It is because we all

know that the Administration has in its possession the largest amount of data which, because of legal or statutory reasons, it is required to collect. The only exception is the Inland Revenue Department, which, subject to its own regulations, would be an offence if it discloses any information. As with other departments, if any of them discloses any information, they would at most be subject to the sanction under the Official Secrets Act. However, at present the Official Secrets Act only covers six kinds of information which may have any direct effect on the citizens. The protection given to information that may have a more direct impact on the citizens is not as great as other information. We therefore have reason to believe that the Administration, being such a large organization, should be treated differently from other commercial or civil agencies in that stricter protection and security requirement should be imposed upon it. Given that it is the defenceless citizens that it is dealing with, our such a request is nothing extravagant. Even though we could be having a double standard, such a double standard was set with a reason.

On the other hand, Mr Roger LUK asked just now why the appointment of the Privacy Commissioner for Personal Data had to be approved by the Legislative Council. I can tell Mr Roger LUK and the other Members present that in many other countries and territories, offices of such importance, including those of the Director of Audit, the Privacy Commissioner for Personal Data and supervisors of intelligence agency, have to be agreed to by the legislature or an institution with popular mandate. What I mean by agree does not mean a compromise. What Mr Roger LUK had in mind might be a person being a compromise as a result of the various competing political parties. My thinking is that as this person must be one having the support of the various political parties in the legislature, we do not need him to be an exceptionally smart person, but he at least must be one accepted and agreed to by the various political parties. He will then be more at ease when he takes up this job, and will also make the citizens believe that he has much power in various investigations, even the power to investigate in relation to matters of state security. His office will then become more important. Our proposal is not made only in respect of the Privacy Commissioner for Personal Data, we shall make similar proposal in respect of the Director of Audit. This is a constitutional matter that requires to be dealt with by an institution with great importance and credibility. Even with ICAC, we feel that it should not be like what we are having at the moment.

Finally, I shall propose a Committee stage amendment, requiring that if the Privacy Commissioner is to collect evidence for investigating crimes or acts that may infringe privacy, and if he has to approach a new agency for such information, which may result in disclosing the source of information, he must first apply to the court. The Administration at first did not agree to this amendment, but I am glad that the Administration was finally convinced to accept such an amendment. The court will, after weighing the public interest, decide if approval can be given to the Privacy Commissioner to exercise his power to obtain such information. Why do I propose this amendment? It is because many of such enforcement powers actually involve a balance of

interests. For example, later today we are to consider amending Chapter 1 of the Laws of Hong Kong, which is about the collection of information by the police or other law enforcement agencies from news agencies. We have achieved a very nice balance and made a very fine amendment. As far as I know, this amendment will be accepted by all the Members. If in case of corruption, grave or serious crimes, the court is asked to do a balancing job based on public interest, I see no reason why the Privacy Commissioner can act unilaterally under the law. Actually what I had in mind originally was a general exemption, because I think general exemption is more appropriate in relation to balancing all interests. Some people think that if general exemption was given to the media, they would become above the law. Judging by our current social condition and balance, I wonder how serious is such interest being infringed? How much can this Privacy Commissioner do to protect our privacy? It is my ideal that general exemption can be achieved in the end. However, I know that if I raise general exemption, the Administration might not put forth the procedure of applying to the court. I therefore think that it is better for me to come to a compromise and I hope that this compromise will be continuously reviewed so that an ideal balance can be achieved in the end. But no matter how, I am glad that the Administration has finally accepted this amendment.

With these remarks, I support the Second Reading of this Bill.

SECRETARY FOR HOME AFFAIRS: Mr President, I would like to open by paying tribute to the commitment and hard work of the Bills Committee that studied the Personal Data (Privacy) Bill under the dedicated leadership of the Committee's convenor, the Honourable Miss Emily LAU. The Committee's painstaking clause by clause examination of the Bill has resulted in some 30 substantive amendments, which I will move during the Committee stage.

As I stated when I introduced the Bill into this Council on 19 April this year, its purpose is to protect the privacy interests of individuals in relation to personal data. It should also safeguard the free flow of personal data to Hong Kong from the imposition of restrictions by the increasing number of countries that already have data protection laws.

The Bill implements the majority of the recommendations of the Law Reform Commission, which were based on more than four years of work, including a very thorough public consultation exercise. In common with such legislation elsewhere, the Bill gives statutory effect to internationally accepted data protection principles. These are set out in Schedule 1 to the Bill and provide for matters such as the fair collection of personal data and for data subjects to have right of access and correction with respect to their personal data. In the main body of the Bill, there are detailed provisions to enable individuals to obtain access to and seek correction of their personal data held by data users.

The Bill establishes an independent statutory body, the Privacy Commissioner for Personal Data, to promote and enforce compliance with the legislation. The Privacy Commissioner is given powers to approve and issue codes of practice giving guidance on compliance with the Bill and to specify classes of data users required to submit annual returns on the kinds of personal data they hold and the purposes to which the data are put for compilation on a public register. The Privacy Commissioner also has suitable powers to inspect personal data systems and investigate suspected breaches of the Bill's requirements.

In order to strike an appropriate balance between the right of privacy and certain public and social interests, there are provisions for narrowly-defined exemptions from the Bill's requirements on providing access to personal data by the individual concerned and limits on the use of personal data to the purposes for which they were collected. The exemptions are linked to specific interests, such as security and defence in respect of Hong Kong, the prevention and detection of crime, the assessment or collection of taxes, financial regulation and news reporting.

The offences provided for in the Bill include an offence of non-compliance with an enforcement notice issued by the Privacy Commissioner. Provision is made for an individual who suffers damage as a result of a contravention of a requirement of the Bill to be entitled to compensation.

As I have mentioned, we agreed around 30 Committee stage amendments with the Bills Committee. This clearly demonstrates the constructive and flexible attitude we have adopted in finalizing the Bill. Many of the amendments have been put forward to meet specific concerns of outside parties who made submissions to the Bills Committee. For example, service providers in the information technology industry were concerned that they could be made liable for breaches of the Bill by their customers. To allay this concern, I will move an amendment that will make it clear that a person who holds, processes or uses personal data solely on behalf of someone else is not a data user in respect of that data. Hence, such a person would not be liable for contraventions of the Ordinance by the person who has ultimate control over the data concerned.

The Bills Committee made a determined effort to reach a consensus on all aspects of the Bill. The amendments that I have tabled bear witness to the hard work the Committee devoted to that end. However, there were a number of proposals for changes to the Bill from individual Members that the Committee as a whole did not endorse but which have nevertheless been tabled for debate during the Committee stage. In particular, the amendment tabled by Dr the Honourable HUANG Chen-ya. We explained to the Bills Committee why the Administration does not accept the proposals embodied in Dr HUANG's amendments. I would like to rehearse a few general points concerning them. First, they would place an unnecessary additional administrative burden on the Government. For example, the proposed amendment to clause 14 requires all government departments and branches to submit returns to the regulator, the

Privacy Commissioner. The Bill currently gives the Privacy Commissioner the discretion to decide which bodies should do this and he or she may decide that certain government data users do not need to be required to submit such returns.

Secondly, Dr HUANG's amendments to clause 57 would remove necessary safeguards for the protection of material held by the Government relating to security, defence and international relations. Members of the Bills Committee were concerned at the "sweeping" nature of the provisions of clause 57. We have already responded positively by proposing Committee stage amendments to this clause that address Members' concerns. Dr HUANG's amendments go far further than those I will move and do not give due recognition to the need to protect highly sensitive material relating to these areas.

Thirdly, Dr HUANG's amendments would make the appointment of the Privacy Commissioner subject to the approval of the Legislative Council. This would politicize the choice of this authority, which may adversely affect the Privacy Commissioner's independent standing. The amendments would also introduce undue rigidity into the composition of the committee established by the Bill to advise the Privacy Commissioner by specifying that it must include members nominated by the Legislative Council, business interests and journalists. In practice, the Administration will of course ensure that affected interests will be broadly represented on the committee. I urge Honourable Members to consider these points very carefully and to vote against Dr HUANG's amendments.

One aspect of the Bill which received close attention from Members of the Bills Committee was its impact on the media. This was also something that the Law Reform Commission took a great deal of trouble over. A whole chapter of the relevant Law Reform Commission report was devoted to this subject and in preparing the Bill, we closely followed the Commission's recommendations on this. Nevertheless, Members of the Bills Committee felt there was a need for additional safeguards for the media with regard to the powers of the Privacy Commissioner to carry out investigations. The Bill already provides that the Privacy Commissioner may only carry out an investigation in relation to personal data held for a news activity where there has been a complaint of a suspected breach of the Bill's requirements. As a positive response to Members' concerns, our Committee stage amendments go further than this by providing that such an investigation may only be carried out in relation to such data that have already been published or broadcast. I will also be moving an amendment to the definition of news activity to ensure that it includes all journalistic activities.

In addition, we originally proposed amendments to clause 44 that provided for restrictions on the Privacy Commissioner's power to require the frunishing of information or production of a document that would reveal the identity of a journalistic source. The Honourable James TO will move a

Committee stage amendment that provides for a variation on our proposals by involving the High Court in making a decision on whether or not the identity of a journalistic source should be revealed to the Commissioner. We have given careful consideration to this proposed amendment and have decided that the involvement of the High Court as an independent adjudicator in this matter is acceptable. Accordingly, I have withdrawn my amendments to clause 44 and recommend that Honourable Members vote in favour of those to be proposed by the Honourable James TO.

With this, Mr President, I recommend the Personal Data (Privacy) Bill to Members for Second Reading.

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

Bill read the Second time.

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

Committee Stage of Bill

Council went into Committee.

PERSONAL DATA (PRIVACY) BILL

Clauses 1, 3, 4, 7, 10, 15 to 18, 26, 29, 32, 35, 36, 38, 40, 41, 45, 48 to 53, 56, 62, 65, 67, 68, 69 and 73 were agreed to.

Clauses 6, 9, 12, 13, 19 to 25, 27, 28, 31, 33, 34, 37, 39, 42, 43, 46, 47, 54, 55, 60, 61, 63, 66, 70 and 72

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

Under clause 12(9) of the Bill, the Privacy Commissioner is required to consult affected bodies and interested persons before approving codes of practice giving practical guidance on compliance with the Ordinance. The amendment to this clause applies this requirement also to revisions to codes of practice by the Privacy Commissioner.

To provide better consistency with the Bill of Rights Ordinance, the amendment to this clause 13(2) reduces the evidential presumption that a breach of a code of practice is a breach of a requirement of the Bill.

Part V of the Bill contains detailed provisions on access to and correction of personal data. The amendments to clauses 19(1) and 21(1) reduce the maximum time period for a data user to respond to a data access request from 45 to 40 days. The same change is made to clauses 23(1) and 25(1), which are the analogous clauses with respect to correction requests.

Under clause 19(3) a data user may, during the first year of operation of the Ordinance, correct personal data for which an access request has been made before providing a copy. As suggested by the Bills Committee, the amendment to clause 19(3) provides that where this is done, the subject should be informed. The amendments to clauses 19(3)(a)(ii) and 19(5) are consequential.

The amendment to clause 22 provides that where a data correction request is under consideration when the personal data concerned are transferred to a third party, all practical steps should be taken to bring this to the attention of the third party.

At the request of the Bills Committee, the amendment to clause 27(1)(c)(i) increases the minimum period that the records should be kept in the log book of refusals to grant subject access requests from two to four years.

As suggested by the Bills Committee, the amendment to clause 33(2) provides for an exception to the restrictions on transferring personal data outside Hong Kong where this is in the interests of the subject but it is not practicable to obtain his consent.

Clause 34 relates to personal data used for direct marketing purposes. The amendment provides that a data subject can require a data user to cease to use personal data for such purposes, instead of the current provision to require erasure of such personal data as data may be needed for other purposes.

At the Bills Committee's suggestion, the heading of clause 42 is amended to state that the clause is concerned with the Privacy Commissioner's power of entry on premises for the purposes of an inspection or investigation.

The amendment to clause 43(1)(a) is for consistency with the wording of clause 44.

The amendment to clause 46(4)(b) increases the period allowed for a data user to object to the inclusion in a report to be issued by the Commissioner of matter the data users belive to be exempt from subject access by virtue of an exemption under Part VIII from 14 to 28 days.

Clause 54 provides for a transitional exemption from the right of subject access for pre-existing employment-related personal data provided by a third party in confidence. As agreed with the Bills Committee, there are two amendments to clause 54(1). The first removes a qualification with respect to the exemption that could inadvertently limit its application only to such data that

were specifically requested. The second amendment reduces the transitional period during which the exemption will apply from 10 years following commencement of the Ordinance to seven years following its enactment.

The amendment to clause 60 is a technical change.

Clause 61 provides for exemptions for personal data held for a news activity. As agreed with the Bills Committee, there are two amendments to this clause. The first excludes the Privacy Commissioner from investigating a compliant in relation to personal data held for a news activity prior to publication or broadcasting of the data. The second amends the definition of "news activity" to include "journalistic activity".

Under clause 18(1)(a) a data user is required to confirm whether or not personal data in relation to a particular individual is held. Clause 63 exempts a data user from this requirement where doing so would prejudice any interest protected by an exemption from the subject access provision of clause 18(1)(b). In response to concerns expressed by the Bills Committee about the wide applicability of clause 63, the amendment restricts it to the protection of the interests covered by clause 57, security and so on, and clause 58, crime and so on.

At the request of the Bills Committee, clause 70(1) is amended to remove broadly worded regulation making powers.

The remaining amendments are technical amendments to the Chinese version of the Bill.

Mr Chairman, I beg to move.

Proposed amendments

Clause 6

That clause 6(b) be amended, by deleting "業務" and substituting "職業".

Clause 9

That clause 9(3)(b) be amended, by deleting "的人" and substituting "人".

Clause 12

That clause 12(9) be amended —

(a) by adding "or any revision or proposed revision of the code under subsection (3)" after "subsection (1)".

(b) in paragraph (a), by adding "or the code as so revised, as the case may be," after "code".

Clause 13

That clause 13(2) be amended, by deleting "unless that body is satisfied" and substituting "in the absence of evidence".

Clause 19

That clause 19 be amended —

(a) in subclause (1), by deleting "45 days" and substituting "40 days".

(b) in subclause (3) -

(i) in paragraph (a)(ii), by deleting "and" at the end;

(ii) by adding -

"(aa) where any correction referred to paragraph (a)(ii) has been made to the data, be accompanied by a notice stating that the data have been corrected pursuant to that paragraph (or words to the like effect); and".

(c) in subclause (5), by adding "and paragraph (aa)" after "paragraph (a)".

That clause 19(3)(b)(iii)(B)(II) be amended, by deleting "副本" and substituting "複本".

That clause 19(4)(ii)(B)(II) be amended, by deleting "間中" and substituting "間內".

Clause 20

That clause 20(1)(b) be amended, by adding "個人" after "事人的".

That clause 20(2)(a) be amended, by adding "個人" after "事人的".

That clause 20(3)(b) be amended, by deleting "供應" and substituting "提供".

That clause 20(3)(c) be amended, by deleting "同類" and substituting "類似".

That clause 20(4)(b) be amended, by deleting "在能不違反有關禁制而依從該項要求的範圍內，無須" and substituting "無須在能不違反有關禁制而依從該項要求的範圍內".

Clause 21

That clause 21(1) be amended, by deleting "45 days" and substituting "40 days".

Clause 22

That clause 22 be amended, by adding —

> "(3) Without prejudice to the generality of sections 23(1)(c) and 25(2), if a data user, subsequent to the receipt of a data correction request but before complying with the request pursuant to section 24 or refusing to comply with the request pursuant to section 25, discloses to a third party the personal data to which the request relates, then the user shall take all practicable steps to advise the third party that the data are the subject of a data correction request still under consideration by the user (or words to the like effect).".

That clause 22(2)(b) be amended, by deleting "的使用" and substituting "的處理".

Clause 23

That clause 23(1) be amended, by deleting "45 days" and substituting "40 days".

Clause 24

That clause 24(3)(c) be amended, by deleting "供應" and substituting "提供".

That clause 24(4) be amended, by deleting "實施" and substituting "施行".

Clause 25

That clause 25(1) be amended, by deleting "45 days" and substituting "40 days".

Clause 27

That clause 27(1)(c)(i) be amended, by deleting "2 years" and substituting "4 years".

That clause 27(2)(b) be amended, by deleting“從”and substituting“守”.

Clause 28

That clause 28(4) be amended, by deleting“而資料”and substituting“而複本”.

That clause 28(6) be amended, by adding“成本”and substituting“行政”.

Clause 31

That clause 31(2) be amended, by deleting“該等資料使用者中的任何一名”and substituting“任何該等資料使用者”.

Clause 33

That clause 33(2) be amended, by adding —

“(ca) the user has reasonable grounds for believing that, in all the circumstances of the case -

(i) the transfer is for the avoidance or mitigation of adverse action against the data subject;

(ii) it is not practicable to obtain the consent in writing of the data subject to that transfer; and

(iii) if it was practicable to obtain such consent, the data subject would give it;”.

That clause 33(2)(a) be amended, by deleting“通知”and substituting“公告”.

That clause 33(2)(e) be amended, by deleting“盡”and substituting“作出”.

Clause 34

That clause 34(1) be amended, by deleting paragraphs (i) and (ii) and substituting —

“(i) the first time he so uses those data after this section comes into operation, inform the data subject that the data user is required, without charge to the data subject, to cease to so use those data if the data subject so requests;

(ii) if the data subject so requests, cease to so use those data without charge to the data subject.".

Clause 37

That clause 37(2) be amended, by deleting "他們中的任何一" and substituting "任何該等個".

Clause 39

That clause 39(1)(d)(i)(A) be amended, by deleting "在香港居住" and substituting "居於香港".

That clause 39(2) be amended, by adding "拒絕" and substituting "繼續".

Clause 42

That clause 42 be amended —

(a) in the heading, by adding **"for the purposes of an inspection or investigation"** after **"on premises**".

(b) by deleting subclause (1)(a) and substituting -

"(a) where the personal data system, or any part thereof, the subject of the inspection is situated in -

(i) non-domestic premises, enter the premises at any reasonable time;

(ii) domestic premises, enter the premises with the consent of any person (other than a minor) resident therein;".

(c) in subclause (3), by deleting "subsection (4)" and substituting "subsections (3A) and (4)".

(d) by adding-

"(3A) Without prejudice to the generality of subsection (4), where any domestic premises are specified in a notice under subsection (3) in respect of which the Commissioner proposes to exercise his power under subsection (2), then the Commissioner shall not exercise that power in respect of those premises unless and until a person

(other than a minor) resident therein consents thereto before the expiration of 14 days after service of the notice.".

(e) in subclause (5)(a), by adding "Part 1 of" after "specified in".

(f) by adding -

"(5A) A magistrate may, if satisfied by information upon oath by the Commissioner or any prescribed officer that there are reasonable grounds for believing that the purposes of an investigation may be substantially prejudiced if the Commissioner is prevented by the operation of subsection (3A) from exercising his power under subsection (2) in respect of any domestic premises, issue a warrant -

(a) in the form specified in Part 2 of Schedule 5; and

(b) authorizing the Commissioner to exercise that power in respect of those premises.".

(g) by adding -

"(9) In this section and Schedule 5 -

"domestic premises"（住宅處所）means any premises which are constructed or intended to be used for habitation;

"non-domestic premises"（非住宅處所）means any premises other than domestic premises;

"premises"（處所）means -

(a) any building where no part of the building is separately occupied, and includes any land appertaining to the building;

(b) in any other case, any part of a building which is separately occupied, and includes any land appertaining to such part.".

Clause 43

That clause 43(1)(a) be amended, by deleting "obtain" and substituting "be furnished with".

That clause 43(3) be amended, by deleting "前發言" and substituting "前".

Clause 46

That clause 46(4)(b) be amended, by deleting "14 days" and substituting "28 days".

Clause 47

That clause 47(4)(a) be amended, by adding "資料" before "使用".

Clause 54

That clause 54(1) be amended —

(a) in paragraph (b), by deleting "at the request of the data user".

(b) by deleting "10 years immediately following that day" and substituting "7 years immediately following the enactment of this Ordinance".

Clause 55

That clause 55(2)(a)(i) be amended, by deleting "適合" and substituting "合適".

Clause 60

That clause 60 be amended, by deleting "legal proceedings" and substituting "law".

Clause 61

That clause 61 be amended —

(a) in subclause (1)(i), by deleting "section 18(1)(b)" and substituting "sections 18(1)(b) and 38(i)".

(b) in subclause (3), in the definition of "news activity", by adding "any journalistic activity and includes" after "means".

Clause 63

That clause 63 be amended, by adding "by virtue of section 57 or 58" after "section 18(1)(b)".

Clause 66

That clause 66(3) be amended, by adding "針" after "本條".

Clause 70

That clause 70(1) be amended —

(a) in paragraph (b), by deleting "Ordinance;" and substituting "Ordinance.".

(b) by deleting paragraphs (c) and (d).

Clause 72

That clause 72 be amended, in the Chinese text by deleting the clause and substituting —

"72. 公共機構

《防止賄賂條例》（第 201 章）的附表現予修訂，加入 —

"79. 個人資料私隱專員。" 。".

Question on the amendments proposed, put and agreed to.

Question on clauses 6, 9, 12, 13, 19 to 25, 27, 28, 31, 33, 34, 37, 39, 42, 43, 46, 47, 54, 55, 60, 61, 63, 66, 70 and 72, as amended, proposed, put and agreed to.

Clause 2

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the definition of "adverse action" and paragraph (h) of the Chinese text of the definition of "financial regulators" in clause 2(1) be amended, and that clause 2 be further amended by adding subclauses (12) and (13) as set out in the paper circulated to Members.

Clause 2(1) provides for definitions of terms used in the Bill. As agreed with the Bills Committee, a minor amendment is proposed to the definition of "adverse action" to make it clear that "interests" include "legitimate expectations". The other amendment to clause 2(1) is a technical amendment to the Chinese version of the Bill.

The remaining amendment to clause 2 adds two new subclauses agreed with the Bills Committee. The first makes it clear that a person who holds, processes or uses personal data solely on behalf of another person is not a data user in respect of such data. The second puts beyond doubt that actions that could result in suspension or disqualification by the Royal Hong Kong Jockey Club constitute "seriously improper conduct", for which there are applicable exemption provisions.

Mr Chairman, I beg to move.

Proposed amendment

Clause 2

That clause 2 be amended, in subclause (1), in the definition of "adverse action", by adding "(including legitimate expectations)" after "interests".

That clause 2(1) be amended, in paragraph (h) of the definition of "財經規管者", by deleting "人的" and substituting "者的".

That clause 2 be amended, by adding -

> "(12) A person is not a data user in relation to any personal data which the person holds, processes or uses solely on behalf of another person if, but only if, that first-mentioned person does not hold, process or use, as the case may be, those data for any of his own purposes.
>
> (13) For the avoidance of doubt, it is hereby declared that, for the purposes of this Ordinance, any conduct by a person by virtue of which he has or could become a disqualified person or a suspended person under the Rules of Racing and Instructions by the Stewards of the Royal Hong Kong Jockey Club, as in force from time to time, is seriously improper conduct.".

Question on the amendment proposed, put and agreed to.

CHAIRMAN: Both the Secretary for Home Affairs and Dr HUANG Chen-ya have given notice to move amendments to the definition of "matching procedure" in clause 2(1). I will call upon Dr HUANG Chen-ya to move his amendment first in accordance with Standing Order 25(4).

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, I move that the definition in respect of matching procedure be amended as set out under my name in the paper circulated to Members.

Mr Chairman, if Personal Data (Privacy) Bill is to achieve its purpose of protecting the privacy of the citizen, one of the important principles is to supervise and restrict the Administration's power to collect data of the citizens. If the Administration can collect large amount of data of the citizens, though they may not feel persecuted for the time being, the power of the Administration certainly will expand day by day! A government machinery that has in its control large amount of personal data can control as it wishes the citizens and suppress them.

What is gravely in lack of in the present Bill is a measure to prevent the government departments from abusing their power and infringing on the privacy of the personal data of the citizens, or damaging the rights of the citizens due to incorrect data.

The Bill actually provides that data users, when comparing data from different sources, should have the consent of the data subject or the Privacy Commissioner, unless such comparison is not for producing or verifying data that could lead to adverse action against a person. Regrettably the Bill has not provided for the regulation of manual comparison procedure and comparison procedure that is not for taking adverse action. If the Administration can, on a regular basis or without the immediate intention of taking any adverse action, match data from various sources as it pleases and piece together a detail file of a person, such a file would become a tool to control the citizen instead of one that is only used for taking adverse action against him. I therefore think that comparison of data from various sources by the Administration should also be regulated.

The Administration has the power, the opportunity and the ability to collect large amount of personal data, and the danger of an expansion of the power of the Administration increases accordingly. In fact, without the help of computers, just by manual collection, the fate of the people in mainland China has been under the sway of their own personal file for the past few decades. In 1984 when the United Kingdom passed its Data Protection Act, comparison of data collected manually was not regulated, but later the British Government also discovered that this could be a loophole whereby many departments could compare data manually. Law was therefore passed to regulate manual comparison of data by social welfare, housing and health departments. The Law Reform Commission also said in its 1994 report that manual data-matching procedure should also be brought within the purview of legislations. Not having brought any manually processed data under regulation is, on the part of the Administration, obviously an affront to the views of the Law Reform Commission.

The amendment of the Democratic Party has one thing in common with that of the Administration, and that is manual comparison of data by the private sector is permitted so long as such comparison is not for producing or verifying data that could lead to adverse action against a person. It is because we feel that at present the private sector has not posed any threat to the citizens. It is the spirit of the amendment of the Democratic Party to prevent as far as possible the power of the Administration from becoming too excessive. Our amendment therefore requires the Administration to bring the comparison and matching procedure all under regulation, and in the amendment to clause 14 to be put forth later, we require all data-using departments of the Administration to report to the Privacy Commissioner, so that the citizens know that how many departments have in their possession personal data of the citizens.

The Administration's agreeing to put all comparison procedures under the matching procedure for regulation is stark proof that the Administration has "a guilty conscience", fearing that our amendment would prevent the Administration from unreasonably supervising the citizens and secretly infringing their privacy. If it was not so, I cannot see why the Administration should oppose to my amendment to clause 2(1) in respect of matching procedure.

Proposed amendment

Clause 2

That clause 2(1) be amended, by deleting the definition of "matching procedure" and substituting —

""matching procedure"（核對程序）means -

(a) any procedure carried out by or on behalf of the Government whereby personal data collected for 1 or more purposes in respect of 10 or more data subjects are compared (including by manual means) with personal data collected for any other purpose in respect of those data subjects; or

(b) any procedure whereby personal data collected for 1 or more purposes in respect of 10 or more data subjects are compared (except by manual means) with personal data collected for any other purpose in respect of those data subjects where the comparison -

(i) is (whether in whole or in part) for the purpose of producing or verifying data that; or

(ii) produces or verifies data in respect of which it is reasonable to believe that it is practicable that the data,

may be used (whether immediately or at any subsequent time) for the purpose of taking adverse action against any of those data subject;".

CHAIRMAN: I will call upon the Secretary for Home Affairs to speak on the amendment proposed by Dr HUANG Chen-ya as well as his own amendment, but will not ask the Secretary for Home Affairs to move his amendment unless Dr HUANG's amendment has been negatived. If Dr HUANG's amendment is agreed, that will by implication mean that the Secretary for Home Affairs's proposed amendment is not agreed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, clauses 30 to 33 of the Bill provide for special controls to be applied to matching procedures. As currently defined, matching procedures involve the automated matching of personal data collected for different purposes with a view to taking adverse action against one or more of the subjects of the data.

Dr the Honourable HUANG Chen-ya's proposed amendment to clause 2(1) provides for a far wider definition of "matching procedure" where this is done by and on behalf of the Government. Dr HUANG's revised definition includes, for the Government only, the matching of personal data by manual means and without the aim of taking adverse action against any of the subjects. The effect of the change is, for the Government only, to bring within the scope of the controls on "matching procedure" a wide range of personal data matching activities which do not warrant such control. This would place unnecessarily additional control of administrative burden on the Government.

The mischief which the controls are aimed at is the potential for error found in large scale automated matching programmes which could result in adverse action being taken by mistake. Where matching is done manually or where no adverse action is to be taken as a result of the procedure, the mischief is not present and such controls are not necessary.

