OFFICIAL RECORD OF PROCEEDINGS
立法局會議過程正式紀錄

Wednesday, 10 July 1996
一九九六年七月十日星期三

The Council met at half-past Two o'clock
下午二時三十分會議開始

MEMBERS PRESENT
出席議員：

THE PRESIDENT
THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.
主席黃宏發議員，O.B.E., J.P.

THE HONOURABLE ALLEN LEE PENG-FEI, C.B.E., J.P.
李鵬飛議員，C.B.E., J.P.

THE HONOURABLE MRS SELINA CHOW LIANG SHUK-YEE, O.B.E., J.P.
周梁淑怡議員，O.B.E., J.P.

THE HONOURABLE MARTIN LEE CHU-MING, Q.C., J.P.
李柱銘議員，Q.C., J.P.

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.
倪少傑議員，O.B.E., J.P.

THE HONOURABLE SZETO WAH
司徒華議員

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.
劉皇發議員，O.B.E., J.P.
THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

何承天議員，O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.
夏佳理議員，O.B.E., J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.
劉健儀議員，O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP
陳偉業議員

THE HONOURABLE CHEUNG MAN-KWONG
張文光議員

THE HONOURABLE CHIM PUI-CHUNG
詹培忠議員

THE HONOURABLE FREDERICK FUNG KIN-KEE
馮檢基議員

THE HONOURABLE MICHAEL HO MUN-KA
何敏嘉議員

DR THE HONOURABLE HUANG CHEN-YA, M.B.E.
黃震遐議員，M.B.E.

THE HONOURABLE EMILY LAU WAI-HING
劉慧卿議員

THE HONOURABLE LEE WING-TAT
李永達議員

THE HONOURABLE ERIC LI KA-CHEUNG, O.B.E., J.P.
李家祥議員，O.B.E., J.P.

THE HONOURABLE FRED LI WAH-MING
李華明議員
THE HONOURABLE HENRY TANG YING-YEN, J.P.

唐英年議員，J.P.

THE HONOURABLE JAMES TO KUN-SUN
涂謹申議員

DR THE HONOURABLE SAMUEL WONG PING-WAI, M.B.E., F.Eng., J.P.
黃秉槐議員，M.B.E., F.Eng., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG
黃宜弘議員

DR THE HONOURABLE YEUNG SUM
楊森議員

THE HONOURABLE HOWARD YOUNG, J.P.
楊孝華議員，J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN
黃偉賢議員

THE HONOURABLE CHRISTINE LOH KUNG-WAI
陸恭蕙議員

THE HONOURABLE JAMES TIEN PEI-CHUN, O.B.E., J.P.
田北俊議員，O.B.E., J.P.

THE HONOURABLE LEE CHEUK-YAN
李卓人議員

THE HONOURABLE CHAN KAM-LAM
陳鑑林議員

THE HONOURABLE CHAN WING-CHAN
陳榮燦議員

THE HONOURABLE CHAN YUEN-HAN
陳婉嫻議員
THE HONOURABLE ANDREW CHENG KAR-FOO

鄭家富議員

THE HONOURABLE PAUL CHENG MING-FUN
鄭明訓議員

THE HONOURABLE CHENG YIU-TONG
鄭耀棠議員

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG
張炳良議員

THE HONOURABLE CHEUNG HON-CHUNG
張漢忠議員

THE HONOURABLE CHOY KAN-PUI, J.P.
蔡根培議員，J.P.

THE HONOURABLE DAVID CHU YU-LIN
朱幼麟議員

THE HONOURABLE ALBERT HO CHUN-YAN
何俊仁議員

THE HONOURABLE IP KWOK-HIM
葉國謙議員

THE HONOURABLE LAU CHIN-SHEK
劉千石議員

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.
劉漢銓議員，J.P.

DR THE HONOURABLE LAW CHEUNG-KWOK
羅祥國議員

THE HONOURABLE LAW CHI-KWONG
羅致光議員

THE HONOURABLE LEE KAI-MING

李啟明議員

THE HONOURABLE LEUNG YIU-CHUNG
梁耀忠議員

THE HONOURABLE BRUCE LIU SING-LEE
廖成利議員

THE HONOURABLE LO SUK-CHING
羅叔清議員

THE HONOURABLE MOK YING-FAN
莫應帆議員

THE HONOURABLE MARGARET NG
吳靄儀議員

THE HONOURABLE NGAN KAM-CHUEN
顏錦全議員

THE HONOURABLE SIN CHUNG-KAI
單仲偕議員

THE HONOURABLE TSANG KIN-SHING
曾健成議員

DR THE HONOURABLE JOHN TSE WING-LING
謝永齡議員

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E., I.S.O., J.P.
黃錢其濂議員，C.B.E., I.S.O., J.P.

THE HONOURABLE LAWRENCE YUM SIN-LING
任善寧議員

MEMBERS ABSENT

缺席議員：

DR THE HONOURABLE DAVID LI KWOK-PO, O.B.E., LL.D. (CANTAB), J.P.
李國寶議員，O.B.E., LL.D. (CANTAB), J.P.

DR THE HONOURABLE EDWARD LEONG CHE-HUNG, O.B.E., J.P.
梁智鴻議員，O.B.E., J.P.

PUBLIC OFFICERS ATTENDING
出席公職人員：

THE HONOURABLE DONALD TSANG YAM-KUEN, O.B.E., J.P.
CHIEF SECRETARY
行政局議員布政司曾蔭權先生，O.B.E., J.P.

MR RAFAEL HUI SI-YAN, J.P.
FINANCIAL SECRETARY
財政司許仕仁先生，J.P.

THE HONOURABLE JEREMY FELL MATHEWS, C.M.G., J.P.
ATTORNEY GENERAL
行政局議員律政司馬富善先生，C.M.G., J.P.

MR GORDON SIU KWING-CHUE, J.P.
SECRETARY FOR TRANSPORT
運輸司蕭炯柱先生，J.P.

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE
□生福利司霍羅兆貞女士，O.B.E., J.P.

MR JOSEPH WONG WING-PING, J.P.

SECRETARY FOR EDUCATION AND MANPOWER
教育統籌司王永平先生，J.P.

MR KWONG KI-CHI, J.P.
SECRETARY FOR THE TREASURY
庫務司鄺其志先生，J.P.

MISS DENISE YUE CHUNG-YEE, J.P.
SECRETARY FOR TRADE AND INDUSTRY
工商司俞宗怡女士，J.P.

MR LAM WOON-KWONG, J.P.
SECRETARY FOR THE CIVIL SERVICE
公務員事務司林煥光先生，J.P.

MR KWONG HON-SANG, J.P.
SECRETARY FOR WORKS
工務司鄺漢生先生，J.P.

MR CANICE MAK CHUN-FONG, J.P.
SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS
規劃環境地政司麥振芳先生，J.P.

MRS RITA LAU NG WAI-LAN, J.P.
SECRETARY FOR BROADCASTING, CULTURE AND SPORT
文康廣播司劉吳惠蘭女士，J.P.

MRS STELLA HUNG KWOK WAI-CHING, J.P.
SECRETARY FOR HOME AFFAIRS
政務司孔郭惠清女士，J.P.

MRS CARRIE YAU TSANG KA-LAI, J.P.
SECRETARY FOR SECURITY
保安司尤曾家麗女士，J.P.

CLERKS IN ATTENDANCE

列席秘書：

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL
秘書長馮載祥先生

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL
副秘書長羅錦生先生

MISS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL
助理秘書長吳文華女士

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL
助理秘書長陳欽茂先生

PAPERS

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

Subject	
Subsidiary Legislation	*L.N. No.*
Mental Health (Amendment) Regulation 1996	298/96
Trade Marks (Amendment) Rules 1996	299/96
Prison (Amendment) Rules 1996	300/96
Air Pollution Control (Motor Vehicle Fuel) (Amendment) Regulation 1996	310/96
Air Pollution Control (Vehicle Design Standards) (Emission) (Amendment) Regulation 1996	311/96
Copyright (Application to Other Countries, Territories or Areas) Regulation	312/96
Copyright (Designation of Qualifying Countries, Territories or Areas) Regulation	313/96
Trade Marks Ordinance (Amendment of Schedule) Order 1996	314/96
Layout-Design (Topography) of Integrated Circuits (Designation of Qualifying Countries, Territories or Areas) Regulation	315/96
Civil Aviation (Aircraft Noise) (Certification) (Amendment) Regulation 1996	316/96

Medical Practitioners (Electoral Provisions)
(Procedure) Regulation (L.N. 227 of 1996)
(Commencement) Notice 1996 ..... 328/96

Official Languages (Authentic Chinese Text)
(Shipping and Port Control Ordinance) Order..... (C) 76/96

文件

下列文件乃根據《會議常規》第 14(2)條的規定而正式提交：

項　目	*法律公告編號*
附屬法例	
《1996 年精神健康（修訂）規例》	298/96
《1996 年商標（修訂）規則》	299/96
《1996 年監獄（修訂）規則》	300/96
《1996 年空氣污染管制（汽車燃料）（修訂）規例》	310/96
《1996 年空氣污染管制（車輛設計標準）（排放）（修訂）規例》	311/96
《版權（適用於合資格國家、領域或地方）規例》	312/96
《版權（指定合資格國家、領域或地方）規例》	313/96
《1996 年商標條例（修訂附表）令》	314/96

《醫生（選舉規定）（程序）規例
（1996 年第 227 號法律公告）
1996 年（生效日期）公告》 328/96

《法定語文（中文真確本）
（船舶及港口管制條例）令》 ..... (C) 76/96

Sessional Papers 1995-96

No. 106 — Statement of Accounts for the Customs and Excise Service Welfare Fund for the year 1995-96

No. 107 — Lingnan College President's Report 1994-95 with Lingnan College Financial Report for the year ended 30 June 1995

No. 108 — Hong Kong Trade Development Council Annual Report 1995-1996

No. 109 — Sir Robert Black Trust Fund Annual Report for the year 1 April 1995 to 31 March 1996

No. 110 — Sir David Trench Fund for Recreation Trustee's Report 1995-96

No. 111 — Hong Kong Sports Development Board Annual Report 1995-1996

No. 112 — Report of the Public Accounts Committee on Report No. 26 of the Director of Audit on the Results of Value for Money Audits (June 1996 - PAC Report No. 26)

No. 113 — The Eighth Annual Report of the Commissioner for Administrative Complaints Hong Kong June 1996

No. 114 — Enquiry into the circumstances surrounding the labour disputes involving imported workers under the Special Labour Importation Scheme for the Airport Core Programme Projects and related issues

No. 115 — Hong Kong Airport Authority Annual Report 1995-1996

一九九五至九六年度會期內提交的文件

第 106 號 — 香港海關福利基金
一九九五至九六年度帳目結算表

第 107 號 — 嶺南學院校長一九九四至九五年度報告
連同截至一九九五年六月三十日止的
嶺南學院財務報告

第 108 號 — 香港貿易發展局年報
1995-1996

第 109 號 — 柏立基爵士信託基金
一九九五年四月一日至
一九九六年三月三十一日年報

第 110 號 — 戴麟趾爵士康樂基金
信託人報告書
1995-96

第 111 號 — 香港康體發展局年報
1995-1996

第 112 號 — 政府帳目委員會就核數署署長第 26 號
衡工量值式核數報告書提出的報告書
一九九六年六月
政府帳目委員會第 26 號報告書

第 113 號 — 香港行政事務申訴專員
第八次年報
一九九六年六月

第 114 號 — 就新機場核心計劃
特別輸入勞工計劃的輸入工人
所涉及的勞資糾紛的有關情況
及其所引起的相關問題進行的研訊

第 115 號 — 香港機場管理局
一九九五至一九九六年度報告書

PRESIDENT: Honourable Members, Mr Frederick FUNG asked me to rule, at the last sitting whether it was in order for Mr Albert HO Chun-yan to strongly question the "誠信" of the Association for Democracy and People's Livelihood, or rather the "誠信" of Legislative Council Members who are also members of the Association. I said I would make a ruling at this sitting as I needed to listen to the tapes and to reflect on the matter first.

I have checked a number of Chinese dictionaries, dictionaries of Chinese phrases, but have not been able to find the phrase "誠信" in those dictionaries. It is obvious that the expression, though now in circulation in Hong Kong, is not a well-established one. Some might insist that this two-character phrase means "integrity" whilst others believe that the first character stands for "integrity" and the second stands for "credibility". It appears that the phrase might mean different things to different ears.

I am now of the opinion that the expression, when loosely used, should be understood as "sincerity" in general.

That part of Mr Albert HO's speech which is the subject of Mr FUNG's point of order is:

"We, that is the people of the democratic camp, strongly question the sincerity of the Association for Democracy and People's Livelihood, especially their sincerity in the support of a democracy."

I have given the matter much thought. Questioning other Members' sincerity in the support of democracy is, in my opinion, an expression of the opinion of that particular Member and can hardly be regarded as out of place in a debate in a political forum like this legislature. As Mr HO did not use offensive and insulting language in his speech, I rule that he did not breach Standing Orders.

Addresses

Report of the Public Accounts Committee on Report No. 26 of the Director of Audit on the Results of Value for Money Audits (June 1996 - PAC Report No. 26)

MR ERIC LI: Mr President, on behalf of the Public Accounts Committee (PAC), I have the honour to table our Report No. 26 today.

The Director of Audit's Report No. 26 on the results of value for money audits completed between October 1995 and February 1996 was tabled in this Council on 24 April 1996. Following discussion, the PAC decided to carry out in-depth investigation into 11 subject matters raised therein. The Report tabled today contains the conclusions and recommendations that the PAC have reached on these matters.

Mr President, it is not my intention this afternoon to go over the conclusions and recommendations of our Committee on all the 11 items. However, it is appropriate that I highlight some of our main concerns and recommendations.

First, the Committee feel perturbed that the Administration does not seem to have learnt any lesson from the past. In the PAC Report No. 19 published in January 1993, we expressed concern, after hearing evidence on the audit report

on "Reprovisioning of ferry piers in Kwun Tong", that the Administration had failed to include information on the expected length of the future usage of the piers in the submission to the Finance Committee seeking funding approval for the reprovisioning. At that time, the Committee urged the Administration to ensure that, in future, all important and relevant information should be included in the submissions to the Finance Committee when seeking funding approval. The Administration, in the Government Minutes tabled in this Council on 5 May 1993, stated that it would ensure that in future all such information would be included in submissions to the Finance Committee. However, our examination has revealed that the Administration has repeated the same failure when they sought funds on 11 June 1993 for the Northcote College of Education improvement project. The Finance Committee approved funding for the project at an estimated cost of $19 million, without knowing that it would only have a useful life span of two years! I would strongly remind those government officials responsible to take heed of their promises to the PAC so as to avoid the possibility of leading the Finance Committee into ill-informed decisions. The Committee considers it imperative that the Administration should provide the Finance Committee with sufficient and all relevant information, including the useful life span of a short-lived capital project, when seeking funding approval.

We are also concerned to find that the Housing Department's squatter control teams have maintained an excessive level of staff for a long period of time despite the marked decrease in squatting activities in recent years. In sharp contrast, the Department of Health has an acute shortage of Pharmacist Inspectors to monitor the sale and supply of controlled drugs, and the Customs and Excise Department also suffers from a similar problem of having insufficient Assistant Trade Control Officers, to clear the backlog of consignment check cases on textiles licences and notifications. The Committee therefore strongly urges the Administration to keep a vigilant eye on the staffing level in various departments in the light of material changes in the services required to ensure that scarce resources are best utilized in dealing with more prevailing social issues.

A further issue raised in the Director of Audit's Report relates to three capital works projects at the Kai Tak Airport which did not follow the normal funding arrangements for government capital works projects. These projects bypassed the government mechanism for financial control and proper accounting and circumvented the necessary financial control by this Council through the

Finance Committee. We appreciate that, according to the Public Finance Ordinance, the Financial Secretary has the power to decide what constitutes a public works project and that, in very exceptional circumstances, Policy Branches and departments may exercise flexibility in fast-tracking the normal procedures for well-defined, urgent and special capital works projects. We nevertheless consider it imperative that the approval of the Finance Committee must still be obtained before the commencement of the works. This is proper in order to uphold the legislative control of public finance and public accountability.

We would also like to express our observation that there is room for improvement in the Government's system in awarding public works project contracts, particularly to those tenderers with significant adverse performance records. We have evidence that delays in the completion of projects have been caused and additional costs incurred because of the tenderers' unsatisfactory performance. We also consider that contracts which stipulate restrictions of works or other requirements should be fully justified in order to avoid incurring unnecessary expenditure. We note from the Director of Audit's Report that in one of the reported contracts placing restrictions of work during the swimming season, whereby the contractor had to concentrate work in certain areas and at certain times of the year, created an uneven workload and added the cost by 15% to 20% (roughly between $6.9 million and $9.2 million). However, value for money was not achieved because the restrictions had not been strictly enforced, and the contractor had, in many instances, been allowed to work during the restricted periods. The Committee are of the view that both the Central Tender Board and the relevant departments have an important role to play in screening out contract terms with unnecessary costly restrictions.