Dr HUANG's amendment would also add an objective test for determining whether a matching procedure could be used for taking adverse action against any data subject. If his amendment to definition as a whole is defeated, I shall separately move an amendment to include this objective test in the definition as agreed with the Bills Committee.

The Administration will vote against Dr HUANG's proposed amendment and I recommend that Honourable Members also vote against it.

Thank you, Mr Chairman.

MISS EMILY LAU (in Cantonese): Mr Chairman, I rise to speak in support of the amendment proposed by Dr the Honourable HUANG Chen-ya.

In its earlier response, the Administration has not addressed all the matters raised by Dr HUANG. It is our understanding that the Administration internally has held a lot information which have not been processed by computers and there are also a lot of manually handled and collected files. So could the Administration make it clear that, under the present proposal of the Administration, whether those files will come within the scope of this legislation? Dr HUANG has proposed to bring all matching procedures within the scope of this legislation, what is wrong with this? Dr HUANG has asked the Administration if it has a guilty conscience. If the Administration does not find any problem with this, can it widen the scope of this legislation? We understand that widening this legislation is to widen the protection, which we think is in compliance with the spirit of this legislation. I hope that the Administration can give a straightforward explanation.

Thank you, Mr Chairman.

CHAIRMAN: It is entirely up to you whether you elucidate, Secretary. Indeed, Members are not restricted to one speech.

SECRETARY FOR HOME AFFAIRS: No, Mr Chairman.

DR HUANG CHEN-YA (in Cantonese): I find that the criticism the Administration levelled against me is groundless. Firstly, the Administration said that it would bear greater administrative burden, but I do not see where that burden comes. Would making a report to the Privacy Commissioner once every year greatly increase the administrative burden? I really cannot see the basis for this. Secondly, the Administration at present also conducts manual comparison, which is done by putting the data of a person obtained from one department side by side with data of the same person obtained from another department so that a comparison and verification can be made. I would like to ask the Administration what is it intending to do. Are we planning to turn Hong Kong into a society run by secret police? I really cannot see the reason for the Administration in so doing. Unless it is of the opinion that after 1997 our society has to be one under secret control like that in mainland China, I feel that the Hong Kong Government should not intentionally leave the comparison work done by the Government itself out of any regulation.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Miss Emily LAU and Dr HUANG Chen-ya 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 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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH and Ms Anna WU 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 LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, 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 Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Dr TANG Siu-tong, 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 31 votes against it. He therefore declared that the amendment was negatived.

CHAIRMAN: As Dr HUANG Chen-ya's amendment to the definition of "matching procedure" in clause 2(1) has not been agreed, I will call upon the Secretary for Home Affairs to move his amendment to the definition of "matching procedure" in clause 2(1) as well as his amendment to clause 2(9).

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that the definition of matching procedure in clause 2(1) and clause 2(9) of the Bill be amended as set out in the paper circulated to Members. The definition of matching

procedure in clause 2(1) is amended to add an objective text for determining whether such a procedure can be used for taking adverse action against any data subject. The amendment to clause 2(9) is a technical amendment to the Chinese version of the Bill.

Mr Chairman, I beg to move.

Proposed amendment

Clause 2

That clause 2 be amended, in subclause (1), in the definition of "matching procedure", by deleting everything after "where the" and substituting -

"comparison -

(a) is (whether in whole or in part) for the purpose of producing or verifying data that; or

(b) produces or verifies data in respect of which it is reasonable to believe that it is practicable that the data,

may be used (whether immediately or at any ubsequent time) for the purpose of taking adverse action against any of those data subjects;".

That clause 2(1) be amended, in the definition of"核對程序", by deleting"多於".

That clause 2(9)(a) and (b) be amended, by deleting"業務"and substituting"行業".

Question on the amendment proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

Clause 5

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, the Bill provides that the Administration shall appoint the Privacy Commissioner, who shall hold office for a term of five years. The Democratic Party thinks that the role of the Privacy Commissioner is crucial in the effective implementation of this legislation. In safeguarding the privacy of the citizens, he is an important channel for lodging any complaint and is also responsible for supervising the Administration if it has infringed the privacy of the citizens. Thus, in order to enhance the independence of the Privacy Commissioner and to strengthen his supervisory power in relation to the government departments, we propose to

amend clause 5, requiring that the appointment of the Privacy Commissioner shall be approved by the Legislative Council. This will enhance the Privacy Commissioner's responsibility and credibility.

The Privacy Commissioner should side with the citizens to protect their privacy. If he was appointed by the Administration, it would be hard for him not to become the Administration's yes-man and not to assist in covering up the Administration's infringement of the citizen's privacy, he might even become a tool for the Administration to interfere with press freedom. Though it is so, those against this amendment think that an appointment by the Governor already shows where his responsibility is. However, I would like to remind you that the present and the 1997 governments are not democratically elected. The present one is a colonial government and that after 1997 is also not a fully democratically elected one. The Administration and the citizens certainly will have different interests. It is often than not that the Privacy Commissioner for Personal Data shall have to go against the Administration, and he, on behalf of the citizens, is an important supervisory mechanism to make sure that the Administration has not infringed the privacy of the citizens. The more independent it is, the more able it can to perform its supervisory function. We hope that by having his appointment approved by the Legislative Council, the status of the Privacy Commissioner can be more independent and have greater credibility.

Proposed amendment

Clause 5

That clause 5 be amended, by deleting subclause (3) and substituting —

"(3) The Governor shall, with the approval by resolution of the Legislative Council, by notice in the Gazette appoint a person to be the Commissioner.".

Question on the amendment proposed.

MR JAMES TO (in Cantonese): Mr Chairman, despite the fact that what I am going to say may provoke a lot of counterattacks and responses, I still have to relieve myself of it.

We have held over 10 meetings within two months, and when it came to the last meetings, only three or four people turn up. I have to point out that Councillors of the Liberal Party did not turn up at those meetings. Of course, they always held the view, which I know, that they did not have enough time to examine the Bill, and I myself also think that we were not given enough time, but we still tried our best to see if we could make it. Up to now, I still think that we have not completed the work. However, with clause 5, and the provision that we have just voted upon, it is clear from the result that no

opinion whatsoever has been expressed in respect of them. Last week, the Honourable Mrs Miriam LAU said that she was pent up with grievances, to which we have apologized. It was our oversight. However, what is in issue now is whether Councillors from the Liberal Party, in examining this Bill, have said anything in respect of the amendment proposed by Dr the Honourable HUANG Chen-ya, whether they have given any of their of opinions, whether they have given their reasons to say what is right and what is wrong.

A legislative assembly is for holding debates, not just for casting a vote of nay; in the Bills Committee of this legislature, we are to discuss bills. If we think it is right, we would be convinced and would not propose any amendment. It is a process whereby we try to convince each other. If it is so, it is clear that the Administration would have all the votes; anything that the Democratic Party goes for, the rest would go against. It is that simple, a very brutal reality. However, I hope that it would not be the same in the future. If it is a rational discussion, I do not mind others voting against us, but could they tell us, so that we know what causes our demise, what exactly is the reason for their negative vote? What is that reason? Are they in support of the Administration's stand? If it is so, please say so, at least I know what that reason is.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, Dr the Honourable HUANG Chen-ya's proposed amendment to clause 5 provides for the appointment of the Privacy Commissioner for Personal Data by the Governor to be subject to approval by resolution of the Legislative Council. We believe that this will politicize the appointment process which may adversely affect the independent standing of the Privacy Commissioner. The current provisions follow those for the appointment of the Commissioner for Administrative Complaints and will ensure the independent standing of the Privacy Commissioner. The Administration will vote against Dr HUANG's proposed amendment and I recommend that Honourable Members also vote against it.

Thank you, Mr Chairman.

MISS EMILY LAU (in Cantonese): If, as the Administration believes, the appointment of the Privacy Commissioner is made to be subject to approval by resolution of the Legislative Council, the appointment process will be politicized, thereby affecting his independent standing, then the Administration should recall that yesterday when we passed the Bill on the Court of Final Appeal, this Council was also given the power to approve the appointment of judges. Does this mean that the appointment process for judges will be politicized, thereby casting doubt on the independence of the judges? I would like to have an explanation from the Administration.

Thank you, Mr Chairman.

DR HUANG CHEN-YA (in Cantonese): Now it must be in the contemplation of the Administration that it will win. The reasons it gives to counter our argument are not reasons at all. What is politicization? Now government officials have to have meetings with us at the Legislative Council to answer whatever questions we may pose them, but as civil servants, would their so doing politicize their office? No matter how, I know that today is not the day for reasonings. Just now, in respect of amending the matching procedure, we have seen how badly the Administration has tried to explain away the reason for carrying out such matching work today and why personal details from different departments have to be lumped together. Though it is so, it wins out, and easily.

When we had our Bills Committee meetings, the Liberal Party had never attended — or it should not be "never", as it seemed that they had attended once — and they had never given any of their opinions, but now they are lopsidedly in support of the Administration, allowing acts that can only seen in a police state and permitting the Administration to be exempt from supervision. At that time, a Council Member — Mr LUK, had said at the meeting that it was such an easy document to read, why the major political parties did not find some time to read it. Now I understand why he found it so easy, all that is to do is to accept wholesale what the Administration suggests, so it is that simple. Why is there a need for debate? For examination?

I know that we will lose on this amendment, but I feel that this is the time to prove that the Administration and a lot of the Members of this Council, and even the Privacy Commissioner himself, cannot give any protection to our privacy, and cannot stop the Administration from abusing its power and infringing our privacy.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Dr HUANG Chen-ya 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 Martin LEE, Mr SZETO Wah, Dr LEONG Che-hung, 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 Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH and Ms Anna WU 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 LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Vincent CHENG, Mr Moses CHENG, Mr 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 amendment.

THE CHAIRMAN announced that there were 18 votes in favour of the amendment and 30 votes against it. He therefore declared that the amendment was negatived.

Question on the original clause 5 standing part of the Bill proposed, put and agreed to.

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, under section 46(4), (5) and (7) of the Standing Orders, any new schedule should only be examined after all the provisions and schedules of the Bill have been dealt with. I therefore beg to be permitted to move a suspension of section 46(4), (5) and (7) of the Standing Orders, so that the Committee, before examining the amendments of clauses 8, 57, 58 and 64, can first examine the new Schedule 6; and before examining the amendments of clauses 30 and 71, can first examine the new Schedule 3A; and before examining the amendment of clause 42, can first examine Schedule 5.

CHAIRMAN: Dr HUANG Chen-ya, as only the President may give consent to move a motion without notice to suspend Standing Orders, your request cannot be dealt with in Committee. I therefore order that Council will now resume.

Council then resumed.

PRESIDENT: Dr HUANG, you have my consent.

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, I move to suspend section 45(4), (5) and (7) of the Standing Orders, so a committee of the whole Council, before examining the amendments of clauses 8, 57, 58 and 64, can first examine the new Schedule 6; and before examining the amendments of clauses 30 and 71, can first examine the new Schedule 3A; and before examining the amendment of clause 42, can first examine Schedule 5.

Question proposed, put and agreed to.

Council went into Committee.

New schedule 6 Persons specified for the purposes of section 57

Schedule read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(7).

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, I move that the new Schedule 6 be given a Second Reading, details of which are given under my name in the papers passed to the Members.

Mr Chairman, the Personal Data (Privacy) Bill provides that citizens may have access to personal data, but on the grounds of security or prevention of crime, the Administration may refuse such request, and what is more, may refuse to disclose that the security department or the police have possession of files of such person. In respect of security, the Administration may stop the Privacy Commissioner's investigation, making it impossible for the Privacy Commissioner to investigate whether it's reasonable for the government department concerned to refuse the request.

After much haggling, the Administration finally agrees to a slight concession by furnishing the reason for refusal to the Privacy Commissioner. However, too great a power still rests with the Administration that any government department can find an excuse, on the grounds of security or prevention of crime, to stop citizens from accessing their own data. A law-abiding citizen may also find that he has no way to know if he is under secret supervision, or that a file filled with wild gossips and rumours may have painted a dark figure of him. At the same time, the Administration may set up non-governmental secret agency to collect data of the citizens. Just now when we were debating the matching procedure of data, we have seen that the Administration is actually carrying out such data checking, or else it would not be worried by the amendment I proposed.

Anna WU and members of the Hong Kong Observers being watched by the Administration years ago is one good example, which reminds us of the extent the Administration has infringed our privacy. While many of the Members were not in this Chamber, I mentioned that a British lady, who after several unsuccessful attempts in applying for jobs, finally found that she had been mistakenly listed as a suspected terrorist in the files of the Government. If investigations were not allowed, there is no way to make the rectification.

We therefore propose to amend clause 57 by deleting the Administration's using a certificate to refuse anyone to access his own data, and replacing it with a schedule, that is only those government departments listed in the schedule can, on the grounds of security, refuse anyone to access his file or refuse to disclose if such file is in the possession of such department. Listing those security departments that have possession of such information will not in any way sacrifice their efficiency.

The Hong Kong press have often made reference to a so-called "D Section", but the work of this department has not been hampered in any way. Similarly, the work of such organizations as the CIA, MI5, MI6 of the United Kingdom and United States of America and even the KGB are not compromized, so there is no interference to security work. The effect of the schedule is to make it clear that only those agencies that have been listed as security units can apply for exemption and refuse anyone to access their files or refuse to let anyone know if he is listed on any file.

It was originally provided in the Bill that application for exemption can be made after the Governor or the Chief Secretary has signed a certificate, which will enable many government departments, having no connection with security whatsoever, refuse anyone to have access to his file on the ground of security. In fact, you all know, many government documents though listed as secret, confidential or top secret in the past, had nothing remarkable in their content. Experience of many countries has shown that, instead of for genuine security purpose, the reason for security departments not to allow people to have access to their data is not to let people feel that the departments are ineffective or useless, or not to let others know that they have not done their job properly. By restricting the area for security, it will help greatly in respect of citizens' ability to access and rectify their data. That is to say, only genuine security agencies, that is those listed in the schedule, can be exempted. Not only will Hong Kong's needs in security and international relations not be compromised, the rights of the citizens can be balanced and maintained.

If again any of the other political parties wants to be the Administration's yes-man, and gives support to the Administration's stand, may it lay bare its reasons, and may it not remain silent but then vote against my amendment.

Question on Second Reading of the new schedule proposed.

MRS ELSIE TU: Mr Chairman, I would like to clarify that as we have been asked how we are voting, I have been listening very carefully to what has been said and I am sure other Members are doing so too. We are listening to what both sides are saying and, I hope, voting intelligently. If we had not been among a group of intelligent people, I might have considered that we have got to be among a group of paranoids who imagine that secret police is chasing them everywhere. I was one of those in the days when Anna WU's name was mentioned who was followed by police. It did not worry me because I had not done anything wrong. It was quite fun in fact to imagine that the police is following. I think it is very unfair to the Liberal Party who has been mentioned several times. I am not a member but I do object to being considered as being a running dog of the Government.

MR JAMES TO (in Cantonese): Mr Chairman, I want to supplement the point raised by Dr the Honourable HUANG Chen-ya in the hope of convincing the other Members. Since the Honourable Mrs Elsie TU has said that she would vote on the basis of the arguments she has listened to, I would therefore like to add a bit more. What we want to amend is not something that would make secrets leak from the security work of the Administration. We approve of his choice of words. However, I would like to know exactly which agencies would be exempted by the Bill. Just now someone said that the media, if to be completely exempted, would be like one above the law, in respect of which some people did share the same opinion. My last amendment therefore is to make the court the only authority which can, on the ground of public interest, apply to obtain information related to the source of information. As security work involves state security, so it is a very sensitive issue, and in fact what can be more important? Under the privacy protection law, for example, some American agencies that possess confidential data but cannot be restricted by the law will be put in a schedule. In their schedule there is only one such agency and that is the CIA. The law relating to the CIA has specific provision for maintaining privacy protection, but the Privacy Commissioner cannot touch on work of the CIA, which is completely exempted.

I only hope that there is a schedule for the Administration to put in the Special Branch. But now the Special Branch has been disbanded, so the Security Branch of the Police can take its place instead. However, I do not want to see the Postal Service in the schedule, which would seem to make every department a security department. What I want is that if there is really a security department, then let everyone know about its work. That is it. If we support the Administration and are against the amendment of Dr HUANG Chen-ya, there is no way for us to know what the security agencies are. Once the Secretary for Security and the Chief Secretary have given their signature, then there is no restriction. The act of signing is just like the act of state that we referred to yesterday in the discussion on the Court of Final Appeal, once the People's Congress says that is an act of state and no one can do anything. They both are of the same reasoning. Are we to turn Hong Kong into something like this? In the future even the state security departments of China can also be

listed in the schedule so that every one knows there are such departments. It all results from the discussion in respect of the Alex TSUI incident: would there be any people around us engaging in such tailing work that is without any restriction? For example, as reported in the media, Mr YEUNG Fuk-kwong said that he was followed by officers of the Special Branch. On checking the registration plate of the car, he found out that it belonged to a certain high-ranking official of the former Special Branch. On further checking, it was found that the registration plate belonged to a security company, so from there on, one can presume that a lot of company is clandestinely carrying out security work.

Frankly speaking, this is an issue with great ramification. It is not simply a discussion on the ordinary infringement of personal privacy, rather what is in issue is whether there would be a "big brother", or any sort of organization that would not have to tell others what it is doing. That organization of course does not have to be listed in the schedule. What sort of security work can be as sensitive as that of the CIA of the United States, which have to take on innumerable enemies? However, it is clearly put down that other than the CIA, no other organizations, like the Postal Service, can engage in such work. The information concerned will also not be exempted. I feel that this is a reasonable request, I do not quite understand why it cannot be done. Unless the Administration tells us that there are a lot of clandestine agencies engaging in such kind of work, it is hard to explain away.

MISS EMILY LAU (in Cantonese): Mr Chairman, I rise in support of Dr the Honourable HUANG Chen-ya's amendment.

I believe that what Dr HUANG proposes is just a very minor amendment, its effectiveness I hardly know even. What is the use of having a few more names? However, what we want to achieve is to increase the transparency, and to make the Administration tell us that a lot of things can be made open to the public. If there is really a security agency, I believe no one would want to hinder its work or to pare down the effectiveness of the work of the disciplinary forces. However, since so much personal data have been collected, what we are making is just a small request, and that is to put down the names of the security organs concerned. It is because under the current law, an organization would be a security agency once the Governor or the Chief Secretary has signed a certificate certifying it be so. Just as some Members have said, all documents were confidential in the past, but on going through it, one could not find anything remarkable in it, and that will make one feel suspicious. What is more, the certificate may also stop the Privacy Commissioner from carrying investigation and examination, and that really makes one feel that the Administration has something to hide.

Just now Dr HUANG had mentioned of the Hong Kong Observers of the '70s, to which the Honourable Miss Anna WU and the Honourable Miss Christine LOH belonged. The Committee was revealed, but other than its

English name Scope G, I do not know if it had a Chinese name. On its list were the Hong Kong Observers, the Professional Teachers' Union and other community organizations and bodies. Even with Dr HUANG's amendment, which only provides for the listing of names like the Home Affairs Department, people would not know that the Home Affairs Department is collecting their names and carrying out investigation or supervision in respect of them.

The Honourable Mrs Elsie TU said that she would find it very funny if she was followed. Some people would find it a grave matter if they were being followed by the police or some unknown kind of people. Hong Kong is not a society or place run by the police, I therefore hope that the Administration can understand the worries of the Members and the citizens, and if possible do something so as to let us know that in fact a lot of things can be made public, rather than, like a Member has just said, leaving us with no knowledge of the number of departments actually carrying out such kind of work. If the reason for the Administration not to give the names is that there are some 40 or 60 departments doing such job, we would all be aghast. I hope it is not the case. In making his response, I hope that the Secretary for Home Affairs can adopt a more open attitude to help us. We are a bit worried, but can he propose some better amendment, so that those in support of Dr HUANG can realize that the Hong Kong Government has not clandestinely carried out any investigation in respect of the citizens' personal data?

SECRETARY FOR HOME AFFAIRS: Mr Chairman, for Members' benefit, I think I had better explain what clause 57 is all about. Clause 57 provides for exemptions from the Bill's requirements on subject access and use limitation for personal data held for the purposes of security, defence and international relations in respect of Hong Kong. Clauses 57(3) and 57(4) provide for certificates signed by the Governor or the Chief Secretary to be evidence of the applicability of these exemptions. Clause 57(5) provides for the Governor or the Chief Secretary in such a certificate to direct that the Privacy Commissioner shall not carry out an investigation or inspection in relation to the personal data to which the certificate relates. This certificate system provided for clause 57 is a necessary safeguard because of the highly sensitive nature of the material in this area. The provisions are similar to those adopted by the United Kingdom.

Members of the Bills Committee were concerned that the current wording of clause 57 could allow a non-government body to make use of these exemption provisions. To meet this concern, I will later move an amendment to clause 57(1) which limits their application to personal data held by or on behalf of the Government. Dr the Honourable HUANG Chen-ya's proposal goes well beyond this by requiring that the persons who may invoke the exemptions concerned by listed in a new Schedule 6. This is an unnecessarily inflexible way of dealing with this matter.

The Administration will vote against Dr HUANG's amendment and I recommend that Honourable Members also vote against it.

Thank you, Mr Chairman.

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, the Administration, just as it has been doing all along, has not talked reasonably. Could the Administration's decision that it is not necessary be a reason? We have made it very clear that if those departments that are related with security are listed in the schedule, then the citizens can be told that these departments may be exempted if they apply. These departments can ask for exemption so they may not tell the citizens if their names are on the list or if the departments concerned have possession of the personal files of the citizens, or they may refuse the citizens any access to their own files. So what is the big deal to let people know of the existence of such a department? Mr SUEN said just now that he had to give a list of those people, but I have not referred to any person, all along we have been talking about departments. How on earth would I ask the Administration to list the names of each and every one of the people of the intelligence agency? No one in this world would. What I am asking is a clear list in the schedule, in fact many of the names often appear in the newspapers. As I have just said, many people have heard of a special section under the Office of the Political Adviser, which specializes in gathering information. They originally belonged to the Security Branch, but has been transferred to be under the Office of the Political Adviser. This piece of news has been in the papers for many days. Now there is such a special section, "Special Branch", doing such thing, and there are people talking about this, it is no wonder that they are published. It is being published does not mean that the Honourable Mrs Elsie TU cannot be followed. I do not buy any of this, in fact, there is nothing surprising at all.

The Administration expressed that it is following the practice of the United Kingdom, but we should know what it is all about. When the United Kingdom passed its Privacy Act, it was the same in content as what we are having now, but problems were discovered subsequently. The United Kingdom Government therefore through the enactment of laws in respect of MI5, MI6 and other intelligence agency, clearly listed MI5 and MI6 as the intelligence agencies. I would like to know have MI5 and MI6 lost their functions when they have been so listed? Of course not. They are still in existence today. There is also an Act that is used to restrict the CIA's work. We all what sort of work the CIA is doing, but its work has not been affected by such restriction. Similarly, the United Kingdom and Australia also have laws that make known what departments are security agencies.

Why cannot those departments involved in intelligence work be made known? The Administration said that ours is not a society run by the police; Mrs Elsie TU said that I am a paranoid, a neurotic, said that I have suspicion that this is a police society. If ours is not a police society, why the fear of

making things known? I have given two reasons for my point: firstly, it is to maintain a high degree of transparency, by doing so, the citizens can know but without affecting the effectiveness of the security work. If the Administration forbids a department from disclosing any information, then that department will have the power not to. However, it should not be that every department, like the Postal Service, Transport Department or even the Home Affairs Department, can have that power. The Administration perhaps knows that the Home Affairs Department may have to be on that list, so it does not want to have that schedule. But why can other countries have laws to govern such intelligence agencies? It is because if such agencies were being investigated, the "bungle" revealed could be unthinkable.

I have just mentioned how a lady was disturbed. Now I would like to tell another story to prove to Mrs Elsie TU that I am definitely not a paranoid. In 1982 my niece went to study in Australia. After having intelligence of her gathered by the Australian intelligence agents, they attempted to force her to gather intelligence for them, especially information about the Chinese Consulate and Embassy. On learning this my wife was enraged and went alone to meet them at a secret place. The situation was like that in a 007 movie. There was a table, and two burly fellows were facing her. My wife asked how they could force my niece to do such a thing. They said that they could not enter the Consulate and Embassy, so forcing a student to work for them was the only way. My wife said that she would write to the newspapers if they persisted. They then waved a book at my wife, saying that that was Australia's intelligence law, and they could arrest her and put her behind bars. My wife told them that they could arrest her, but if, within an hour, she failed to return home, her lawyer and a member of parliament would lay bare the whole thing. Finally the Australian intelligence agency folded the whole plan and had nothing more to do with my family. Years later, I met this intelligence agent again. He told us that he had been sacked because of what we had done. This is only an example to show that how stupid some of these intelligence agents could be. What they did was senseless and wrong, they tried to intimidate and watch ordinary citizens. Without the enhanced degree of transparency, it can be seen that a government department would abuse their powers and do things that it was not supposed to do. The increased transparency can protect the interests of the citizens. Unless the Administration indicates that they want to abuse powers, likes to intimidate innocent citizens, otherwise I hope that the Administration can withdraw its opposition against me and support my request in respect of the schedule.

Question on the Second Reading of new Schedule 6 put.

Voice vote taken.

Dr HUANG Chen-ya: 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 HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU and Mr LEE Cheuk-yan 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 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 Timothy HA, Mr Simon IP, 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 motion.

THE CHAIRMAN announced that there were 22 votes in favour of the motion and 31 votes against it. He therefore declared that the motion was negatived.

Clauses 8, 57, 58 and 64

CHAIRMAN: Dr HUANG Chen-ya, as the Second Reading of new Schedule 6 is not agreed, your proposed amendment to clause 57 which relates to your amendments to clauses 8, 58 and 64 cannot proceed in its present form. Would you like to seek leave to alter the terms of your amendment?

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, with your permission, I would like to change the terms of my amendment to clause 57 to read as follows:

By deleting subclauses (3), (4), (5) and (6) and substituting:

"(3) Where a data has relied upon:

(a) the exemption from the provisions of section 18(1) (a) provided by this section as read with section 63; or

(b) exemption from the provisions of section 18(1) (b) provided by this section,

then the data user shall, not later than 7 days after the particulars required by section 27(1) in respect of the data access request concerned are entered in the log book, serve a notice in writing on the Commissioner specifying those particulars".

CHAIRMAN: You have my leave. And I think you have now to move those clauses.

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, I move that clauses 8, 58 and 64 be amended as set out under my name in the Paper circulated to Members and that clause 57 be amended by my revised amendment which has just been tabled.

Proposed amendments

Clause 8

That clause 8(1) be amended, by adding —

"(ea) publish in the Gazette, not later than 3 months after the expiry of each financial year, a notice specifying -

(i) the total number of notices under section 57(3); and

(ii) the total number of notices under section 58(6),

served on him during that year;".

Clause 57

That clause 57 be amended, by deleting subclauses (3), (4), (5) and (6) and substituting —

"(3) Where a data user has relied upon -

(a) the exemption from the provisions of section 18(1)(a) provided by this section as read with section 63; or

(b) exemption from the provisions of section 18(1)(b) provided by this section,

then the data user shall, not later than 7 days after the particulars required by section 27(1) in respect of the data access request concerned are entered in the log book, serve a notice in writing on the Commissioner specifying those particulars."

Clause 58

That clause 58 be amended, by adding —

"(6) Where a data user has relied upon -

(a) the exemption from the provisions of section 18(1)(a) provided by this section as read with section 63; or

(b) the exemption from the provisions of section 18(1)(b) provided by this section,

then the data user shall, not later than 7 days after the particulars required by section 27(1) in respect of the data access request concerned are entered in the log book, serve a notice in writing on the Commissioner specifying those particulars.".

Clause 64

That clause 64 be amended, by adding —

"(9A) A data user who, in any notice under section 57(3) or 58(6), knowingly or recklessly supplies any information -

(a) which is false or misleading in a material particular; and

(b) in purported compliance with that section,

commits an offence and is liable on conviction to a fine at level 3 and to imprisonment for 6 months.".

Question on the amendments proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, as I have just explained, clause 57 provides for exemptions from the Bill's requirements on subject access and use limitation for personal data held for the purposes of security, defence and international relations in respect of Hong Kong. Clauses 57(3) and 57(4) provide for certificates signed by the Governor or the Chief Secretary to be evidence of the applicability of these exemptions. Clause 57(5) provides for

the Governor or the Chief Secretary in such a certificate to direct that the Privacy Commissioner shall not carry out an investigation or inspection in relation to the personal data to which the certificate relates. Dr the Honourable HUANG Chen-ya's proposed amendment to clause 57 would delete all the provisions for certificates that I have mentioned.