The Committee have worked very hard in the last two and a half months with the full co-operation of the Administration. In particular, I owe my thanks to all members of the PAC for their contributions and the Director of Audit for the assistance that he and his staff have rendered to the Committee. I also wish to express my sincere appreciation of the dedicated support given by the Secretariat staff, and of the wise counsel from our always dependable Legal Advisers.

Thank you, Mr President.

Enquiry into the circumstances surrounding the labour disputes involving imported workers under the Special Labour Importation Scheme for the Airport Core Programme Projects and related issues

劉千石議員致辭：人力事務委員會在去年十二月決定就九月至十一月間在新機場工程地盤發生連串涉及輸入勞工的勞資糾紛及相關的問題進行研訊。而立法局亦於一九九五年十二月十三日通過決議案，授權事務委員會為進行研究行使《立法局（權力及特權）條例》的權力傳召證人及文件。研訊現已完成，今天我代表事務委員會提交有關的研訊報告。

人力事務委員會在進行這個研訊的時候，主要針對以特別輸入勞工計劃輸入勞工的過程進行研究。所以研訊期間，我們傳召了可以在不同方面和不同角度提供有關資料的證人，使事務委員會能夠以客觀的態度去了解導致去年2 500外勞參與罷工行動的原因，和就各種的問題，我們試圖找出一些可以解決的方法。

人力事務委員會在今年一月至六月期間傳召34位證人為事務委員會作證。這些證人包括官方的代表、機場管理局代表，以及曾參與新機場核心計劃工程的多位總承建商及次承建商、在招聘過程中擔當“中間人”角色的管理服務公司代表，以及來自泰國和中國的輸入勞工。

事務委員會覺得，政府在推行特別輸入勞工計劃時，目標主要放在確保新機場工程得以準時竣工。有關方面並未盡力使本地工人得以優先獲得有關工程帶來的就業機會。由於有關計劃實施方面的細節極之鬆散，規管機制亦不完善，以致特別輸入勞工計劃備受濫用。事務委員會覺得甚為震驚的是，政府其實早已察覺行內有不當的做法，但卻以低調處理，結果導致問題日益嚴重。

事務委員會認為，導致出現不當做法的主要原因，是規管機制缺乏制衡。政府部門採用“互相合作”的手法，令絕大部分申請配額的承建商都可以得到他們要求的全部配額。由於承建商可以持有大量配額，他們便有途徑以廉價的方式招聘外勞，而無須僱用本地工人。

事務委員會在報告中作了一系列針對改善審批機制的建議，包括：

— 將新機場工程統籌署與批核機構分開，加強該署的問責性，使整個審批過程更為嚴格；

— 檢討現時各政府部門之間的工作關係，並界定教育統籌司及人民入境事務處處長就監管及實施特別輸入勞工計劃的職責；及

— 將批准配額的權力交給一個行政部門，讓教育統籌司不再涉及處理配額的日常工作，並可以在執行監管計劃時保持客觀態度。

事務委員會在作出以上的建議外，仍然擔心政府部門為達到盡早建成新機場的目標，不必要地輸入勞工，而忽略工人的利益。事務委員會認為應成立一個獨立的委員會，就輸入勞工的政策，及輸入勞工的計劃在執行上所涉及的事宜，向有關決策科首長提供意見。此獨立委員會亦須決定是否應該繼續輸入勞工，及假若需要輸入外地工人，亦須確保本地工人的利益不會因此而受到損害。

事實證明，一直以來都有相當多的本地工人到新機場的工地工作，達到總勞動人口的八成。這顯示有關方面在開始時便過分高估招聘本地工入從事新機場核心計劃工程的困難，以及未能掌握工程進度的實際情況。事務委員會建議當局不應訂下不設時間限制的配額上限，而應參考各方面的意見，包括工程實際勞動力需求，訂出一個每季或增或減的上限，並每六個月進行檢討。

此外，事務委員會認為亦應杜絕行業裏的不當做法，其中包括“中間人”向承建商提供優厚的條件，博取代其招聘外地勞工，從而在外地勞工身上得到金錢上的好處。這令輸入勞工不能得到應得的薪酬，亦同時影響到本地工人就業的機會。

在這方面，事務委員會建議加強外地工人對來港的服務條件的認識、要求外勞提交證明其工作經驗及技能的證明文件、檢討現時法例對“中間人”活動的管制、加強勞工督察巡察工地的效用和加強檢控。事務委員會亦認為政府應從速考慮收回成本，向申請配額的承建商收回行政費用。

另外，我們希望政府能增加與輸出勞工國家的溝通，共同制訂解決問題的措施，加強監管代理人的活動和收費，確保承建商不能藉着特別輸入勞工計劃輸入廉價勞工，影響本地工人的就業機會。

總括而言，事務委員會對政府當局極表失望。政府曾承諾在由外地輸入

勞工以補充本港勞工需求的同時，會給予本地工人優先就業機會，但政府卻沒有盡力履行這個承諾。研訊期間，事務委員會發現很多不當行為，而該些不當行為存在已久，政府當局並非全不知情，事務委員會對此感到震驚，並希望政府能吸取這次教訓，盡快檢討整個計劃的政策方針和執行方法，並採納事務委員會在報告上所作出的建議。人力事務委員會將會就各項建議繼續跟進。

我在此特別多謝秘書處的同事，尤其是吳文華小姐及法律顧問，以及所有協助事務委員會進行今次研訊工作的人員。

謝謝主席先生。

Hong Kong Airport Authority Annual Report 1995-1996

財政司致辭：主席先生，根據《機場管理局條例》第32(5)條的規定，我現將機場管理局（"機管局"）截至一九九六年三月三十一日止過去一年的年報及帳目報表和核數師報告，提交本局省覽。這是機管局的首份年報，當中亦載述臨時機場管理局在一九九五年十二月一日重組為機管局前的工作。

各位議員當可從年報中得悉，機管局的工作在年內取得重大進展。新機場的興建工程正按既定計劃和預算進行。《機場管理局條例》在一九九五年十二月一日生效後，機管局已經與政府簽訂財務支持協議和批地文件，並順利完成首項向外舉債安排，金額達82億港元。該局並已批出多項主要專營權，包括航空貨運、航機膳食和飛機燃料供應服務等。飛機維修服務及停機坪飛機服務的專營權，亦快將批出。能夠取得這些超卓成就，實有賴機管局董事會全體成員、管理階層及各位員工努力不懈、悉力以赴，我謹藉此機會向他們致謝。

當然，對於本局議員鼎力支持新機場計劃，我亦深表謝意。各位議員最近已通過撥款，提供所需的政府設施，支援新機場第二條跑道的運作。

我在這裏特別感謝機管局主席黃保欣先生。黃先生在一九九五年十二月一日臨時機場管理局重組為機管局時，接任機管局主席一職。擔任機管局主席是一項至為艱鉅和任重道遠的工作。我謹藉此機會感謝黃保欣先生克盡厥職，更特別感謝他為了香港的利益，大力推動，使新機場第二條跑道得以早日啟用。

當第二條跑道落成啟用後，新機場會進一步鞏固香港作為主要航空、貿易、金融服務、以及旅遊中心的卓越地位。

展望未來，我深信機管局定會再接再厲，續創佳績。赤鱲角新機場定將成為香港的一項理想投資，亦將是香港人引以為榮的建設。

謝謝主席先生。

ORAL ANSWERS TO QUESTIONS

PRESIDENT: As we are set for a long sitting today, I will keep question time to around one hour. Members should keep their supplementary questions short, avoiding long, argumentative and repetitious preambles and multi-barrelled questions.

Visa-free Stay for Chinese Visitors

1. **楊孝華議員問**：*主席先生，持中華人民共和國（"中國"）護照來港的過境旅客數目急劇上升，惠及本港的旅遊業。有見及此，政府可否告知本局，是否准許該等中國護照持有人，在七天免簽證入境期內前往澳門及再次進入本港；及當他們從澳門再次進入本港時，會否獲得超過原來七天的額外免簽證入境期；若然，有否任何措施一方面鼓勵旅遊業，另一方面則避免旅客利用此方法來不必要地延長在港停留的時間？*

保安司答：主席先生，由一九九三年八月一日起，中華人民共和國（"中國"）國民，如果在前往外國時經香港過境，可獲准以旅客身分，在本港免簽證逗留最多七天，但他們必須持有有效護照、已覆實的機票，以及海外目的地的有效簽證。這項安排的目的，是方便他們在本港轉機前往外地，或返國前在香港短暫停留。不過，中國國民從國內前往澳門，卻不能使用這項過境措施，因為他們可從中國直接前往澳門。

中國國民在本港過境時，應該按照原定行程，不應順路前往其他地方（包括澳門在內）。不過，入境處人員無權阻止旅客或過境人士，前往原定最後目的地以外的地方。但當他們在順路前往其他地方後返回香港，他們須給予入境處人員滿意的解釋，說明他們確有不依照原定行程的理由。

就個別情況而定，這些人士可在港逗留至先前獲得的七天逗留期限結束為止。如果他們再次利用同一方法更改行程（即再次前往澳門，然後返回香港），當局將會嚴加審查。另一方面，若過境人士沒有充分理由，便可能不准入境。

目前，我們沒有計劃放寬上述免簽證入境政策，讓中國國民經香港前往澳門。如果放寬政策，我們恐怕會遭人濫用，使管制中國國民來港的現行計劃起不了作用。

楊孝華議員問：*主席先生，來自中國的旅客已經佔本港遊客的第一位，我相信他們給香港的進帳超過100億元。與接近1 000萬的其他旅客一樣，他們來港遊玩數天後往澳門玩一、兩天，然後再回香港，是一件很正常的事。請問保安司，會否考慮不要只是就個別情況而定，而是只要他們真的路過香港，而又未用完他們的七天簽證期，便可以讓他們離開香港一段短暫時間，回港繼續享用餘下的免簽證逗留呢？*

保安司答：主席先生，如果這些人士離開香港往澳門只是一天半天，而又不超過七天逗留期限的話，我們一般都會採取較為寬鬆的態度。但我們的着眼點是一定要審查他們是否真的只是過境性質，最終是以外國作為目的地。

涂謹申議員問：*主席先生，其實保安司主要答覆的第一段，在邏輯上是犯駁的。因為如果說他們可從中國直接前往澳門，其實他們也可從中國直接前往泰國及世界各地，不一定要使用香港機場，所以在概念上有邏輯的矛盾。不過，我的質詢是，保安司在主要答覆的最後一段提到，如果這樣做就會遭人濫用，但如果他們在那段期間內只是往澳門一、兩天，然後再回港，而又能給予資料證明他們會返回中國，則在保安上有甚麼意義，要不予批准或要嚴格審查那麼嚴重？主席先生，我問的是保安意義的問題。*

保安司答：主席先生，我們有責任管制中國國民來港的進出入事宜，我們不想太多人濫用這制度，令他們可以利用這個計劃，在香港滯留，所以要實行剛才所說的措施。

PRESIDENT: Mr James TO, are you claiming that your question has not been answered?

涂謹申議員問：*是的，主席先生，我想問為何這樣就會滯留？請問可否詳細解釋這保安意義？*

保安司答：我剛才回答楊孝華議員的質詢時也提到，政策是准許這些人士經香港有不超過七天的停留。在這樣的政策大前提下，如果我們覺得有人改變行程，前往澳門一天半天，然後返回香港，而又不超過那七天逗留期，我們會採取較寬鬆的態度，這是我們處理的方法。但另一方面，我們也要確保不會有太多人利用這種途徑，他們可能不是真的想前往其他國家，而只不過是經香港往澳門。我們不希望有這種濫用情況出現。

詹培忠議員問：*主席先生，保安司的主要答覆強調，如果有其他目的地，就可以在七天逗留期內前往澳門，但入境處有審查的權力。我們可否要求政府考慮將其政策化，如果能夠證實他們會前往其他國家，而只不過在七天逗留期內往澳門一、兩天，甚至三天，不會超過七天，那就不用經過入境處的批准，而是旅客自己的權利，從而促進香港的旅遊業？*

保安司答：主席先生，我們很樂意就現行政策作出檢討。如果有理由認為須政策化，無須逐個審批，我們當然會考慮。但在目前來說，我們覺得有些個案是濫用了這個制度，雖然不是很多，但我可以提供統計數字，給議員參考。在一九九六年一月至六月期間，我們發覺有39人濫用這個制度，而不准許他們入境。

楊孝華議員問：*主席先生，39人在每年200萬人中是一個很小的數目。政府在檢討政策時，可否作出以下的考慮，即對於全世界其他國家有限期來香港逗留、旅遊或從事商業活動的人，看看這些人往澳門遊玩一、兩天，政府會否一般都批准他們繼續享有原有的逗留期限，還是要個別批准，然後再看看中國公民應否獲得同等對待？*

保安司答：我們在檢討政策的運作時，會一併考慮所有有關資料，包括剛才楊議員所提出的意見。

PRESIDENT: Are there two million Chinese nationals transiting Hong Kong for foreign destinations per annum? Was that a point made by you, Mr YOUNG?

MR HOWARD YOUNG: *No, Mr President, I did not say there were two million transiting. There are two million visiting and transiting.*

涂謹申議員問：*有時香港市民前往中山，會覺得經澳門前往較直接由中國前往更為快捷。同樣，如果鄰近深圳的中國公民想前往澳門，他們可能會認為經香港往澳門可能更好。這項政策是否應該整體地考慮幾處地方人民的方便；加上目前中國並沒有出境自由，如果公民能夠出境，其實已經過一定的嚴格審批；此外，只有39宗濫用個案，所以政府可否檢討這項政策？*

保安司答：我剛才已經說我們可以檢討政策。主席先生，我可否向議員提供一個數字呢？因為剛才楊孝華議員所提供的數字並不正確，那是有關過境人士的數目。在一九九五年，據我們所得的數字，這類過境旅客的數目是33萬。

Five-year Plan for Arts Development

2. **MRS ELIZABETH WONG** asked: *Mr President, will the Government inform this Council whether it has any knowledge of the timing for the implementation of the five-year plan for arts development drawn up by the Arts Development Council?*

SECRETARY FOR BROADCASTING, CULTURE AND SPORT: Mr President, the Hong Kong Arts Development Council's Five-Year Strategic Plan,

which sets out the blueprint for the development of the arts in Hong Kong for the period from the year 1996-97 to the year 2000-01, was drawn up in December last year.

In the Strategic Plan, the Council has identified 74 key tasks under four broad goals, namely, access, excellence, resources and advocacy. In order to carry out these tasks, the Council has proposed 292 action steps to be implemented during the five-year period ending 2001.

The Council began to implement the Five-Year Strategic Plan on 1 April 1996. To date, the Council has commenced implementing 59 of the 74 key tasks, and 157 of the 292 action steps.

MRS ELIZABETH WONG: *Mr President, could the Secretary elucidate or elaborate on which 59 of the 74 key tasks and which 157 of the 292 action steps have in fact commenced implementation? If not today, I would be very happy to wait for a written reply.*

SECRETARY FOR BROADCASTING CULTURE AND SPORT: Mr President, I would be very happy to provide Mrs WONG with the details that she has asked for in this question, in writing. (Annex I)

鄭家富議員問：*主席先生，要落實五年計劃，政府有足夠撥款是很重要的。主要答覆中提到有135項行動方案仍未開始實施，而在九六至九七年度，政府只批准五千六百多萬元給藝術發展局。以這數額來說，相信距離藝術發展局九六至九七年度財政預算九千多萬很遠。請問政府，以這個數額的資源，如何能落實這個五年計劃呢？你們有否信心，以及可否具體回答這計劃的時間安排？*

文康廣播司答：主席先生，根據我們的資料，藝術發展局建議在一九九六至九七年度的支出為1.4億元。這筆款項可以全數由政府本年度的經常資源撥款，以及先前撥給藝術發展局的種子基金提供。因此，我們覺得計劃的推行在時間上不應受到影響。至於計劃書其後數年的建議，我們現正盡最大努力尋求所需的資源，使藝術發展局可推行其五年策略計劃。

Emergency Medical Treatment for Non-Hong Kong Residents

3. **張漢忠議員問**：*政府可否告知本局：*

(a) 現時非本港居民在本港境內是否可使用急症服務；若然，如何向該等人士收取有關費用；當有欠繳費用時，如何向該等人士追討；及追討的結果如何；及

(b) 有否和任何國家及地區簽訂協議，令兩地居民在對方境內可享受免費的急症服務；若然，詳情為何；若否，原因為何？

衞生福利司答：主席先生，本港的醫療政策，是不應有人因經濟原因而得不到適當的醫療服務。為貫徹這項政策，醫院管理局和衞生署都為市民免費提供急症室服務；只有一間以前是補助醫院的公營醫院，基於歷史原因，向使用其急症室服務的本港居民象徵式收取34元，而來港旅客則須繳付175元。當局正採取行動，統一所有公營醫院的收費。

目前，與香港簽訂醫療服務互惠協議的只有英國。這項協議由英國與香港政府以書面正式作實，於一九八二年四月一日起實施。據我們所知，這項安排是在一九八二年英國公布一項新法例後而作出的。這項新法例規定，凡在全國衞生服務處獲得醫療及牙科服務的訪英旅客，都須繳付新收費。

根據現有協議，本港居民均有資格免費使用英國的全國衞生服務，包括急症室服務。同樣，英國公民也可按本港居民享有的資助率，在本港獲得範圍廣泛的醫療服務。

“香港居民”指任何通常居於香港，並持有由香港人民入境事務處簽發的有效身分證、護照或身分證明書的人士，或其配偶或18歲以下的受供養子女。“英國公民”指任何通常居於英國，並持有全國衞生服務醫療咭的人士。

張漢忠議員問：*主席先生，現時每天都有大量香港居民進入中國境內，過去*

有不少報道是關於香港居民在大陸尋求醫療服務時所遇到的不愉快事情。請問衞生福利司，除了要求香港市民購買保險外，她會否與中國政府磋商，希望能達成一個類似英國和香港現時的醫療衞生協議？

衞生福利司答：主席先生，我們目前並沒有打算這樣做，因為如果要達成一個互惠協議，必須考慮到兩個地方的醫療體系要有一定程度的水平，以及兩地提供的服務也要達到一定水準，並須確保我們的居民在那個地方能得到適當的照顧。由於以上原因，我們不可以確保有這些條件，所以我們不打算主動向其他國家提出互惠協議。

廖成利議員問：*主席先生，政府主要答覆的第一段提到，現時的醫療政策是不應有人因經濟原因而得不到適當的醫療服務，這也包括為市民免費提供急症服務。請問這裏所說的"有人"及"市民"是否指除了香港居民外，也包括所有非香港居民，例如由中國大陸來港的訪客？即醫院管理局轄下的所有醫院，在政策上都不會拒絕急症要求？如違反這項政策，當局會否一定予以追究呢？*

PRESIDENT: I take the two to be two parts of one single supplementary.