Again, as I have explained, this certificate system provided for in clause 57 is a necessary safeguard because of the high sensitivity of material in this area. The provisions are similar to those adopted by the United Kingdom. Members of the Bills Committee were concerned at what they saw as "sweeping" nature of these provisions. As I said in my speech during the Second Reading debate, we have responded positively to this concern by proposing Committee stage amendments to clause 57 that restrict the use of the exemptions to the Government and require reasons to be given where a certificate excludes access by the Privacy Commissioner. Dr HUANG's amendment to clause 57 goes much further than those I will move. They do not give due recognition to the need to protect highly sensitive material relating to these areas.

Dr HUANG also proposes to amend clauses 8(1), 57, 58 and 64 to require that where data users apply the relevant exemptions from the right of subject access, they must notify the Privacy Commissioner within seven days of the particulars of each case. This would create an unnecessary additional administrative burden on data users. The Bill already requires that these particulars of refusals to give subject access must be recorded in a log book to which the Privacy Commissioner has access, so there is no need for the notice system proposed.

The Administration will vote against Dr HUANG's proposed amendments and I recommend that Honourable Members also vote against them.

Thank you, Mr Chairman.

DR HUANG CHEN-YA: Can I reply?

CHAIRMAN: You have the right to more than one speech at the Committee stage. If you want to speak again, you can.

DR HUANG CHEN-YA: I have not actually spoken on that one.

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, since my proposed Schedule 6 was not approved, and in the discussion on Schedule 6, I have not talked about the effect of not having Schedule 6, so I would like to talk about this.

The Democratic Party proposed amendment to the part on exemption. The spirit of the amendment was to make the government departments to notify the Privacy Commissioner when the citizens were refused access to their own data on the grounds of security or crime prevention, so that the Privacy Commissioner could carry out investigation and review if the reason on which the department based its refusal was reasonable.

Mr Chairman, according to the Bill, when, in respect of security, the Chief Secretary or the Governor has signed a certificate, the Privacy Commissioner will not have the power to investigate the reasonableness of the reason for refusal. Other than this, actually under the present Bill, the Privacy Commissioner has the power to investigate the reasonableness of such reason in respect of crime prevention, that is order and police. Our amendment therefore was that should the department concerned give such a reason, it should notify the Privacy Commissioner of it so that he could look into the reasonableness of such a reason without waiting for the citizen to make a complaint. This is point number one. The second point is that because under clause 63, a department may not let a citizen know if he is on a file, so the citizen has no way to know if he is on the file. If the department is required to notify the Privacy Commissioner, he can investigate if it is really necessary not to disclose the name of the citizen. My proposed amendment to clause 64 was actually to make failure to notify the Privacy Commissioner equivalent to providing false or misleading information to the Privacy Commissioner, and punishment may result. At the same time, the Privacy Commissioner should report annually the number of times the Administration has refused citizens access to their data or refused to disclose there is a file in respect of the citizens concerned.

The Administration thinks that materials related to security and crime prevention are too sensitive to be allowed access to the people concerned, and even allowing them to know that they are under supervision may hinder the work of security and crime prevention. At times, so doing may be reasonable. However, I do not think a terrorist or a triad boss would be so foolish as to raise the alarm himself or to reveal his own identity by reporting to the police or applying to have access to his data. I dare say, therefore, the real effect of this Bill is to prevent ordinary citizens from knowing if the Administration is abusing its powers, or if it has infringed the right of the citizens.

Again I would like to quote an example from England. As the Honourable Mrs Elsie TU is also from England, she may be interested to know and I do not want to be seen to be critical of the Hong Kong Government all the time because Mrs Elsie TU seems to have developed a liking for the Hong Kong Government. A Chief Constable of a police district in England admitted that 40% of the personal data belong to law-abiding people, that is those who have not committed any crime. The data were just collected because the police had nothing better to do. Those 40% of data should not have been collected. An Australian political party which had been the opposition for a number of years won the election and became the ruling party. It found that all its members had been eavesdropped and photographed by the police. It was not because the

police thought there was a security problem, rather it was to help the ruling party to continue to be in power. This was actually a political act.

I have said earlier that what made Hong Kong different from the other countries was that a democratic country had a democratically elected government which would have supervision over security and police power, but what Hong Kong now had was a colonial government. On what basis could it govern Hong Kong? How could it protect the civil rights of the people here? The colonial government is dependent on the military to rule Hong Kong. Unfortunately, the Hong Kong Government after 1997 is also not an elected one. To the Hong Kong people, the greater is the power of the police and the security agency, the greater will the danger be. Some people may still accept the Administration's view and tend to support that the police should have greater power, thinking that security or order is very important and they would rather accept a government that would abuse its powers. My proposed amendment was only a very pitiful one, asking only to enhance the transparency so as to make it easier for the citizens to see that Administration had abused its powers. We asked the Administration to publish figures regarding citizens being refused access to their data or being refused disclosure, and in every case, the Administration should notify the Privacy Commissioner, who would then publish such figures in an annual report at the end of every year. If we found that every year there were hundreds or thousands of people being refused access to their own data and having no way to know if the Administration was holding their files, but seemingly these people were not terrorists, triad elements or tricksters, we could then ask if the Administration or any of the government departments had abused its powers, or if it had improperly exercised its powers. Only through such a process could we use the legislative procedure to abolish or restrict the power for exempting access and disclosure. I am really bewildered by the Administration's intransigence to accept enhancing its transparency. If there is anyone amongst us that support the Administration, I hope that they can give us a reason. A Member who voted but did not give a reason should be held accountable to the citizen, or else they would not know how "shameful" when they face the citizens.

CHAIRMAN: That was very unparliamentary language, Dr HUANG.

Question on the amendments put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

DR HUANG CHEN-YA: Division.

CHAIRMAN: Committee will proceed to a division.

MR JAMES TO (in Cantonese): Mr Chairman, I raised my hand to show that I wanted to respond to the speech of the Secretary for Home Affairs. I have not spoken on this issue. I respect that the vote has already been cast, and I have no intention to overturn your decision. However, I would like to know of your direction: is it that from now on I have to speak before the Secretary for Home Affairs speaks because I have not spoken during this round.

CHAIRMAN: Well, if you wish to speak before I put the question, you should catch my eye in the usual way, Mr James TO.

MR JAMES TO (in Cantonese): Mr Chairman, I can tell you that I have raised my hand, and I raised it real high. The other Members have also seen me doing so. But anyhow, this does not matter, I am not going to challenge your decision. I just want to know that you would allow me to talk before the Secretary for Home Affairs. Originally I was to speak after Dr the Honourable HUANG Chen-ya, to respond to the speech of the Secretary for Home Affairs. If I raised my hand then, I thought that you would require me to speak, because the other Members have all spoken before the Secretary for Home Affairs, who was the last to speak. I might have misunderstood you.

CHAIRMAN: At Committee stage, Members can speak more than once, and a Member can speak after a public officer. But they have to catch my eye before I put the question. Yes, Mr LEE.

MR LEE WING-TAT (in Cantonese): Mr Chairman, in Dr the Honourable HUANG Chen-ya's speech just now, he has used a Chinese line to refer to those who oppose without giving an explanation would be "very shameful". Mr Chairman, your determined that this line is "unparliamentary". When we speak, we may not be able to define which words do not comply with the Standing Orders. Generally, I feel that "a shameful face" in Chinese is not a very rude saying. I hope that you can determine whether "a shameful face" complies with the Standing Orders. Thank you, Mr Chairman.

CHAIRMAN: Well, there are certainly conventions in the British House of Commons that the expression "shame on you" is unparliamentary. I cannot help you more than that, Mr LEE.

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 HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Ms Anna WU 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 NGAI Shiu-kit, Mr PANG Chun-hoi, Mr TAM Yiu-chung, 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 Timothy HA, Mr Simon IP, 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.

THE CHAIRMAN announced that there were 21 votes in favour of the amendments and 32 votes against them. He therefore declared that the amendments were negatived.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clauses 8, 57 and 58 of the Bill be amended as set out in the paper circulated to Members.

Clause 5 of the Bill provides for the establishment of the Office of the Privacy Commissioner for Personal Data. The functions and powers of the Commissioner are set out in clause 8. At the suggestion of the Bills Committee, the amendment to clause 8(1) explicitly includes in the Privacy Commissioner's function the carrying out of inspections of personal data systems of data users, including government departments and statutory corporations. The Privacy Commissioner's detailed powers in this regard are provided for in clause 36.

The amendment to clause 8(2)(a)(1) corrects a drafting error and the remaining amendments to clause 8 are technical amendments to the Chinese version of the text.

Clause 57 provides for exemption from the Bill's requirements on subject access and use limitations for personal data held for the purposes of security, defence and international relations in respect of Hong Kong. As I have already said, Members of the Bills Committee were concerned that data users outside the Government may be able to make use of these exemption provisions. The

amendment to clause 57(1) limits the application to personal data held by or on behalf of the Government.

Members of the Bills Committee were also concerned that the provisions of clause 57(5) for a certificate to direct that the Privacy Commissioner shall not carry out an investigation or inspection in relation to certain personal data could be abused. To meet this concern, the amendment to clause 57(5) requires reasons to be given on such a certificate for excluding access by the Privacy Commissioner.

The remaining amendment to clause 57(3) is a technical amendment to the Chinese version of the Bill.

Clause 58 provides for various public interest exemptions from the Bill's requirements on subject access and use limitations. There are two amendments to this clause. The first elaborates the scope of the exemptions, based on prejudice to the prevention, preclusion or remedying of unlawful or seriously improper conduct by explicitly including dishonesty or malpractice.

The second amendment provides for a new ground of exemption based on the prevention or preclusion of significant financial loss arising from imprudent business practices or activities.

Mr Chairman, I beg to move.

Proposed amendments

Clause 8

That clause 8(1) be amended, by adding —

"(da) carry out inspections, including inspections of any personal data systems used by data users which are departments of the Government or statutory corporations;".

That clause 8(2)(a)(i) be amended, by deleting "person" and substituting "officer".

That clause 8(2)(c) be amended —

(a) by deleting "辦或" and substituting "辦及".

(b) by deleting "託及" and substituting "託或".

That clause 8(3) be amended, by deleting "事宜與他執行職能或行使權力有合理連帶或附帶關係" and substituting "與他執行職能或行使權力所合理附帶或相應引起的事宜".

Clause 57

That clause 57 be amended —

(a) in subclause (1), by adding "by or on behalf of the Government" after "held".

(b) in subclause (5), by adding "and for the reasons specified in that certificate" after "relates".

That clause 57(3) be amended, by adding "個人" before "資料".

Clause 58

That clause 58(1) be amended —

(a) in paragraph (d), by adding ", or dishonesty or malpractice, by persons" after "conduct".

(b) by adding -

"(da) the prevention or preclusion of significan financial loss arising from -

(i) any imprudent business practices or activities of persons; or

(ii) unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;".

Question on the amendments proposed.

MR JAMES TO (in Cantonese): Mr Chairman, I agree to the amendments proposed by the Secretary for Home Affairs, but I would like to have a few words to be put on record.

His proposed amendments concern the signing of certificate in respect of security matters, and the Governor and the Chief Secretary both can sign the certificate. This is strange. Under the present situation, as far as I know, the Chief Secretary does not lead or may not even have any knowledge of the intelligence work carried out in Hong Kong. However, under the present provision, the Chief Secretary may also sign the certificate. I do not want the Chief Secretary to be given the opportunity to get involved in certain sensitive intelligence work, especially those related to security in Hong Kong, in the remaining two years of the colonial rule, otherwise the Chief Secretary may,

for political reason, not be able to be one of the candidates for the Chief Executive of the Hong Kong Special Administrative Region. I do not mean to put the person who is to assume this office on a pedestal, but within a framework, it is extremely rare. Originally I would like to see the provision relating to the Chief Secretary to be deleted. The Governor is already "damned" to have to shoulder the blame, I do not want the Chief Secretary to have any share of it.

Question on the amendments proposed, put and agreed to.

Question on clauses 8, 57 and 58, as amended, proposed, put and agreed to.

Clause 11

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, I move to amend clause 11, details of which have been set out in the papers circulated to Members.

The Bill provides for the establishment of a Personal Data (Privacy) Advisory Committee to advise the Privacy Commissioner upon any matter relevant to the privacy of individuals in relation to personal data or otherwise relevant to the operation of this Bill. As matters relevant to the privacy of individuals are not only closely related to the daily lives of the citizens, but also have long lasting effect on the business and media sectors. The composition of this Committee should aim at a high degree of credibility and to allow for greater degree of public participation. The Democratic Party therefore proposes that of the four to eight members, at least three should respectively be nominated by the Legislative Council, media workers and the business sector and be appointed by the Secretary for Home Affairs. This is to ensure that all sorts of views can be sufficiently reflected within the Committee.

In her earlier speech, the Honourable Miss Christine LOH expressed that she held different view on this matter, thinking that so doing might have an adverse effect on the Committee. I cannot agree to her view, because to the eight members are added only three members with a representative background, how could this have any adverse effect on the Personal Data (Privacy) Advisory Committee?

And I also do not quite understand the comment of the Administration that such a composition would make it too "rigid". This Bill itself already provides that one of the members must have a number of years of experience in handling data, and not more than one of the members should be a government official. These are also restrictions. Why is it no good if we are to lay down a specific requirement so that there is a proper channel for the business sector, media and Legislative Council to be represented on the Committee? Would it not be even better? We have seen that while we were examining the Bill, the media showed great concern, feeling that this Bill might affect press freedom and the business sector also expressed views that their work might be affected if

this Bill was not drafted properly. I therefore feel that it would be much better if there are representatives from the business sector and the media, and a Legislative Councillor that can represent the general interest.

Once again I hope that the Administration can discard its biased stance and support my amendment.

Proposed amendment

Clause 11

That clause 11(2)(b) be amended —

(a) in subparagraph (i), by deleting "and".

(b) by adding -

"(ia) not less than 1 shall be from amongst persons nominated by the Legislative Council;

(ib) not less than 1 shall be from amongst persons nominated by bodies in Hong Kong representing the interests of journalists;

(ic) not less than 1 shall be from amongst persons nominated by bodies in Hong Kong representing the interests of business; and".

Question on the amendment proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, clause 11 provides for the establishment of the Personal Data (Privacy) Advisory Committee to advise the Privacy Commissioner on any matter relating to the privacy of individuals with respect to personal data. Dr the Honourable HUANG Chen-ya's proposed amendment to clause 11(2)(b) requires persons nominated by this Council, bodies representing business interests and journalists to be included as members of this Advisory Committee. We believe that this, as Dr HUANG has pointed out, would make the composition of the Committee unnecessarily rigid. As I said during the Second Reading debate, in practice, appointments to the Committee will be made in such a way that will ensure that affected interests are broadly represented, and that the broadly represented interests might include those that have been suggested by Dr HUANG or it might go wider. It depends on the interests that we determine at the time as requiring representation on this body.

The Administration will vote against Dr HUANG's proposed amendment and I recommend that Honourable Members also vote against it.

Thank you, Mr Chairman.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

DR HUANG CHEN-YA: I claim a division.

CHAIRMAN: Committee will proceed to a division.

CHAIRMAN: Would Members please proceed to vote?

CHAIRMAN: There appears to be three short of the head count. 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 HUANG Chen-ya, Dr Conrad LAM, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr MAN Sai-cheong, Mr TIK Chi-yuen, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Ms Anna WU and Mr 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 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, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, 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 32 votes against it. He therefore declared that the amendment was negatived.

Question on the original clause 11 standing part of the Bill put and agreed to.

Clause 14

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, I move to amend clause 14, details of which have been set out in the papers circulated to Members.

The Bill provides that Privacy Commissioner may by notice in the Gazette specify a class of data users to submit a data user return so that the Privacy Commissioner can monitor if the data user has complied with the conditions specified in the Bill. However, for those data users not gazetted, they need not send in a return to the Privacy Commissioner. This implies that a lot of agencies, especially government departments, when they use the personal data of the citizens, need not submit a return to the Privacy Commissioner.

The Democratic Party considers that as the Administration has in its possession a lot of data of the citizens, the potential threat of it infringing on the citizen's privacy is the greatest. We therefore request that clause 14(3) be amended, requiring that all government departments must submit a return to the Privacy Commissioner.

The Administration does not agree to this amendment, thinking that this will substantially increase the Administration's work. As the private sector only poses a limited threat, we do not need to impose such a restriction on them. However, the situation is different with the Administration, if increasing a bit of its work will reduce the danger of the Administration controlling the citizens, I believe it is worth the while. After all, what every government department has to do every year is to submit a return to the Privacy Commissioner, so the actual increase in the volume of work is very limited. I do not see why the Administration consider that such an increase is too substantial, is it that the quality of our civil servants is on the way down that they cannot handle this? I am really puzzled.

Proposed amendment

Clause 14

That clause 14 be amended, by deleting subclause (3) and substituting —

"(3) This section -

(a) shall apply to any data user which is the Government; and

(b) shall not apply to any other data user except a data user belonging to a class of data users specified in a notice under subsection (1) which is in force.".

Question on the amendment proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, Dr the Honourable HUANG Chen-ya's proposed amendment to clause 14 provides for all government data users to be required to submit data user returns to the Privacy Commissioner. As I said during the Second Reading debate, requiring all government data users to do this would result in an unnecessary administrative workload that may otherwise have been avoided.

The Administration will vote against Dr HUANG's proposed amendment and I recommend that Honourable Members also vote against it.

Thank you, Mr Chairman.

DR HUANG CHEN-YA (in Cantonese): I do not want to make a response. What I can only see is that the Administration is in fact trying to hide the exact number of government departments which are handling the personal data of the citizens. I am now asking the Administration why it is so apprehensive of letting the citizens know how many government departments are now collecting, investigating and handling the personal data of the citizens? What exactly is the Administration doing now? Why does it feel so frightened? Please tell us.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Dr HUANG Chen-ya 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 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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, 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 LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mr Martin BARROW, 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, Mr Simon IP, 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.

THE CHAIRMAN announced that there were 20 votes in favour of the amendment and 33 votes against it. He therefore declared that the amendment was negatived.

Question on the original clause 14 standing part of the Bill put and agreed to.

New schedule 3A — Provisions of Ordinances under which matching procedures are required or permitted

Schedule read the First time and ordered to be set down for Second Reading pursuant to Standing Order 46(7).

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new Schedule 3A set out in the paper circulated to Members be read the Second time.

Under clause 30(1) of the Bill, personal data "matching procedures", as defined in clause 2, may only be carried out if one or more of four specified conditions is met. One of these is that the "matching procedure" is required or permitted under any other Ordinance. At the Bills Committee's suggestion, the

new Schedule 3A is proposed to be added to the Bill to specify those provisions in Ordinances that allow or require this.

Mr Chairman, I beg to move.

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

Schedule read the Second time.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that new Schedule 3A be added to the Bill.

Proposed addition

New Schedule 3A

That the Bill be amended, by adding —

"SCHEDULE 3A [ss. 30(1)(d) & 71]

PROVISIONS OF ORDINANCES UNDER WHICH MATCHING PROCEDURES ARE REQUIRED OR PERMITTED

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

Clauses 30 and 71

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clauses 30 and 71 of the Bill be amended as set out in the paper circulated to Members.

As I have already said, under clause 30 "matching procedures" as defined in clause 2 may only be carried out if one or more of the four conditions specified in clause 30(1) is met. Clause 30(1)(c)(ii) is amended to make this clear. At the Bills Committee's suggestion, clause 30(1)(d) is amended to provide for the new Schedule 3A to the Bill I have already referred to. The amendment to subclause (2)(b) of clause 30 and the addition of new subclause (2A) to clause 30 require the Privacy Commissioner to consult affected bodies and interested persons before specifying conditions for permitted classes of "matching procedure". Subclause (3) is also amended to make notices of classes of permitted "matching procedures" subject to Legislative Council approval as subsidiary legislation. The amendment to clase 30(4) is a technical amendment to the Chinese version of the Bill.

The amendment to clause 71 is consequential to the addition of new Schedule 3A. It enables amendments to be made to the new Schedule 3A.

Mr Chairman, I beg to move.

Proposed amendments

Clause 30

That clause 30 be amended —

(a) in subclause (1)(c)(ii), by adding "or" after "notice;".

(b) in subclause (1)(d), by deleting "other Ordinance" and substituting "provision of any Ordinance specified in Schedule 3A".

(c) in subclause (2)(b), by adding "subject to subsection (2A)," before "the conditions".

(d) by adding -

"(2A) The Commissioner shall, before specifying any conditions in a notice under subsection (2), consult with -

(a) such bodies representative of data users to which the conditions will apply (whether in whole or in part); and

(b) such other interested persons,

as he thinks fit.".

(e) in subclause (3), by deleting "not".

That clause 30(4)(a)(ii) be amended, by deleting "顯示" and substituting "提出".

Clause 71

That clause 71 be amended —

(a) in the heading, by adding "**, 3A**" after "**2**".

(b) by adding ", 3A" after "Schedule 2".

Question on the amendments proposed, put and agreed to.

Question on clauses 30 and 71, as amended, proposed, put and agreed to.

Schedule 5

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that Schedule 5 of the Bill be amended as set out in the paper circulated to Members.

As agreed with the Bills Committee, the amendment to Schedule 5 provides for a warrant for the Commissioner to enter domestic premises where the occupant has not consented to such entry by the expiry of the required 14 days' period of notice.

The remaining amendment to Schedule 5 is a technical amendment to the Chinese version of the Bill.

Mr Chairman, I beg to move.

Proposed amendment

Schedule 5

That Schedule 5 be amended —

(a) by deleting "[ss. 42(5) & 71]" and substituting -

"[ss. 42(5), (5A) & (9) & 71]".

(b) by adding before the heading to the Schedule -

"PART 1".

(c) by adding -

"PART 2

WARRANT AUTHORIZING PRIVACY COMMISSIONER FOR PERSONAL DATA TO ENTER SPECIFIED DOMESTIC PREMISES

To the Privacy Commissioner for Personal Data.

Having been satisfied by information upon oath/declaration* that there are reasonable grounds for believing that the purposes of the investigation into .....[name of relevant data user] may be substantially prejudiced if you are prevented by the operation of section 42(3A) of the Personal Data (Privacy) Ordinance (of 1995) from exercising your power under section 42(2) of that Ordinance in respect of the domestic premises at

.....

.....

[address of domestic premises occupied by the relevant data user/in which is situated the personal data system, or any part thereof, used by the relevant data user*]:

YOU ARE HEREBY AUTHORIZED, with such assistants as may be necessary, to exercise that power in respect of those premises provided that such power is exercised before the expiration of 14 days after the date on which this warrant is issued.

Dated this .....day of ..... 19 .....

.....

(Signature) Magistrate

*Delete Whichever is inapplicable.".

That Schedule 5 be amended, by deleting "而作的告發／聲明*" and substituting "／聲明*而作的告發".

Question on the amendment proposed, put and agreed to.

Question on schedule 5, as amended, proposed, put and agreed to.

Clause 42

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 42 of the Bill be amended as set out in the paper circulated to Members.

As agreed with the Bills Committee, the amendments to clause 42 provide for a warrant procedure for the Commissioner to enter domestic premises where the occupant has not consented to such entry by the expiry of the required 14 days' period of notice. The amendments to clause 42(1)(a), 42(3) and 42(5)(a) are consequential.

Mr Chairman, I beg to move.

Proposed amendment

Clause 42

That clause 42 be amended —

(a) in the heading, by adding "**for the purposes of an inspection or investigation**" after "**on premises**".

(b) by deleting subclause (1)(a) and substituting -

"(a) where the personal data system, or any part thereof, the subject of the inspection is situated in -

(i) non-domestic premises, enter the premises at any reasonable time;

(ii) domestic premises, enter the premises with the consent of any person (other than a minor) resident therein;".

(c) in subclause (3), by deleting "subsection (4)" and substituting "subsections (3A) and (4)".

(d) by adding -

"(3A) Without prejudice to the generality of subsection (4), where any domestic premises are specified in a notice under subsection (3) in respect of which the Commissioner proposes to exercise his power under subsection (2), then the Commissioner shall not exercise that power in respect of those premises unless and until a person (other than a minor) resident therein consents thereto before the expiration of 14 days after service of the notice.".

(e) in subclause (5)(a), by adding "Part 1 of" after "specified in".

(f) by adding -

"(5A) A magistrate may, if satisfied by information upon oath by the Commissioner or any prescribed officer that there are reasonable grounds for believing that the purposes of an investigation may be substantially prejudiced if the Commissioner is prevented by the operation of subsection (3A) from exercising his power under subsection (2) in respect of any domestic premises, issue a warrant -

(a) in the form specified in Part 2 of Schedule 5; and

(b) authorizing the Commissioner to exercise that power in respect of those premises.".

(g) by adding -

"(9) In this section and Schedule 5 -

"domestic premises"（住宅處所）means any premises which are constructed or intended to be used for habitation;

"non-domestic premises"（非住宅處所）means any premises other than domestic premises;

"premises"（處所）means -

(a) any building where no part of the building is separately occupied, and includes any land appertaining to the building;

(b) in any other case, any part of a building which is separately occupied, and includes any land appertaining to such part.".

Question on the amendment proposed, put and agreed to.

Question on clause 42, as amended, proposed, put and agreed to.

Clause 44

MR JAMES TO (in Cantonese): Mr Chairman, I move that clause 44 to be amended as set out under my name in the paper circulated to Members.

Clause 44 provides that the Privacy Commissioner may, for the purposes of any investigation, summon before him any person to give any information relevant to those purposes. The Democratic Party thinks that this may confer too great a power on the Commissioner to compel provision of information, and in cases of infringement of privacy, relevant people or journalists may thus be forced to disclose their source of information, thereby causing damage to press freedom.

The amendment proposed by the Democratic Party is to require the Privacy Commissioner to obtain permission from the High Court before requiring the subject to provide information, and the High Court, after taking

into consideration of a series of a stringent requirements, has to base its decision on public interest before permitting the subject to provide information.

As far as I understand, this provision also has the approval of the Administration. I hope that other Members may vote in support this time.

Proposed amendment

Clause 44

That clause 44 be amended —

(a) in subclause (1), by adding "subsection (1A) and" after "Subject to".

(b) by adding -

"(1A) Where -

(a) an investigation has been initiated by a complaint;

(b) the complaint relates, whether in whole or in part, to personal data referred to in section 61(1);

(c) the Commissioner has, for the purposes of that investigation, under subsection (1)(a) summoned before him a person; and

(d) that person asserts, in response to any requirement under subsection (1) by the Commissioner to furnish him with information or to produce a document or thing, that -

(i) to comply with that requirement would directly or indirectly disclose the identity of the individual from whom those data were collected (whether in whole or in part); or

(ii) he is not required to comply with that requirement by virtue of any common law privilege,

then -

(i) notwithstanding any other provision of this Ordinance, the Commissioner shall not serve an enforcement notice on that person in relation to that requirement;

(ii) the Commissioner may, not later than 28 days after that assertion is made known to him, make an application to the High Court for an order directing that person to comply with that requirement;

(iii) the High Court may make the order if, but only if, it is satisfied, having regard to all the circumstances (including the circumstances of the complainant), that -

(A) if the act or practice specified in the complaint were proven to be a contravention of a requirement under this Ordinance, the contravention would be of sufficient gravity to warrant that person complying with the requirement referred to in paragraph (d);

(B) that investigation would be substantially prejudiced if the requirement referred to in paragraph (d) were not complied with;

(C) it is in the public interest, having regard to the benefit likely to accrue to that investigation, that the requirement referred to in paragraph (d) be complied with; and

(D) in any case to which paragraph (d)(ii) is applicable, the common law privilege asserted does not apply; and

(iv) on the hearing of the application, the Commissioner, that person and the complainant shall each be entitled to be heard on the application and to call, examine and cross-examine any witness.

(1B) Where -

(a) a person has complied with a requirement referred to in subsection (1A)(d) the subject of an assertion referred to in that subsection; and

(b) the result (whether in whole or in part) of the investigation to which that requirement relates is that the Commissioner is of the opinion that the individual concerned referred to in subsection (1A)(d)(i) has not contravened a requirement under this Ordinance in relation to the matter the subject of the complaint which initiated the investigation,

then, notwithstanding any other provision of this Ordinance, neither the Commissioner nor any prescribed officer shall disclose the identity of that individual to the complainant.

(1C) The High Court may, of its own volition or on an application made to it for the purpose, by order reverse, vary or discharge an order made under subsection (1A)(iii) or suspend the operation of such an order.

(1D) Provision may be made by rules of court -

(a) with respect to applications to the High Court under subsection (1A)(iii) or (1C);

(b) generally with respect to procedure before the High Court in relation to any such application.

(1E) Subsection (1D) is without prejudice to the generality of any existing power to make rules.".

Question on the amendment proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, clause 44 received lengthy discussion at the meetings of the Bills Committee. As I said during the Second Reading debate, we have decided, after careful consideration, that the involvement of the High Court as an independent adjudicator in this matter is acceptable. Accordingly, the Administration supports the Honourable James TO's amendment and the Official Members will vote for it.

Question on the amendment put and agreed to.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 44 of the Bill be further amended as set out in the paper circulated to Members.

The amendment to clause 44 is a technical amendment to the Chinese version of the Bill.

Mr Chairman, I beg to move.

Proposed amendment

Clause 44

That clause 44(1)(b) be amended, by deleting"同時傳召".

That clause 44(4) be amended, by deleting"或"and substituting"及".

Question on the amendment proposed, put and agreed to.

Question on clause 44, as amended, proposed, put and agreed to.

Clause 64

CHAIRMAN: We will now deal with further amendments to clause 64 which have been considered earlier.

MR JAMES TO (in Cantonese): Mr Chairman, I move that clause 64 to be amended as set out under my name in the paper circulated to Members.

This is a very simple amendment, which is consequential to the amendment of clause 44 that the Members have supported earlier.

Proposed amendment

Clause 64

That clause 64(6) be amended, by adding "44(1B) or" after "section".

Question on the amendment proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, the Honourable James TO's proposed amendment to clause 64 is consequential to his amendment to clause 44, which the Administration supported. Accordingly, the Administration supports this amendment and the Official Members will vote for it.

Thank you, Mr Chairman.

Question on the amendment put and agreed to.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 64 of the Bill be further amended as set out in the paper circulated to Members.

The amendment to clause 64 is a technical amendment to the Chinese version of the Bill.

Mr Chairman, I beg to move.

Proposed amendment

Clause 64

That clause 64(1) be amended, by deleting "後果" and substituting "實情".

That clause 64(1)(ii) be amended, by deleting "是在其意是爲遵守該條的規定的情況下" and substituting "看來是爲遵守該條的規定".

That clause 64(2) be amended, by deleting "中，提供" and substituting "中".

That clause 64(2)(a) be amended, by adding "提供" before "在要".

Question on the amendment proposed, put and agreed to.

Question on clause 64, as amended, proposed, put and agreed to.

Clause 59

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, I move that clause 59 of the Bill be amended as set out in the paper circulated to Members.

Mr Chairman, we propose to delete clause 59(a) which provides that personal data relating to the physical or mental health of the data subject are exempted in any case in which the application of the provision to the data would be likely to cause serious harm to the physical or mental health of the data subject or any other individual.

I cannot think of a situation in which a patient cannot be allowed to know of the data relating to his physical or mental health. In these past few weeks, I have discussed with a lot of doctors and the Hospital Authority, but I still cannot find an example. While examining the Bill, the Administration also could not give any example, showing the reason for not allowing a patient to know of information about his physical or mental health.

Someone has given such an example: if he was allowed to know that he was suffering from AIDS or cancer, it would be a heavy blow to him. But does it mean that a doctor can tell lies to or hide any fact from his patients, like saying that he is not suffering from AIDS or cancer, but in fact the doctor clearly knows that the patient is having AIDS or cancer? Would this become an excuse for those unethical doctors? Would it turn the condition of a patient into a hopeless one if, because a quack doctor thought that it was a disease he was not allowed to disclose, treatment was delayed? Everyone should have the right to make arrangement in respect of one's life. If a person is suffering from an incurable disease or may die soon because of a genetic disease, who has the right to decide for him how he should wisely use the remaining days of his life?

The greatest danger of clause 59(a) rests not with the individual doctor. I also cannot think of a situation that serious damage may result if a doctor does not allow his patient to know of his condition. The greatest danger I feel is that the Administration or the Hospital Authority may make use of clause 59(a) to hide any serious policy fault, like radiation leakage, or the damage caused by electromagnetic field which has given rise to much debate recently, or cancer-causing chemical in the drinking water. If the Administration want to hide these from the citizens, invoking clause 59(a) can prevent the citizens from knowing the extensiveness and seriousness of the problem. The citizens may know that they are sick, but do not know that it is all the result of the serious fault of the Administration. Some might say that I am a paranoid, or so crazy as to harbour such suspicion of the Administration. Let me quote some examples here: some Frenchmen contracted AIDS virus during blood transfusion because a blood transfusion centre of the French Government had not carried out checks for AIDS virus; the Australian Government had used some human hormone from unknown source and caused a lot of patients contract the disease of brain degeneration; a pathologist of a United Kingdom hospital had mistakenly diagnosed many healthy people as having cancer and carried out amputation and

electro-and chemo-therapy on them. With clause 59(a), such scandals certainly can be hidden.

I therefore think that this provision should not be preserved. It should be deleted, so that the citizens can freely have access to information of their health.

Proposed amendment

Clause 59

That clause 59 be amended —

(a) by deleting "either or both of".

(b) by deleting paragraph (a).

Question on the amendment proposed.

MISS EMILY LAU (in Cantonese): Mr Chairman, I rise to speak in support of Dr the Honourable HUANG Chen-ya's amendment.

During a meeting of the Bills Committee, Dr the Honourable LEONG Che-hung, not a member of the Committee, was exceptionally present in attendance. That morning we had a very interesting, in-depth and useful discussion. However, in the process, I believe many of us were not convinced why the Administration need to have that provision included in the Bill. Being a citizen or a patient myself, I think that if I do not feel well, I would like my doctor tell me what has gone wrong. If the doctor tries to hide anything, as Dr HUANG has just said, I would not have any trust in that doctor. That is even if I have any incurable disease or contagious disease, I would like to know.

At the meeting, Mr Chairman, someone said that there were things that might do harm to the subject and he should not be told of it, and now it is so written in the Bill. I believe that if we pass this Bill, people should be psychologically prepared that, if they dare to access the information, what they see may not be something they like, especially those personnel matters. Though the requirement is that such information may only be obtained after seven years, such information may contain unfavourable account of things. If they are really scared, then they should not get it. However, I believe that we, being adults, should be able to handle this. Being an ordinary person or a patient myself, I cannot fully understand why some doctors have to hide the truth from their patients. As Dr HUANG has said, the doctors are not omnipotent, if a patient is told by a doctor that he is suffering from a serious disease, he can find a second or third doctor to get another diagnosis. But if the first doctor already hides the truth from him, the patient will not have any other chance to find another doctor.

Well, take myself for example. If I knew that I had only six more weeks to live, I might have my own way to spend these six weeks, like going on a round-the-world tour, or doing some other things. If my doctor hides this from me, I would not be able to make arrangements on how to spend my last six weeks. I therefore find it very puzzling why the Administration has to put such a provision here. At the meetings of the Bills Committee, the Administration had already made it very clear. I would like the Secretary for Home Affairs to clarify the matter to the Members, or those present who are doctors themselves to tell us if there is such a need that a patient cannot even have this basic right?

Thank you, Mr Chairman.

DR LEONG CHE-HUNG: Mr Chairman, I rise to speak against the proposed amendment to clause 59(a), and in doing so I must tell my honourable colleague, Dr HUANG, that I am not doing this as a mouthpiece or the megaphone of the Government, but perhaps with the deep understanding of what the medical profession acts and behaves.

I would like to state, with your permission, Mr Chairman, categorically the sentiments of the medical profession on the release of medical records, and I stress medical records, which are entirely different from medical reports. Medical records are what the doctor, the nurse or any health care professional would write on their own record after seeing a patient, perhaps without full analysis. When a patient needs a report, then a report is issued to them after full investigation, after full analysis, which means the genuine details of the medical condition of the patient. What the medical profession would disagree would be the release of medical records and not medical reports.

Mr Chairman, whilst the medical profession strongly believes and supports the spirit of better access and observance of correctional rights of the data subjects, we are concerned with the contradiction of recommendations to release medical records to the prevailing common law position and the consequential practical difficulties when applied to medical practice.

Mr Chairman, patient records have always been the property of the medical doctors or institution under the common law, yet it has always been the undoubted professional ethics and the adopted practice that patients would be given the full information concerning themselves. These two principles, namely, property rights and full information access, are both fully and properly observed in the practice by the provision of medical reports rather than medical records, and again I like to stress, containing full and relevant information on request and as requested, unlike what Dr HUANG and Miss LAU have just tried to portrait.

Such practice not only maintains a good observance of all principles but also makes good practical sense. In practice, Mr Chairman, a patient's record contains not only bare information of the individual patient, but usually also

patchy notes of opinions and expression of the doctors compiling the records. This part of the record is not provided by the patient but indeed by the doctor himself or herself. In principle, therefore, this should make a difference when attributing access and correctional rights to the various parties concerned. By providing a copy of the record to the patient on simple request would provide more than what should properly be attributed to the patients. Indeed, even in practice, provision of a copy of the record may not necessarily benefit the patients to the fullest degree. Merely pursuing such patchy notes may not provide the full information, given the fact that most doctor's handwriting are notoriously difficult to interpret! They may further be difficult to decipher, as I just mentioned. Mr Chairman, any medical practitioner, be it politicians or otherwise, must have come into contact with patients, usually the apprehensive type, who will virtually lapse into a state of profound depression should there be as much as a hint that they might have a life-threatening disease in spite of proof subsequently of the contrary. It is also common practice of the doctor, whilst deliberating the final diagnosis of any patient, to write down his or her series of thoughts before detailed investigation results are available. Some of them, if accessible to the patient, could be alarming, especially if taken out of context.

Should the Bill before us today be passed then clause 59 becomes the minimum protection the medical profession can accord to the well-being of the public if they feel that accessibility of original data and records may cause serious harm. By applying or allowing this exemption, it does not imply that doctors can ignore the needs and the wish of the patients. Similarly, the medical profession can issue a medical report which list out all the proven facts and diagnosis instead of the original records itself. So the examples that Dr HUANG quoted just now about wrongly amputating legs, about using hormone extracts from unknown sources, and so on and so forth, if they ever occur, the person involved would be under the purview and the discipline of his own professional body. If not then he is denigrating the medical profession.

Furthermore, Mr Chairman, in the Bill there will be the Privacy Commissioner who will be the final arbiter.

I oppose the amendment. I hope Members will do likewise.

MR JAMES TO (in Cantonese): Mr Chairman, I have listened to the arguments put forth by Dr the Honourable LEONG Che-hung, but I have not been convinced. If we look carefully at the exemption under discussion, it covers more than the medical records and reports (I use "reports" for 報告 and "records" for 紀錄) referred to by Dr LEONG Che-hung. If we look at the provision, we can see that a medical practitioner may refuse to tell anything to his patient on the grounds of health, and this is different from what Dr LEONG Che-hung has been saying. This is not to protect privacy with due diligence, but give such exemption under necessary condition. I therefore think that under such a situation, the examples as quoted by Dr the Honourable HUANG Chen-ya may still happen, that is, the truth may be covered up, hidden or glossed over.

Though Dr LEONG Che-hung said that should such thing happen, the party concerned may sue the one concerned, or may even lay a complaint to the Medical Council for it to carry out hearing, determination and disciplinary action. However, the question now is at the very beginning, we do not yet take this step. At the very beginning, what we need may be some primary information. If it is done for the good of the patient, I believe that the party concerned can append some notes with the release of the information. No one says that this cannot be done! Now in providing the information, it is not something that can be completed within a day or two, rather it is a very lengthy process, sometimes it takes a dozen or even dozens of days, they should have time to append any notes. The medical record as requested by a patient is only the diagnosis or information at that moment, the doctor concerned can give such qualification as he thinks fit, so it won't do harm to the patients. This provision if passed without any amendment would give very extensive exemption rather than necessary protection.

DR LAM KUI-CHUN (in Cantonese): Mr Chairman, under the present situation, I think I need to explain what a doctor generally puts down in his records.

The content is mainly written in the individual doctor's own language. As learned from the communication I have with my colleagues, I know that much of the language are those used by the individual doctor himself, and can only be understood by the doctor himself. If information written in such language were given to another doctor, that other doctor might not be able to understand; similarly if that piece of information were given to patient, he might not understand either. Such a situation would give rise to a lot of misunderstanding, and might require a lot of explanation. If a patient's understanding of the language is not the same as that of the doctor, a lot of dispute may result, which is unnecessary.

If, as Dr the Honourable HUANG Chen-ya said, a patient really needs the medical records, that patient or another doctor has the right to obtain such information, but not the detailed information as penned in the language of the doctor, rather, in the scientific language that doctors will use, if it is to be written for the eyes of another doctor, or in a language people commonly use, if it is to be written for the eyes of the patient himself or his lawyer. Only through a language that is commonly understood by all parties can misunderstandings be avoided.

If there is a genuine need for medical data, we have to use a commonly used language so that no misunderstanding can result. If the information is for the use of the individual doctor himself, he would use a language he is accustomed to, which is usually very brief and will lead to misunderstanding if allowed to be read by others. I therefore think that under the present situation, the original provision provides adequate protection. It would only give rise to unnecessary misunderstanding if doctors are made to give their records.

MISS EMILY LAU (in Cantonese): Mr Chairman, I think that Dr the Honourable LAM Kui-chun might have a little misunderstanding of this Bill, because what we are discussing now is an exemption, that is, if the provision of such information to the subject would do him serious physical or mental harm, exemption is permitted. Many people said that this is an exceptional case, so under normal situation, information can be requested.

Under this Bill, people can also obtain the original file, or the Administration can confirm it later. I think that now all doctors must be psychologically prepared that what they put down can be obtained by their patients. What the patients want is not something which has been filtered and rewritten. I therefore believe that from now on what the doctors put down must be understood by the other doctors as well as the patients. Actually the patients have the right to obtain such material. I therefore think that Dr LAM Kui-chun has some understanding here, what we are talking is about under very limited condition can such exemption be invoked, and the reason is serious physical or mental harm, but such a situation, I hope, is not of frequent occurrence. So there is a little misunderstanding here.

I hope that the Administration can clarify this point later, so that no doctor would think that with this provision, nothing can be given to the patients. The patients themselves can obtain the original file. I think that the Administration should make it clear that the doctors are not, by making a "carbon copy" of the file, writing up a version that is understandable to the patient for his collection. What the Bill now permits the patient to obtain is the patient's record that is actually written by the doctor himself. Thank you, Mr. Chairman.

DR LEONG CHE-HUNG (in Cantonese): Mr Chairman, I believe that when I oppose the amendment, I understand that what the patient want to obtain is the original record. The problem is very often the original record contains material that may cause problem to the patient himself, or may even do harm to his health.

Let us take an example. Assuming that a patient went to see a doctor because he had a headache, which could be caused by a myriad of reasons, like he had a row with his wife the night before, or hypertension, just now the Honourable Miss Miriam LAU said that, being the party whip today and unable to get the right votes, she had hypertension and headache; or brain tumour. When the doctor see the patient for the first time, it is difficult for the doctor to find out what caused the headache, and in his record, he might put down these few reasons. Of course, the doctor would observe the patient further and carry out detailed investigation and consideration, after which he might tell her that it was because she was the party whip and could not marshall the right number of votes, so she had headache, that should not be too big a problem. However, if the patient had already obtained the record in the first instance, read that he might have brain tumour, to the nervous sort, this would cast a long-lasting

shadow over him, making him think that he had cancer. Under such a situation, his health would be affected for ever.

I believe that the doctors present, including Dr the Honourable HUANG Chen-ya, may have met this kind of patient. A patient might be told that there was the probability that he had a certain disease which later proved otherwise, he might nonetheless felt that shadow in him. What worries me is this situation. To an ordinary patient, under ordinary circumstances, there would be no problem in giving an ordinary record. However, if we are faced with the kind of patient in my example, instead of giving him the original record, we should give him a medical report.

Hence, I oppose the amendment.

DR CONRAD LAM (in Cantonese): Mr Chairman, the situations described by Dr the Honourable LEONG Che-hung and Dr the Honourable LAM Kui-chun can in fact happen, and they are real problems. For the convenience and protection of doctors, it certainly would be better if the provision is not amended. However, from the point of view of an ordinary citizen, I think that clause 59, as amended by Dr the Honourable HUANG Chen-ya would be more beneficial to the citizens and the patients. Patients should have the right of obtaining what others have written of his condition. To doctors in general, this certainly would cause inconvenience, and I myself do feel the same, but I support Dr HUANG Chen-ya's amendment.

MR JAMES TO (in Cantonese): Mr Chairman, what we are discussing now is whether we should prevent a patient from obtaining his record on the ground of serious effect to his health. Take again the example given by Dr the Honourable LEONG Che-hung. Would a patient be so scared after viewing his records that he could not be cured because he thought he was having tumour? The question is when we legislate for the society, and consider the right of a person, we have to consider if we are adopting a parentalism approach. Take a very extreme example. What if a patient has put it in black and white that he would be responsible, even if that meant serious harm, like becoming greatly disturbed after looking at the record, or he does not understand, or even die, but he has set it down on paper that the doctor is immuned, and he has done all these just for knowing what the doctor's diagnostic data was at that time.

Frankly speaking, if we are to adopt the parentalism approach, how can there be a right for the people? When a doctor lets a patient to have access to his record, he can or even has the responsibility to warn the patient that all responsibility should be borne by the patient himself, and the patient should not be prevented from having access to his record by invoking this provision on the ground of protecting his health. If it is so, human rights would be made too narrow. Many societies or governments make use of this concept, saying that they are to protect the citizens' health, protect them from spiritual pollution,

and protect them from everything, so nothing is to give to the citizens. This is a very dangerous development.

Actually the arguments we heard just now only show that the doctors are afraid that those records may cause disputes. Now we all know that it is nothing of that kind. There is no difficulty in getting those records. With Dr LEONG Che-hung's example, I feel that those records should be obtained all the more. Why? If the patient has been warned, and after getting the records, any misunderstanding on his part will be borne by him. All it requires is a warning to him in black and white, plus a note.

I hope that can clearly tell us how wide an exemption is provided by this provision, or else a lot of doctors may abuse this exemption. I beseech the doctors that they should not abuse this provision because if the amendment cannot be passed, the right of the citizens will be greatly pared down. I believe that it was not in the Administration's early conception. If it is really a misunderstanding on our part, I hope that the Administration can explain why we have this misunderstanding.

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, my speech will be very brief. I just want to explain again to Dr the Honourable LAM Kui-chun and Dr the Honourable LEONG Che-hung, and the Honourable Miss Emily LAU has also explained, that under this Bill, all records kept by doctors should be open to patients' access, unless the circumstance is so exceptional that it requires otherwise. There is no way to stop a patient from accessing his records, the special circumstance only refers to such situation that will cause serious harm to the subject or other person.

The examples as given by Dr LAM Kui-chun and Dr LEONG Che-hung show that their refusing patients access to relevant material is to avoid serious harm because the doctors use a language different from that of the patients, which is not easily understandable by layman. If this is the case, I think the Privacy Commissioner will not accept this as the reason. If this will really lead to misunderstanding, to what extent should that misunderstanding be to warrant refusing patient access to the records? In fact we cannot see things this way under normal circumstances. With respect to an ordinary request, it is accepted that patients can have access to their doctors' records. In another word, whether the doctor's writing is illegible, or that the doctor has put down some strange thoughts in the record, or that the doctor has question marks over his diagnosis, all these cannot be exempted. And you should not think that these can be exempted. According to the Bill, such data have to be given unless it may cause the so-called serious harm. How do you prove the harm is serious? When a patient ask to have access to his information, his doctor said that the patient could not have it because it might scare him and because mentally he might not be able to accept the diagnosis of the doctor. If that is the case, there are two questions here. Firstly, is it that the doctor has been hiding the fact from the patient? Secondly, the doctor said that the patient could not accept the diagnosis,

is it right for the doctor to say so? Can the patient, through another appeal channel, get another doctor to prove that he can accept the fact that he has a certain disease? Who is to decide? I feel that the whole matter is very unreasonable and getting very complex. How can the Commissioner be able to acquaint with the whole situation? He must first find that doctor. Would that make the patient even more fearful that the doctor had something concerning the patient himself which could not be revealed to the him?

Mr Chairman, I can tell you that what most patients fear is that their doctors are not telling the truth. Many patients have the doubt that their doctors would not tell them the truth. Do I really have no cancer? If we make the citizens feel that many doctors do not tell the truth, that the patients would not be told that they have cancer or AIDS, then the credibility of the doctors, I think, will suffer a very heavy blow. This will cause serious physical and mental harm to the citizens.

DR TANG SIU-TONG (in Cantonese): Mr Chairman, I am a doctor myself, and would also like to say a few words. I do not quite agree to the views of Dr the Honourable HUANG Chen-ya. I feel that there is an element of trust in the relationship between a doctor and his patient. When a doctor treats a patient, it is more often the case that concerns with trust and credability. A patient's choosing a particular doctor is all out of his trust in that doctor; on seeing the doctor, the patient's illness is almost half-cured. This trust is very important, which is built up over a long period of time. If there is no "trust" in this relationship, what a doctor can do is just prescribing antibiotics for curing infections, or giving blood transfusion for blood loss, or giving injections for pain. Can these be the greatest advancement in medical science? Medically, the most important advancement is "trust", whether a patient would trust his doctor. If there is no trust, nothing can be done, whereas if there is trust, in many cases, a disease can be cured without the need to resort to any medicine. To us doctors, "trust" is very important.

Dr HUANG Chen-ya just now said that many of the records must be accessible by the patients. When a patient makes a request to us, we would try our best to tell him. However, under certain special circumstances, a doctor cannot be so frank with his patient. What sort of circumstance can be special is a matter of professional judgment, which should be entrusted to the professionals. If a professional cannot make such a professional judgment, then he will not have the ability to handle other matters. I therefore think that it is better to leave it to the professional to make that professional judgment. I support the view of Dr the Honourable LEONG Che-hung.

CHAIRMAN: I hope we shall not be too long delayed to go to a vote by the non-layman. *(Laughter)*

DR LEONG CHE-HUNG (in Cantonese): Mr Chairman, thank you for giving me another chance to speak. My opposing Dr the Honourable HUANG Chen-ya's proposed amendment is all because of the reasons given by him.

We all know that the Personal Data (Privacy) Bill has already made it clear that we can let the patients have access to our records. We only hope that under certain circumstances, if we think that giving access to the patients may do harm to him, then we would not grant such access.

I oppose the amendment does not mean that I oppose this Bill, I just oppose the amendment proposed by Dr HUANG Chen-ya. In other words, we hope that some reservations can be made so that when it is beneficial to the patient himself, he can be refused access to the original record. This does not mean that they are not allowed to know of their condition.

Thank you, Mr Chairman.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, clause 59 of the Bill provides for the exemption from the Bill's requirements on subject access with respect to health-related personal data where this would be likely to cause serious harm to the mental or physical health of the subject or other individual. Dr the Honourable HUANG Chen-ya's proposed amendment will remove this exemption from the Bill. I would like Members to remember that the Bill already provides adequate safeguards against abuse of this exemption as where a medical practitioner applies the exemption without proper justification, subject access can be enforced by the Privacy Commissioner. The proposed amendment would only remove the current flexibility for medical practitioners to exercise their professional judgment in the best interests of their patients.

The Administration will vote against Dr HUANG's proposed amendment and I recommend that Honourable Members also vote against it.

Thank you, Mr Chairman.

DR HUANG CHEN-YA (in Cantonese): Mr Chairman, my response will be very brief. Dr the Honourable LEONG Che-hung, Dr the Honourable LAM Kui-chun, Dr the Honourable TANG Siu-tong and I are all of the same profession. We all know that allowing patients to have access to our records can be quite troublesome because what is recorded may be very personal. I have also had discussions with the Hong Kong Medical Association, the attitude of which is that there is no reason to oppose this Bill because they actually have to accept that the patients have this right.

Notwithstanding the problems discussed by Dr TANG Siu-tong, Dr LAM Kui-chun or Dr LEONG Che-hung, the Bill has made it very clear that there is no way to resolve their problems as the patients definitely have the right to

access to their doctors' records. The only reservation, which is a very minor point, is that only under special circumstance can a patient be refused access. I would like to make it very clear to you that I cannot think of a special circumstance that should be reserved. Dr TANG Siu-tong, Dr LAM Kui-chun and Dr LEONG Che-hung all cannot give one. What they have said has been put forth by the Administration. According to the Bill, the Privacy Commissioner can say that access cannot be refused on such ground. Thus, the only reason for preserving the right to refuse access actually is to hide certain serious policy fault.

Similar to the examples I gave just now, in a certain foreign country the site for storing radioactive wastes was found to have radioactive leakage. Despite the fact that the public health department of such country did not want the citizens to know of the incident, the whole matter subsequently turned into a scandal. The citizens became aware that many of them developed cancer, and the doctors had at a very early stage suspected that the situation might be related to certain chemicals from the site for storing toxic wastes: Such incidents make me feel that the provision is not there for protecting individual doctors, but to help some government departments to hide facts which the citizens have the right to know. I therefore feel that this provision should be deleted.

Question on the amendment put.

Voice vote taken.

THE CHAIRMAN said he thought the "Noes" had it.

Dr HUANG Chen-ya 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 Martin LEE, Mr SZETO Wah, Mr Andrew WONG, Mr Albert CHAN, Mr Vincent CHENG, 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, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, 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 TAM Yiu-chung, Mr LAU Wong-fat, Mr Edward HO, Mr Martin BARROW, Mrs Miriam LAU, Mr LAU Wah-sum, Dr LEONG Che-hung, Mr Jimmy McGREGOR, Mrs Elsie TU, Mr Peter WONG, Mr Moses CHENG, Mr Marvin CHEUNG, Mr Timothy HA, Mr Simon IP, Dr LAM Kui-chun, Mr Eric LI, Mr Steven POON, Mr Henry TANG, Dr Samuel WONG, Dr TANG Siu-tong, Mr Roger LUK, Mr James TIEN and Mr Alfred TSO voted against the amendment.

THE CHAIRMAN announced that there were 22 votes in favour of the amendment and 29 votes against it. He therefore declared that the amendment was negatived.

Question on clause 59, in its original form, put and agreed to.

8.00 pm

PRESIDENT: Council will now resume. Attorney General, it is now eight o'clock.

ATTORNEY GENERAL: Mr President, if anybody thinks that listening to a group of lawyers arguing a point is a bad experience, I might wish to revise their opinion, having listened to a medical debate that lasted 40 minutes. And on that note, with your consent, with much regret, Mr President, I move that Standing Order 8(2) should be suspended so as to allow the Council's business this evening to be concluded.

MR JAMES TO (in Cantonese): My speech will be very brief. I just want to ask the Members that now it is eight already, and we shall extend the time, but the examination may still need a lot of time. So, shall we continue with this marathon examination for say 40 hours, or postpone it?

Mr Chairman, are we to adjourn at eleven or twelve tonight and continue tomorrow morning, or go on with the discussion indefinitely? I would like you all to speak on this. I do not oppose to continuing with the discussion after eight, but I hope that you can consider this as well when you examine the Bill. Thank you, Mr Chairman.

PRESIDENT: First things first.

Question proposed, put and agreed to.

PRESIDENT: We shall complete this Bill and then break for dinner. And I will consult with the Chairman of the House Committee about the further progress of this evening's business. Council is now in Committee.

Council went into Committee.

Schedules 1 and 2

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that Schedules 1 and 2 of the Bill be amended as set out in the paper circulated to Members.

Schedule 1 of the Bill provides for the data protection principles. The amendment to principle 2 in Schedule 1 introduces a practicability test for the requirement to pass on corrections to personal data that have previously been disclosed to a third party.

The remaining amendments to Schedules 1 and 2 are technical amendments to the Chinese version of the Bill.

Mr Chairman, I beg to move.

Proposed amendments

Schedule 1

That Schedule 1 be amended, in data protection principle 2(1)(c) —

(a) by deleting "is known" and substituting "is practicable in all the circumstances of the case to know";

(b) in subparagraph (i), by adding "materially" after "party are".

That Schedule 1 be amended —

(a) in data protection principle 2(1)(c)(i), by deleting"期".

(b) in data protection principle 6(b)(iv), by deleting"可理解"and substituting "清楚易明".