衞生福利司答：主席先生，香港現時的做法是，所有人士，無論是香港居民或在香港旅遊的外地旅客，如有急病需要到公立醫院急症室求診，我們是不會收費的，是免費提供服務的。

張漢忠議員問：*主席先生，我想提出補充質詢。請問與英國政府簽訂的醫療協議會否在主權回歸中國後失效？*

衞生福利司答：主席先生，可否請議員重複他的質詢？

PRESIDENT: The reciprocal agreement with the United Kingdom, will it become invalid in July 1997?

衞生福利司答：主席先生，這項協議是由香港與英國簽署的，我相信不會因為任何時間而失效。

Remuneration and Benefits of Policy Secretaries

4. **劉慧卿議員問**：*主席先生，據報道，有籌備委員會成員建議大幅度增加香港特別行政區政府主要官員的薪酬，而現時香港政府首長薪級表第八點的司級官員，即在座很多位官員，月薪是 157,250 元，但其實這數額已經改變，因為上星期五本局財務委員會已經通過薪酬調整，現在是 169,350 元。*

PRESIDENT: Miss Emily LAU, you are not supposed to add words to the original question.

劉慧卿議員問：*多謝主席先生，我只想提供一些新資料。*

PRESIDENT: Miss LAU, or else the Secretary cannot really answer it. You can bring in the words when you ask your supplementary.

劉慧卿議員問：*連同其他福利，該等司級官員的每月薪酬接近 30 萬元。有見及此，政府可否告知本局：*

(a) 釐定司級官員薪酬福利的準則為何；

(b) 司級官員的薪酬待遇，跟私人機構職級相若的人員相比為何；

(c) 本地高級公務員協會有否要求改善司級官員的薪酬福利；及

(d) 有否計劃檢討司級官員的薪酬及服務條件？

公務員事務司答：主席先生，我現在逐點答覆劉議員的質詢。

(a) 關於公務員薪酬的政策和目標，是要提供足夠分量的報酬，確保能吸引、挽留和激勵合適的人才，為市民提供切實和高效率的服務。政府所提供的薪酬，應當為公務員和市民雙方都認為是公平合理的。在這個大原則的前提下，釐定公務員薪酬的其中一個重要考慮，是應與私營機構的薪酬保持大致相若。

關於司級人員的薪酬問題，政府雖然贊同，要評定公務員的薪酬是否合理，我們應參考私營機構職級相若的僱員的薪酬福利。然而，由於服務性質各有不同，我們不能預期高層首長級人員的薪酬福利，必定與某些私營機構的高層行政人員看齊。

除了這種與外界的對比關係，我們亦須考慮首長級薪級及其他人員的職責，以及按他們的職責所釐定的薪酬，即是說，我們也要顧及內部的對比關係。我們訂有一些分級因素，把不同部門和部門首長分類。這些分級因素載述於《首長級薪常會第十次報告書》。現隨本答覆文本附上有關資料，供各議員參閱。該報告書亦建議，司級人員的支薪點，應高於大型文職部門首長的支薪點，因為前者的職責範圍明顯較為廣闊，責任亦較重大。目前，大型文職部門首長的最高支薪點是首長級第七點，而司級人員的支薪點為首長級第八點。

(b) 我們目前並無主動搜集最新的資料數據，來全面比較司級人員與私營機構高層行政人員的薪酬福利。我們一貫的做法是，司級人員的薪酬會跟隨高層薪金級別每年作出調整，而且理應定期檢討，研究司級人員的薪酬是否已遠遠落後於私營機構的薪金水平。我們上一次是在一九八九年作出檢討。

(c) 本地高級公務員協會並無提出這樣的要求。

(d) 在目前階段，我們沒有計劃檢討司級人員的薪酬福利。

附件

分級因素

主要因素

A. 有關部門對香港的重要性。該部門首長所作的決策及判斷明智與否，對香港經濟或社會所能造成的影響，應在考慮之列。

B. 財政方面的影響，或對政府公帑所涉及的問題。不但要考慮所管理的公帑數額大小，同時也要研究有效管理財政所會遭遇的困難，以及部門首長在決策判斷，調整收支方面可運用的權力。

C. 決策和判斷的艱難。所需的策劃和前瞻工作、可用的資料和指引，以及問題的性質等，均應予以考慮。

D. 時間的寬緊，特別是在緊迫情況下作出決策或分析形勢。

E. 管治有關部門的難度。該部門的規模大小、繁複程度、地理位置、職責的種類及性質等，均應予以考慮。

F. 所需的政治／社交才能。該部門首長在香港或海外執行的政治、社會及公共關係方面的職責，應在考慮之列。

附加因素

G. 所需的領導才能，特別是在領導職員、激勵士氣和人事管理方面的才能，以及這些因素對該部門工作效率的重要性。

H. 部門首長在政府部門以外的市場價值。其資歷、經驗，以及外界對其服務的需求，均應予以考慮。

I. 部門首長的個人責任，這是指除擔當該部門首長一般職責以外的責任。

J. 與其他部門的相互關係。應考慮的是政府要求有關部門向其他部門提供意見的服務範圍。

劉慧卿議員問：*主席先生，對不起，剛才我加了一些說話。不過，我要說清楚，現時司級官員的薪酬是169,350元，已超出157,250元頗多。*

政府的答覆很怪，一方面說跟私營機構大致相若，但另一方面又說未必需要看齊，即認為哪一說法迎合要求，便選擇那種說法！主席先生，我想

問有關定期檢討的事，其實公務員事務司剛才所說的已更改了答覆的文本。答覆的文本說“會”定期檢討，即給人的印象是“會”，而上一次是在八九年進行；但剛才公務員事務司只說“理應”。其實我想問的是會否定期檢討，因主要答覆末段說沒有計劃進行檢討。如果上一次的檢討在八九年進行，那麼“理應”下一次會在何時進行呢？是否定期進行呢；如果是的話，多少年進行一次呢？最重要的是，如果私營機構人員的薪酬較低，因為我們的商界同事可能會說市道不好，要減薪酬，政府會否也減低薪酬？

公務員事務司答：主席先生，如果我們能喜歡那樣便選那樣，相信我們要最少加薪40%以上。

不錯，我們是說“理應”檢討，原則上應是這樣的。當然，實際上應何時進行檢討，我們須視乎實際的環境和情況而定。在目前的情況下，我們的判斷是暫時我們未有計劃進行檢討。

至於劉議員第二項質詢，有關如果私營機構人員的薪酬較低，情況會怎樣。這是一個理論性、假設性的問題。在現實上來說，我們過去每次檢討所得的結果，都是我們遠遠低於私營機構頂級、總裁級人員的薪酬，所以這問題實際上是不存在的。

田北俊議員問：*政府說高級公務員的薪酬遠較私營機構為低，我不表認同。主要答覆第五段提到，八九年曾進行檢討，請問是否只包括薪酬和津貼？因為私營機構會有一種較為殘忍的情況，就是表現不好會被開除，但公務員奉旨沒有這種事發生，只是自行辭職。請問這種“不會被開除”的待遇值多少錢呢；又檢討內有否考慮這情況？*

公務員事務司答：主席先生，有關職業保障的問題，事實上，首長級薪常會報告書已確認了這是公務員及私營機構人員工作性質有別的其一個因素。就八九年所進行的檢討而言，當時顯示出由八五至八九這四年期間，首長級公務員的薪酬調整較同等級別的私營機構人員薪酬調整墮後了接近30%，即相差了28.5%。雖然後期薪常會建議了一定程度的調整，但這調整只有4.3個百分點，遠遠跟不上當時的差距。因此，在現實上來說，如無意外，我們現時的差距應是擴大了，而非縮小。

至於議員問及“開除”值多少錢，本來我剛才已經回答，不過我忍不住，主席先生，如果你容許我的話。我們作為司級公務員也有其他因素，我們要制訂政策，管理資源，面對公眾，參與立法局的工作，每天都要勇戰四方。*（眾笑及掌聲）*我相信絕少有私營機構的總裁級人員須像我們這樣。

謝謝主席先生。

PRESIDENT: As a member of the Senior Non-Expatrial Officers Association, or a member of the administrative service, or as the Government's representative? Or all three rolled into one? *(Laughter)*

劉慧卿議員問：*主席先生，不好意思，我相信你不應這樣發問，因為應由我們問，你要問便應坐下來。（眾笑）*

我相信林煥光先生是戴着公務員事務司的帽子來回答質詢。剛才他提到首長級公務員的薪酬較私營機構同級人員低30%，請問那些是甚麼機構呢？是如何將那些機構跟司級官員作出比較呢？他那政策科很小，但責任很大，請問會以哪類公司與他的政策科相比，覺得我們虧待他，少給他們30%？

公務員事務司答：主席先生，我沒有用“虧待”一詞。當時八九年的薪常會調查正如我們一向進行的調查一般，選取了香港一些良好及有規模的僱主，因為政府的薪酬調整政策是以這些良好及有規模的僱主的薪酬調整來作比較的。當然，我不便在此說出這些公司的名字，但這些公司在香港都是屬於“藍籌”的公司。

田北俊議員問：*主席先生，工商界的總裁級人員如果犯錯，公司賺少了錢，*

花紅可能會較少，又可能被開除。當然，公務員事務司說他們要“勇戰四方”，但我們在立法局曾見他們“卸膊”，而政策科內也有其他十多位司級官員予以協助。有那麼多人協助，那麼又應減多少薪金呢？

公務員事務司答：主席先生，舉例來說，我現在處於“勇戰”立法局的環境，只有我站在這裏，便沒有人能協助我。我是說我像一間機構的總裁一般，在公務員事務科範疇之下的事，那些責任就會留在我枱上，由我負責。相信在責任程度方面來說，這應不弱於任何一間大機構的總裁。

劉慧卿議員問：*主席先生，請問政府有否跟其他政府相比？我經常說你們的薪酬是全世界最高之一，你們有否其他政府給予最高級公務人員的薪酬的資料；是否較我們為低？*

公務員事務司答：主席先生，我們並沒有嘗試這樣做，因為跟其他政府相比是不恰當的。每一個地區、每一個政府都應參考他們自己本地的經濟發展和可以支付薪酬給員工等情況，所以應以地區或國家內部作出比較，才是最恰當的。我相信在座各位議員都不會嘗試跟其他地區的立法局議員相比。

Japanese Apology for War Atrocities

5. **曾健成議員問**：*主席先生，鑑於英國對本港的管治權將於一九九七年六月三十日結束，政府可否告知本局，英國政府會否在該日前，要求日本正式就第二次世界大戰期間，日軍在本港的暴行，正式向本港市民道歉，並且作出賠償？*

保安司答：主席先生，我們完全理解市民及議員對此事的感受。我們知道日本前任首相村山富市，曾在去年抗日勝利紀念日發言時，為日本昔日戰時的行為作出道歉。關於賠償問題，我們可以證實，在九零年十二月及九二年十一月本局提出此事時，已經提交英國政府加以研究。英國政府亦已回應表示，根據一九五一年日本在三藩市與英國和其他盟國簽訂的和平條約，日本

政府已完全履行他們的賠償責任。因此，英國政府不能再向日本政府提出此事。

曾健成議員問：*主席先生，當年英國政府曾代表香港市民接受日軍投降。英國政府對於要求日本就戰爭暴行的道歉賠償是否負有道義上的責任呢？會否做呢？亞太區其他地方如菲律賓和南韓可以獲得賠償，為甚麼我們香港得不到呢？英國人有否盡此責任呢？有否盡義務呢？是否必須盡此義務呢？假如英國今年不追究，英國撤出後，責任誰負呢？當年三年零八個月是英國統治香港，那責任誰去追究呢？香港市民可往哪裏追究呢？*

PRESIDENT: It is a rhetorical question.

任善寧議員問：*主席先生，本港有雜誌報道今年三月聯合國與日本有一個協定，如果日本想成為常任理事國，要先處理一些國家仍然對它要求的賠償。請問香港政府會否利用此機會協助香港人獲得應有的賠償？*

SECRETARY FOR SECURITY: Mr President, as I have mentioned, the Peace Treaty of San Francisco which also applied to Hong Kong, made provisions for the Allied States to dispose of Japanese assets under their jurisdiction by way of war reparations. The British Government and other Allied Powers agreed that the sums received would be recognized as a full discharge by the Japanese Government of its obligations. In other words, I am afraid, the scope for legal redress in seeking compensation is constrained by the San Francisco Peace Treaty of 1951.

何承天議員問：*主席先生，保安司說在一九五一年的和平條約，日本政府已履行了其賠償責任。當時他們所賠償的錢是否全部去了英國？有多少能賠償給香港市民的損失？*

SECRETARY FOR SECURITY: Mr President, I do not have the facts and figures here. But I think the important thing is to say that on the question of a

legal liability from the Japanese Government, that has been taken care of by the Peace Treaty of San Francisco in 1951.

PRESIDENT: Mr Edward HO, are you claiming that your question has not been answered?

何承天議員問：*保安司可否提供書面的答覆？*

SECRETARY FOR SECURITY: I shall try to dig up the information which I believe is many years old. So if the information is available, I shall be happy to provide it in writing. (Annex II)

何俊仁議員問：*主席先生，保安司剛才在答覆內提到三藩市條約，日本資產被凍結和變賣後作為部分賠償。我必須指出其中的錢很少，而且除此之外，英國政府在沒有諮詢香港人之下而代表香港放棄了一切賠償，這是三藩市條約的第十四條。我的質詢，主席先生，就是現時當英國政府快要撤出香港前，可否保證一切仍在政府手上。有關日本管治香港時的暴行的資料，一切有關他們軍事上尤其最重要的是影響到香港人的資料，例如關乎軍票的資料等，在一九九七年七月一日前公開或交還給香港市民？*

SECRETARY FOR SECURITY: Mr President, I am not sure if the question falls within my ambit of responsibility which looks after security. So I think that this is a question for the British Government which I think I will have to take up with the relevant authorities.

PRESIDENT: Mr Albert HO, are you claiming that your question has not been answered?

何俊仁議員問：*主席先生，其實目前政府仍有很多資料列為保密檔案，因為事實上我在兩、三年前曾致函政府，而政府表明.....*

PRESIDENT: Mr Albert HO, which part of your question has not been answered?

何俊仁議員問：*我只是質詢政府是否願意保證將那些保密資料公開。如果保安司不能答覆，則可否會後以書面回覆？*

PRESIDENT: The Secretary has said that she will take the matter up with Her Majesty's Government.

何俊仁議員問：*主席先生，那些資料是在香港政府手上的。如果香港政府目前還有一些資料的話，可否公開，當然包括英國政府，可以向英國政府澄清？但香港政府手上的資料可否公開？*

SECRETARY FOR SECURITY: Mr President, I have said earlier that I will take this up with the relevant authorities. (Annex III)

張文光議員問：*主席先生，主要答覆內提到日本政府已經完全履行了他們的賠償責任，我們不提那些在戰爭裏家破人亡的中國人或被迫去作慰安婦的一些可憐婦女。單是在抗戰時已有相當多香港人被迫兌換日本軍票，而當日本戰敗後，這些軍票完全作廢，所有財產因此而化為烏有。英國政府會否在撤出前，協助當時那些被迫兌換軍票的香港人，將這些軍票與日本政府重新兌現而歸還給他們應有的財產呢？*

SECRETARY FOR SECURITY: Mr President, while the Hong Kong Government fully sympathizes with those who suffered loss and hardship in Hong Kong during the Japanese occupation, the Government cannot press the British Government to further pursue with the Japanese Government on the matter of seeking compensation for those Hong Kong residents who are still holding Japanese wartime currency. Under the Peace Treaty with Japan signed by the United Kingdom and other Allied Powers in San Francisco in 1951, which also applied to Hong Kong, the sums received at the time will be recognized as the full discharge by the Japanese Government of its obligations. I do not think

that we can change or rewind history.

曾健成議員問：*主席先生，剛才我根本沒有離題。我質詢道義的責任。當然法律上已解釋了，但我覺得英國人在道義上應該協助香港人追討日本的道歉賠償。它會否做？如果提供協助的話，會用哪種方式？*

PRESIDENT: Mr TSANG Kin-shing, I did not rule your question out of order for exceeding the scope of the original question. I ruled it to be rhetorical, in other words, argumentative. You were making a point. I now accept your present supplementary.

SECRETARY FOR SECURITY: Mr President, I would like to reiterate that we are very sympathetic to those who have suffered physically, mentally, emotionally and financially during the Japanese occupation of Hong Kong. But I think the fact remains that I do not think that we are in the position to render assistance to them for the reasons I have just explained.

As regards the moral obligation or whether Her Majesty's Government is going to pursue, I think it is for Her Majesty's Government to answer.

PRESIDENT: Mr TSANG Kin-shing, are you claiming that your question has not been answered.

曾健成議員問：*是的，主席先生。*

PRESIDENT: Which part?

曾健成議員問：*最後那部分。*

PRESIDENT: Secretary, perhaps I will rephrase the question on behalf of Mr TSANG Kin-shing. Is there any moral obligation on the part of the Hong Kong Government to persuade the British Government to do something about it?

SECRETARY FOR SECURITY: I think that in seeking compensation, we may perhaps explore the moral route. But whether this would lead to anywhere, I do not have a crystal ball, I cannot have the answer.

Lawsuits under New Territories Land (Exemption) Ordinance

6. **黃偉賢議員問**：*主席先生，《新界土地（豁免）條例》（第 452 章）已實施兩年，就此，政府可否告知本局：*

(a) 在過去兩年，涉及該條例的訴訟個案數目為何；

(b) 在該等個案中，有多少名婦女成功爭取到新界的土地繼承權；及

(c) 曾否推行宣傳該條例的活動，以確保新界婦女清楚了解她們在該條例下所享有的權益；若有，該等活動的內容、推行時間及經費為何？

政務司答：主席先生，《新界土地（豁免）條例》規定，一般繼承法例也適用於新界土地，從而保障了婦女繼承新界土地的平等權利。就這方面來說，條例已於一九九四年六月二十四日開始生效。

《新界土地（豁免）條例》並沒有關於提出訴訟的規定。在這項條例頒布後，有意繼承新界土地的婦女須按照一般繼承法例辦理遺囑認證或遺產管理書的申請。所謂一般繼承法例，是指《遺囑認證及遺產管理條例》（第10章）、《無遺囑者遺產條例》（第73章）及《財產繼承（供養遺屬及受養人）條例》（第481章）。

死者遺產代理人須自行根據一般繼承法例，向法院申請適當的遺產承辦書或在遇有糾紛時提出訴訟。遺產承辦處並不是按個別條例來存備有關個案的統計數字，而法院登記處則只按訴訟的性質，如人身傷害、破產、公司清盤、離婚、海事等來將訴訟分類。上述辦事處都沒有區分哪些婦女是根據《新界土地（豁免）條例》而獲得土地的繼承權。因此，我們沒有關於在這條例頒布後，有多少婦女因此而獲得土地繼承權的紀錄。

至於宣傳方面，在《新界土地（豁免）條例》獲通過後，政府隨即展開廣泛宣傳，協助市民認識這條例的條文。政府印製了一些解釋條例的作用和要點的宣傳單張，透過各區政務處、鄉事委員會和房屋署廣泛派發。當局並特別製作了一套公民教育節目在電視上播放，內容集中討論婦女在該條例下所享有的權利。新界各區政務處的聯絡主任也在定期探訪鄉村時，向村民解釋有關條文。上述工作是政務科和政務總署日常聯絡及公眾教育服務的一部分，因此，我們沒有另外存備這些工作所需經費或開支的帳目紀錄。

黃偉賢議員問：*主席先生，從政務司答覆的最後一段，很明顯看到政府並不重視這條新法例的推行，宣傳活動做得十分少。政務司可否再具體一點說明，究竟她所說的宣傳單張是何時印製的？印製了多少份？以及聯絡主任探訪了幾多條鄉村解釋這條條例呢？並且有否評估這個宣傳活動所帶來的效果，如果效果不理想，會否再撥款進行更廣泛的宣傳？*

政務司答：主席先生，剛才黃議員提出幾個問題。第一，關於宣傳單張，我們在一九九四年通過這條法例之後，便立刻印製，我們上一次印製了11萬份中文單張，英文亦有12 000份。我們現在其實又準備再印製更新的版本，因為要看看有甚麼最新的資料須加入，而且有一些繼承條例亦已有所修改。至於聯絡主任往鄉村探訪的問題，我想大家都知道新界聯絡主任與村民是有很密切的聯繫，雖然我們沒有特別規定每一個聯絡主任須探訪每條村落多少次，但是他們至少每星期兩次探訪村民。現在來說，我相信最直接和最有效的方法，就是探訪的時候，向他們解釋這條條例。另一方面，當村民有需要的時候，他們亦都會很詳細地加以解釋。

黃偉賢議員問：*我的質詢重點是政府有否評估這兩年所做的宣傳效果？*

政務司答：我想這條條例的效用，須看市民對這一條條例的接受程度和遵行情況。在這條條例來說，當然起初通過這條條例時，市民都很關注，並且有很大的迴響。所以，一直以來經過宣傳之後，其實現在村民對它都是很關注。所以，在他們考慮土地的承繼時，在這方面亦沒有困難。據我們所知，我們一直以來沒有收到任何投訴，因此，我相信我們的宣傳是收效的。

李永達議員問：*主席先生，剛才政務司的答覆說政務處聯絡主任探訪鄉村時會說及這件事，但我們要了解，探村時那些村的委員會全部都是男士。在這麼多次聯絡主任探訪之中，有否統計曾經親口向幾多位女士宣傳關於這件事和法例的通過？*

政務司答：其實，政府一直以來推廣在鄉村的選擇，希望有一人一票，應該開始有女士可以在鄉村委員會中擔任職務。但我要說一件事，就是聯絡主任探村時，並不單止探訪委員會的委員，亦在村中與村民聯繫。我們雖然沒有實際的數字，亦很難說有幾多個是村婦，但另一方面，我相信很多村內的婦女，都收到這個訊息。

PRESIDENT: Mr LEE Wing-tat, are you claiming that your question has not been answered?

李永達議員問：*主席先生，不是。我會提出另一個補充質詢。*

何俊仁議員問：*主席先生，剛才政務司說有很多數字是他們沒法提供的，因為沒有持別為某一類的訴訟做統計。我所關心的就是政務處經常有官員或聯絡主任探村，在探訪的時候有否收到任何資料或投訴，關於雖然這法例通過了，但仍然有某些人抗拒這法例的實施，仍然佔用一些應該由婦女承繼的財產呢？如果有這樣的數字，可否提供呢？*

政務司答：主席先生，剛才我亦說過我們沒有收到任何這一方面的投訴。但另一方面，我一定要說的是，當聯絡主任探村時，尤其是有人找他們詢問有

關承繼這方面的事情，他們一定會將這條條例清楚解釋給他們知道。所以，其實我們是採取主動去解釋給他們知道，希望村民接受，亦可以遵從這條條例，以免有甚麼投訴。

黃偉賢議員問：*主席先生，雖然政務司的答覆說遺產承辦處和法院也沒有這方面的紀錄，政務司可否透過法律援助署找到一些數字，究竟有多少個婦女透過法律援助署尋求這方面的援助？如果現在不能回答，可否以書面答覆我們？*

政務司答：主席先生，我想我要與黃議員說對不起了，因為法律援助署儲存的資料其實與法庭一樣，他們是根據訴訟案件的性質來儲存，不是按照哪一條條例，所以，我們亦不可以從他們的資料中找到這一個數字。

李永達議員問：*主席先生，因為法例已經通過兩年，現在我們爭論的是那些村婦是否知道有這條法例。為了確切知道她們是否知道這條法例，政務總署會否考慮做一個簡單的科學調查，問一下那幾百條村的村婦，第一，是否知道已通過這一條法例，第二，是否知道自己的權利？*

政務司答：其實一直以來，透過與她們的接觸，我們都知道很多村婦都知道這件事，況且我們亦沒有收到任何投訴，所以，我相信大家應該明白，她們其實是認識這條法例的，尤其是大家也會記得，這兩年來其實不時都有重提這條法例。不過，如果李議員真的覺得需要作一個調查，我們是可以考慮的。

WRITTEN ANSWERS TO QUESTIONS

Planning Criteria for Hospital Construction

7. **司徒華議員問**：*就公營醫院的設立及其人員編制事宜，政府可否告知本局是否知悉：*

(a) 每間公營醫院的病床標準數目與醫生及護士人手的標準編制以及每間醫院的病床、醫生及護士人手現時的實際數目為何；

(b) 用以劃分各區公營醫院服務網絡的標準，以及根據何種標準，

決定是否在某區設立一所公營醫院；

(c) *有否一套標準用以釐定人口與病床數目及人口與駐院醫生數目的比例，若有，詳情為何；及*

(d) *"聯網醫院"如何編配及運作；現時每個"聯網"的組合為何？*

衞生福利司答:主席先生，截至一九九六年三月底，公營醫院病床的實際數目，以及醫院管理局（"醫管局"）屬下醫務及護理人員的實際總人數，分別載於附件I及II。

醫管局不會嚴格依循人手編制的概念。醫管局採用一個根據核准職位制訂的人手水平機制，釐訂個別職級與職系的人手需求。隨着醫管局把職權下放，每間醫院都可視乎當時的運作需要，更改本身的員工配合。各醫院一向都着重服務質素及所需投入的資源。除對預算作出管制外，醫管局也訂立了一套人手指標（載於附件III），協助醫院的管理人員處理人手編制事宜。

醫管局總辦事處現正與每間醫院商定人員職級，以改善每年一次的規劃程序。這個規劃程序預期於未來數月完成，為日後的監察及管制工作提供一個客觀的基準。

成立醫院聯網是基於行政理由，以加強各醫療機構之間的協調、規劃及臨床服務管理工作。劃定聯網時，已考慮到每間醫院的地理位置、傳統上發揮的作用，及聯能關係。現有八個醫院聯網的詳情載列於附件IV。

各聯網內的醫院互相轉介病人，共用大型醫療設備和其他臨床支援服務，以發揮互為補充、相輔相成的作用。這項安排是希望物盡其用，以及避免服務重複或有所不足。每個聯網均由醫管局總辦事處的專責小組負責督導。

我們是通過定期檢討使用模式來鑑定對新醫院的需求，而使用模式會受多個因素影響，包括人口數目、人口結構、醫療科技的進步、日間醫療護理、社區支援服務，以及私營醫療護理服務的提供情況。醫院病床的總需求量是按照下列的既定公式來計算：

$$\text{所需病床數目} = \frac{\text{預測人口數目} \times \text{預計住院病人出院率} \times \text{每名病人平均住院日數}}{365\text{日} \times \text{最適度病床住用率（85\%）}}$$

每間公營醫院所需的醫生人數，不能單參照某套既定準則來訂定，而須考慮多項因素，包括所提供服務的性質及範圍、病症分類，以及病情的複雜程度。醫管局制訂的人手指標，能有效協助各醫院策劃及調配資源。

附件 I

截至一九九六年三月三十一日
醫院管理局轄下醫院在職醫護人員人數

醫院	*醫生*	*護士*
雅麗氏何妙齡那打素醫院	0	8
白普理寧養中心	2	30
香港佛教醫院	15	152
香港輸血服務中心	2	90
慈氏護養院（春磡角）	0	13
明愛醫院	158	888
青山醫院	40	586
大口環根德公爵夫人兒童醫院	7	69
粉嶺醫院	11	77
馮堯敬醫院	5	75
葛量洪醫院	41	468
靈實醫院	12	239
香港眼科醫院	30	50
葵涌醫院	51	680
九龍醫院	28	724
廣華醫院	210	1 205
荔枝角醫院	3	69
麥理浩復康院	1	34
戴麟趾夫人復康院	1	15
南朗醫院	7	70
聖母醫院	35	340
瑪嘉烈醫院	265	1 400
博愛醫院	32	201
威爾斯親王醫院	300	1 632
東區尤德夫人那打素醫院	232	854
伊利沙伯醫院	421	1 928
瑪麗醫院	278	1 565
律敦治醫院	58	330
沙田慈氏護養院	3	88
長洲醫院	6	38

小欖醫院	2	68
沙田醫院	24	295
東華東院	41	279
屯門醫院	250	1 303
鄧肇堅醫院	18	109
東華醫院	34	393
贊育醫院	18	159
基督教聯合醫院	184	1 136
黃竹坑醫院	4	44
黃大仙醫院	24	244
仁濟醫院	109	661

包括兼職人員在內

附件 II

截至一九九六年三月三十一日公營醫院提供的病床數目
（按病床種類分類）

醫院名稱		*總數*
香港東醫院聯網：		
慈氏護養院（春磡角）		90
東區尤德夫人那打素醫院		1 363
律敦治醫院		597
長洲醫院		83
鄧肇堅醫院		88
東華東院		303
黃竹坑醫院		200
	小計	2 734
香港西醫院聯網：		
根德公爵夫人兒童醫院		150
馮堯敬醫院		296
麥理浩復康院		130
瑪麗醫院		1 390
贊育醫院		195
東華醫院		787
	小計	2 948
九龍中醫院聯網：		
香港佛教醫院		353
九龍醫院		977
伊利沙伯醫院		1 846
	小計	3 178
九龍東醫院聯網：		
靈實醫院		257
戴麟趾夫人復康院		80
基督教聯合醫院		878
	小計	1 215
九龍西醫院聯網：		
廣華醫院		1 417
聖母醫院		252
黃大仙醫院		1 003
	小計	2 672
新界東醫院聯網：		
慈氏護養院（沙田）		296
威爾斯親王醫院		1 384
沙田醫院		540
	小計	2 320
新界北醫院聯網：		
青山醫院		1 741
粉嶺醫院		100
博愛醫院		470
小欖醫院		300
屯門醫院		1 417
	小計	4 028

新界南醫院聯網：		
明愛醫院		1 386
葵涌醫院		1 622
荔枝角醫院		424
瑪嘉烈醫院		1 245
仁濟醫院		608
	小計	5 285
不屬任何聯網的醫院：		
白普理寧養中心		26
葛量洪醫院		579
香港眼科醫院		14
南朗醫院		180
	小計	799
總數		25 177

資料來源：醫院管理局轄下各醫院所設病床數目周年統計（一九九五至九六年度）

附件III

醫生及護士的人手指標

	專科類別	*急症醫院*	*延續護理醫院*
醫生[1]	內科	350-600	
	外科	400-650	
	兒科	350-550	
	婦產科	600-800	
	矯形外科及創傷科	250-400	
	急症室[2]	6 000-7 500	
護士[3]	內科	16-21	10-13
	外科	15-20	10-13
	兒科	15-19	13-14
	產科	14-18	13-14
	婦科	14-17	不適用
	矯形外科	14-17	10-13
	老人病學	13-17	10-13

註：

1. 除非另外註明，否則有關醫生的數字全部都是以每名醫生每年負責的離院病人人數為計算單位。

2. 這些數字是每名醫生每年治療首次求診的急症病人的人數。

3. 護士（病房經理除外）的數字是根據一間標準醫院病房的情況而訂定。一間標準醫院病房設有34張病床；入住率為85%；而護士比率為合格護士佔68%，護士學生佔32%。

ONE PAGE MAP

Housing Authority's Shop Letting by Negotiation

8. **羅叔清議員問**：*鑑於房屋委員會（"房委會"）轄下的商業單位，主要是以投標方式，輔以協商方式出租，政府可否告知本局是否知悉：*

(a) 屋邨商場內的鋪位以協商方式出租佔所有出租店鋪的比率為何，及房委會如何釐定該比率；

(b) 房委會為何不將所有店鋪公開招標出租；

(c) 房委會有否指引，明確釐定經協商方式出租的店鋪的審批標準；若有，其審批標準為何；及

(d) 房委會有否監管機制監察審批決策過程？

房屋司答：主席先生，房委會轄下購物中心的商業單位，大部分以公開投標方式出租。我們沒有規定商業單位，以某種方式出租的所佔比例。過去兩年，約有20%的商業單位是以協商方式出租的。

使用公開投標抑或協商方式，須視乎擬經營的生意的性質及規模而定。舉例來說，為吸引主要零售公司在公共屋邨開設分店，房委會可以撥出小量商業單位，以協商方式出租。這個做法可讓房委會較有彈性地訂定每份租約的條款，例如租期和租金的規定。以這種方式獲得挑選的租戶，一般都是受到屋邨居民歡迎的連鎖店；而在同一購物商場的其他零售商亦會歡迎這些連鎖店，因為它們能夠吸引更多人到商場光顧。私營機構亦往往採用這種方法，出租商業鋪位。