Schedule 2, sections 1(3) and 6(2)

That Schedule 2, sections 1(3) and 6(2) be amended, by deleting"公務支出"and substituting"開銷費".

Question on the amendments proposed, put and agreed to.

Question on Schedules 1 and 2, as amended, proposed, put and agreed to.

Schedules 3 and 4 were agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

PERSONAL DATA (PRIVACY) BILL

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

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

Bill read the Third time and passed.

8.05 pm

PRESIDENT: We will take the supper break and then resume in 45 minutes. I now suspend the sitting.

9.04 pm

Second Reading of Bill

PUBLIC BUS SERVICES (AMENDMENT) BILL 1995

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

Question on Second Reading proposed.

MR WONG WAI-YIN (in Cantonese): Mr President, on 26 May 1995, a Bills Committee was formed to study the Public Bus Services (Amendment) Bill 1995, of which I was the Chairman. The main purpose of the Bill is to amend Part IV of the principal Ordinance dealing with emergencies and revocation of franchise. The Bills Committee has held four meetings with the Administration

and considered written submissions from China Motor Bus Company Limited and Swire Properties Limited.

In studying the Bill, the Bills Committee has considered a number of issues. I would like to highlight the major ones.

1. *Staff redundancy arrangements*

Members are concerned over arrangements regarding staff redundancy arising from the taking over of a bus company's assets. The Administration points out that it is a statutory requirement for companies to settle their liabilities under the Employment Ordinance. All franchised bus companies have made adequate provision for pension payments. Furthermore, under the proposed legislation, compensation based on an open market rental or value will be paid. The compensation payments would also help the company concerned to meet its obligations towards its employees. The Administration assures us that, if it is necessary for Government to exercise the new powers, Government would take measures to mitigate any adverse impact on the employees of the bus companies.

2. *Elimination of possible delay in taking possession of bus company's assets*

In response to Members' suggestion that Government should serve a notice and publish it in the Gazette before the franchise expires in order to avoid any possible delay in taking possession of assets, a corresponding amendment will be made to the Bill to address this point.

3. *Assessment of compensation*

Clause 4 of the Bill substitutes a new section 25 relating to temporary retention by Government of bus assets used by company whose franchise is revoked or has expired.

In response to the Bills Committee's concern on the exclusion from the compensation calculation improvements made by the franchisee within one year from expiry of the franchise, the Administration agrees to make an amendment to section 25(5)(b) of the Ordinance to allow Government to pay compensation for improvements made with the written permission of the Commissioner for Transport.

4. *New requirement on franchisee to give notice of non-renewal*

Under section 6(2) of the existing Public Bus Services Ordinance, a franchisee can seek a franchise extension of one year before its franchise expires. Should a franchisee fail to seek an extension in time, it would be up to the Governor in Council to consider granting a new franchise or extending the existing franchise under section 6(3) to the franchisee concerned. The Governor in Council is also free to grant a new franchise to a new operator.

In order to allow adequate time for the Administration to "take-over" in the event of non-renewal, we suggest that the present 12-months advance notice should be lengthened. Allowing six months for negotiation and depending on the length of the notice period, a decision on the renewal or otherwise should be made a few months before the expiry of a franchise. Having regard to the lead time for the order of new buses and public tendering procedures for a new operator and so on, the majority of the Bills Committee prefers a 18-month notice period.

While appreciating Members' good intention and supporting the suggestion in principle, the Administration did not agree to put it in the legislation because the suggestion put pressure on the Administration and weakened its bargaining position. We were not convinced and proposed a Committee stage amendment to section 6(2) of the Ordinance.

After the Bills Committee has completed its deliberation, the Administration reconsiders the issue and finally agrees to the amendment moved by the Bills Committee to lengthen the notice period to 15 months. Where notice has been given by a franchisee, the Secretary for Transport shall, not less than nine months before the expiry of the franchise, submit to the Governor in Council a report setting out his recommendation as to whether the franchise should be extended for a further period. The Secretary for Transport may, wherever necessary, seek approval from the Governor in Council to extend the negotiating period to more than six months. This is acceptable to us.

5. *Pro-rata taking over of assets upon partial renewal or revocation of bus routes*

We are concerned that the existing Ordinance does not empower Government to take temporary possession of assets used or kept by the bus company where only some routes are revoked. Under the Bill a franchise has to be revoked entirely before the new power is available. We consider that such restriction on the exercise of power will undermine its deterrent effect. The Bills Committee proposes to amend the Bill to empower the Administration to take over assets, on a pro-rata basis, upon partial non-renewal or revocation of bus routes.

The Administration states that the purpose of the Bill is to maintain a proper and efficient bus service rather than penalizing any franchisee. It is already empowered to impose financial penalty on a franchisee for not providing proper and effective bus service. There will be practical difficulties as well as drafting difficulties in putting such a provision in the Bill. "Indivisible" items, such as only one depot which cannot be shared or split, facilities to clean buses and so on, will pose practical difficulties in the exercise of the proposed power. The overall operational efficiency of bus service might be affected.

However, the Bills Committee did not accept the Administration's explanation and it was intended that I would move an amendment to the Bill at the Committee stage. We then continue to discuss with the Government and the Administration ultimately undertakes to conduct a review on our proposal in the next session. In the light of that, we agree to withdraw the proposed amendment for the time being.

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

MISS MIRIAM LAU (in Cantonese): Mr Chairman, despite the fact that the Administration has insisted that the Public Bus Services (Amendment) Bill 1995 is not drafted with China Motor Bus (CMB) specifically in mind, in fact we all know what it sets out to achieve. Last month when there were two or three months left before the franchise of CMB would expire, and CMB still had not come to an agreement with the Administration in respect of a renewal of the franchise, the Administration was a dilemma. On the one hand, the Administration had to ensure there would not be any interruption in bus service, in other words, when the CMB franchise expired at the end of August, the Administration had the responsibility to provide proper and efficient bus service to the citizens, on the other hand, the Administration would not rashly terminate the negotiation with CMB and find another operator, given that there was so little time left and the Administration might not be able to find another operator to continue with the service. At the same time, terminating CMB's franchise would deal a heavy blow to the staff of CMB.

The impression that the public have of the whole negotiation between the Administration and CMB is that the Administration is being led by CMB. The problem, though resolved, has put the Administration in a very embarrassing situation, mainly because the current law has not covered the situation where the franchise is not renewed. Under such a situation, what right does the Administration have? Nothing is mentioned of this in the current law.

The Liberal Party understands why this Bill was not tabled at the Legislative Council until now, and accepts that, in the worst scenario when certain bus service operator remains recalcitrant or fault-finding, or takes advantage of legal loopholes and shirks its duty as the provider of a public service, the Administration needs to have adequate means to deal with such operator to protect public interest. Though it is so, the Liberal Party is wary of the Administration's such measures as confiscating private property or little short of confiscating private property. Confiscating private property without giving fair and reasonable compensation is even unacceptable to the Liberal Party, such act can only be seen in totalitarian states.

The Bill under discussion certainly does not set out to confiscate private property. It provides that the Government may take possession of other's property and pay an amount equal to the open market rental. Still, it is compulsory lease, that is the Government cannot be refused lease of such property. The Liberal Party thinks that such a practice is similar in thought with stripping or confiscating a person of his property. We therefore think that the Administration, if it is to exercise the power conferred by the Bill, must ensure that the affected company will be fairly and reasonably compensated. We would like the Secretary for Transport will confirm this in his response. This important basic principle is the spirit behind the amended law.

Moreover, stripping a citizen of his private property, notwithstanding that compensation is given, can still be considered a high-handed policy of the Administration. This weapon should not be used lightly and should only be used when all other venues are exhausted and it is absolutely to the best of public interest. The Administration should also ensure that those persons or companies affected by such measures are only affected to the extent that is absolutely necessary, that is they would not be affected beyond any necessary extent.

Now this Bill proposes that the Administration may compulsorily requisition the property of a bus company for a maximum period of three years. The Liberal Party thinks that this period is too long, which, we think, should be reduced to a maximum of two years. This will be more reasonable. Under normal situation, the Administration explains, a two-year period is enough, but in the case of a large company with a large fleet and enormous amount of property (this could be Kowloon Motor Bus), the Administration may need more time to arrange for a new operator to take up the service. The Liberal Party, though can only barely accept this explanation, urges the Administration to exercise the power conferred by this Bill with care and serious consideration, and make the requisition period as short as possible. After the lapse of the required period, the Administration should return the relevant property to the company concerned. The Liberal Party thinks that if the requisition period extends beyond two years (usually it is two years), the Administration should give a clear explanation to the Transport Panel of the Legislative Council as to why the work cannot be completed within two years.

Mr Chairman, with these remarks, I support the Bill.

MR LEE WING-TAT (in Cantonese): Mr Chairman, I rise to support the proposal of the Administration, though to certain points I do not agree. I would like to express what I feel about this.

The existing Public Bus Services Ordinance has already conferred certain power on the Administration to deal with those bus companies that deliver unsatisfactory service. However, because the provision that provides for the power to take over the bus company's assets has not been clear, so we have to

amend the ordinance to make the requirement more specific, for example, when such power can be used and to what extent.

We do not have to hide the fact that the historical reason for the present amendment can be traced to China Motor Bus Company (CMB). This is a fact that we do not have to hide. From the long experience of bus service, the most bitter one is that of the bus drivers' strike in 1991. It was only after the incident that the Transport Department and Transport Branch started looking into ways to deal with the problem. First of all, administratively, how can there be a better safety net in face of such franchised bus company? When its service has become so bad that the franchise will not be renewed, how can the Administration deal with the crisis? Then, legally, when the franchise of these bus companies is not renewed or some grave incident happens, is there a way to take over these bus companies? Can the Administration exercise proper power to continue the provision of proper bus service?

Regrettably, when the franchise of CMB was renewed in 1993, this Bill was not yet drafted. This issue might not have been under consideration or perhaps, the study of the issue had not yet completed. I do not know. Anyway, regrettably, this problem was not dealt with when CMB's franchise was renewed in 1993. At that time, the Administration cut only 26 routes from CMB, leaving the remaining 100 routes for it to continue operation. After more than two years' observation, I believe that the public and the Transport Branch are of the opinion that, as the Secretary for Transport just said, CMB has at most scored a bare pass. I have asked my fellow Members who think that CMB has scored a pass with respect to its service. I could not even find two Members, only one Member thought that CMB's service could score a pass. In this Chamber, there is only one Member who gives a similar assessment of the bus service. For the others, they either give negative marks or zero. Why was it not done in 1993 when the franchise was renewed? There is no point to find out the reason. Now with this Bill, we can still mend the fence.

Mr Chairman, in dealing with the franchise of the bus companies, the most practical way is to have ample time to deal with the crisis when they actually take place. We cannot exclude certain facts. First, ordering buses could be very simple, but in fact it is a very complicated process. According to the material given to us by the Transport Branch, unlike buying vegetables or clothings, orders for buses must be made well beforehand. There are also examinations to be conducded. Therefore, generally, in every one year, we can order at most 100 or a hundred something buses. This is the most we can do.

I would also like to talk about the problem of bidding. If, because bus routes are cut or franchise is completely revoked, bids are invited to take up the service, we need at least six months, better still nine months to a year. These are materials we cannot afford not to know. Therefore if any negotiation for renewal is unnecessarily extended to close to the expiry of the franchise, the Transport Branch or the Transport Department will be left with no cards to play. As the chairman, the Honourable Mrs Miriam LAU (Mrs Miriam LAU is

the chairman of the Transport Panel of the Legislative Council) just said, CMB's franchise is to expire in August, but the Administration only had a decision at the end of June and early July. I would like to ask the Administration: can it not renew the franchise? The Administration has nothing to rely on so that it can that it would not renew. With no bus ordered, it cannot invite bids; so the Administration is like being held in the throat, it has to concede to whatever demands, even if it has to cut certain routes, it cannot cut too many of them.

When we are dealing with these ordinances, we have used a lot of time to think. What sort of time frame is the most beneficial to the Administration, so that in negotiating with the franchised companies, the Administration will not be subject to the time frame of the counterparty. When I joined the Bills Committee, I hope that the franchised company would inform the Administration 18 months before the expiry of the franchise and start the negotiation. Ideally, 12 months before the expiry of the franchise, there would be a conclusion whether we would grant the franchise to the company concerned. If the Transport Branch thinks that the negotiation has to continue, I suggest that the Administration asks for a stay from the Executive Council, but has to explain to the public and the Legislative Council. Only by this means can our Government have a better and more advantageous position to negotiate with the bus companies. I hope that by amending the legislation, things can be done a bit better.

Throughout the whole negotiation, the government officials were treated like "underdogs". Around the world I have not seen a company which has to apply for a franchise from its government can be so "haughty". Of course, what we have heard are hearsay, for example, the negotiators could say that they did not feel like having meetings at the Transport Department, and wanted to have meetings at the Transport Branch; they did not want to have meetings here, but there; they did not want to have meetings in the afternoon, but in the evening; the main negotiator could go on holiday during the period of negotiation. Of course, I am not referring to the officials at the Transport Branch or Transport Department, it is their counterparty. I cannot find in this world a company that can be so "haughty" towards its government, given that the franchise is granted by the government. The Administration is like begging the bus companies to accept the franchise. I feel that officials of the Transport Branch and the Transport Department should not be so "badly treated" at the negotiation and I feel sorry for them. I ask you to firm up a bit, but you feel that I am too firm. If the bus companies can show such a bad attitude, then do not give them the franchise, but the Administration is so gutless to refuse granting. Last time when the Secretary for Transport made a statement at the Legislative Council, saying that the franchise of CMB must be renewed, I felt very unhappy. On that occasion, I also criticized the Administration for its incompetency.

Mr Chairman, I do not want to dwell on history, rather I would like to give some of my views. With respect to negotiations for franchise, I see that different methods are adopted in the various ordinances concerning franchize.

For example, with the franchise of the Western Harbour Crossing and the Route No.3, we grant the franchise to franchised companies by way of ordinances, but the franchise for bus companies, including CMB, KMB, Citybus and Lantau Bus Company is granted after the relevant government department has had negotiation with them. When negotiation is under way, the Administration sometimes would mention it to us, but as in other franchise negotiations, the Administration generally does not feel like revealing to us the content, details and progress of the negotiations on the grounds of maintaining business confidence or disclosing such material would put obstacles in the negotiation. The Legislative Councillors are put in such a difficult situation. If it is like the Western Harbour Crossing or Route No.3, we can still propose amendment while the legislation is being passed, or even reject it. However, in the negotiations of other franchises, we do not have a role to play. When a franchise expires, what we can do is to accept it, we do not have the power to veto it. Now the Administration has been more kind to us, before the negotiation is about to end, it would report to the Transport Panel of the Legislative Council. But, is it enough? Assuming that unfortunately for once the result of the Administration's negotiation over bus franchise goes against the opinions of most of the members of the Transport Panel or even most of the Members of the Legislative Council, what should we do? Are we to change the legislation to veto the renewal of the franchise? I hope that both the Transport Branch and the Secretary for Transport will think this over. Why do we have to have so many of these franchise negotiations, some requiring legislation, some not?

I would like to raise another point. The Honourable WONG Wai-yin has said that the assets of the bus company should be retaken by proportion. In fact both the Honourable Mr LEE Cheuk-yan and I have raised this point before. According to the existing law, when we decide not to renew a bus company's franchise, there are two options open to us: all or nothing. In another word, either we do not renew the franchise and take back all the assets, depots, and buses and get the Administration to run the company; or we ignore the company and do not take one single bus or depot. This will put the Transport Branch in a very difficult position if a large number of routes have to be cut. The Transport Department told us, as I said just now, that we need a year so that the new company can buy about 100 buses. If we are to cut 40 routes from either CMB or KMB, then we need 200 buses. Whatever the new operator may be, there is no guarantee that it can amass 200 or 300 buses within a year. I am therefore not very happy with this way.

However, after much discussion, I learn to be convinced and make compromise sometimes. I have stood firm for too long, and this is one great compromise. I grudgingly accept the arrangement of the Secretary for Transport, and for the time being shall not propose any amendment. But I hope that the Secretary for Transport can reconsider again, because such an inflexible way will leave the Transport Branch with no card to play in future negotiation, and he will face the same situation as he is now having with CMB.

Mr Chairman, I only hope that in future negotiations over franchise, the Administration will consider another point, which is why we are mired in such a situation? It is because there is still no enough competition in the provision of public bus service. Now there are two bus companies operating on Hong Kong Island, they are CMB and Citybus. In choosing the appropriate operator, there is greater flexibility. But what about the situation in Kowloon and the New Territories? The answer from the Transport Branch and the Secretary for Transport of course will be: there is no cause for worry as KMB has been doing fine. Doing a fine job now does not mean it would be fine forever, and does not mean it is necessarily so always. Good service comes out of competition, making the company to do better to meet the demands of the market and passengers. KMB now has 4 000 buses. If we are to cut one-tenth of its routes, we shall need to have 400 buses, which is something beyond our ability. When a company has grown to such a size that if we are to cut a certain proportion of its routes or to suspend or completely terminate its franchise, the Transport Branch will find that it can do nothing. I hope that the Secretary for Transport can seriously think this over now. 1997 is not far from now, by the summer of 1997, the franchise of CMB will expire. According to the timetable, the Secretary for Transport should begin drafting the plan of negotiation in 1996 before embarking on the negotiation, or else by mid-1996, the Secretary for Transport could be telling us that because of differences the negotiation can only complete in early 1997. By then, we might find that there is nothing we can do. I still feel that the best way to benefit the passengers and consumers is to introduce competition. Introducing competition into public bus service in Kowloon and the New Territories is the best way to ensure the benefit of the public. I hope that the Transport Branch and the Secretary for Transport can consider this carefully.

Mr Chairman, finally, I want to say that I hold very disparate views from the Secretary for Transport, Transport Branch and Transport Department on this matter, but I cannot help not to show my appreciation for the work of the Secretary for Transport and the colleagues of the Transport Branch and Transport Department under his leadership. In the past few years, I have learned to be tolerant. A very stubborn man I am though, in the course of negotiation, sometimes I have to learn to be tolerant and receptive of different opinions. When the amendment cannot competely satisfy me, I have to be understanding.

Mr Chairman, let me thank the Secretary for Transport, the Transport Branch and the Transport Department for their work. Thank you, Mr Chairman.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I support the Administration's amendment, but I do not quite like the fact that it was tabled at so late a date. A bus company which has not operated properly, or which does not have the mind to operate, has not thought of improving its service, but the Administration only tables this amendment this year. However, there are areas

in this Bill which can be further improved. I agree to the Honourable LEE Wing-tat's view that what the Bill wants to achieve is either execution or no execution. I agree to Mr LEE Wing-tat's view that a power for imposing half of the punishment should be conferred on the Transport Branch. That is, if some routes are cut, some of the buses and the necessary parts may be taken in proportion.

Another issue that has been my worry is that if certain routes are cut, the employment and livelihood of the staff of the original operator will be put at stake. I feel that we cannot just let severance pay be discussed then and the whole matter will be resolved. The most important thing is to ensure that the staff of the old operator can all be transferred to the new operator, with the terms and conditions more or less the same. The livelihood of the staff can thus be maintained and the new operator will not be given the opportunity to be choosy. Some of the bus drivers may have reached 50 years of age. If the new operator is not to take him on, he will have to rely on pension for his living, and that may be years of hardship. If there is to be such change, I hope that all staff can be arranged to continue work in the new operator, with similar terms and conditions.

Another problem which I think has not been properly addressed is the setting up of a Price Stablizing Fund which I raised in the past. We hope that the Secretary for Transport can reconsider when a bus company sell off the land of its plant without benefiting the passengers by passing the benefit to the Price Stablizing Fund, what measure he can take. I feel that there are still a lot of supervisory problems requiring the Transport Branch to address. Thank you, Mr Chairman.

SECRETARY FOR TRANSPORT: Mr President, may I begin by expressing the Administration's gratitude to the Honourable WONG Wai-yin, Chairman of the Bills Committee, and also to all other Honourable Members who have served on this Committee, for their advice on and support of the Public Bus Services (Amendment) Bill.

Introduction

Franchised bus services are the backbone of our public transport network system. This is illustrated by the fact that three and a half million passenger trips are made on franchised buses every day. It is therefore imperative that bus services need to be maintained at all times. No one will dispute this.

The Bill before Honourable Members today enshrines a concerted effort, first and foremost, to protect the interests of the travelling public whilst, equally important, seeking to ensure that any bus company, whose property may need to be leased or purchased, is fairly and fully compensated.

At this point, I should say that I cannot accept the Honourable Mrs Miriam LAU's and the Honourable LEE Wing-tat's contention that this Bill has been designed to strengthen the Government's hand in our franchise negotiations with China Motor Bus (CMB). Let me reiterate that our born aim is to protect the public interest. We are not here this evening to debate CMB or any other bus company's performance and I do not therefore propose to argue this aspect. But let me say that franchise negotiations can often be difficult and time-consuming. In response to the Honourable LEE Wing-tat's philosophy on how to conduct negotiations, I can assure the Honourable Member that the Administration accepts the need to commence negotiations early and in respect of the Honourable Member's comments, I shall be moving an amendment later on this particular point.

Shortcomings of the Ordinance

The present Public Bus Services Ordinance was enacted in 1975. Much has changed over the past 20 years. In particular, bus companies have grown substantially. The existing legislation does not simply provide adequate safeguards to allow the Administration to cope with situations in which a major bus company may cease to operate.

Power to take temporary possession of property

When a franchised bus company fails to maintain a proper and efficient service, there are provisions in the existing Ordinance for the Governor in Council to revoke its franchise and to take temporary possession of its property for a period not exceeding one year. However, this period of time and other existing provisions are out of date. Let me briefly explain why. The Government has no intention whatsoever of operating bus services on a permanent basis. The Government will need to find a replacement operator and ensure that the replacement operator has sufficient time to gear up for operations. What does this involve? Acquiring buses, spare parts and depots to say the least. Given the size of the fleet of major bus companies, there is no way the replacement operator can acquire all these within a year. In practice the new operator may well have no option but to lease buses from the outgoing operator.

Accordingly, clause 4 of the Bill seeks to extend the one-year period to two years, with a provision for the Administration to seek the Executive Council's approval to extend the period for a further year. Although this means that the maximum period for taking temporary possession will be three years, I can assure Honourable Members that the Administration will make every effort to ensure that the period of time during which a bus company's property is leased is kept to the minimum.

The existing Ordinance is silent on the situation where, for some reason, a bus company may choose not to renew its franchise which is due to expire shortly. Clause 4 also covers such an eventuality with the arrangements for temporary possession also being applicable.

Power to purchase property

The Honourable WONG Wai-yin and the Honourable LEE Wing-tat have argued for additional powers for the Administration to lease or purchase property used or kept by bus company even only when some of the bus routes are revoked. As I have explained to the Bills Committee, there are other considerations and logistical aspects which need to be taken into account. For example, bus depots cannot be divided and shared among different operators. Furthermore, would the down set consequences be greater since this will limit the existing operator's ability to maintain and improve its services. This is a complex issue and given the Honourable Member's concern, the Administration is prepared to assess this particular suggestion very carefully in the coming months. I have explained the present and proposed measures for "temporary possession", but there is no provision under the existing Ordinance to allow the Government to purchase property used or kept by a franchisee for maintaining a bus service.

Powers to purchase an incumbent franchisee's buses and spare parts would help to reduce the gearing-up time and the capital outlay of the replacement operator. Moreover, the use of part of the existing fleet would also enable the replacement operator to maintain bus services at reasonable and acceptable fares. For these reasons, we propose, under clause 5 of the Bill, to give the Administration the power to purchase buses and spare parts which are considered essential for bus operations.

Compensation

Some critics may argue that taking temporary possession of, let alone purchasing, a bus company's property are drastic measures. I wish to assure the Council that such that such powers would only be used as a last resort under very special circumstances. In order to safeguard the legitimate interests of the bus company concerned and its shareholders, we have gone to great lengths to set out the compensation provisions in the Bill. Furthermore, we have limited, quite deliberately, the power of purchase to buses and spare parts and we have excluded specifically the purchase of lands and buildings.

We recognize that the bus company affected should be given fair and reasonable compensation based on open market values. We certainly support the principle that bus companies should not be put in a situation which results in their losing out financially because their property is leased initially by the Government. To reiterate, we accept in principle that the total rent payable to a bus company together with the disposal value of the property after the lease expires should not be less than what the bus companies would have realized had

it been able to dispose of the property in question at the time when it ceases to operate. I can assure Honourable Members that these factors will be taken into consideration in the arbitration process in the event that the Government and the bus company concerned cannot agree on the compensation amount.

Some concern has also been expressed that should the Government take possession of a fleet of buses, the Government can pick and choose the newest vehicles. This indeed is an option but newer buses would command a higher rental and thus the bus companies would not lose out in this regard.

Committee stage amendments

Mr President, I shall be proposing a number of amendments to the Bill at the Committee stage. Most of these amendments have been made in response to views expressed by Members during meetings of the Bills Committee.

Conclusion

With these remarks I commend the Bill to Honourable Members.

Committee Stage of Bill

Council went into Committee.

PUBLIC BUS SERVICES (AMENDMENT) BILL 1995

Clauses 1 and 6 were agreed to.

Clauses 2 to 5

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

As suggested by the Bills Committee, a new section 25(1A) has been added which enables the Government to serve advance notice to a bus company regarding the Government's intention to lease its property. This provides more flexibility and ensures that the Administration will have sufficient lead time to prepare for taking possession of such property.

Under the existing Bill, there are no provisions for compensation to be paid on any improvements made to land and buildings within a period of one year before the expiry of the franchise. The Bills Committee considered that the franchisee should be compensated for legitimate and necessary improvements which have been made. This is very reasonable and the amendment to section 25(5)(b) accordingly provides for compensation to be

payable when these improvements which have been made are with the written permission of the Commissioner for Transport.

The other amendments which have been proposed are either technical or textual in nature. The amendments to sections 23(7)(b), 25(1), 25(6)(b), 25E(1)(b) and 25F(3) have all been agreed by the Bills Committee.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended, by deleting "of the Public Bus Services Ordinance (Cap. 230)".

Clause 3

That clause 3 be amended, in the proposed section 23(7)(b), by deleting the passage beginning "cost of depreciation" and ending "subsection (3)" and substituting -

"depreciation in the value of the property over the period of the Government's possession of the property under subsection (3) as calculated at the rate of depreciation applicable in respect of the property for the purposes of section 30".

Clause 4

That clause 4 be amended —

(a) by deleting the proposed section 25(1) and substituting -

"(1) Where -

(a) a franchise has been revoked under section 24(3); or

(b) a franchise period has expired and no new franchise has been granted under section 5(1) to the company,

the company shall deliver to the Government possession of such of the following property as may be specified by the Government in a notice served on the company and published in the Gazette, that is to say -

(i) any premises provided and maintained in accordance with section 19 within the period of 3 months immediately prior to the service of a notice on the company under section 24(1) or within the period of 3 months ending with the expiry of the franchise period (as the case may be);

(ii) any property (other than premises mentioned in paragraph (i)) used or kept by the company for the purposes of or in connection with its revoked or expired franchise within that period,

and the Government may take possession of such property as from the time that the notice has effect.

(1A) A notice served and published in accordance with subsection (1) shall have effect -

(a) where the notice was served and published prior to the revocation of the franchise or the expiry of the franchise period, as from such revocation or expiry;

(b) in any other case, as from the time of its service and publication.".

(b) in the proposed section 25(5)(b), by deleting subparagraph (i) and substituting -

"(i) no regard shall be had to any improvements made to the property -

(A) after notice has been served on the company under section 24(1); or

(B) within a period of 1 year before the expiry of the franchise period, as the case may be, except that sub-subparagraph (B) shall not apply as regards any improvements made with the prior written approval of the Commissioner given for the purposes of this section; and".

(c) in the proposed section 25(6)(b), by deleting the passage beginning "cost of depreciation" and ending "subsection (2)" and substituting -

"depreciation in the value of the property over the period of the Government's possession of the property under subsection (2) as calculated at the rate of depreciation applicable in respect of that property for the purposes of section 30".

Clause 5

That clause 5 be amended —

(a) in the proposed section 25E(1)(b), by deleting "deposit rate (expressed as a percentage) paid from time to time by continuing members of the" and substituting -

"rate of interest (expressed as a percentage) paid from time to time by the continuing members of the Committee of The".