房委會只在下述情況下，才以協商方式出租商業單位：

(a) 擬出租單位的面積超過250平方米，而所經營的行業能為購物中心招徠更多顧客，或可為居民提供受歡迎的設施；或

(b) 在超過兩次的公開招標中，擬出租的單位均未能吸引合適的投標者；或

(c) 擬在商業單位經營業務的商號具吸引力，或租戶有能力透過廣泛推廣活動去發展其業務。這兩個因素均可加強購物商場的整體吸引力；或

(d) 現時的租戶已證明有能力擴充業務。

由房委會轄下商業樓宇小組委員會的主席領導的租賃小組，監管以協商方式出租商業樓宇的安排。租賃程序和準則亦由總督特派廉政專員公署定期進行檢討。

Criteria on Attorney General's request for Death Inquiry

9. **涂謹申議員問**：*根據《死因裁判官條例》第 8 條，如律政司要求就某人的死因進行研訊，死因裁判官須進行該研訊。就此，政府可否告知本局：*

(a) 過去五年，律政司要求死因裁判官進行此類研訊的個案共有多少宗；及

(b) 律政司根據甚麼準則提出該項要求？

律政司答：主席先生，《死因裁判官條例》第8條規定，如律政司要求就某人的死亡原因及有關情況進行研訊，死因裁判官須進行該研訊。過去五年，律政司並沒有行使第8條所載述的該項權力。

律政司行使《死因裁判官條例》第8條的權力，是沒有法定準則的。在決定是否就某人的死亡進行研訊時，律政司會考慮下列因素：

(a) 在必須進行研訊的情況下，死因裁判官拒絕了或漏去了進行研訊；或

(b) 其他情況顯示，下令進行研訊會符合公眾利益。

Co-ordination of Information on Copyright Ownership

10. **田北俊議員問**：*政府可否告知本局：*

(a) 在有超過一間公司同時聲稱擁有某種商品的版權時，政府有何措施協助工商機構辨別該商品的真正版權持有人，以避免該等機構購入沒有版權的商品；及

(b) 哪個部門負責統籌歌曲、書籍、電影及電腦軟件等商品版權持有人的資料；及有何途徑供商界人士查詢有關資料？

工商司答：主席先生，

(a) 版權是一種私有權。在香港，無須按香港現行版權法律註冊，版權即已存在。香港政府跟隨國際的慣常做法，並無設立版權登記冊，以記錄版權作品及版權作品版權持有人的資料；因此，我們沒有備存關於持有或轉讓版權的資料。

在有兩名或兩名以上人士聲稱擁有某種商品的版權時，有意購買該種商品的工業或商業機構，須查證版權誰屬，而這不外是關乎提出證據的問題。其實，工商機構在作出有關的工業或商業決定前，最好先徵詢法律意見。

(b) 正如先前所說，政府沒有備存關於持有或轉讓版權的資料，亦無政府部門負責整理這類資料。不過，有意購買版權作品的人士，可循下述途徑，查詢版權持有人的身分：

— 音樂方面，香港作曲家及作詞家協會為公開演出、播放及通過有線電視傳送音樂作品簽發許可證。錄音製品播放版權（東南亞）有限公司則負責發許可證予國際唱片業協會會員製作的錄音製品。至於公開播放由國際唱片業協會會員製作的錄音製品及音樂錄影帶，則必須先與該協會簽訂合約，取得特許。

— 書籍出版方面，一些文學、戲劇或音樂作品的作者及出版商，都是香港版權複製授權協會的會員。該會現正計劃代表會員，簽發複製許可證。

— 電影及電腦軟件方面，一些電影製片人及電腦程式設計員均已加入有關協會。也許此等協會能夠提供一些業內版權持有人的資料。

知識產權署設有24小時電話查詢熱綫（電話號碼：2803 5860），並在國際電腦網絡上設有網頁（網址：http://www.houston.com.hk/hkgipd/），提供有關知識產權，包括版權等的一般資料。

Polyclinic Services

11. **何敏嘉議員問**：*政府可否告知本局：*

(a) 現時本港共有多少間政府開設的分科診所，其中哪幾間同時提供日間及夜間診症服務；

(b) 現時是否按每區的人口數字來決定在該區設立分科診所；

(c) 有何準則釐定在分科診所同時提供日間及夜間診症服務的需要；及

(d) 各公立醫院如何與各地區的分科診所配合，為市民提供醫療服務？

衞生福利司答：主席先生，“分科診療所”是指提供超過兩類醫療服務的診療所。目前，本港有六間分科診療所，提供範圍廣泛的基層健康護理服務，例如普通科門診、胸肺科、社會衞生科及特別皮膚科等服務。衞生署同時提供日間及夜間診症服務。全港60間普通科門診診療所中，六間設於分科診療所內，18間則同時提供日間及夜間診症服務。

根據香港規劃標準與準則，一般來說，每10萬名市民可獲提供一間普通科門診診療所。政府在決定某間診療所應否提供夜間診症服務時，會充分考慮有關因素，其中包括現有設施的使用模式、診療所的地點是否方便適中，以及鄰近地區是否設有其他醫療服務機構等。

當局早已設立轉介制度，以便把需要專科護理的病人，由普通科門診診療所轉介往醫院管理局轄下的醫療機構，接受進一步治療。另一方面，通過類似的轉介制度，公營醫院的出院病人如情況穩定，亦可以在基層健康服務機構覆診。上述各醫療服務機構會就病人的健康和治療情況交換資料，以確保為病人提供更具連貫性的護理。對於這項安排，當局定會根據不斷轉變的情況，定期加以檢討。

Employees Retraining Scheme Programmes

12. **MR SIN CHUNG KAI** asked: *Regarding the retraining courses offered by the Employees Retraining Board, will the Government inform this Council of:*

(a) the number of workers who have joined the following programmes since the implementation of the Employees Retraining Scheme:

(i) General Retraining Programme

i Courses on Job Search Skills
ii. Job-Specific Skills Courses
iii. General Skills Courses
iv. Skills Upgrading Courses

(ii) One-the-Job Training Programmes, with a breakdown by industry

(iii) Programmes for the Elderly

(iv) Programmes for Disabled and Industrial Accident Victims

(v) Other Programmes; and

(b) the contents of each of the above programmes?

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

(a) Since its establishment in 1992, the Employees Retraining Board has provided a total of 136 149 retraining places under the Retraining Programmes and the On-the-Job Training Programmes as at the end of June 1996. A breakdown of the number of retraining places by type of course is set out below:

	Programme		*No. of retraining places*
(i)	General Retraining Programme		
	i.	Job search skills courses	28 307
	ii.	Job-specific skills courses	19 902
	iii.	General skills courses	69 725
	iv.	Skills upgrading courses	1 927
		Sub-total:	119 861
(ii)	On-the-Job Training Programme (by industry)		
	i.	Communication, Social and Personal Service	3 857
	ii.	Import and Export and Retail and Wholesale	2 723
	iii.	Manufacturing	1 929
	iv.	Finance, Insurance, Real Estate and Business Service	1 021
	v.	Hotel and Catering	908
	vi.	Transport, Storage and Communication	680
	vii.	Others	227
		Sub-total:	11 345
(iii)	Programme for the Elderly		2 888
(iv)	Programme for Disabled and Accident Victims		1 485
(v)	Other Programmes		570
		Grand total:	136 149

There is no breakdown of the actual number of workers who have joined each of the above programmes and some workers might have taken more than one course since the commencement of the Employees Retraining Scheme.

(b) The general contents of each of the programmes are as follows:

(i) General Retraining Programme

i. Job search skills courses — retrainees are taught job search skills, interview techniques, information on labour market, psychological coping skills, interpersonal and communication skills.

ii. Job-specific skills courses — retrainees are taught vocational skills for specific occupations. Examples of vocational skills relate to salespersons, hotel housekeepers, receptionists, office assistants, junior account clerks, building attendants, travel assistants and domestic helpers.

iii. General skills courses — retrainees are taught general vocational skills such as computer, typing and language (for example, English, Putonghua and Japanese) training.

iv. Skills upgrading courses — these courses are designed to help workers of a specific occupation to upgrade their skills to meet market needs. Examples are skill upgrading courses for mechanical craftsmen and technicians, product design and development personnel and electroplating operatives.

(ii) On-the-Job Training Programme — under this programme, individual employers provide induction training which is specific to the jobs concerned after they have taken on the retrainees.

(iii) Programme for the Elderly — these are specially designed courses for persons aged 50 and above. They are trained for occupations such as junior clerks, couriers, carpark attendants and domestic helpers, and in areas such as office English and basic computer skills.

(iv) Programme for Disabled and Accident Victims — this programme includes training for office assistants, cleaning services, desktop publishing, paging services, mobile kiosk work and fast food services.

(v) Other programmes — these are tailor-made courses designed to train employees for a specific firm or groups of firms, such as training for paging operators, retail salespersons, market interviewers and building attendants.

Control and Improvement of Air Quality inside Road Tunnels

13. **MISS CHRISTINE LOH** asked: *In 1993, the Environmental Protection Department issued the "Practice Notes on Control of Air Pollution in Vehicle Tunnels" to all tunnel operators. The Notes set down guidelines on the minimum requirements for three air pollutants: carbon monoxide, nitrogen dioxide and sulphur dioxide. As tunnel operators are already required by legislation and the terms of management contracts to monitor the concentration of carbon monoxide to ensure that it does not exceed the prescribed limits, and in view of the Government's recent statement that it will discuss with the tunnel operators the feasibility of installing nitrogen dioxide monitors inside the tunnels, will the Administration inform this Council whether:*

(a) it will consider bringing in regulatory control on the level of sulphur dioxide as well as other pollutants (such as suspended particulates and various hydrocarbons) inside road tunnels; if so; what the details are; if not, why not; and

(b) it will adopt other measures to improve the air quality in all road tunnels to a standard conforming to the guidelines laid down in the

Practice Notes?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

(a) We will consider the need for legislation to ensure the consistent application of the air quality standards set out in the Practice Notes to all road tunnels. The development of new legislation will, however, require time. In the meantime, and as set out in my reply to a question from the Honourable CHOY Kan-pui on 26 June 1996, tunnel operators are already required, either by legislation or by contract terms, to monitor the level of carbon monoxide in the tunnels. They are also required to monitor visibility as well. The levels of carbon monoxide and visibility, together with nitrogen dioxide, are sufficiently indicative of the air quality inside the tunnels.

(b) A new ventilation system with nitrogen oxides monitors has recently been installed in the Lion Rock Tunnel and action is in hand to upgrade the air quality monitoring facilities in the Airport Tunnel. We are also assessing the air quality situation in the other government tunnels and upgrading work will be implemented if necessary. For franchised tunnels, the Administration will continue to discuss with the tunnel operators compliance with the air quality requirements set out in the Practice Notes issued by the Environmental Protection Department. A trial scheme to improve the air quality in the Tate's Cairn Tunnel is being conducted with the agreement and co-operation of the tunnel operator. Subject to the outcome of the trial, we will work together with the tunnel operator to implement the necessary air quality improvement measures as a matter of priority. In the longer term, as noted above, we will also consider the need for legislation to ensure consistent application of the air quality standards set out in the Practice Notes to all tunnels.

Comprehensive Insurance for Subsidized Schools

14. **張文光議員問**：*政府可否告知本局：*

(a) *當局為全港受資助學校購買的公共責任綜合保險，其保障範圍及所需保費為何；及*

(b) *鑑於參加課外活動或就讀於有潛在危險斜坡附近的學校的學生，在發生意外後所得的保障並不足夠，當局會否考慮為資助學校增加保險價值及擴大保險範圍，以提高意外傷亡人士可得的賠償額？*

教育統籌司答：主席先生，

(a) 政府為全港資助及按位津貼學校購買的綜合保險，投保期由一九九五年九月一日至一九九七年八月三十一日，保費超過350萬元。

綜合保險包括三部分：公眾責任保險、僱員補償保險及團體人身意外保險。這三項保險的承保範圍分述如下：

公眾責任保險：承保範圍包括受保學校發生事故及／或教育署或受保學校舉辦教育活動而引致學生及其他人士(不包括受保學校僱員)的身體受傷，以及財產遭受損失或損毀時，受保學校在法律上須承擔的賠償責任。每宗事故的最高保額為港幣750萬元，而在投保期內，索償的次數並無限制。

僱員補償保險：承保範圍包括在投保期內，僱員在受保學校工作期間因工罹患疾病或遭遇意外以致身體受傷而得的補償。每間受保學校每宗事故的最高保額為港幣2億元。

團體人身意外保險：承保範圍包括每名學生的意外死亡或傷殘補償，但有關意外必須在學生參與學校活動時發生。在每宗傷亡事件中，每名學生的最高保額為港幣2萬元。

(b) 政府現正考慮提高公眾責任保險和團體人身意外保險的最高保額。我們希望很快便能作出決定。不過，我們認為無須檢討僱員補償保險的最高保額，因為該保額與《僱員補償條例》(第282章)下的法定規定相符。

Enforcement of Seat-belt Legislation

15. **周梁淑怡議員問**：*政府已立例規定私家車後座乘客佩帶安全帶，而只有經有關專家批示應予豁免者，再經運輸署審核為確應予豁免者，才可得豁免證明。就此，政府可否告知本局：*

(a) 運輸署以甚麼準則來鑑定專家就某些個別人士所作的應予豁免佩帶安全帶的建議；

(b) 運輸署運用此酌情權時，如何避免出現不公平情況；

(c) 政府會否考慮放寬對佩帶後座安全帶的管制，例如簡化甚至取消由運輸署簽發豁免證的手續，改由專業人士簽發證明代替；及

(d) 政府如何教育市民，特別是家長和孕婦，有關佩帶後座安全帶的安全措施？

運輸司答：主席先生，根據《道路交通（安全裝備）規例》第10條，任何人都可以向運輸署署長申請豁免配用安全帶。

(a) 運輸署處理這類申請時，會考慮申請人提出的理由，包括其身體狀況及其他有關因素，例如註冊醫生的意見。註冊醫生的書面意見並非必要，但會有助該署處理申請。

(b) 為確保所有個案獲得公平處理，運輸署已制訂處理豁免申請的指引。這些指引的範圍包括：申請人可以提出的多種情況和理由；如何證明申請合理（例如由醫生證明）；以及該署如何處理申請。

(c) 有關配用安全帶的豁免安排，運輸署在這方面取得更多經驗後，便會加以檢討，然後決定是否改行新手續。

(d) 自一九九五年年底以來，運輸署已展開宣傳，向學校、各區政務處、運輸署牌照事務處、油站等派發資料單張和《道路交通安全季刊》，讓駕車人士和乘客知道後座乘客須配用安全帶的規定。由一九九六年五月起，電視和電台都有宣傳這事。此外，免費派發給駕駛考試考生的《道路使用者守則》也正在修訂中，加入正確配用安全帶方法的插圖，以及兒童和孕婦使用安全帶須知。

Out-patient Services

16. **黃震遐議員問**：*有關衞生署及醫院管理局在過去三年分別所提供的門診服務，政府可否告知本局：*

(a) 每年求診病人的總數及求診人次分別為何；及

(b) 每年每次門診服務的平均成本及其成本結構（包括員工薪酬、藥物及化驗費用等）分別為何？

衞生福利司答：主席先生，過去三年的求診人次如下：

年度	*衞生署（普通科門診服務）*	*醫院管理局（專科門診服務）*
一九九三至九四	3 970 000	4 709 713
一九九四至九五	4 010 000	5 273 162
一九九五至九六	4 200 000	5 851 232

過去三年，每次門診服務的平均成本如下：

年度	*衞生署（普通科門診服務）*	*醫院管理局（專科門診服務）*
一九九三至九四	152元	340元
一九九四至九五	175元	386元
一九九五至九六	191元	422元

過去三年，每次門診服務的成本結構如下：

衞生署
（普通科門診服務）

	一九九三至九四元	*一九九四至九五元*	*一九九五至九六元*
職員費用	104	121	134
藥物費用	14	15	16
其他費用（包括化驗開支及其他支援服務費用）	34	39	41
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	152	175	191

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醫院管理局
（專科門診服務）

	一九九三至九四	*一九九四至九五*	*一九九五至九六*
	元	*元*	*元*
職員費用	231	270	296
藥物費用	68	73	80
其他費用（包括化驗開支及其他支援服務費用）	41	43	46
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	340	386	442
	===	===	===

Government Support Services for Matrimonial Troubles

17. **蔡根培議員問**：*政府可否告知本局：*

(a) *在過去三年，本港的離婚個案有多少宗；請按年列出涉及內地及外地女子的離婚個案數字，及她們所來自的國家分布情況；*

(b) *在(a)項所述的離婚個案中，請按年列出受父母離異影響的 18 歲以下人士的數字；及*

(c) *有關部門有否為受離婚影響的人士及其家庭成員提供輔導及協助？*

衞生福利司答：主席先生，過去三年，即一九九三、九四及九五年，申請離婚的個案分別有8 626、9 272及10 292宗。至於離婚個案中女子所來自國家的分布情況，以及18歲以下受父母離異影響人士的數字，我們並沒有統計資料。

社會福利署（“社署”）為申請離婚的夫婦及其家庭成員提供多項服務及援助。社署會建議當事人接受婚姻輔導，以協助他們挽救婚姻，並減輕婚

姻關係出現危機所帶來的家庭壓力。家庭個案工作者會協助這些夫婦了解分居或離婚對子女的影響，並會向他們強調須要保持融洽的家庭關係。社署的監護兒童事務課也會就離婚個案所引起的子女撫養及監護權問題，提供深入的個案工作服務。社署還會按情況，向這些夫婦及其子女提供其他福利服務，例如經濟援助、房屋援助、幼兒服務、心理輔導及其他的家庭支援服務等。這些夫婦如需法律援助，社署亦會把其個案轉介法律援助署。