(b) in the proposed section 25F(3) -

(i) by deleting "at";

(ii) by deleting everything after "highest" and substituting

"rate of interest (expressed as a percentage) paid from time to time by the continuing members of the Committee of The Hong Kong Association of Banks on deposits fixed for 7 days of an amount equal to the amount of compensation payable.".".

Question on the amendments proposed, put and agreed to.

Question on clauses 2 to 5, as amended, proposed, put and agreed to.

New clause 1A Periods of grants and extensions thereof

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

SECRETARY FOR TRANSPORT: Mr Chairman, I move that the new clause 1A as set out in the paper circulated to Members be read the Second time.

During discussion in the Bills Committee, Honourable Members repeatedly stressed that future franchise negotiations should be concluded in good time and argued, in particular, that the Administration should ensure that, if the existing franchise is not renewed, there should be sufficient lead time to award a new franchise by tender. Accordingly, I propose that a new clause 1A be added to the Bill to require a franchisee who seeks a franchise extension, to give at least 15-month's notice to the Government, instead of the current requirement of one year. This new clause also requires the Secretary for Transport to recommend to the Executive Council whether a franchise should be extended, at least nine months before its expiry. If franchise negotiations are not completed by then, the Secretary for Transport will have to seek permission from the Executive Council to carry on the negotiations.

This approach has been agreed by Honourable Members. Mr Chairman, I beg to move.

Question on Second Reading proposed.

MR WONG WAI-YIN (in Cantonese): Mr Chairman, I rise in support of the amendment proposed by the Secretary for Transport. Actually the Administration did not agree to this amendment at first, but the Bills Committee agrees to it. It was originally intended that I proposed the amendment on behalf of the Committee, however, after the meeting, the Administration held further meeting with us on the issue. Our proposing this amendment is not to create problems for the Administration. During the course of discussion of the Bills Committee, the Administration made available to us a lot of materials such as orders for buses must be made one year beforehand, and each annual order may total about 120 buses, and public tender must have a lead time of at least half a year. As with the negotiation with China Motor Bus Company (CMB), it can clearly be seen that CMB has been playing a delaying tactic, making the government officials involved in the negotiation always on the defensive. We do not want to see such a dedicated team of officials to be so badly treated by a bus company that actually has no mind in running its operation. We therefore want to give the Administration greater powers so that the scale is not always tipped to one side.

The recent negotiation was only completed two months before the expiry of the franchise. We saw that the Administration could not find a way to substantially revoke the bus routes, and only 14 routes were revoked. This clearly was related with the time required for ordering in new buses, as there actually had no time left for ordering bus and inviting public tender. The Administration was held at the throat in the negotiation.

The Bills Committee at first proposed that negotiation should begin 18 months before the expiry of the franchise, with six months slated for negotiation, the Administration would have a whole year to order new buses or finding a new operator should the negotiation fail. This would give the

Administration great advantage if taking possession of a bus company is considered. However, because the Citybus franchise was about to expire and negotiation would begin soon, if this requirement was to be enacted, that is negotation should begin 18 months before the expiry of a franchise, there would not be 18 months left and Citybus would have to be exempted from such a requirement. It seems that the Administration was reluctant to give exemption to Citybus, so the Administration agreed with the Bills Committee that the time be reduced to 15 months, and if, after nine months, no agreement could be reached and there was the need for further discussion, the Administration could seek permission from the Governor in Council to extend the negotiation. But I would like to remind the Administration that it should not think that with this proviso it can always ask for an extension. The less time it gives to finding a new franchised operator, arranging work in relation to taking possession, or arranging public tender, the greater will be its work pressure, and the less advantageous its position will be. We therefore think that the earlier the negotiation for franchise can be completed, the more advantageous the situation will be to all parties concerned, that is, the company, the Administration, the bus commuters and the general public.

Finally, Mr Chairman, I would like to say that Hong Kong's traffic problem has long been a concern of every one of us. The citizens have been complaining the traffic planning of Hong Kong, and traffic congestion has become very serious. The Secretary for Transport and the officials of the Transport Department have been working hard on this problem, and the Transport Panel is one of the Panels that holds the most meetings. Mr BARMA, the Secretary for Transport, Mr R. S. Y. HUI, the ex-Commissioner for Transport and Mrs L. YAM, the incumbent Commissioner for Transport have also attended meetings of the Panel, and they have attended more meetings of the Panel than any other Secretaries and Departmental Directors. Because of this, I would like to express my gratitude on behalf of the Democratic Party for their hard work over the years, as a result of which we could make concerted efforts in solving the problem. Thank you, Mr Chairman.

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

Clause read the Second time.

SECRETARY FOR TRANSPORT: Mr Chairman, I move that the new clause 1A be added to the Bill.

Proposed addition

New clause 1A

That the Bill be amended, by adding —

"1A. Periods of grants and extensions thereof

Section 6 of the Public Bus Services Ordinance (Cap. 230) is amended -

(a) in subsection (2), by repealing "1 year" and substituting "15 months";

(b) by adding -

"(2A) Where notice has been given by a grantee under subsection (2), the Secretary for Transport shall, not less than 9 months before the expiry of the period for which the franchise was granted under subsection (1), submit to the Governor in Council a report setting out his recommendation as to whether the franchise should be extended for a further period under this section.".".

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

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

PUBLIC BUS SERVICES (AMENDMENT) BILL 1995

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

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

Bill read the Third time and passed.

Second Reading of Bill

COMPANIES (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).

Committee Stage of Bill

Council went into Committee.

COMPANIES (AMENDMENT) BILL 1995

Clauses 1 to 23

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

Firstly, amendments are moved to introduce a Chinese text of all of the 23 clauses in the Bill. Following gazettal of the authentic Chinese text of the Companies Ordinance on 14 July 1995, it is now also necessary to provide an authentic Chinese text for the present Bill.

Secondly, clause 15(e) is amended to clarify the exclusion of term deposits fixed for more than five years from the preferential payment. When a term deposit is renewed, the new term agreed by the depositor and the banks will be considered for the purpose of this section. The amendments to this clause also address a drafting point.

It is intended that clause 15 will be brought into effect upon gazettal of the legislation and that the remaining clauses, which provide for the use of either Chinese or English under various provisions of the Ordinance, will be implemented towards the end of the year, following completion of the changes required to systems and procedures in the Companies Registry to accommodate the new arrangements.

Mr Chairman, I should like to thank Members, who scrutinized the Bill very carefully although no Bills Committee was formed. In particular, the Honourable Marvin CHEUNG has made constructive comments with regard to clause 15.

Mr Chairman, I beg to move.

Clause 1

That clause 1 be amended, by adding the following as the Chinese text of the clause —

"1. 簡稱及生效日期

(1) 本條例可引稱爲《1995 年公司（修訂）條例》。

(2) 本條例自財經事務司以憲報公告指定的日期起實施。".

Clause 2

That clause 2 be amended, by adding the following as the Chinese text of the clause —

"2. 修訂條文

《公司條例》（第 32 章）第 4(1)及 12(a)條現予修訂，在"英文"之前加入"中文或"。".

Clause 3

That clause 3 be amended, by adding the following as the Chinese text of the clause —

"3. 註冊的效果

第 16(1)條現予修訂，廢除"簽署核證"而代以"發出一份有其簽署或印刷簽署的證明書，以核證"。".

Clause 4

That clause 4 be amended, by adding the following as the Chinese text of the clause —

"4. 公司註冊證書乃具決定性

第 18(1)條現予修訂，廢除"given"而代以"issued"。".

Clause 5

That clause 5 be amended, by adding the following as the Chinese text of the clause —

"5. 與招股章程細則有關的特別規定

第 38 條現予修訂 —

(a) 在第(1)款人 —

(i) 在"company must"之後加入"either"；

(ii) 在"譯本"之後加入"或以中文擬備及載有英文譯本"；

(b) 在第(1.A)款中 —

(i) 廢除"均須在其英文版本的顯眼位置，"而代以"若以英文擬備，均須在顯眼位置"；

(ii) 廢除"在中文版本的顯眼位置，則須"而代以"若以中文擬備，則須在顯眼位置"。".

Clause 6

That clause 6 be amended, by adding the following as the Chinese text of the clause —

"6. 有關招股章程的廣告

第 38B(1)條現予修訂，在"英文版本"之前加入"中文版本、"。".

Clause 7

That clause 7 be amended, by adding the following as the Chinese text of the clause —

"7. 招股章程的註冊

第 38D(4)條現予修訂，廢除"並非以英文撰寫，則須視作爲提述合約的英文譯本，或提述其內已收錄合約中非以英文撰寫的部分的"而代以"既非以中文亦非以英文撰寫，則須視作爲提述合約的中文或英文譯本，或提述其內已收錄合約中既非以中文亦非以英文撰寫的部分的中文或"。".

Clause 8

That clause 8 be amended, by adding the following as the Chinese text of the clause —

"8. 分配申報書

第 45(1)(a)條現予修訂 —

(a) 在"訂明格式的"之後加入"中文或英文"；

(b) 廢除第一組括號及其內所有字句。".

Clause 9

That clause 9 be amended, by adding the following as the Chinese text of the clause —

"9. 公司的債權證持有人登記冊

第 74A(1)條現予修訂 —

(a) 在"登記冊"之前加入"中文或英文"；

(b) 在(a)段中，廢除括號及其內所有字句。".

Clause 10

That clause 10 be amended, by adding the following as the Chinese text of the clause —

"10. 關於臨時帳目的規定

第 79H(5)條現予修訂，廢除"並非以英文擬備，則帳目的"而代以"既非以中文亦非以英文擬備，則帳目的中文或"。".

Clause 11

That clause 11 be amended, by adding the following as the Chinese text of the clause —

"11. 關於初步帳目的規定

第 79I(7)條現予修訂 —

(a) 廢除"並非"而代以"既非以中文亦非"；

(b) 廢除"的英文"而代以"的中文或英文"。".

Clause 12

That clause 12 be amended, by adding the following as the Chinese text of the clause —

"12. 成員登記冊

第 95(1)條現予修訂 —

(a) 在"英文的"之前加入"中文或"；

(b) 在(a)段中，廢除第一組括號及其內所有字句。".

Clause 13

That clause 13 be amended, by adding the following as the Chinese text of the clause —

"13. 與周年申報表有關的一般條文

第 109(3)條現予修訂，廢除"並非以英文擬備，該資產負債表、文件或報告須有英文譯本，附連於該資產負債表，而該英文"而代以"既非中文亦非以英文擬備，該資產負債表、文件或報告須有中文或英文譯本，附連於該資產負債表，而該"。".

Clause 14

That clause 14 be amended, by adding the following as the Chinese text of the clause —

"14. 董事及秘書登記冊

第 158 條現予修訂 —

(a) 在第(1)款中，在“備存”之前加入“以中文或英文”；

(b) 在第(2)(a)及(3)(a)款中，廢除第一組括號及其內所有字句；

(c) 在第(2A)(a)款中，廢除括號及其內所有字句。”.

Clause 15

That clause 15(e) be amended —

(a) by deleting the proposed subsection (5D)(a) and substituting -

“(a) terms deposits where the current term agreed to by the depositor at the most recent time it was negotiated exceeds 5 years;”.

(b) by deleting the proposed subsection (5E).

(c) in the proposed subsection (5G)(c) and (d), by deleting “insolvent company” wherever it appears and substituting “company being wound up”.

That clause 15 be amended, by adding the following as the the Chinese text of the clause —

“15. 優先付款

第 265 條現予修訂 —

(a) 在第(1)款中，加入 —

“(db) 凡正進行清盤的公司現時或以往是一間銀行，並且在清盤開始時持有存款，則指向每個存戶支付最高爲$100,000 的存款總額，不論其有多少筆存款；”；

(b) 在第(3A)款中，在”(da)、”之後加入”(db)、”；

(c) 在第(3AAA)款中，在“相對於第(1)”之後加入”(db)、”；

(d) 加入 —

"(3AAAA)第(1)(db)款所指明的債項 —

(a) 相對於第(1)(e)、(ea)及(f)款的債項，具有優先權；

(b) 彼此具有同等順序攤還次序；及

(c) 須悉數償付，但如有關資產不足以應付該等債項，則須按相等此例減少該等債項的償付額。" ；

(e) 加入 —

"(5D) 根據第(1)(db)款獲給予優先權的存款，並不包括以下項目 —

(a) 定期存款（如存戶在最近所議定的現行存款期超過 5 年）；

(b) 在根據《銀行業條例》（第 155 章）第 28(2)(b)條於憲報刊登一項公告的日期後所作的存款，而該項公告爲述明公司已自登記冊中刪去以及不再是一間銀行者。

(5F) 根據第(1)(db)款獲給予的優先權，並不適用於符合以下情況的存款：於銀行停止經營銀行業務後（不論清盤的法律程序是否已在當時開始），存戶將享有以其名義所作的部分存款的權利轉讓另一人，而如此轉讓的效果，乃增加有資格獲給予第(1)(db)款所訂的優先權的款項的數額。

(5G) 根據第(1)(db)款獲給予優先權的存款，並不包括以下述名義所作的存款 —

(a) 根據《外匯基金條例》（第 66 章）設立的外匯基金；

(b) 在《銀行業條例》（第 155 章）附表 3 第 1 段中所界定的多邊開發銀行；

(c) 持有正任行清盤的公司全部股份的控股公司、正進行清盤的公司的附屬公司或該控股公司的附屬公司；

(d) 在清盤開始時身爲下述公司的董事、總監或經理的人 —

(i) 正進行清盤的公司；

(ii) 正進行清盤的公司的附屬公司；

(iii) 持有正進行清盤的公司全部股份的控股公司，或該控股公司的附屬公司；

(e) 在《銀行業條例》（第 155 章）中所界定的認可機構。”；

(f) 在第(6)款中，加入 —

“‘存款’(deposit)及‘存戶’(depositor)的涵義與《銀行業條例》（第 155 章）中該等詞語的涵義相同；

‘經理’(manager)的涵義與《銀行業條例》（第 155 章）中該詞的涵義相同；

‘銀行’(bank)的涵義與《銀行業條例》（第 155 章）中該詞的涵義相同；

‘總監’(controller)的涵義與《銀行業條例》（第 155 章）中該詞的涵義相同；”。”.

Clause 16

That clause 16 be amended, by adding the following as the Chinese text of the clause —

“16. 在香港設立營業地點的海外公司須交付處長的文件等

第 33 條現予修訂 —

(a) 在第(1)(a)款中 —

(i) 廢除“並非”而代以“既非以中文亦非”；

(ii) 在“譯本”之前加入“中文或英文”；

(b) 在第(1)(b)及(c)款中，在“名單”之後加入“（以中文或英文擬備）”；

(c) 在第(1)(d)、(e)及(f)款中 —

(i) 在“譯本”之前加入“的中文或英文”；

(ii) 在“英文”之前加入“中文或”；

(d) 在第(2)(a)(i)及(b)(i)款中，廢除第一組括號及其內所有字句；

(e) 在第(2)(aa)(i)款中，廢除括號及其內所有字句。”.

Clause 17

That clause 17 be amended, by adding the following as the Chinese text of the clause —

“17. 海外公司的帳目

第 336(5)條現予修訂，廢除“並非以英文撰寫，則須附以經核證的”而代以“既非以中文亦非以英文撰寫，則須附以經核證的中文或”。”.

Clause 18

That clause 18 be amended, by adding the following as the Chinese text of the clause —

“18. 招股章程日期的註明以及其內所載的詳情

第 342(1)條現予修訂 —

(a) 在(a)(iii)段中，廢除“譯本（如原文並非”而代以“中文或英文譯本（如原文既非以中文亦非”；

(b) 在(b)段中，在“譯本”之後加入“或以中文擬備及載有英文譯本”。”.

Clause 19

That clause 19 be amended, by adding the following as the Chinese text of the clause —

"19. 招股章程的註冊

第 342C(4)條現予修訂，廢除"並非以英文撰寫，則須視作爲提述合約的英文譯本，或提述其內已收錄合約中非以英文撰寫的部分的"而代以"既非以中文亦非以英文撰寫，則須視作爲提述合約的中文或英文譯本，或提述其內已收錄合約中既非以中文亦非以英文撰寫的部分的中文或"。".

Clause 20

That clause 20 be amended, by adding the following as the Chinese text of the clause —

"20. 交付處長的文件須符合某些規定

第 346(1)條現予修訂 —

(a) 廢除"除以中文字書寫的名字之外，均須以"而代以"均須以中文或"；

(b) 在"譯本"之前加入"中文或英文"。".

Clause 21

That clause 21 be amended, by adding the following as the Chinese text of the clause —

"21. 私人公司成爲公眾公司時須交付處長
的代替招股章程陳述書的格式
及其內須列載的報告

附表 2 第 I 部現予修訂，廢除"英文譯本，或一份合約內凡外文部分均備有英文譯本的該合約的副本（視屬何情況而定）可予查閱的時間及地點，而以上的英文"而代以"中文或英文譯本，或一份合約內凡外文部分均備有中文或英文譯本的該合約的副本(視屬何情況而定)可予查閱的時間及地點，而以上的"。".

Clause 22

That clause 22 be amended, by adding the following as the Chinese text of the clause —

"22. **公司不發出招股章程或不就所發出的招股章程作出分配時須由公司交付處長的代替招股章程陳述書的格式及其內須列載的報告**

附表 4 第 I 部現予修訂，廢除"英文譯本，或一份合約內凡外文部分均備有英文譯本的該合約的副本（視屬何情況而定）可予查閱的時間及地點，而以上的英文"而代以"中文或英文譯本，或一份合約內凡外文部分均備有中文或英文譯本的該合約的副本(視屬何情況而定)可予查閱的時間及地點，而以上的"。".

Clause 23

That clause 23 be amended, by adding the following as the Chinese text of the clause —

"23. 公司周年申報表的內容及格式

附表 5 現予修訂 —

(a) 在第 I 部第 4 段及第 IA 部第 7 段中 —

(i) 在"列表 —"之前加入"中文或英文"；

(ii) 在(a)節中，廢除"描述；"之後所有字句；

(iii) 在(b)節中，廢除"地址"之後所有字句而代以分號；

(b) 在第 II 部中 —

(i) 在第 4 及 5 段中，廢除"（如成員是華人，而成員登記冊內又載有其中文姓名，則須包括其中文姓名）"；

(ii) 在標題"帳目的核證副本"之下，廢除"並非以英文擬備，該資產負債表、文件或報告須有英文譯本，附連於該資產負債表，而該英文"而代以"既非以中文亦非以英文擬備，該資產負債表、文件或報告須有中文或英文譯本，附連於該資產債表，而該"；

(iii) 在附註 3 及 8 中，廢除第二句句子；

(iv) 在附註 12 及 13 中，廢除“，如董事或秘書是華人，而董事登記冊或秘書登記冊（視屬何情況而定）內又載有其中文名字及姓氏，則（參照《公司條例》第 158 條）須同時列載其中文名字及姓氏”；

(c) 在第 IIA 部中 —

(i) 在第 6 及 7 段中，廢除“（如成員是華人，而成員登記冊內又載有其中文姓名，則須包括其中文姓名）”；

(ii) 在附註 3 及 8 中，廢除第二句句子；

(iii) 在附註 12 及 13 中，廢除“，如董事或秘書是華人，而董事登記冊或秘書登記冊（視屬何情況而定）內又載有其中文名字及姓氏，則（參照《公司條例》第 158 條）須同時列載其中文名字及姓氏”；

(d) 在第 III 部中 —

(i) 在標題“帳目的核證副本”之下，廢除“並非以英文擬備，該資產負債表、文件或報告須有英文譯本，附連於該資產負債表，而該英文”而代以“既非以中文亦非以英文擬備，該資產負債表、文件或報告須有中文或英文譯本，附連於該資產債表，而該”；

(ii) 在附註 5 及 6 中，廢除“，如董事是華人，而董事登記冊內又載有其中文名字及姓氏，則（參照《公司條例》第 158 條）須同時列載其中文名字及姓氏”。”.

Question on the amendments proposed, put and agreed to.

Question on clauses 1 to 23, as amended, proposed, put and agreed to.

New clause 13A Representation of companies at meetings of other companies and of creditors

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

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that the new clause 13A as set out in the paper circulated to Members be read the Second time.

The new clause amends the short title of Chapter 420 appearing in the Chinese text of the Companies Ordinance. The amendment is necessary because the short title was recently amended in the English text of the Companies Ordinance following passage of the Securities (Clearing Houses) (Amendment) Ordinance 1995.

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 FINANCIAL SERVICES: Mr Chairman, I move that the new clause 13A be added to the Bill.

Proposed addition

New clause 13A

That the Bill be amended, by adding —

(a) by adding -

"13A. Representation of companies at meetings of other companies and of creditors

Section 115(1A) is amended by repealing "《證券（結算所）條例》" and substituting "《證券及期貨（結算所）條例》.".

(b) by adding the following as the Chinese text of clause 13A -

"13A. 代表公司出席其他公司的會議或債權人會議

第 115(1A)條現予修訂，廢除"《證券（結算所）條例》"而代以"《證券及期貨（結算所）條例》"。".

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

Long title

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

The amendment is to add the Chinese text of the long title and enactment formula to the Bill.

Mr Chairman, I beg to move.

Proposed amendment

Long title and enactment formula

That long title and enactment formula be amended, by adding the following as the Chinese text of the long title and enactment formula —

"**本條例草案**

旨在

修訂"公司條例》。

由香港總督參照立法局意見並得該局同意而制定。".

Question on the amendment proposed, put and agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

COMPANIES (AMENDMENT) BILL 1995

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

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

Bill read the Third time and passed.

Second Reading of Bill

COMPANIES (AMENDMENT) (NO. 2) 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.

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

Committee Stage of Bill

Council went into Committee.

COMPANIES (AMENDMENT) (NO. 2) BILL 1995

Clauses 1 to 9

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

This technical amendment is to introduce a Chinese text of all of the nine clauses in the Bill. Following the gazettal of the authentic Chinese text of the Companies Ordinance on 14 July 1995, it is now also necessary to provide an authentic Chinese text for the present Bill.

Clause 6 is also amended by deleting certain superfluous words from the English text of the Bill.

Mr Chairman, I should like to thank Members for their consideration of the Bill and for their support.

Mr Chairman, I beg to move.

Proposed amendments

Clause 1

That clause 1 be amended, by adding the following as the Chinese text of the clause —

"1. 簡稱及生效日期

(1) 本條例可引稱爲《1995 年公司（修訂）（第 2 號）條例》。

(2) 本條例自財經事務司以憲報公告指定的日期起實施，而財經事務司可爲不同條文指定不同的實施日期。".

Clause 2

That clause 2 be amended, by adding the following as the Chinese text of the clause —

"2. **與任免核數師有關的補充條文**

《公司條例》（第 32 章）第 132 條現予修訂，加入 —

"(7) 凡擬將屬《專業會計師條例》（第 50 章）所指的執業公司（在本部中以後稱爲"執業公司"）的核數師以第(1)(d)款描述的方式免任，則第(6)款所描述的出席及陳詞的權利，可由該核數師以書面授權作作爲其代表的個人在有關大會上行使。"。".

Clause 3

That clause 3 be amended, by adding the following as the Chinese text of the clause —

"3. **喪失獲委任爲核數師的資格**

第 140 條現予修訂 —

(a) 在第(2)款人 —

(i) 廢除(c)段；

(ii) 在(d)段中，廢除“、(b)或(c)”而代以“或(b)”；

(b) 廢除第(5)款。”.

Clause 4

That clause 4 be amended, by adding the following as the Chinese text of the clause —

“4. **核數師的辭職**

第 140A 條現予修訂，廢除第(2)款而代以 —

“(2) 核數師的辭職通知書除非符合以下規定，否則無效 —

(a) 該通知書載有 —

(i) 一項陳述，意思是表示其本人認爲並無任何與其辭職有關的情況是應當通知公司的成員或債權人的；或

(ii) 一項關於前述任何此等情況的陳述；及

(b) 該通知書由以下人士簽署 —

(i) 就屬執業公司的核數師而言，該執業公司的董事；

(ii) 就屬合夥的核數師而言，該合夥的合夥人；

(iii) 就屬個人的核數師而言，該個人。” 。”.

Clause 5

That clause 5 be amended, by adding the following as the Chinese text of the clause —

“5. **辭職核數師請求公司召開會議的權利等**

第 140B 條現予修訂，加入 —

“(6) 凡已辭職的核數師屬執業公司，第(5)款所描述的出席及陳詞的權利，可由該核數師以書面授權作爲其代表的個人在有關大會上行使。” 。”.

Clause 6

That clause 6 be amended —

(a) by deleting "the Professional Accountants Ordinance (Cap. 50)".

(b) by adding the following as the Chinese text of the clause -

"6. **核數師報告書，核數師取用簿冊的權利，出席會議並在會議上陳詞的權利**

第 141 條現予修訂，加入 —

"(8) 凡核數師屬執業公司，則第(7)款所描述的出席及陳詞的權利，可由該核數師以書面授權作爲其代表的個人在有關大會上行使。" 。".

Clause 7

That clause 7 be amended, by adding the following as the Chinese text of the clause —

"7. **浮動押記的效力**

第 267 條現予修訂 —

(a) 廢除"就公司的業務或財產設定的一項"而代以"一項在設定時是就公司的業務或財產設定的"；

(b) 廢除第二及三次出現的"浮動" 。".

Clause 8

That clause 8 be amended, by adding the following as the Chinese text of the clause —

"8. **本條例所罪行的懲罰**

附表 12 現予修訂，廢除所載關於第 140(5)條的事項。".

Clause 9

That clause 9 be amended, by adding the following as the Chinese text of the clause —

"9. **廢除**

《公司（重整紀錄）條例》（第 249 章）現予廢除。".

Question on the amendments proposed, put and agreed to.

Question on clauses 1 to 9, as amended, proposed, put and agreed to.

Long title

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that the long title be amended as set out in the paper circulated to Members. The amendment is to add the Chinese text to the long title and enactment formula to the Bill.

Mr Chairman, I beg to move.

Proposed amendment

Long title and enactment formula

That long title and enactment formula be amended, by adding the following as the Chinese text of the long title and enactment formula —

"本條例草案

旨在

修訂《公司條例》及廢除《公司（重整紀錄）條例》。

由香港總督參照立法局意見並得該局同意而制定。".

Question on the amendment proposed, put and agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

COMPANIES (AMENDMENT) (NO. 2) BILL 1995

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

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

Bill read the Third time and passed.

Second Reading of Bill

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 5 July 1995

Question on Second Reading proposed.

MR PETER WONG: Mr President, this incorporation exercise had its inception in the Carrian Case of 1984. In any such case, the auditors would be perceived as the ones with the deep pockets and anyone will find it worthwhile to have a go. In the Bank of Credit and Commerce fiasco, the auditors were again the main targets.

A small working party chaired by me was set up by the Hong Kong Society of Accountants to study the problem of professional liability in depth. With the help of an eminent Queen's Counsel, we prepared a very thorough discussion paper analysing whether we accountants should carry on our profession with unlimited liability, allowing almost anyone with a grievance to sue us for negligence. We had many possible solutions other other incorporation. These included tort reform, the exclusion of joint liability, capping of the limit of liability for any one assignment and negotiation by contract with clients to limit the liability. Each had particular merits, in particular tort reform, but involved very fundamental changes in our thinking of how business will be done and how the businessman or investor can rely on the professional accountant. They will all take time to consider fully. We went for the option that was the easiest to understand and most likely to gain support — the incorporation option. It was then favourably considered by the Standing Committee on Company Law Reform and found an enthusiastic supporter in Mr David NENDICK, the then Secretary for Financial Services.

Mr President, a human's gestation period is nine months, an elephant needs two years, and this incorporation animal took a full nine years. In drafting the legislation, we encountered many problems including making the existing provisions of the Companies Ordinance fit the letter and spirit of a limited company for a sole practitioner.

We have not forgotten that we accountants have to treat the public in a fair way. What we have proposed should give more protection to the users of our services. Partner's capital and loans can disappear in a flash, but approved professional indemnity insurance policies taken out by our members against the Society's appointed Insurer ensures that the stipulated minimum will always be there to meet claims. For the smallest firms, we stipulate a minimum figure of HK$5 million per claim for PII coverage. This is in contrast to £ 50,000 (HK$600,000) in the United Kingdom and A$250,000 (HK$1.25 million) in Australia. There is a graduated scale for larger firms as they tend to deal with larger clients and hence potentially larger risks.

Furthermore, the individual who is responsible for the audit engagement and signs the audit report will be clearly identifiable in the audit report by his practicising certificate number. He cannot escape liability for his own personal negligence. His partner, who has had no part to play in the audit work, may lose his entire investment in his professional firm, but his personal wealth will not be at risk.

Mr President, I firmly believe that by passing this amendment Bill, we will help redress the balance of liability between the professional accountant and users of his services. The Hong Kong Society of Accountants will annually review the level of claims, settlements and awards with the Insurer through the broker to ensure that the principle remains sound, the methodology is correct and that grievances are properly addressed. Of course, this society would keep the Administration fully in the picture on the status of the Committee. Members have our undertaking that the accountancy profession shall remain proactive in self-regulation for the benefit of everyone.

The Professional Accountants (Amendment) Bill 1995 and the Companies (Amendment) (No. 2) Bill 1995 which have already passed mark the fulfilment of most of the election pledges I made when running for the Accountancy Functional Constituency seat in 1988. I would urge that Members support this Bill.

MR ERIC LI: Mr President, I declare my interest as a practising professional accountant and a Council member of the Hong Kong Society of Accountants.

Accountants in Hong Kong have been waiting for this day since 1984. In the past 11 years, we had worked exceedingly hard to earn this piece of legislation. In the early days of negotiation with the Government, it was suggested to us that we must demonstrate publicly our determination to self-regulate

as a pre-condition that the Government would introduce this Bill. Since then, the Hong Kong Society of Accountants instituted a comprehensive system of practice review with the endorsement of this Council; offered one of the highest level of compulsory professional indemnities insurance in town and had established a solid track record in working with the Government in many areas of prudential regulation and law enforcements. Accountants are self-motivated and take great pride in our high professionalism. The passage of this Bill will add further incentive for us to self-regulate with vigour and integrity.

There is obviously a difference between the police and the villain. There is obviously a difference between the guilty and the innocent. There is obviously a difference between auditing and acting as a financial guarantor and an insurance underwriter. However, under the existing antiquated legislation, all these distinctions are blurred in the case of professional accountants providing audit services. When a company suddenly fails, it is tempting for creditors to focus on the deep pockets of the accountants, on fairness and rather than reasons.

It is a plain fact that "dishonest directors" and "fraudsters" are responsible for sudden failures of companies. But when the "villains" are long gone, it is often the poor accountants who had helped shareholders and creditors to "police" the accounts that got sued. It may even be right for the "particular accountant responsible" for the job to be held accountable for possible professional negligence, but without fair protection of limited liability for his/her partners, "innocent accountants" in Hong Kong are also liable to be sued to the last shirt on their backs. In short, they need not have "known" anything, they need not have "done" anything, they could not possibly be held "guilty" of anything but they could be bankrupted simply because creditors expect them to be financial granantors or insurance underwriters when things got rough on themselves.

This inequitable predicament has resulted in a number of eye-catching litigations overseas. In the wake of hundreds of perfectly respectable accounts being placed under bankruptcy orders and thousands of job loss, there were rapid changes in legislation in many developed countries like the United States, United Kingdom, Canada and Australia and so on, during the 1980s. In Hong Kong, we have been very slow on our feet. Because of the delay in the introduction of this Bill, it has already toll on the accountancy profession to some extent; the tolls were in the terms of losing interests of many young and bright accountants professionally. Professional insurance had been hard to find for quite some time. We therefore welcome this long overdue Bill. It simply puts responsibility to the person where the responsibility is due, leaving other innocent parties fairly protected.

I am particularly grateful to the Administration for agreeing to proceed with such great speed the legislative arrangements once details of the draft bill had been agreed. I am also thankful to the Honourable Members who have actually studied diligently this Bill and the substantial amount of information

provided to them by the Hong Kong Society of Accountants. Despite the numerous Bills Committees at hand, many Honourable Members have taken time to ask numerous pertinent questions and information from the Hong Kong Society of Accountants through me. The Society on its part had also arranged a number of press briefings to explain the contents of the Bill to the public.

The high transparency in the way this Bill was handled by the society has attracted a fair amount of press reporting, but to date we received absolutely no adverse comments. I can therefore confidently commend this Bill to Honourable Members and ask for their support.

MR MARVIN CHEUNG: Mr President, I wish to declare an interest as a practising accountant, and would therefore have a direct interest in the Bill under discussion.

I support all the principles behind this Bill. I would commend this Bill to Members. 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).

Committee Stage of Bill

Council went into Committee.

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 1995

Clauses 1 to 23 were agreed to.

Council then resumed.

Third Reading of Bill

THE ATTORNEY GENERAL reported that the

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BILL 1995

had passed through Committee without amendment. He moved the Third Reading of the Bill.

MR PETER WONG: Mr President, I was wondering whether the Secretary for Financial Services may be asked to speak on behalf of the Government whether they approve this Bill.

PRESIDENT: I did invite speeches and no one from the right bench caught my eye. *(Laughter)*

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

Bill read the Third time and passed.

Second Reading of Bill

DISABILITY DISCRIMINATION BILL

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

Question on Second Reading proposed.

DR LEONG CHE-HUNG: Mr President, further to the marathon debate on 28 June 1995 on the Sex Discrimination Bill, I rise today to speak on the Disability Discrimination Bill. I do hope that we will not have such a marathon debate today. Later in this sitting, I shall also be speaking on three other Equal Opportunities Bills covering seven other areas of discrimination.

Mr President, at the House Committee meeting on 5 May 1995, it was agreed that this Bill should be assigned to the same Bills Committee studying the Equal Opportunities Bill and Sex Discrimination Bill at that time. The membership of the Bills Committee was extended to those Members who were interested only in this Bill. The reconstituted Bills Committee, of which I was re-elected Chairman, held five meetings, including four with the Administration and one with deputations.

Having the experience of scrutiny of the Sex Discrimination Bill and Equal Opportunities Bill, the Bills Committee studied the Disability Discrimination Bill much more quickly and efficiently. Let me state very clearly that although Members of the Bills Committee have been studying these Bills and actually one Bill has been passed, we are together in one issue, and that is, we have all agreed that this Bill should be scrutinized as a Bill of its own right.

Mr President, this Bill before us today covers the grounds of discrimination on disability and harassment. Whilst the definition of "disability" is obvious to all and defined in the Bill, harassment is defined as "unwelcome conduct" that could be anticipated, would offend, humiliate or intimidate a person. Therefore threats, abuses, insults or taunts on the ground of disability will constitute unlawful harassment. Mr President, this Bill also covers a wide scope of discrimination, including the field of employment, education, provision of pension, goods, services and facilities and other miscellaneous areas.

This Bill also provides the establishment of a statutory body, the Equal Opportunities Commission — the same Commission that was established in the Sex Discrimination Ordinance to take on a wider effect.

Inadequate areas requiring improvement

Mr President, during the scrutiny of the Bill, a few areas were found to be inadequate or that there were grounds for improvement. Some of these areas are:

(1) The Chinese title is not appropriate.

(2) It does not give effect, when enacted, to relevant international obligations.

(3) The grace period of five years, which will be amended to three years, still does not provide early enough protection for the disabled.

(4) The Bill as presently drafted would make it unlawful for an employer to single out a job applicant with a disability by asking for information where others would not be asked for. The employer would not be incriminated however when all applicants were asked for the same information. This still will not do, for what is the purpose of requesting for a specific information such as a blood test if it is not for the sake of employment discrimination?

(5) The power of the Equal Opportunities Commission

The power of the Equal Opportunities Commission was found not to be wide enough. The current Bill does not empower the Equal Opportunities Commission to bring proceedings in its own name. Similarly the Equal Opportunities Commission is not empowered to carry out an investigation on named persons or organizations for any purpose connected with its functions.

(6) The current Bill does not empower the court to order appropriate remedy, especially in the region of reinstatement. We feel that this is vital to the disabled when jobs available to them are of such scarcity.

(7) No timetable was forthcoming to ensure that our public transport system will provide facilities in total to disabled persons.

There are of course many more other issues.

Mr President, during our discussion, it was brought to our attention, too, that the definition of "disability", or rather, the interpretation of "disability" in (c) and (d) which specify the word "organisms" causing or capable of causing disease or illnesses, was not too clear in the sense that whether the word "organisms" would also include AIDS viruses. After detailed consultation through the Government with their expert, this particular point has been cleared. And I would like to take this opportunity to inform people who suffer from AIDS, or are HIV carriers, not to be worried about this particular situation.

Three sets of amendments

Mr President, in essence there will thus be three sets of amendments.

Firstly, there will be a set of amendments agreed both by the Administration and the Bills Committee and will be moved by the Administration.

Secondly, there will be a set of amendments agreed by Members present in the Bills Committee which with regret have not been supported by the Administration. I will therefore be moving these amendments for and on behalf of the Bills Committee. But let me state categorically that many of these are very similar to the amendments moved on the Sex Discrimination Bill which unfortunately have been defeated. Yet, Members of the Bills Committee feel so strongly that some of these amendments are so pivotal to the bringing of anti-discrimination for the disabled to roost and for the promotion of genuine equal opportunities to those members of our society who happen to be "children of a lesser god", that it would be irresponsible to surrender without going through yet another decent fight.

I appeal to the Government, therefore, to give it another consideration. I appeal to frequent absentee Members of the Bills Committee to support what the Bills Committee has agreed. I appeal to other Members of this Council to vote with their heart and conscience, and not to follow blindly on the Government's demand.

Many Honourable Members of this Council, Mr President, have on many occasions shown their support to the disabled before the glary eyes of the television cameras, for example. They have been shaking hands and making heart-felt speeches. Let them today show their real concern by supporting the amendments that will be moved to make it a better Bill.

The Honourable Fred LI will be moving a third set of amendments. I have no doubt frequent attending Members of the Bills Committee will respect his move and give him all the possible support.

Government's knee-jerk support of damages ceiling

Mr President, in the course of deliberation by the Bills Committee and in reflecting the results of the Committee stage amendment of the Sex Discrimination Bill, which was passed in June, doubts were expressed unanimously on the Government's support to the amendment proposed by the Honourable Mrs Peggy LAM putting a ceiling of $150,000 on damages to a claimant. So I stand here to express the disappointment and strong objection of myself and that of the Bills Committee to the Administration's knee-jerk support of this amendment which involve a significant policy issue that had never been discussed at the Bills Committee meetings.

Mr President, there were times, as I understand, in the deliberation of the Bill before us today that the Administration was intending to move a similar amendment itself, that is, putting a ceiling on damages to a claimant. It would of course be disastrous and most inappropriate in relation to disability discrimination. I am glad that the Health and Welfare Branch in its ultimate wisdom decided not to go ahead.

Finally, Mr President, we have come a long way thus far in our quest for equal opportunities for the disabled. Yet, no law alone will bring to fruition with changing people's culture. I appeal to the Government to establish the Equal Opportunities Commission without delay and to empower it quickly to promote proper education. I appeal to the Government to take a lead in accommodating our many very able disabled to show that it cares and they can.

May I close, Mr President, by thanking the Health and Welfare Branch, in particular, Ms Ann SHEPHERD for being so thorough with the subject, for being so compromising and compliant with the requests of the Bills Committee. My thanks are also due to the very industrious and supporting secretariat and Legal Service Division of this Secretariat, and most of all the public who have through either their deputations or their written submissions to us, have given Bills Committee Members a much deeper insight of the problem of inequality to the disabled. Mr President, the Honourable Ms Anna WU has my undented respect. She will no doubt go down in history as the person who have brought anti-discrimination in Hong Kong to fruition.

I recommend the Bill to Members.

MS ANNA WU: Mr President, nothing saddened me more than the attacks on the Laguna City rehabilitation centre and the Downs Syndrome Resource Centre in Tung Tau Estate in 1993. I wrote to the Secretary for Health and Welfare in 1993 enquiring if the Government would wish to legislate against disability discrimination and offering my co-operation and support should the Government wish to proceed. It was unfortunate then that the Government was not able to provide me with any assurance of legislation, whether in the area of disability or otherwise. It was against this background that I went ahead with the preparation of my Equal Opportunities Bill which covered the area of disability discrimination.

My Bill was introduced in July last year. Despite the introduction of my own Bill, I was happy to remove the disability discrimination provisions from that Bill, in favour of the Government's. I welcome government initiative in this area. I am also relieved that it is a government initiative before you today and not a Private Member's Bill set to be scuttled by the Government at the expense of the victims.

You will well understand why I am saying this if we look back at the United Kingdom experience relating to a Private Member's Bill to protect the disabled. While there is a Government Bill on disability being studied in United Kingdom today, this has not yet been enacted into law. This government Bill was only introduced in reaction to the public outcry after the United Kingdom Government went to ridiculous lengths to scuttle a Private Member's Bill on the same subject.

The Private Member's Bill began with support from a majority of MPs: 235 MPs were in favour and none voted against at the end of its Second Reading debate. In Committee stage, the Minister for Disabled People, Mr Nicholas SCOTT, did not vote against a single clause or make any amendments. It sounded too good to be true. When it returned for the Report Stage, however, Tory backbenchers submitted 80 new amendments, a ploy clearly designed to kill that Bill. That Bill's sponsor, to allow the Bill to proceed to the Lords, accepted all of the new amendments, but the Minister, Mr Nicholas SCOTT, went on to speak for one hour and 15 minutes to make sure that the time allotted for the Bill would run out. Out of time, the Bill was not able to proceed further.

While Mr SCOTT initially denied having anything to do with wrecking amendments, he was later forced to apologize for misleading the House when it emerged that the amendments, though made in the name of several backbencher, had in fact been drafted under his instructions. Government views were withheld throughout lengthy consideration in Committee and then released in bulk for tactical effect when it was no longer possible to deal with them.

I see a disturbing resemblance between the incident in the United Kingdom and this Administration's treatment of my own Private Member's Bills and I am glad we do not have to see a repeat of these devious manoeuvres with regard to the disability discrimination as covered by this Bill. The Branch on this occasion was able to formulate the Disability Discrimination Bill within a relatively short period of time, after the introduction of my own Bill. Indeed, it went about preparing for this Bill earnestly and conducted the public consultation efficiently. I am particularly pleased to find the Branch looking into the Australian model. A study trip to Australia on how the law works in Australia was also made by a representative of the Branch. The Branch worked conscientiously with the Bills Committee. While we still have our differences, we were able to narrow the gap considerably. It showed that, with commonalty of purpose, the Government and the Bills Committee could co-operate effectively.

It was particularly encouraging, for instance, for the Branch to accept the proposal to restrict requests for unnecessary medical information, such as HIV status, relating to a person. It is unfortunate that the Branch, despite the latitude it has exhibited was, nevertheless, bound by policy constraints set by the preceding Sex Discrimination Bill, and thus it was not able to accept several additional proposals from the Bills Committee.

I wish to make a strong plea that, when considering these proposals, Members should not feel bound by the position taken under the Sex Discrimination Ordinance. This is a different Bill. We are dealing with victims who include the mentally impaired and the mentally ill who do not have the skills to help themselves. The best way we can help them is to provide a proactive Commission and reinstatement as a discretionary remedy. It is difficult enough for the disabled person to secure a job. When a disabled person is deprived of a job for the wrong reason it makes it that much worse. I ask you to consider their plight. Reinstatement is the only remedy that will restore some degree of dignity to them.

Members, Mr James BRADY, the former aide to Ronald Reagan, disabled due to a gunshot wound and now wheelchair-bound, once related his own experience which shows how marginalized the disabled have become. He was to attend an interview with a newspaper. He could not find a lift accessible to wheelchairs but that building did have lifts for newspapers to be transported in bulk to the ground level every morning. He was eventually shown the cargo lift. Obviously he did not like the idea of being treated as cargo.

Members, I urge you to support the Second Reading of this Bill. Finally, I wish to congratulate the Branch for having the courage to state clearly that this Bill was proposed to meet the undertaking to legislate against discrimination made by the Government when the Bill of Rights was enacted in 1991.

Thank you, Mr President.

DR CONRAD LAM (in Cantonese): Mr Chairman, the Bills Committee for the Disability Discrimination Bill, in the course of studying the Bill, met with a lot of people and groups which have as their concern the welfare of those who have AIDS, and listened to their views. The Health and Welfare Branch subsequently made some amendments which included requests by employers for information from job applicants. The Advisory Council on AIDS held a meeting last Monday, which thought that these amendments could help alleviate the worries of the above-mentioned people and groups, and could also specifically embody the spirit of the Bill. The Advisory Council on AIDS therefore authorizes me to praise the hard work of the Health and Welfare Branch, especially Miss SHEPHERD, in this regard. I would also like to take this opportunity to thank the Honourable Ms Anna WU for providing the agreement.

Mr Chairman, if passed, this Bill will greatly help remove the discrimination which the AIDS patients and carriers have been subject to. I am pleased that this Bill can be timely passed by this Council in this legislative year.

With these remarks, I support the Second Reading of this Bill.

MR FREDERICK FUNG (in Cantonese): Mr Chairman, for the past 10 years or so, the disabled has been subject to the discriminative treatment of the society. When they are at work, or in the provision of services and facilities, education and even access to public and private buildings, the disabled have been treated coldly, and very often they have to swallow all these silently. At the end of 1992, residents of the Laguna City objected to the setting up of a Mental Rehabilitation Day Activity Centre there; and in early 1993, residents of the Tung Tau Estate staged protests against the establishment of a Downs Syndrome Resource Centre and Home for the Mentally Disabled within the Estate. All these incidents show that the disabled are being treated unequally. Today, after much long wait, an anti-discrimination law is finally introduced, with the purpose to make unlawful any act that is discriminatory against the disabled. Of course, the making of the legislation is something worthy of celebration for the 200 000 something disabled in Hong Kong, because when being discriminated, they can now have a legal channel to seek redress. On the other hand, together with the introduction of this Bill, the Administration has also prepared the White Paper on Rehabilitation. It seems that this is to be the way to put into practice any protection for the disabled. However, whether the Disability Discrimination Bill and the White Paper can provide adequate protection for the disabled is still open to question, and the effects can only be seen after these are put into operation.

I would like to talk first about the Disability Discrimination Bill. I welcome the Administration to enact the Bill to protect the disabled. However, what the disabled need is not just legal protection, but, of equal importance, is the provision of convenient access to various places, ways and opportunities for social involvement and easy access to public transport. The Disability Discrimination Bill has specifically required that plans for buildings will not be

approved unless the authorities concerned have accepted that appropriate access has been provided for the disabled in the new buildings, or in those existing buildings that are to be redeveloped or to carry out addition. However, the Bill has not made specific provision in respect of the time within which such facilities or convenience should be made available to the disabled. For example, the Administration should consider requiring the bus companies to, say within 10 years, provide sufficient access for disabled commuters. The Administration sometimes argue that the Bill is to deal with the problem of discrimination, instead of providing for specific facilities, but I would like to ask whether it is the Administration's intention to rely on the White Paper to provide assistance to the disabled. If it is so, I can say for sure that the White Paper in fact cannot provide sufficient assistance to enable the disabled to be involved with the society, neither can it accord them the appropriate and necessary protection.

Put simply, the White Paper has not made it a requirement that all new public access and facilities must be so designed that they are obstacle free, neither is there a time within which gradual improvement must be made to existing access and facilities. As to the rehabilitation policy, work and expected objective for the coming 10 years, the White Paper does not provide any clear and specific guideline. Without any specific requirement and facilities, the disabled, it is afraid, will have to wait indefinitely for any real improvement in their living.

I think that the Legislative Council, while studying this Bill, still have a lot of work ahead. Firstly I hope that the Administration can formally make it a reality for the protection of the disabled by making the various transport agencies and public and private companies to provide convenient access during a certain interim period, instead of relying on the so-called agreement or making oral promises. Secondly, we should learn from the past protests that part of the public have serious misunderstanding of the disabled and show no understanding and respect for them. Such misunderstanding of course cannot be corrected all at once. Mr Chairman, I strongly request that after the passage of the Bill, the Administration must launch a public education program to make the citizens have a better understanding of the situation of the disabled. It is already a misfortune for the disabled not to be able to function properly, if the society still permits unequal treatment in respect of this group, or they are subject to the taunts of the public, life will be very unbearable for them. I believe that such an experience is not easy to be understood by the able-bodied, but it is not the sort of attitude a society of the healthy should adopt.

With these remarks, I support this Bill and the amendments proposed by Dr the Honourable LEONG Che-hung.

MR FRED LI (in Cantonese): Mr Chairman, my speech will be very brief because I shall propose an amendment in respect of clause 11 of the Disability Discrimination Bill, which is about employment discrimination. Though the Administration and I hold different views, I hope that my colleagues here will

support the disabled, who in Chinese are referred to as the handicapped. I hope that you can all see where their needs lie. My proposed amendment has been made after having heard their views.

Just now the Honourable Ms Anna WU said that she was saddened by the incidents in the Tung Tau Estate and the Laguna City in 1993. I am the chairman of the Welfare Service Panel of the Legislative Council, and have personally inspected the two places. I find that the residents and property owners there all treat the handicapped through a very different perspective. The group to be at the Tung Tau Estate is the seriously mentally disabled, and that at the Laguna City are those who have mentally recovered. I myself should be the one who is the most touched at heart because I live at the Laguna City and I still am. Though it is rumoured that I have moved, I in fact still live there.

What touches me most is the sight of those billboards, which have recently been replaced by another batch, in the vicinity of the rehabilitation centre. Education after all is education. I hope that with the passage of this Bill today, this should be made unlawful in the chapter on harassment. They aim their attack on the those who have recovered from their mental illness, saying that they are time bombs and will endanger other's life. Such discriminatory slogans are still around in the Laguna City. I hope, and I believe, that this Bill will be passed today. I think other than education, we have to take certain action by instituting proceedings to eliminate such discriminatory perspective.

Some politicians, mindful of raking in a few more votes, make use of such incidents. I myself of course am not one of them. I in fact lost votes in the incident, it is obvious. In the last Urban Council election, I got fewer votes at the Laguna City. This was obtained from a survey and I was a bit puzzled; I believe this could be the only reason. In another middle-class housing estate, I got pretty high votes, though the two estates are pretty close to each other. I feel very sad, not because of the votes, but for the new billboards which the owners put on. We still see that there are discriminatory remarks against the ex-mental patients.

Just now Ms Anna WU said that she was saddened. From 1993 to 1995, such incidents have not gone away. I think only through prosecution and legal action can people be stopped from taking such discriminatory action.

MISS EMILY LAU (in Cantonese): Mr Chairman, I rise to support the Disability Discrimination Bill and the amendments to be proposed by Dr the Honourable LEONG Che-hung and the Honourable Fred LI later on.

Last month when the Sex Discrimination Bill was passed by the Legislative Council, regrettably most of the amendments proposed by Dr LEONG Che-hung on behalf of the Bills Committee were voted down, making that Bill provide for a lot of unnecessary exemption, thus incapable of performing the functions it set out to perform. This time Dr LEONG Che-hung

tries once again, proposing a dozen or so amendments on behalf of the Bills Committee, in the hope that the Bill can be made better and the disabled can have genuine protection. The Administration has accepted some of the amendments of the Bills Committee, and these amendments also have my support.

Because the Disability Discrimination Bill and the Sex Discrimination Bill are very similar; as many of the amendments proposed this time are the same as those proposed for the Sex Discrimination Bill, I therefore would only comment on a few points. The Equal Opportunities Commission established under the Sex Discrimination Ordinance shall also take on the responsibility of overseeing the situations where the disabled are being discriminated. The Commission actually is a mechanism whereby the public are helped to resolve any discriminatory problem they may encounter. The Commission though has the power to institute investigation and help settle disputes, is not a court in its own right. Any case of inequality will have to be dealt with by a court. If the Commission cannot help the citizens when a case is in court, the legal protection for the general public is very limited. Instituting any proceeding requires a large amount of money, so even if being discriminated, the general public may not have the resources to invoke the law to get back what they deserve. I therefore support Dr LEONG Che-hung's amendment in that the Commission should be empowered to institute proceedings in its own name, intervene in any proceedings and start any proceedings on behalf of the plaintiff. This amendment was discussed when the Sex Discrimination Bill was studied but was voted down in the end. I hope that the Administration and the Members can understand that such a power is very important for the protection of the disabled, especially those, being physically or psychologically impaired, who cannot institute any proceedings or who cannot withstand the pressure of the whole hearing and have to withdraw midway. We thus hope that their right in this regard should be protected, or else to the disabled, this piece of legislation is nothing more than the sheet of paper on which it is printed.

I agree that to eradicate any discrimination in the society, education is a very important factor. That is why it puzzles me even more when the Administration will vote against the amendment of Dr LEONG Che-hung, who proposes that the Commission should have the obligation to promote the requirements of relevant international conventions. The more materials the citizens are aware of in this regard, the greater it will help to eradicate discrimination. Promoting international conventions is an important segment of education, why has the Administration to vote against it?

Another amendment of Dr LEONG Che-hung is to let the Commission have the right to study if there is the possibility that any law that is being drafted will discriminate against the disabled. This is a very reasonable amendment, I mean Dr LEONG's amendment. If any Legislative Councillors or the Administration unwittingly proposes a Bill that may be discriminatory, the Commission may submit the result of its study to the Councillor concerned and the Administration. Why has the Administration to oppose this?

Another amendment of Dr LEONG Che-hung is to enable a court to order reinstatement once it is adjudged that a discriminatory situation has existed. I believe that in respect of those disabled who are being discriminated against, this is a basic right. I hope that the Administration will not oppose such a basic right.

Finally, I shall also support the amendment to be proposed by Mr Fred LI to remove the five-year exemption for small companies employing less than five employees or that the Admiinistration the period should be reduced to three years. I am discriminating against the small companies which may have its difficulties; in the Bill itself there are already two very important exemptions which enable any business to be exempted when it encounters genuine difficulty. One of the exemptions is unjustifiable hardship which takes into consideration all the financial circumstances and the estimated expenses of the person concerned. The other exemption is genuine occupational qualification which enables an employer to employ one who is not disabled. These two exemptions, I think, are enough. I therefore shall support Mr Fred LI's proposal. I hope that on passing this Bill, the Administration will set up the Equal Opportunities Commission and set down the commencement date as soon as possible.

Finally, Mr Chairman, I have to salute again to the Honourable Ms Anna Wu. I concur with Dr LEONG Che-hung that she has achieved a lot in the work against discrimination. I wish her luck in the three pieces of Private Member's Bill to be introduced tomorrow. I see now that people from different parties are quite happy to throw in their support, I wish Ms WU luck.

Thank you, Mr Chairman.

DR YEUNG SUM (in Cantonese): Mr Chairman, the Disability Discrimination Bill under discussion is closely related to the Health and Welfare Branch, but the Equal Opportunities Bill, the one to be introduced as three by the Honourable Ms Anna WU tomorrow will have close relation with another government department. From the experience we have with these two departments, we find that the Health and Welfare Branch was co-operative with the Bills Committee which was charged with the study of the Disability Discrimination Bill. The officials from the Branch were very receptive to the questions we raised and where practicable made response as fast as they could, they would also explain where they could accept and where they could not. I would like to put on record that the Health and Welfare Branch deserve a mention for its work.

On the other hand, my experience with the Home Affairs Branch was very disappointing. Though we are not discussing the Bill that is to be introduced by Ms Anna WU, I believe that a discussion on both of them will reflect how different the attitude two government departments have adopted in face of these problems or the Bill introduced by Ms Anna WU. In relation to the Equal Opportunities Bill that is to be introduced as three by Ms Anna WU tomorrow, the Home Affairs Branch had not been enthusiastic in attending the meetings,

and did not address our questions right in the face and very often were quite tardy in their response. Basically they were impervious to our views. I would therefore like to put on record my regret in respect of the Branch.

From the newspapers, I have read that the Administration is trying all means to block the Second Reading when Ms Anna WU put forth the three Bills. If it were true, I would feel very sorry. I hope that those Members present, or listening to this debate on the radio or watching it on the television will do their bit to enable the passage of Ms Anna WU's Bill, if not all three, but at least one or two. This is not a matter personal to Ms Anna Wu herself, but one that will show Hong Kong in the international community that it is a society not progressing towards equality. This is something any cosmopolitan society will not accept.

I would also like to put on record my profound respect for Ms Anna WU. With her hard work, she has brought about these history-making legislations; with her constant pushing, the Health and Welfare Branch has taken the bold step to introduce this Disability Discrimination Bill.

Mr Chairman, I have only a few points to make about this Bill. Firstly, the passage of the Sex Discrimination Bill has greatly affected the Disability Discrimination Bill. In the course of our examination of the Bill, the Administration was always mindful that the Sex Discrimination Ordinance had to be taken into consideration before coming back to the Disability Discrimination Bill. However, I would like to stress that the two are separate and distinct, and I hope that the Administration will not mix the two up later.