Work Permits for Foreigners

18. **羅祥國議員問**：*政府可否告知本局：*

(a) 過往三年每年簽發多少個工作許可證予不同國籍的外國人；有多少宗工作許可證的申請遭拒絕；及

(b) 過往三年每年獲簽發工作許可證的外國人，其行業、工作類別、年齡及薪酬的分布為何？

保安司答：主席先生，

(a) 根據來港工作的一般政策，在過往三年，發出工作簽證數目（不包括發給合約工人和外籍家庭傭工的簽證在內），以及不獲接納的申請數目，分別按前五名的國籍，載列如下：

年分	*國籍*	*簽發數目*	*拒絕數目*
一九九三	日本	2 456	101
	美國	2 280	177
	澳洲	1 069	205
	台灣	1 056	261
	菲律賓	1 022	399
	其他	6 988	1 225
	總計	14 871	2 368

年分	*國籍*	*簽發數目*	*拒絕數目*
一九九四	美國	3 017	164
	日本	2 931	71
	菲律賓	1 205	253
	台灣	1 068	237
	澳洲	1 058	777
	其他	6 952	1 227
	總計	16 231	2 029

年分	*國籍*	*簽發數目*	*拒絕數目*
一九九五	日本	3 141	66
	美國	2 604	108
	菲律賓	976	276
	澳洲	878	136
	台灣	833	97
	其他	7 606	2 549
	總計	16 038	3 232

年分	*國籍*	*簽發數目*	*拒絕數目*
一九九六	日本	747	30
（一月至三月）	美國	595	21
	菲律賓	265	89
	澳洲	270	14
	台灣	240	10
	其他	1 641	276
	總計	3 758	440

註：在“國籍”欄下，“其他”類別包括泰國、南韓、印度、馬來西亞

及印尼等。

(b) 關於已發出的工作簽證，我們並沒有按行業、年齡或薪酬加以細分。在過去三年，每年發出的工作簽證，按專業分類如下：

專業	*一九九三*	*一九九四*	*一九九五*	*一九九六（一月至三月）*
技術人員	2 786	2 485	2 967	479
行政、管理及專業人士	6 863	7 017	6 550	1 843
其他	5 222	6 729	6 521	1 436
總計	14 871	16 231	16 038	3 758

註：在“專業”欄下，“其他”類別包括會計師、顧問、設計師、新聞從業員、講師等。

Labour Importation Related to Second Runway

19. **梁耀忠議員問**：*政府可否告知本局：*

(a) 有否估計興建新機場第二條跑道的工程，將會為本港帶來多少就業機會；

(b) 政府為新機場及有關工程定下的輸入外地勞工的限額，是否仍適用於第二條跑道工程；若否，政府會否為此後項工程增加輸入外地勞工的限額；及

(c) 在決定是否增加輸入外地勞工的限額時，政府會否考慮本港現時的失業情況及過去在新機場工程特別輸入勞工計劃下，曾出現剋扣外勞工資的事件？

教育統籌司答：主席先生，新機場及有關工程特別輸入勞工計劃（“特別輸入勞工計劃”）的目的，是容許有關工程的承建商，在確實無法於指定期限內覓得合適本地工人填補職位空缺時，可以輸入外地勞工替代，好讓新機場

及有關工程能夠如期完成。為保障本地工人的就業機會，特別輸入勞工計劃自推行以來，均以一項政策原則為依據，就是僱主應優先僱用本地工人填補職位空缺，而本地工人不應被外來工人取代。特別輸入勞工計劃的適用範圍，包括各項與新機場有關的工程。換句話說，所有獲得這些工程合約的承建商，均可根據該計劃申請輸入勞工。

關於質詢的三個部分，現分別答覆如下：

(a) 根據機場管理局的評估，第二條跑道的建築工程及客運大樓西北客運廊的有關工程，在進入高峰期時，最多大約需要工人1 000名。

(b) 第二條跑道是一項與新機場有關的工程，因此屬於可在特別輸入勞工計劃下申請輸入勞工的工程種類。現時該計劃所定的輸入勞工配額上限為17 000人，相對於這個數目，第二條跑道的建築工程和客運大樓西北客運廊的有關工程合共需要的工人數目不多，故無須為此提高目前定於17 000的配額上限。

(c) 儘管第二條跑道工程可能需要輸入勞工，我們並不打算提高特別輸入勞工計劃所定的配額上限。倘若第二條跑道工程及客運大樓西北客運廊有關工程的承建商希望按該計劃申請輸入勞工，他們必須完全遵照該計劃的規則和程序辦理。

Senior Citizen Card Scheme

20. **李華明議員問**：*就長者卡計劃的運作，政府可否告知本局：*

(a) 長者卡推出已有兩年，當局會否作出全面檢討；

(b) 社會福利署有甚麼經常的宣傳活動來推廣長者卡計劃；

(c) 現時以甚麼方式，邀請商業機構參與長者卡計劃；

(d) 會否考慮透過人民入境事務處，自動發卡予適齡長者；

(e) 現時有否機制監察該些承諾提供優惠予長者的商號有否遵守承諾；如該些機構不依承諾提供服務，現時有否途徑供長者人士提出投訴；及

(f) 政務總署有否透過其地區網絡（如各地區諮詢組織），推廣長者卡計劃；若有，曾進行甚麼推廣活動；若否，原因為何？

衞生福利司答：主席先生，

(a) 截至一九九六年六月底，共有427 699名老人向社會福利署長者卡辦事處申領長者卡，約佔全港老人人口的70%。該辦事處至今已發出 423 320張長者卡，其餘的申請則仍在處理中。迄今，共有424間公司和機構參與長者卡計劃，分別在屬下各單位（總數2 133個），為老人提供各種優惠及／或優先提供服務。社會福利署會定期檢討這個計劃，並加以監察。由於這個計劃的運作，一直都十分順利，當局認為無需進行全面檢討。

(b) 政府多個部門及非政府機構的服務櫃位，都備有長者卡申請表格及宣傳海報，供市民索取。此外，社會福利署在地區層面舉辦宣傳活動和展覽，並派發宣傳資料。長者卡大使計劃的推行，有助進一步推廣這計劃。

(c) 長者卡辦事處以發出邀請信、用電話聯絡等方式，邀請商業機構參與長者卡計劃。最近，各區已開始試辦長者卡大使計劃，招募老人和義工擔任大使，親自邀請各商業機構參與長者卡計劃。迄今，有超過50個機構通過這個計劃應邀參與長者卡計劃。鑑於長者卡大使計劃十分成功，當局將繼續使用這個推廣策略。

(d) 由於須保護個人私隱，當局披露個人資料的權利受到限制。人民入境事務處負責人事登記的工作，備有個人年齡的資料。不過，該處儲存這些資料的目的，並不包括簽發長者卡。《人事登記條例》及其附屬規例禁止披露已登記人士的資料。為簽發長者卡而披露該處所儲存的個人資料，可視為無理侵犯個人私隱，不但牴觸《人權法案》第14條的規定，也會牴觸快將實施的保護資料法例。基於這些因素，在未得有關人士同意的情況下，不宜使用這些資料。

讓長者自行決定是否申請長者卡，是較為可取的做法。但當局必須聲明，他們申請時所提供的個人資料，只會用來簽發長者卡。

(e) 由於長者卡計劃的目的，是提高市民對老人的尊重及關注，商業機構完全自發性地參與。老人如發現某些公司沒有履行承諾，可直接向這些公司投訴。社會福利署把這類投訴轉達有關公司，並在需要時要求這些公司加以解釋。

(f) 自一九九四年長者卡計劃推行以來，政務總署通過與區議會的緊密聯繫和本身的廣泛地區聯絡網絡，積極協助社會福利署推廣這計劃。政務總署一直在下述各方面進行推廣活動，今後仍會繼續這樣做：

(i) 該署屬下18區的諮詢服務中心都備有申請表格和宣傳單張，供市民索取；

(ii) 為了在地區層面廣泛宣傳這計劃，該署把申請表格和宣傳單張分發各分區委員會、鄉事委員會、互助委員會、業主立案法團及其他地區組織。政務處人員日常與市民接觸，也會向他們推廣這計劃；及

(iii) 該署一直協助社會福利署，呼籲區議會給予支持，並在政務處、區議會或區內老人團體主辦的多項社區建設活動中宣傳這計劃。

普羅大眾，特別是老人，對這計劃都非常熟悉。政務總署會繼續協助社會福利署推廣這計劃，以吸引更多老人及機構參與及贊助這計劃。

BILLS

First Reading of Bills

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS (AMENDMENT) BILL 1996

EMPLOYMENT (AMENDMENT) (NO. 3) BILL 1996

EMPLOYEES' COMPENSATION (AMENDMENT) (NO. 2) BILL 1996

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

PATENTS BILL

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

Second Reading of Bills

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS (AMENDMENT) BILL 1996

THE CHIEF SECRETARY to move the Second Reading of: "A Bill to amend the Commissioner for Administrative Complaints Ordinance."

He said: Mr President, I move that the Commissioner for Administrative Complaints (Amendment) Bill 1996 be read a Second time.

This Bill has three purposes. The first purpose is to empower the Commissioner for Administrative Complaints (COMAC) to investigate those administrative actions taken by or on behalf of the police, the Independent Commission Against Corruption (ICAC), and the Secretariats of the Independent Police Complaints Council and the Public Service Commission in relation to the Code on Access to Information. The second purpose is to enhance the operation of COMAC, and the third is to change COMAC's English title to "The Ombudsman".

Code on Access to Information

We have stated publicly that we will extend the Code on Access to Information throughout the Government by the end of this year. Under his existing statutory powers, the COMAC may investigate whether a branch or department listed in Schedule 1 to the Ordinance has failed to apply the Code properly. However, Schedule 1 does not include the police, the ICAC, or the two Secretariats of the Independent Police Complaints Council and the Public Service Commission, which are thus outside the COMAC's jurisdiction.

While we do not propose that the COMAC be given general jurisdiction to investigate complaints of maladministration on the part of these four departments, we consider that it would be more efficient for the operation of the Code, and less confusing to members of the public, to have a single independent review body under the Code. We therefore propose that the COMAC Ordinance be amended so that the COMAC may investigate complaints of non-compliance with the Code against these four agencies, for example, the police, the ICAC, and the two Secretariats of the Independent Police Complaints Council and the Public Service Commission.

Amendment to Schedule 2

When the police and the ICAC are brought within the COMAC's jurisdiction for the purpose of the Code, we need to ensure the security of sensitive materials relating to the prevention, detection or investigation of crime. We therefore propose to amend Schedule 2 to the Ordinance to make it clear that the COMAC is not to investigate any action taken in relation to the prevention, detection or investigation of any crime or offence.

Secrecy provision

Section 15 of the COMAC Ordinance requires the COMAC and his staff to maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions. This is unnecessarily wide. The Bill seeks to make it clear that the provision only covers matters arising from any investigation a complaint made to the COMAC or his staff in the exercise of their complaint-handling functions, and that the COMAC and his staff may disclose information that is necessary to be disclosed for the purpose of investigating a complaint, or deciding on whether an investigation should be undertaken, continued or discontinued.

Reporting requirement

The COMAC also finds that the present reporting requirement in the Ordinance poses problems for the efficient discharge of his functions in view of the large increase in the number of complaints made to his office. This is particularly so in respect of simple complaints where the organization being

complained against agrees with his findings and recommendations. The COMAC wished to have greater flexibility in handling simple and minor complaints. We therefore propose that the reporting requirements set out in section 16(1) of the Ordinance, for example, when the COMAC has formed a view that there is maladministration or inadequacy on the part of the organization being investigated, should be made discretionary instead of mandatory. However, section 17(2) of the Ordinance would still require the COMAC to inform the organization affected of the outcome of his investigations.

Change in title

The COMAC considers that his powers and jurisdiction are more akin to those of a traditional ombudsman following the legislative changes effected in June 1994. He has proposed that his English title be changed to "The Ombudsman" as this would facilitate his contacts with his overseas counterparts. This proposal is now implemented in the Bill.

I commend the Bill to Honourable Members.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

EMPLOYMENT (AMENDMENT) (NO. 3) BILL 1996

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

教育統籌司致辭：主席先生，我謹動議二讀《1996年僱傭（修訂）（第3號）條例草案》。

條例草案建議將僱員在放取病假時的每天疾病津貼額，由現時相等於僱員當時工作一天可得工資的三分之二增至五分之四；其餘的規定則保持不變：即僱員必須連續放病假最少四天，又經醫生或註冊牙醫證明確有需要放假，才可獲發疾病津貼。

《僱傭條例》下有關疾病津貼的條文最初在一九七三年制定時，疾病津貼額定為工資的一半。政府在一九七七年作出修訂，將津貼額提高至僱員每天工資的三分之二。這項津貼額此後未再有調整。

政府最近就疾病津貼額進行檢討，並參考《國際勞工公約第130號1969年醫療護理及疾病福利公約》，鄰近國家有關疾病福利的條文，以及僱員放取病假的調查結果。政府完成檢討，認為應提高每天疾病津貼額，由僱員工資的三分之二增至五分之四，但保留最少連續放取四天病假才可領取津貼的規定。《僱傭（修訂）（第3號）條例草案》旨在把這項建議付諸實行。

條例草案中的建議較早前已獲勞工顧問委員會通過。我們亦向勞工顧問委員會承諾，在引進這條例草案後，我們將會檢討其他與疾病津貼有關的條文。

主席先生，我謹提出議案。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

EMPLOYEES' COMPENSATION (AMENDMENT) (NO. 2) BILL 1996

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

教育統籌司致辭：主席先生，我謹動議二讀《1996年僱員補償（修訂）（第2號）條例草案》。

條例草案旨在改善因工受傷的僱員在放取病假期間可得的補償。

根據現行的《僱員補償條例》，僱員因工受傷導致喪失工作能力連續超過三天，便有資格獲得按期支付補償。補償額是僱員在意外發生時每月收入與意外發生後每月收入兩者差額的三分之二，另加醫療費。

政府詳細檢討了現時有關按期付款的條文，並參考《國際勞工公約第17號勞工賠償（意外）公約》和《第121號工傷利益公約》，鄰近國家的工傷補償條文，以及僱員和僱主的意見。我們現在提出《僱員補償（修訂）（第2號）條例草案》旨在：

(a) 取消僱員現時須等候三天才可獲得按期付款和醫療費補償的規定，使因工受傷而暫時喪失工作能力的僱員，不論喪失工作能力多久，均可獲得這兩項補償；及

(b) 修訂按期付款的計算方法，由僱員受傷前後收入差額的三分之二提高至五分之四。

基於這些建議，政府亦檢討了《僱員補償條例》下現時處理補償的機制，以及補償申索的仲裁程序。

根據現行規定，僱員如因工受傷導致暫時喪失工作能力連續超過三天，不論該宗意外是否涉及補償責任，僱主須在意外發生後14天內，按《僱員補償規例》訂明的格式，把意外通知勞工處處長。僱主須在訂明的格式上填報僱主和僱員的資料、意外詳情、僱員的補償保險詳情、僱員的收入、僱主和僱員直接達成的補償額和詳情、僱員受傷的性質和受傷原因。政府現在建議因工受傷喪失工作能力的僱員，不論喪失工作能力多久，均可獲得暫時喪失工作能力補償，可能會導致按期付款索償個案數目增加。同時，因工受傷而喪失工作能力連續不超過三天的僱員，一般傷勢較輕，他們的索償個案會比喪失工作能力時間較長的個案較為簡單。因此，我們建議應簡化申報程序。具體來說，我們建議如僱員因工受傷而喪失工作能力連續不超過三天，僱主可向勞工處處長申報較為簡單的資料，處長會循行政方法指定僱主採用新格式，簡化申報程序，以減輕僱主和勞工處的行政負擔。

受傷僱員如欲向僱主追討按期付款，現時須向地方法院提出申索。根據實際經驗，暫時喪失工作能力不超過三天的按期付款，金額多數不大，因此，我們建議這類申索亦可當作民事債項，交由小額錢債審裁處審理，而非只限向地方法院提出。由於預期申索個案將會因《1996年僱員補償（修訂）（第2號）條例草案》而增加，這項安排可減輕地方法院的工作量，並縮短個案的候審時間。實施這項安排後，這類個案的申索程序將與醫療費的申索程序一致。

主席先生，我謹提出議案。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

THE SECRETARY FOR SECURITY to move the Second Reading of: "A Bill to provide a statutory basis for the Independent Police Complaints Council, to define its functions and powers, and to provide for matters incidental thereto or connected therewith."

She said: Mr President, I move the Second Reading of the Independent Police Complaints Council (IPCC) Bill. The Bill seeks to give statutory status to the IPCC and enhance its monitoring role as a civilian oversight body on complaints against the police.

The Bill will provide the legal basis for the IPCC to discharge its functions of monitoring and reviewing investigations by the Complaints Against Police Office (CAPO), which deals with all complaints against police officers. Where the IPCC identifies any inadequacies or discrepancies in police investigations, they will be taken up with the CAPO. If not satisfied with the CAPO's investigation, the IPCC can draw a case to the attention of the Governor.