Secondly, I would like to mention specifically the Equal Opportunities Commission. I hope that the Administration can establish the Commission as soon as possible and its work should not delayed on the grounds that the relevant guidelines have not drawn up yet. I want to point out that if any disabled is being unfairly dismissed, I hope that they can have the right to be reinstated.

Finally, I want to talk about the problem of transport facilities and access. In the course of our examination, the Administration did not want to make it a legal requirement that all accesses and transport facilities should accommodate the needs of the disabled. I understand that no immediate result can be achieved when the Bill is passed into law, but I hope that after the establishment of the Equal Opportunities Commission, by enforcing guidelines and through the communication between the Administration and the public utilities, the transport facilities and other accesses can accord the disabled greater convenience. Of course, only by law itself cannot eradicate all discriminations, the Administration should co-operate by educating the public.

I would like to thank Ms Anna WU, it is only with her hard work that we can have the opportunity to examine this Bill. I would also like to thank the swift response of the Administration. Thank you.

MR LEE CHEUK-YAN (in Cantonese): Mr Chairman, I have been listening carefully to the speech of the Honourable Ms Anna WU. At first I did not quite understand why she talked about a piece of legislative history in the United Kingdom. On listening further, I saw what she meant. In the legislative history of the United Kingdom, the law for the disabled had been a Private Member's Bill which was much battered by the Administration. I believe that something must have touched Ms Anna WU that made her refer to the incident. When she introduced her Private Member's Bill, the Administration had also tried for a number of times to batter it out of existence. Fortunately, in respect of the Bill for the disabled, the Administration has not been so harsh. This Bill should be able to be passed into law smoothly. Of course we hope that Ms Anna WU's Equal Opportunities Bill can be passed intact tomorrow, without being dissected into pieces by the Administration. If all the three Bills could be passed tomorrow, that will be a very comprehensive piece of legislation. I wish her success.

As to the Disability Discrimination Bill, I feel that it is a very important piece of legislation. One great problem with the Hong Kong people is that we are quite "disabled" with our thinking. Sometimes we cannot accept others being different from us, we would feel insecure when we see that others are different from us and try to treat them discriminatively. I hope that this kind of thinking can be changed through legislation, so that the discrimination which the disabled working in the business sector and education have long suffered can be removed and they can truly be assimilated into the society. I hope that with the passage of this Bill, they can truly enjoy equal opportunity.

However, even if the Bill is passed, I still see that there are areas need improvement. What worries me most is the improper treatment in respect of employment. According to a survey done eight years ago on the disabled (no such survey has been done recently, and I am afraid the situation would be even worse), the unemployment rate among the disabled was 49%. With a disabled population of 260 000, the unemployment rate was 49%, I believe the situation today would be even worse. The Bill has provided for one exemption, under which a small enterprise may be exempted from compliance with the Bill, that is about 20% of Hong Kong employers can be exempted. I find that it is too lenient because the proprietors of these enterprises can refuse to employ the disabled on the ground of hardship. This is a loophole they can make use of.

Another important issue is whether a court has the power to order reinstatement. Ms Anna WU, or it should be the Bills Committee, will propose an amendment to provide for the right of reinstatement. I hope that you all can support this amendment. To the disabled, this is a very important right. Some people, especially those from the Education and Manpower Branch, have said that even if they are asked to return to their job, they may not wish to. However, I believe that the situation is different for the disabled, if they cannot be reinstated, they will not have a job. I firmly believe that it is of exceptional importance for a right of reinstatement to be provided in this Bill. I feel that the decision should not be taken by the Education and Manpower Branch, which

will say that review will be carried out next year or the whole relationship between the employer and the employed has to be examined and reviewed. I think that we should take action with this Bill and let the disabled have their right of reinstatement.

There is a point which has not been covered in the Bill but I would like to pose to the Health and Welfare Branch again. We should set up a quota system or provide tax relief, only with these measures can the high unemployment rate of the disabled be alleviated and resolved. It would not be easy to go about with it, but with a quota system, more disabled people will be taken up by the job market.

Transport is another major problem which many bodies had raised when the Bills Committee was studying the Bill. If the transport system does not provide any convenience for the disabled, they cannot go to work. Thus the provision of transport for them is very important.

Yesterday I had the opportunity of meeting with Mr John CHAN and discussed with him about the plans of KMB. He said that a pilot scheme would be launched next year when two single-deck buses would be so adapted to enable easy access for people using wheel-chair. I asked him what about the double-deckers. He said that he was now asking the manufacturer to look into the problem of providing access to people using wheel-chair. After listening to what he said, I find that there is still a long road for the disabled to go before they can use the public transport to commute to work. I asked Mr John CHAN about the service for the blind. He expressed that he had looked into a number of systems and was considering which system to be introduced to Hong Kong. He said that the system used in Taiwan had been studied, but felt that it is not appropriate for Hong Kong. What the Taiwan system does is to provide announcement at every bus-stop, telling the passengers which stop the bus is stopping. I do not know when Hong Kong can do better in this regard.

Provision of access is also another problem covered by the Bill. Without access, the movement of the disabled will be very restricted. Even if the Bill is passed, there is no requirement that the Administration has to redevelop its former facilities. If the Administration does not take the lead, I believe that it is difficult to ask the private sector to do it. I therefore appeal to the Administration not to just ask the buildings to have the right sort of access after the Bill is passed, it at least has to take the lead. Buildings completed before 1984 seldom have provided any access for the disabled, I hope the situation can be improved.

Finally, another area which I found disappointing is that the Bill does not provide for the provision of legal aid to the disabled. If they have to sue under this Ordinance, they still have to pass the means test. If we are to have the same provision as the Bill of Rights, then means test should be waived in respect of legal aid. Thank you, Mr Chairman.

MR WONG WAI-YIN (in Cantonese): Mr Chairman, despite the fact that Hong Kong is such a prosperous city, there are often saddening scenes and incidents around us. Just now many of us have mentioned the incidents at the Tung Tau Estate and the Laguna City, and that incident at the Laguna City apparently has not ended. I sometimes still receive complaints from the people there. I have friends working at the centre there, he says their "wards" will try to avoid walking on the street when they return to the centre, or they will get off their transport as close to the centre as possible. Anyway, they will try not to walk on the streets to avoid being jeered at. I have heard that the residents are trying to annoy these children into making a scene so that the residents can say that these children have affected their living. From the calls I receive, some people said that they are not sure if it is the people inside the centre that have mental problem or it is those residents, making such a fuss, that are mentally deranged. I have heard that City One, Shatin has also refused an application from the mentally retarded to stage an exhibition at the shopping centre there. Earlier, a school principal living in Fairview Park, Yuen Long wrote to a newspaper, opposing the establishment of a special school in Fairview Park. His reason was that for a high-class residential area like this, it is inconceivable to have such a facility in it. Recently I have also heard that the Gold Coast, Tuen Mun refused a visit by the disabled.

Mr Chairman, with these examples, I want to tell my colleagues that Hong Kong is a prosperous city, but irrespective of the background of the people, be they from the public housing estate, or middle-class residential area or high-class living, or be they educated or illiterate, they can be the ones who are involved in any discriminatory incident. It can thus be that the Administration has not done enough to educate the people. No matter how committed we are to strengthen the education of people, I believe that some people still need to have the supervision of the law. The Democratic Party therefore will give its full support to the Disability Discrimination Bill, and to the amendments to be made by Dr the Honourable LEONG Che-hung at the Committee stage later on.

Mr Chairman, a few weeks ago, a group of disabled invited me to a seminar called "Give Me Back My Dignity", at which I listened to a lot of tales of how the disabled were being discriminated. Some disabled even said that not only they themselves, even their parents were being discriminated against. Dr the Honourable YEUNG Sum just now praised the work of the Health and Welfare Branch, but I have a few criticisms about them. In handling such cases, their way of delivery often makes the disabled and their family feel very sad. The Social Welfare Department may have to organize more internal training programs.

At this seminar, many disabled told me that what they needed most is a job which would make them feel confident again. Without a job, they did not want to go out and they would feel that they were really useless. With a job, they had the confidence to feel that they were part of this world, and a contributing one. They only hope to have equal opportunity. You may all know that it is extremely hard for a disabled to find a job, I therefore agree to

the Honourable LEE Cheuk-yan's view that the disabled must be given the right of reinstatement. Given that they already face such great difficulty in finding a job, if they are dismissed on discriminatory grounds, it will be very unfair to them if judgment is awarded for them but they cannot return to their work. Yesterday, the Honourable James TIEN said that the Honourable PENG Chun-hoi is the labour's representative in this Council who really cares for the interests of the worker. Now Mr PENG is not in the Chamber, but I hope that he will support giving the right of reinstatement to the disabled.

Mr Chairman, job and transport are closely related issues. Just now a number of us have said there is not enough rehabus service and routes. Even if more resources are provided to have more rehabus running, there may still not be any improvement in the overall service. We must look to the public transport system for solution. We are happy to know that some public transport operators, like Kowloon Motor Bus which Mr LEE Cheuk-yan has just referred to, are finding ways to improve their service. The Mass Transit Railway has also made written submission to the Bills Committee, expressing that it will install elevators in each station for use by the disabled. I hope that other public transport operators can all follow these examples and take an active part in improving their facilities for the disabled.

Moreover, the Administration should also improve its out-dated facilities. I have seen that many old footbridges were so built that one side is a slope and the other side is a staircase. How can the disabled use these footbridges? The Administration must improve such facilities. A few months ago, the Finance Committee of this Council approved of the design of a footbridge, which I was not very happy about and had reflected this dissatisfaction to the district council. This footbridge at first did not provide any pathway for the disabled. The Administration later remove a pathway, saying that the disabled could use the elevators of the neighbouring shopping centre. I feel that this in fact is ignoring the need of the disabled. The elevators of the shopping centre were very small, with a wheel-chair rolled in, there would not be room for others. Would the disabled therefore be criticized by the others for having the elevator all to himself? I think building a pathway would not cost much, but it would provide great convenience to the disabled. Some of us has already talked on the problem of access of many buildings, which I shall not repeat. Do not think that every year we hold some obstacle-free architectural design award and say that we have done a lot. In fact, I hope that the Administration and the private developers can see that the disabled do need to have their access.

Mr Chairman, so far I have been stressing on the practical work, and the Democratic Party has been advocating that in order to encourage more employers to employ disabled staff, tax relief should be given to those factory owners or employers who are willing to take on more disabled workers. The Democratic Party will keep on fighting for tax relief for these employers, and hope that the Administration can give due consideration to this matter.

Mr Chairman, the disabled are not asking for special care from us, and they do not need special care. I believe what the disabled are asking for is just one thing, and that is being treated equally like others, not special treatment. Thank you, Mr Chairman.

REV FUNG CHI-WOOD (in Cantonese): Mr Chairman, the Democratic Party fully supports the Disability Discrimination Bill. According to a survey carried out several years ago, half of the disabled population were unemployed. This reflected the unequal and dismal treatment they were subject to. The capable group, especially the happy and capable group, in the society should try their best to help this unfortunate group by giving them equal opportunity to develop their ability and contribute to the society. We should show more care to them. However, when we say we have to help, there is a price to pay.

A church once purposely assisted a group of dumb and deaf people to organize a fellowship. It is no easy matter as the way to communicate with the deaf and the dumb is totally different from the way we are accustomed to. To help these people, in fact, the society has a price to pay. Some Members have already said that to help them in the areas of transport and employment, we have to pay a price. We shall propose an amendment later in respect of the three-year grace period for the small enterprises. There is also a price to pay.

We shall also propose some other amendments, which are about giving more power to the Equal Opportunities Commission to help the disabled, and hope that the other Members can support. When the Sex Discrimination Bill was passed, similar amendments about the Equal Opportunities Commission were voted down, but we hope that the Members can consider the amendment more carefully. What we are aiming at is a group of unfortunate people, the assistance and protection we provide them should be more than what we give others. I therefore appeal to all of you to support the amendments proposed by Dr the Honourable LEONG Che-hung on behalf of the Bills Committee.

Mr Chairman, one of the amendments to be made later is to change "disable"（弱能）to "handicap"（殘疾）. I am happy about this change as the latter term is less a term of judgment for this group of people. I hope that after the Bill is passed, there will be some advancements for the term and it will denote a special occurrence instead of being synonymous with "second class". Every time I watch para-olympics on the television, I feel very happy, for the competitors are like other ordinary people, trying to do their best in the competition.

Mr Chairman, we still have a lot of work to do even if the Bill is passed. Education is one such area. Many Members have already said that the society has shown misunderstanding and discrimination of the AIDS and Down's Syndrome. Education in this respect should be continued and strengthened. On the other hand, the Administration has to take the lead to give these people more job opportunitites and allocate more funds for the setting up of special schools

and hostels, and help alleviate the burden of those who suffer from congenital or postnatal disability, and their families.

I would like to thank the Administration for listening to our request by introducing this Disability Discrimination Bill. I also hope that after this Bill is passed, the society can show more care for and give more support to this group of people.

MR JAMES TIEN (in Cantonese): Mr Chairman, the weather is not very good outside today. It is overcast with occasional rain. Many of these ideals are just like one big piece of cloud, but the occasional rain can actually reach every corner of Hong Kong. The examples of Tung Tau Estate and Laguna City given by the Honourable Fred LI show that many citizens from the grassroot level, guided by the cloud-like ideal, all support the Democratic Party, thinking that it was the best, but after the rain had fallen on the Tung Tau Estate, the Laguna City or Kwun Tong, the citizens changed their views and did not give their vote to Mr Fred LI. If the Administration is to move the disabled to Yuen Long, I wonder what the Honourable WONG Wai-yin would think?

Mr Chairman, besides dealing with the relationship between the employers and the employed, this Bill also shows that many people from the grassroot level has some misunderstanding about the Bill. There is always "discrimination" in this world. Racial discrimination is very common in the United States, it is a problem between the blacks and the whites. The United States has already had an anti-discrimination law for a number of years, and the unemployment rate is 6%. But why is the average unemployment rate for black females is 20%, while that for white males is 5%? They are all under the same law. Is this legislation just like one big piece of cloud? Can it deal with any practical problem? Having these legislations does not necessarily mean that all problems can be solved.

The Chamber of Commerce, the Federation of Hong Kong Industries and three other business organisations have drawn up a code for the employers, encouraging them to follow. I have to praise the Honourable Ms Anna WU for her work. Without her efforts, the five business organizations would not have come to such a joint effort. Even if we oppose her today, she certainly has done something useful in respect of anti-discrimination. Besides the disability discrimination we are discussing today, we have also sex discrimination and age discrimination, otherwise, the business sector would say that it would come anyway and take a sluggish attitude. This could be the view held by the business sector, but are employers that bad? Among the six million population in Hong Kong, three million are employed and 82 000 unemployed, so who is discriminating against who?

When the Honourable LEE Cheuk-yan spoke, I noted two figures. I hope that he does not mind my quoting him. He said that of the 260 000 disabled, 49% were unemployed, that means 130 000. If we accept that the disabled are

being discriminated against and there are 130 000 people unemployed, how can that be reckoned with the figure of 82 000 unemployment? He further said that females over 30 years of age were also unemployed, and said that there was age discrimination. The aged, including males, were also unemployed. Altogether, how many unemployment could there be? Hope that it is not one million! If there are only 82 000 people unemployed, how can these figure add up? From the employers' point of view, they will feel that injustice has been done to them. The current unemployment rate is 3%, which is the highest for years, but this is something the business sector would not like to have, too. High unemployment rate does not bode well for the industrial and business sectors. We are only forced to send our staff away if we cannot make any money. Among the unemployed, who are we discriminating against? Are we to put it the other way by saying that the only group that is not being discriminated against is those males under 40 because all the others are staging anti-discrimination?

The business sector thinks that educating the public is a very useful way. Let us take an example. Years ago Hong Kong was very dirty, so we had a Clean Hong Kong Campaign. Another example is the Fight Crime Committee. Such work cannot achieve any result in just two or three years. It may take four, five or 10 years, but someday the effect will be seen. We should encourage the business sector and the general public not to discriminate against the disabled by employing them. We are actually doing such work, many of the factories have disabled people on their staff. However, will the provision for penalty and prosecution in this Bill be counter-productive? Some small companies only have a staff of five, they already have lots of problems. Now you can encourage such companies to employ more disabled persons and females over 30 years of age, but if the employers are prosecuted at every turn, they will be scared into not employing anyone. An employer has the right not to give any reason for not employing anyone, so in practice, what can the Government do?

Mr Chairman, I have used "one piece of cloud" and rain as my example. If we really want to help those being discriminated against, we should begin by educating the public, which is better than meting out fines.

We shall discuss the problems related to the Equal Opportunities Commission later. There are a number of amendments. The Equal Opportunities Commission can, without giving any reason, initiate any proceedings against a company, that is it can prosecute as it wishes. The Administration said that this is not the case. If a company is to be prosecuted, the Equal Opportunities Commission still have to give the reason to the company. If we say that everyone of us should be given equal opportunity, why is the proprietor of a small concern not informed of the reason of the prosecution? The proprietor may only have an asset of a couple of hundred thousand dollars and does not have the money to engage a legal representative. Prosecuting him so casually would only push him into bankruptcy.

The Honourable Mrs Peggy LAM set a ceiling of $150,000 in respect of Sex Discrimination Ordinance last time and attracted much criticism. To a small proprietor, one or two $150,000 are enough to push him into bankruptcy. Under such a situation, would it be any good to the employee being discriminated against? I do not think so. The business sector agree in principle that everyone should be treated equally. We do not want to see an unemployment of 82 000. We want to create more jobs so that no one will be discriminated against. If we look at it from a positive side, what do we want these Bills to do, to encourage or praise, or to fine and imprison? Put it the other way, are we to scare people from employing anyone at all?

For the past few months, there is only one statement from Mr WONG Wai-yin that is more agreeable to the ears. He said that the Administration should give tax relief to the businesses to encourage them to take on more disabled. The Administration should seriously consider this. This benefit may be only limited to the disabled, what about employing females over 30 years of age, how much relief should be given? What about employing aged males, again how much relief should be given? Maybe all three million people should have tax relief.

Mr Chairman, the business sector will support the Bill as a whole, but many of the amendments, like many other things, should be taken progressively, for example, when instituting a proceeding against someone by the Equal Opportunities Commission, what should the procedure be. This does not mean social welfare should advance progressively. Now we have to make the business sectors understand and know about the whole matter. I hope that this Bill to be passed today will be like the Sex Discrimination Ordinance, they are similar in nature, otherwise, the employers will think they have two different sets of law to deal with and get confused. Putting an advertisement to recruit staff is one example; promotion is also another example. If the two laws have the same standard, the employers and the employees will know that they are based on the principle. I support making progressive improvement this way, and the business sector will also support.

Mr Chairman, with these remarks, I support this Bill.

MR LEE CHEUK-YAN: I want to clarify.

PRESIDENT: Yes, please make it short.

MR LEE CHEUK-YAN (in Cantonese): Just now the Honourable James TIEN quoted me as having said that the unemployment rate of the disabled is 49%, that is 130 000, which cannot add up to give the current unemployment figure. However, these 130 000 people have already come to a stage that even the Census and Statistics Department will not treat them as people actively seeking

employment. If they are not active job seekers, they will not be treated as unemployed. They have come to such a pathetic state that statistically they cannot even be labelled as "unemployed". Thank you, Mr Chairman.

SECRETARY FOR HEALTH AND WELFARE: Mr President, three years ago the Green Paper entitled "Equal Opportunities and Full Participation: A Better Tomorrow for All" suggested that "legislative changes could be proposed to bring about equalization of opportunities and full participation" for people with a disability. Since then, as we expanded our rehabilitation facilities, in particular those for ex-mentally ill people, we met with strong opposition from some local residents. Some of our Honourable Members here today obviously met with similar experiences.

It certainly helped convince the Administration that to achieve our goal of integrating people with a disability into our community, we would need more than public education and persuasion. Today, with Members' support, we will put into Hong Kong's statute books legislation to ensure equal opportunities and full participation for people with a disability so that they will never again need to feel, as Members fear, and to quote Dr the Honourable LEONG Che-hung, children of a lesser god. It is a major step towards creating a better tomorrow for all.

In October 1993, we made a commitment in this Council that we would decide on the kind of anti-discrimination legislation which would best suit local needs and circumstances. Having looked at such legislation elsewhere in the world, we announced in July 1994 our proposals for a comprehensive Disability Discrimination Bill. In May this year we introduced the Bill into this Council. Mr President, in three years we have turned the suggestion made in the 1992 Green Paper into a reality. It has taken us some time to reach this point because of the need to consult widely, both locally and overseas. This remains, after all, a relatively new area for legislation the world over. The United Kingdom as we have heard from the Honourable Ms Anna WU, is only now processing its own legislation. We have proceeded, therefore, with all due care.

I would at this point like to thank Dr the Honourable LEONG CHE-HUNG, Chairman of the Bills Committee, and Members of that Committee, in particular the Honourable Ms Anna WU, for the thought and effort they have put into studying the Bill and for their kind words this evening.

As a result of all their contributions, the many useful discussions we have had with disability groups and the deputations we have heard, the Administration will now be introducing a number of amendments. I will explain these during the Committee stage, but I would like briefly to highlight the main changes we will be proposing.

Chinese translation of the term "disability"

Throughout the process of developing our initial ideas and then the legislation itself, we have been in close touch with disability groups. The Bill has benefited a great deal from this dialogue. A point which was raised only relatively recently is the Chinese term for "disability". It is felt that the term "弱能" is not appropriate in that it implies weakness. The last thing we would wish to do is to use a word or continue to use a word with which those who have a disability are uncomfortable, so we will amend it to "殘疾".

Government activities

The Government is already bound by the Bill of Rights not to discriminate in the discharge of its duties generally and by clause 5 of the Bill to its specific provisions. We have accepted the proposal of the Bills Committee that the Disability Discrimination Bill should, nevertheless, make it explicit that it would be unlawful for the Government to discriminate against a person with a disability in the performance of any of its functions. The amendment we will propose to achieve this is the same as that passed by Members of this Council to the Sex Discrimination Bill.

Regards requests for information

Both the Coalition of AIDS Organizations Against Discrimination and the Advisory Council on AIDS expressed concern that the clause relating to requests for information would allow an employer to require all applicants for a job to take an AIDS test, regardless of whether it was reasonably necessary, having regard to the nature of the job. Although other clauses of the Bill would make it unlawful for the employer to use the information from such a test to discriminate against a particular person with AIDS by refusing to employ him or her, to allay the concern raised we have taken on board an amendment suggested by Dr the Honourable Conrad Lam. It will mean, in the example I have just quoted, that the request for information of a medical nature would itself be unlawful unless it is absolutely necessary to determine whether the job applicant can carry out the requirements of the job. We are gratified that the proposed amendment is so much appreciated by all concerned.

Bills Committee amendments

Turning now to the 12 amendments proposed by the Bills Committee. Members will be familiar with the amendments to be proposed because similar amendments were proposed recently to the Sex Discrimination Bill. We propose to respect the decision made by Members by voting for two of these amendments. But we will be opposing the others. I will explain our reasons for again opposing these 10 amendments at the Committee stage, But at this point I would like to say a few words about those which we feel we cannot accept on grounds of policy and principle.

Commission to bring proceedings in its own name

The Bills Committee has proposed that the Equal Opportunities Commission be able to bring proceedings in its own name, intervene in proceedings, as well as take over proceedings where the claimant withdraws from them. We agree that it should be empowered to bring proceedings in its own name, but we aim to do this through subsidiary legislation which will set out how exactly this may be done. As proposed by the Bills Committee, the provisions would permit the Commission to bring proceedings where the claimants do not wish to do so, for whatever reason. We believe the Commission should respect rather than interfere in an individual's decision in this regard.

Where the Equal Opportunities Commission wished to establish a point of principle, this would be better done through a formal investigation or a test case where the individual was content to be involved.

We would, therefore, urge Members to accept our amendment to give the Equal Opportunities Commission the power to institute proceedings in its own name and require the Administration to set out in regulations, which would have to come to this Council for approval, the legal framework in which this power would be exercised. And we would, of course, consult the Commission fully in the process of drafting such regulations.

Final investigations

As presently drafted, the Bill requires the Commission to draw up terms of reference for a formal investigation. This is an investigation into, for example, a sector-wide or a company-wide discriminatory practice. Where the terms of reference are confined to activities of persons named in them and the Commission proposes to investigate any act made unlawful by the Bill, it has to inform the person of its belief that such an act has occurred and of its proposal to investigate. The person then has the chance to make representations and to be represented by counsel or a solicitor in this process.

The Bills Committee amendment to this clause would mean that:

(i) the Commission would not have to inform the person of its belief that his or her act may have been unlawful;

(ii) that the act would not be restricted to those made unlawful by the Ordinance; and

(iii) it would place a time limit of 28 days on the persons being investigated to make their representations.

We believe it would be better to require the Commission to state its belief as to what unlawful act has been perpetrated, since this would be the reason for its investigation, and as bad publicity could be generated for those being investigated, it is all the more important that the belief or reason for the Commission's action be stated. It is also reasonable that the Commission should only investigate acts unlawful under the Disability Discrimination Ordinance and the Sex Discrimination Ordinance. The problem with a set time limit is that it is inflexible and it does not allow for particular circumstances to be taken into account, including the complexity of the case and the availability of the person being investigated. The Bill as drafted, would allow the Commission to set its own time limit as appropriate.

International obligations and instruments

The Bills Committee has proposed that the Equal Opportunities Commission, which is to be set up under the Sex Discrimination Ordinance and which will also play a key role in giving effect to this Bill, should have two new powers. The first is the power to promote the understanding, acceptance and public discussion of relevant international obligations and standards. The second is to examine any proposed legislation it considers may affect the equality of opportunity between those with and without disability or affect the understanding and acceptance of the same international obligations and standards. It should then report the results of its examination to the person putting forward the legislation and to this Council.

Mr President, we feel that the Disability Discrimination Bill is a self-contained and comprehensive Bill. We are setting out in our own domestic legislation the standards we believe are appropriate for Hong Kong. It could be confusing for the public to link this concrete expression of what is or is not lawful with more general international statements or rules, for example, with the United Nations Declarations on the Rights of Mentally Retarded Persons and on the Rights of Disabled Persons, or the standard rules on Equalization of Opportunities for Persons with Disabilities.

That said, if the Commission felt that public discussion of international instruments would be helpful or that it needed to examine proposed legislation against norms established in an international setting, it could do so under its powers to "work towards the elimination of discrimination" and to "promote equality of opportunity between persons with a disability and persons without a disability". We would therefore oppose the amendment on the ground that it is unnecessary and potentially confusing.

Grace period for small firms

In addition to the amendments proposed by the Bills Committee, the Honourable Fred LI has proposed an amendment to delete the grace period of five years for firms employing not more than five people. We will propose our own amendment to this clause to reduce the period from five to three years.

We believe this is a reasonable period to allow small firms to adjust to the new requirements and to learn from the experience of larger firms. Such an amendment was also passed by this Council in respect of the Sex Discrimination Bill. Members should be assured by the fact that 80% of employees in Hong Kong are not employed by small firms. Moreover, most people with a disability are employed by larger firms. This means that the vast majority of employees will, from the date these provisions are brought into effect, already enjoy the full protection of the law. We would, therefore, not support the Honourable Fred LI's amendment.

Mr President, I would like to say that by supporting the Disability Discrimination Bill, as I am confident Members will, we as a community are adding Hong Kong to the small but growing list of countries in the world where people with a disability will be able to turn to the law to fight for equal opportunities. At the same time, the community as a whole can rest assured that its interests have been fully taken into account. We will also be gaining a powerful public education tool to help the community understand that those with a disability have a right to be treated fairly and that we all have a part to play in achieving the goal of integration. With Members' support, let us take this positive step and many more steps together, and make Hong Kong an even more caring society.

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).

SUSPENSION OF SITTING

PRESIDENT: I am going to suspend the sitting until 9.00 am tomorrow morning.

Suspended accordingly at twenty-eight minutes to Twelve o'clock.

Note: The short titles of the Bills listed in the Hansard, with the exception of the Mandatory Provident Fund Schemes Bill, the Personal Data (Privacy) Bill and the Disability Discrimination Bill, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.

Reprography by the Printing Department 1337013－7L－3/98
(Printed on paper made from woodpulp derived from renewable forests) $43－G41009545E0