Specifically, the Bill would empower the IPCC to require the CAPO to investigate or reinvestigate any complaint. The Bill also provides that the IPCC may interview witnesses, complainants or complainees. This will enable the IPCCC to clarify ambiguities and discrepancies and make a better assessment of the whole complaint case. Further, IPCC members can also conduct scheduled or surprise visits to observe investigations by the CAPO directly. In carrying out their duties, IPCC members enjoy the same protection and privileges as are given to Magistrates.

Mr President, the Bill will firmly anchor the IPCC in our police complaints

system by defining clearly in the legislation the powers and functions of the IPCC. In turn, this will promote the accountability of the IPCC. According to the Bill, the IPCC shall in each year make a report to the Governor concerning the exercise of its functions and the Governor shall lay the report before this Council.

In recent years, we had already implemented a number of measures to improve our police complaints system, such as the installation of closed circuit television, video or tape-recording facilitates in the CAPO. We are, however, not complacent with improvements made so far. In parallel with the Bill, we will therefore introduce a new package of improvement measures aimed at further enhancing the independence of the IPCC, and the credibility and transparency of the police complaints system.

These improvement measures are drawn up from the recommendations arising from an independent review of CAPO procedures conducted under the IPCC aegis, and a comparative study of overseas police complaints systems conducted by representatives from the IPCC, Security Branch and the police. The full reports have been made available to Members of this Council.

The improvement measures are summarized as follows:

(i) to address the concern that some complaints may have taken considerable time to complete, the CAPO will set time limits on handling complaints. These include contacting a complainant within two working days, providing progress report to the complainant every two months, aiming to complete investigation of complaint cases within four months — it will be shorter in practice if the case is less complicated;

(ii) to enhance transparency of the system, the IPCC will open part of its meetings to the public; complainants will be given more details of the investigation results; and leaflets on police complaints investigation procedures and the monitoring procedures of the IPCC will be made available at all police stations and District Offices for distribution. On top of these, we intend to allocate three million dollars to the IPCC Secretariat to launch publicity programmes over

a three-year period;

(iii) to ensure serious cases will receive adequate attention in the complaints system, the IPCC will set up a special panel to monitor serious cases, after which it will submit its findings in a special report to the Governor;

(iv) to enhance the capability of the IPCC, one additional Vice-chairman and three additional members will be appointed. Besides, one more vetting team will be provided;

(v) to prevent any "tipping-off" to officers being complained, CAPO procedures will be tightened up to make this a disciplinary offence; and

(vi) to gauge public opinion towards the overall performance of the Force including the police complaints system, regular surveys and researches will be conducted.

Mr President, I believe that by enacting the Bill and implementing the above package of improvement measures, we would make the system more transparent and credible. It will enhance the public awareness of and confidence in the existing police complaints system.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

PATENTS BILL

THE SECRETARY FOR TRADE AND INDUSTRY to move the Second

Reading of: "A Bill to make new provision in respect of patents and related matters in substitution for the Registration of Patents Ordinance."

She said: Mr President, I move that the Patents Bill be read the Second time.

The purpose of the Bill is to establish an independent patent registration system in Hong Kong, which is in line with international standards and will continue through 1997, for the protection of inventions.

A patent protects technical innovation. A patent system encourages new technology by granting the inventor a patent for his invention which gives him the right to exploit his invention for a set term. An inventor in exchange is required to make his invention public. The disclosure of this invention provides a major source of technical information to other inventors, businessmen and other users.

At present, there is no original grant of patents in Hong Kong. We register in Hong Kong United Kingdom patents and European patents designating the United Kingdom. A local patent law needs to be enacted before 1 July 1997 because the existing patent registration law is dependent on United Kingdom patent law. The Patents Bill aims to achieve this.

The Bill largely follows the recommendations made by the Patents Steering Committee in its Report issued for consultation in May 1993, and incorporates, where appropriate, comments received from the industrial, professional and academic fields during a consultation exercise conducted in February and March this year.

The Patents Bill provides for the grant of independent patents in Hong Kong based on the registration of a patent granted by designated patent offices. We propose the United Kingdom Patent Office, the European Patent Office designating the United Kingdom, and the Chinese Patent Office as designated patent offices. It also provides for the grant of short-term patents. This will give a new type of protection in Hong Kong for inventions with a short-term commercial life. The Bill sets out the procedures for obtaining and maintaining patents and short-term patents in Hong Kong, the rights given to the owners, and provisions for enforcement.

The basis for the Bill and the new independent patent system have been agreed in the Sino-British Joint Liaison Group.

Mr President, a new local patent law is an essential tool for protection of technical innovation. It is also an integral part of Hong Kong's intellectual property regime. To ensure continuity in the protection of inventions in Hong Kong, the new local patent law and the necessary administrative system must be put in operation before I July 1997. At the risk of stating the obvious, I would just like to note that any delay in the implementation of the new patent system would jeopardize the protection of patents in Hong Kong after 1997, with all its consequential negative implications for the further economic and technological development of Hong Kong.

By introducing the Patents Bill into this Council today, we hope that Honourable Members will give the earliest possible consideration to the Bill. We hope that the Bill can be enacted with enough time remaining for us to prepare the necessary Patents Rules and administrative procedures for the implementation of the new patent system before 1 July 1997.

By introducing the Patents Bills into this Council today and having regard to the 12-month lead time required for procuring and setting up the first phase of the computer system, we also hope that Honurable Members will vote the necessary funds sought for the patent computer system at a forthcoming meeting of the Finance Committee of this Council before it goes into summer recess.

The time-table we have set for ourselves is an extremely tight one. With support from Honourable Members, I am confident we can achieve our task.

Mr President, I commend this Bill to the Council.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

Resumption of Second Reading Debate on Bills

PREVENTION OF BRIBERY (MISCELLANEOUS PROVISIONS) (NO. 2) BILL 1995

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

涂謹申議員致辭：主席先生，《1995年防止賄賂（雜項條文）（第2號）條例草案》旨在實施廉政公署權責檢討委員會一九九四年報告書所提的建議，並因應是次檢討引起的有關事宜作出相應安排。

本條例的第1號草案是在一九九五年五月立法局上一個會期內提交的，本局隨即成立了條例草案委員會，以進行研究。委員會在一九九五年六月先後舉行了四次會議，其中三次是與當局舉行的。由於條例草案內容複雜，當時的委員會未能在會期內完成工作。當局遂在十月再把條例的第2號草案，即相同的草案提交本局。為研究條例草案，本局在去年十一月成立了條例草案委員會。委員會與政府舉行過18次會議，另外亦聯同當局與財政科和稅務局、警廉行動聯絡小組及香港記者協會的代表分別舉行會議。委員會先後舉行了22次會議，並接獲來自27個組織的多份意見書。

作為委員會主席，我自己感慨良多。條例草案涉及的問題極為繁複，但我很高興委員會和當局均開明和自由地交換意見，以致雙方最終在絕大部分問題上取得協議，惟有關《防止賄賂條例》第30條的修訂則例外。我有責任在此代表委員會向當局代表致意，尤其是當時的副律政專員（法律政策）歐義國先生，感謝他們在委員會詳細研究條例草案期間，以開放的態度進行討論，並提出有建設性的意見。我也要多謝立法局秘書處的同事。首先，我會重點提述委員會討論過的幾個主要問題，然後我會提出個人對條例草案的意見。

A. 修訂《防止賄賂條例》第13（1）條（特別調查權力）的草案第4條

我曾在條例草案委員會提出，廉政專員根據《防止賄賂條例》第13（1）條行使的特別權力，應與建議中對該條例第14條有關獲得資料的權力和第17條有關搜查的權力所作的修訂一樣，應受法庭規管。當局指出，法庭可作出無限制的干預會影響廉政公署(“廉署”)的效率和破壞調查工作的保密性。不過，他們最終同意，該條文所訂對受疑人及第三者（例如銀行）的要求應作區分，而且應訂明須有“合理因由相信”要求交出的文件就調查工作而言是“可能相關”。因此，他們將在委員會審議階段動議有關的修正案。

對於我提出的另一項建議，當局經考慮後同意刪除該條文中對保管箱的提述。當局會在委員會審議階段動議有關的修正案。

條例草案委員會建議議員支持該等修正案。

B. 加入新訂第13A條（提交物料及提供協助令）及第13B條（根據第13A條獲得的資料的披露）的草案第5條

李家祥議員關注到，若稅務局以外的機關可取得稅務紀錄，則會損及稅務紀錄的保密性及侵犯納稅人的權利，條例草案委員會亦有同感。據當局解釋，為證明某人犯了貪污罪行，必須先確定其資產。他們認為，必須取得高等法院批准的規定已足以防止廉署不必要地引用該條文。不過，當局同意在委員會審議階段動議修正案，清楚訂明廉署調查人員必須獲廉政專員或副專員批准，才可提出要求稅務紀錄的申請。廉署並會就該等申請制訂內部指引。律政司稍後將作出保證，根據該條文獲得的資料不得向其他方面披露。

條例草案委員會繼而指出有需要制訂法定指引，以限制可以作出向廉署提交稅務紀錄的命令的情況，並制訂措施，免致無辜納稅人的紀錄被公開作為證據。當局在回應時同意就新訂第13A條所載的“公眾利益”驗證標準訂下法定指引，並增訂第13C條，以限制所披露資料的公布。

條例草案委員會現建議議員支持按當局動議的委員會審議階段修正案修改的擬議條文。

C. 修訂《防止賄賂條例》第14條（獲得資料的權力）的草案第6條

現行法例並無就反對高等法院大法官因應單方面申請所作的命令作出規定，條例草案委員會質疑這會否與《香港人權法案條例》牴觸。當局經考慮後證實，他們認為情況並非如此。然而，他們同意就草案第6(a)條動議委員會審議階段修正案，訂明單方面申請應向高等法院內庭提出，並限制向第三者發出通知。當局將在稍後動議有關的委員會審議階段修正案。

D. 修訂《總督特派廉政專員公署條例》第8（2）條（廉署人員的委任）的草案第15條

新的第8（2）條明文訂出現有的解僱程序及人員提出上訴的權力。

經條例草案委員會提問，當局同意就該草案條文動議委員會審議階段修正案，以規定廉政專員在解僱某人員之前，在法定程序上要先徵求貪污問題諮詢委員會的意見。當局會在委員會審議階段動議有關的修正案。

委員會亦考慮到應否設立獨立的上訴機制，處理與解僱廉署人員有關的上訴。鑑於此事在憲制、法律及資源分配方面會帶來廣泛的影響，委員會決定不應在現階段處理此事。

E. 修訂《總督特派廉政專員公署條例》第13條（廉政專員的權力）的草案第17條

當局回應條例草案委員會提出的質詢時，答允動議一項修正案，限制廉署人員只可查閱其合理地認為會揭露某公共機構的工作常規及程序的紀錄、簿冊及文件。對於廉署應否獲授強制取得資料的權力，以便其可提出有關消除貪污的意見一事，我雖然仍有保留，但認為擬議的修正案可消除我部分的憂慮。條例草案委員會亦贊同我的見解，因此建議議員支持有關的修正案。

F. 《防止賄賂條例》第30條（披露受調查人身分等資料的罪行）

為了適當平衡新聞自由與反貪污工作的比重，陸恭蕙議員指出有需要修訂該條文，何俊仁議員亦有同感。條例草案委員會遂深入研究該條文及各個擬議修訂方案。在研究過程中，委員會參考過一些其他司法管轄區的相類法例，與香港記者協會的代表會晤，並審閱英國樞密院在今年五月二十日就《明報》一案所作的判詞。

根據樞密院的判詞，第30條只適用於對某指明人士的調查。披露一般調查的詳情，如《明報》一案的情況，並非違法。相對於保障調查工作的完整性而言，保障受疑人聲譽只屬次要目的。條例草案委員會並查考過一些歷史資料，以研究該條文的立法意圖。委員會的結論是，該條文只適用於對某指明人士的調查。

廉署對樞密院的判詞表示關注，並認為一般調查亦應保密進行，而且和對某指明受疑人的調查一樣，否則，極易因資料被披露而受妨害。故此，廉署希望第30條可予以修訂，使其亦適用於一般調查。條例草案委員會對此舉表示懷疑。然而，當局將在委員會審議階段動議有關的修正案。

另一方面，條例草案委員會研究了數個修訂該條文的方案。雖經多番

努力，但委員會與當局未能商議出雙方均可接受的方案。惟在討論期間，我們發現有理由在披露資料的“合理辯解”的定義中，加入符合公眾利益的抗辯理由中一些經確認的元素，例如廉署人員的不合法活動及不當行為、對公共秩序的嚴重威脅等。

主席先生，儘管條例草案委員會未能向議員提出一致同意的建議，但周梁淑怡議員、陸恭蕙議員、何俊仁議員和當局會分別就該條文向各位提出意見，以及動議委員會審議階段修正案。待我發言之後，他們便會輪流發表意見。

G. 《總督特派廉政專員公署條例》第10條（逮捕權力）

條例草案委員會關注到，廉署可用其調查貪污案件的特別權力調查與貪污無關的案件。在這方面，當局與出席委員會會議的警廉行動聯絡小組代表均向委員會保證，有關方面已採取足夠措施，防止不必要地使用該等權力的情況。

條例草案委員會決定把此事所涉及的行動上的事宜交由立法局保安事務委員會檢討。

主席先生，我以上的發言已撮述了條例草案委員會所提出的較為重要的意見。在委員會的商議過程中，各成員表達過很多其他意見，而我們亦就此反覆進行討論。由於時間有限，我不能一一詳述。這些意見和商討過程已載列於條例草案委員會提交的有關文件內，我相信各位必已詳加審閱。故此，在以下時間，我會提出自己對條例草案精神的意見。

以下發言是我自己個人的一些意見。其實，觸發今次檢討和改革的背景，大家都很清楚，那就是因為廉署成立已經20年，我們有需要作出檢討；加上徐家傑事件作為背景，以及九七的回歸，不同商業和社會文化令市民和外國的投資者擔心貪污惡化，同時亦擔心廉署能否適應九七後的環境。廉署去年進行的調查顯示，有超過70%的市民擔心九七後的貪污會更嚴重，50%的市民認為現時貪污仍然普遍存在，只有35%的人認為不普遍；而60%的市民認為應該增加對廉署的監管，30%認為應該保持不變。

我認為今次檢討的最重要目的，是要訂下好的法例，給廉署有足夠和有效的權力，做好它的工作；但另一方面，要制訂有效的監管架構，防止濫權，這也是非常重要的，也是市民在近期的調查中所關心的事項。最近有商界背景的人士也擔心將來廉署和稅務局、證監會和商業罪案調查科在極端的

情況下，能成為行政首長濫權和打擊政治或經濟異己的工具。

在現時的情況下，因為廉署向總督負責，而實際上代表市民，或間接代表市民來監察廉署行動的就只有審查貪污行動覆檢委員會，但在該委員會內，政府竟然沒有委任立法局議員為成員，連一個也沒有。這不禁令我驚奇，因為這是檢討委員會報告書內所載的重要建議，我覺得如果政府連一名立法局議員也不相信，或換句話說，連一名不是由政府委任的成員都沒有，我相信這個委員會給予市民的公信力未必足夠。

我們認為不單止要執法，更重要、更深層的是要鞏固廉潔和反貪污的文化。我們近期看到一些年青人在調查中對貪污問題的禍害，警覺性不足，可能因為他們，包括我自己，沒有經歷過這些禍害的實際體驗、痛苦的經驗，因此，我們將來的重點工作是要在這方面多做一些。反貪污不單止是廉署的事，更是整個社會的事。要整個社會不能容忍這事，並身體力行對抗這事，才算是成功。另一方面，我相信廉署必須加強中港的反貪污合作，致力對付越境的貪污事件。值得一提的是，近期有報道稱在一、兩宗案件中，廉署的調查員在進行卧底行動時“過火”，被法官批評為誘使別人犯法。我們需要的是精明和有勇有謀的調查員，我希望他們和他們的上司在法律的底綫上有所克制。因此，廉署應檢討有關監管的程序。

最後，經過今次的修訂，我認為大致上可取得在人權和廉署所需權力之間的一個平衡。我期望廉署能夠做好工作，不負市民所望。我也呼籲全港市民全力支持廉署的工作，鞏固香港的廉潔文化，踏入二十一世紀。展望將來，香港更需要的是“香港人勝在痛恨貪污”這口號，而不只是“香港勝在有ICAC”。當然，“香港勝在有ICAC”實在是一個很有意思的口號，但我希望更重要的是，“香港人勝在痛恨貪污”。

MISS CHRISTINE LOH: Mr President, today's debate concludes more than a year of scrutiny by this Council of the Prevention of Bribery (Miscellaneous Provisions) (No. 2) Bill. In the view of some critics, the Council should long ago have stopped dawdling and enacted the Bill put before it. I strongly disagree with this view. On the contrary, I believe that what has been achieved by this Council's attention to the Bill demonstrates very clearly how valuable its legislative work is to the community.

I make this observation not only from the standpoint of a member of the Legislative Council Bills Committee that studied the Bill, but also as a member

of the Independent Commission Against Corruption (ICAC) Review Committee. It was the Review Committee's recommendations a year and a half ago that formed the basis for this Bill in the first place. It has been an instructive experience to sit on both these Committees, one of them an advisory body that held its deliberations in private, the other a legislative one working in the open.

The many suggestions for reform made by the Review Committee in its public report provided a solid foundation for this legislation. But as a participant, I was struck by that Committee's unwillingness to come to grips with some issues.

There was no doubt, for example, that section 30 of the Prevention of Bribery Ordinance raised fundamental questions: questions about the need for secrecy to protect investigations; about when criminal liability should arise from innocent acts; about the public's right to know about ICAC activity; and about the danger to innocent reputations posed by ICAC investigations. Section 30 has always generated public controversy, and recently gave rise to litigation that reached the Privy Council.

Nevertheless, I found it impossible even to initiate a discussion of section 30 in the Review Committee. The Committee readily accepted the ICAC's initial representations on section 30. It was simply not interested in entering this particular controversy.

It is often said, and indeed it was the justification of the Review Committee's own closed meetings, that an advisory body is able to provide more candid and useful advice on controversial issues if it meets in private. My experience was the opposite: closed meetings enabled the Committee virtually to ignore an issue that was clearly of importance to the public.

By contrast, the Legislative Council Bills Committee did not hesitate to press the Administration in public on matters the Review Committee had explored briefly or not at all in private. Although the ICAC and the Administration resisted such pressure, after persistent discussion in the Bills Committee, the Administration accepted that there was indeed a need for change in several, important areas.

Mr President, the Bills Committee's results speak clearly for the value of the open legislative process. The Attorney General will move several major

amendments developed in the Bills Committee. One set of amendments will significantly enhance protection for taxpayers affected by the ICAC's new power to examine tax records. Despite strong ICAC resistance, other amendments will for the first time give the courts a role in authorizing the inspection of account information, one of ICAC's most frequently used powers. And, very reluctantly, the Administration has acceded to some relaxation of section 30's draconian restrictions on publicity about investigations.

It should come as no surprise that the open legislative process practised by this Council produces results. That is what it is designed to do. It does a disservice to the community to take a narrow view of this Council's legislative role.

I believe the Administration has only gone half way towards a sensible revision of section 30, and I will later propose one of several private Member's amendments to that section. Aside from section 30, I support this Bill and all the amendments proposed to it.

MISS MARGARET NG: Mr President, Let me state from the outset that I do not think this Bill goes far enough in removing some of the most Draconian powers of the ICAC, particularly in relation to section 30 of the Prevention of Bribery Ordinance. Therefore, I will support the Second Reading of the Bill on the basis of the amendments to be introduced by the Honourable Albert HO and Miss Christine LOH at the Committee stage.

In this community, we all recognize the importance of fighting corruption. We all recognize the importance of giving the necessary powers to the ICAC to fight corruption. However, this does not mean that, in the name of fighting corruption, the ICAC can claim unlimited power and privilege, or place itself above other law enforcement agents, above the rights of the individual and above the law. It is in this spirit that a Review Committee was set up in 1994 to review the relevant law, and in this spirit that the present Bill was proposed.

And that is why I am totally astonished by the Administration's attempt to amend section 30 in a way which enlarges the power of the ICAC and further restricts the rights of the individual. Mr President, such a move is not to be countenanced.

Section 30 has nothing to do with the ICAC's power of investigation. It aims at restricting anyone from reporting on it by making disclosure a criminal offence. As such, it restricts the freedom of speech, the freedom of the press, the freedom of information, and the public's right to be informed. While no freedom is absolute, every restriction has to be clearly and fully justified. In looking at section 30, we must never lose sight of that. It is not a question of what powers it may be convenient for the ICAC to have, but whether certain restrictions, and further restrictions on the citizen's rights can be allowed.

As the Judicial Committee of the Privy Council has made clear in a recent decision concerning the *Ming Pao Daily News*, section 30 restricts the disclosure of an ICAC investigation only when there is an identified suspect. The Administration's amendment seeks to criminalize disclosure regardless of whether a suspect has been identified. This plainly broadens the scope of the infringement of rights and freedoms, contrary to the entire spirit of the Bill.

Mr President, the Attorney General puts it mildly as "plug[ging] a loophole disclosed by the recent Privy Council decision", but the ICAC Commissioner leaves us in no doubt as to what the ICAC's true attitude is, and always has been. In a letter to Members of this Council, he reiterates a view he had earlier expressed in a newspaper article. In his view, the present amendment "restores" section 30 to the meaning the ICAC had always given it. Otherwise dire consequences will follows. It will, he says, seriously impair the ICAC's capability to investigate corruption.

The attitude is quite clear, Mr President. In the Commissioner's view, the law is what the ICAC considers it to be, and if the court does not agree, then the law must be changed to support the ICAC's view.

Can we really endorse this kind of attitude? Can we entrust the ICAC with greater powers than it strictly needs, in the confidence that they will not be abused? That the ICAC will not gag the press except in a case where the investigation is such as to make it necessary?

I am sure that it is this fear of abuse which prompted the Honurable Albert HO to introduce his amendment, stipulating that a disclosure is a criminal offence only if it is "likely to prejudice the investigation". Where there is no

likelihood of prejudicing the investigation, the press should not be gagged.

The Administration argues that such a requirement would be too difficult to meet, and would render section 30 nearly meaningless. Mr President, is not a strict requirement only reasonable, where fundamental rights are put at risk? Indeed, we are not talking about a theoretical or speculative fear of abuse. We are not talking in the realms of ideals but stark reality and an actual event.

That event is well-known. We have the *Ming Pao* case before us. As Members know, *Ming Pao* and three of its editors were charged under section 30 for a news report on 3 August 1994. The subject of the ICAC investigation was a land auction on 26 May 1994 in which several developers joined hands in a bid to keep the prices down. The auction was open. The behaviour of those developers were openly seen. The whole thing was given prominent coverage in all the major newspapers. The incident was widely discussed and commented upon. The ICAC did not think it a matter for investigation until, sometime afterwards, it received a letter suggesting that they should carry out an investigation. The letter, which was read out at the trial in court, contained no other information or allegation to any specific individual. The *Ming Pao* report disclosing the investigation hardly went beyond the fact that the ICAC was investigating it, and approaching media organizations to gather information.

Given the above facts, how can the report have prejudiced any investigation? Was there any real fear that suspects would be alerted to take flight, or evidence be destroyed? Was anyone's reputation unjustifiably at stake? Were, indeed, ICAC officers going about it in a secretive way? How was that investigation different from other police investigations such that it requires different treatment?

And yet, while no more is heard of the investigation, *Ming Pao Daily News* was charged under section 30. Not just the organization — in order perhaps to "teach the media a lesson — but three editors were also charged as co-defendants. But for the fact that *Ming Pao* took a strong stand and had the resources to go all the way to the Privy Council, but for the fact that section 30 does not apply where no suspect had been identified, these three individuals

would almost certainly have been convicted. Anyone would have been entitled to call them criminals with the stigma of an offence under an anti-bribery legislation. Under the law, they would also have been deprived of important political rights for 10 years.

Why such oppressive measures? Is it in the public interest? Or is it to assuage the wounded pride of the ICAC? Is the fear of abuse theoretical, or is it real and present?

Mr President, forgive me if I use passionate language. But the power of prosecution is a dreadful weapon in the hands of the executive. It could be used oppressively against the innocent without redress. Where an attempt is being made to enlarge that power, indeed, to legitimize what, in my opinion, amounts to an abuse of that power, I cannot be other than passionately in opposition. Section 30 ought to be scrapped. The Honourable Albert HO's amendment is the least that we can accept.

Thank you, Mr President.

何俊仁議員致辭：主席先生，廉政公署過去二十多年反貪污的工作，在得到香港市民廣泛的支持下，廉署的成績在海內外都得到認同，這是香港市民值得引以為榮的。

我們支持廉署的工作，致力令香港成為一個廉潔的社會，締造一個公平、公正的投資環境，給本地及海外的投資者在港進行投資活動時，能夠得到充分的保障。一個廉潔的社會不但對香港作為國際金融中心的地位名聲很重要，對香港作為國際經貿活動及對香港本地的經濟發展亦起着實質的意義。投資者不用事事靠“走後門”、靠行賄、靠利用一些不正當的方法，去賄賂官員來爭取一些不應得到的利潤，破壞社會秩序。這些不當手法都是我們完全不能接受的，是任何文明的現代社會也不能接受的。很多經商朋友也不時向我反映“香港勝在有ICAC”，而很多市民也向我說讚賞廉署以往的工作。無疑“ICAC”廉政公署已經深入民間，是一個廣泛受到市民尊重的反貪污機構。

主席先生，今年四月初，一項向亞洲12個國家和地區的外商進行的調查顯示，亞洲地區貪污問題最嚴重的是中國，香港排名第十，較日本和新加坡

為差。

去年廉署的民意調查亦有超過七成受訪者認為九七後貪污會更嚴重，五成的人認為現時貪污現象隨着九七來臨，會更嚴重。無可置疑，防止及打擊貪污活動將是香港未來的重要工作。廉署需要有足夠及有效的法定權力去履行這法定的反貪污職責。

但與此同時，隨着《人權法案》的實施、徐家傑事件引發的廉署權責問題，我們亦有必要檢討廉署的權力會否過大或在某些地方有不足之處；或有些地方需要制衡，從而作出適當的法律修訂。

廉政公署權責檢討委員會九四年底公布經檢討後的一些建議，涉及修改《防止賄賂條例》及《總督特派廉政專員公署條例》。今天我們對《防止賄賂條例》的修訂，大部分來自這份檢討報告的建議，目的是要訂下一套更好的法例，給予廉署足夠及有效的權力，做好反貪污的工作。另一方面，我們亦要照顧到人權和基本自由的保障、新聞自由得到維護，在現行法例中制訂機制，防止廉署濫權，尤其是最近一些商人擔心廉署會成為日後特區行政首長用來打擊政治異己或經濟對手的工具。

此外，《防止賄賂條例》中第30條禁止披露廉署調查個案的規定，現時根據政府所建議的條文，和政府的修訂條文，也過分嚴格。我們覺得會打擊了新聞自由，也防止新聞界扮演一個監管政府的角色。本人將於委員會審議階段提出一些有關的修正案，屆時我會詳細解釋提出修正案的原因。

今次對《防止賄賂條例》的修訂是一次重要的法例改革，在賦予廉署權力及體現人權之間必須作出合理的平衡。民主黨希望透過這次改革，能給予公眾更大的信心去繼續支持廉署的工作，使香港能維持一個廉潔、公正的社會，過渡九七。

不過，今次的修訂仍有些地方尚未完善，例如《防止賄賂條例》附載的公共機構名單訂定標準仍然未能達致共識，或訂出一些法律原則，從而對法律作出相應的修訂，使同樣是接受公眾捐款和政府撥款資助的公共機構也須受條例的約束。可惜今次未能經過修訂附在法律附表之內。民主黨將跟進有關的檢討工作，我們希望在下一立法年度內，在適當時能與政府商討可否作出一些適當的修訂。

主席先生，基於剛才我所說的原因，民主黨支持《1995年防止賄賂（雜項條文）（第2號）條例草案》恢復二讀。我們支持這個法例改革下的基本原則和精神，以及政府所提出的修正案（第30條除外）。我們希望在條例草案

通過後，廉政公署能夠進入一個新紀元。我們也謹祝廉政公署在未來日子裏，在香港回歸祖國後，在他們進入跨世紀的工作階段時，能夠繼續一如以往，積極、認真和勇敢地執行職責，爭取一個更好的成績，在香港確立和鞏固一個廉潔的文化和一個廉潔的美譽。

本人謹此陳辭，謝謝主席先生。

MRS SELINA CHOW: Mr President, this is the conclusive episode to the sequence of events which flowed from the dismissal of Alex TSUI, a public inquiry conducted by the Security Panel of this Council which reflected queries raised by the public on the dismissal and the appointment of the Review Committee which led to reforms to the Commission which are now contained in the Bill. The process of thorough vetting in the Bills Committee is in my view competent in adding the public dimension to the Bill through the amendments.

The Liberal Party, by and large, agrees with the Bills Committee's conclusions regarding the Administration's proposed Prevention of Bribery (Miscellaneous Provisions) (No. 2) Bill 1995 with its latest set of Committee stage amendments, with the exception of the intended amendment for section 30(1) under the new clause 13A. I shall therefore be moving my own amendment to this clause. I would like to explain my reasons for moving this amendment, and also the Liberal Party's reasons for not supporting the amendment proposed by Mr Albert HO.

Section 30 deals with restrictions on disclosure of information relating to investigations. We believe that the legislation needs to establish the right balance between the public's right to know on the one hand, and the safeguard of the integrity of investigations as well as the adequate protection of reputations on the other.

We oppose Mr Albert HO's amendment which introduces the "likely to prejudice" test to offending disclosures. As was pointed out in the Privy Council ruling on the *Ming Pao* case, the difficulty with such a test is, and I quote, "in many cases it will be impossible to know whether disclosure has prejudiced an investigation or not," and it goes on to say, "For the same reason the suggestion that the desired aim could have been achieved by qualifying the second limb subsection with some such words as "likely to prejudice the investigation" fails because of the difficulty of establishing when a disclosure satisfied the test. If the restriction is to be effective it cannot draw distinctions

between prejudicing and non-prejudicing disclosures nor have regard to the state of mind of the disclosure." We agree with their Lordships that the "likely to prejudice" test would render the restriction on disclosure of the investigation in question ineffective, and thereby risk prejudicing the investigation as well as unnecessarily causing damage to reputation to the subject person.

I would now like to come to my amendment to section 30(1). In fact my amendment is exactly the same as the one proposed by the Administration before the Privy Council ruling. It liberalizes the existing state of things by:

(a) limiting the application of section 30 to offences under Part II of the Ordinance; and,

(b) narrowing the application of this subsection so that the offence is triggered if the person who discloses does so knowing or suspecting that an investigation of a Part II offence is taking place.

Following the Privy Council ruling, the Administration substituted another amendment for section 30(1) which aims to extend the restriction on disclosure to general investigation where no identifiable suspect has yet been named. The Commissioner of the Independent Commission Against Corruption argues that such an amendment is to, in his words, "restore the section to one which protects investigations". We beg to differ. We see the latest amendment by the Administration not as a restoration to an accepted interpretation, but rather an expansion of the scope of the present law. We regard the existing provision as clear and beyond ambiguity, and accept the Privy Council's interpretation of it as entirely sensible. It is, and should have always been, applied to only those investigations where a suspect has been identified. We do not believe the shroud of secrecy is justified for fishing expeditions and general intelligence gathering. I shall therefore be proposing the amendment initially submitted by the Administration in order to proceed with the liberalization intended before the Privy Council ruling.

葉國謙議員致辭：主席先生，今次的修訂條例草案，最富爭議性莫過於有關《防止賄賂條例》第30條的修訂。民建聯認為香港之所以能成為一個廉潔的社會，完全有賴一支獨立、高效率的廉政部隊。現時廉政公署透過《防止賄賂條例》來行使其權力，而其中被指為限制新聞自由的第30條，其實是早於

廉政公署成立之前已經執行。隨着社會的轉變，市民對新聞自由的意識越加重視，此條例着實要有放寬的必要。不過，我們若再深思，此條例的立法精神在於保障及避免廉署在調查期間，無論在一般調查或更深一層的有確認疑犯調查，因被披露調查資料而造成不必要的阻礙。

政府在釐定此條文背後的憂慮並非全無道理，尤其是在現今傳媒市場激烈競爭下，各傳媒工作者無不盡其所能尋求獨家新聞。如果傳媒對這些尋求得來的資料處理不當，可能會造成廉署的工作受到干擾而遭拖慢甚至破壞，試問這是否我們所願意看見的後果！

主席先生，民建聯認為廉政公署的工作既敏感又影響甚大，故此，保障調查資料應是首先關注的項目。無論在保障調查的進度或對被調查者的聲譽各方面而言，傳媒的報道可能對調查及有關人物造成不必要的影響。其實政府在平衡新聞自由及調查保密這方面已下了不少苦功。從其建議可看出，政府在保障調查工作這底綫上，已在放寬傳媒報道方面作出重大讓步和改善。

同時，為免廉政公署權力過分膨脹及失去監管，政府亦建議傳媒可因廉署人員涉及非法活動、嚴重疏忽職守、行為不當及一些嚴重威脅社會秩序、安全和公眾健康的情況下，作為揭露調查的抗辯理由，以制衡及監察廉署的權力。

民建聯贊同新聞自由必須與市民一同維護和捍衞，但亦須有一定的規範，以免對社會整體上帶來負面的影響。

主席先生，本人謹此陳辭。

廖成利議員致辭：主席先生，民協支持周梁淑怡議員對《防止賄賂條例》第30條的修訂，以及她剛才提出的大部分理由，特別是她不支持何俊仁議員提出的修訂的一個理由。

民協認為防止賄賂法例應平衡兩方面的原則，一是市民的知情權，另一是廉署執行任務的調查權和保障受調查人，特別是清白人士的聲譽。可是，何俊仁議員提出的“可能妨礙調查”的準則，並不是一個適當的平衡準則，未能令披露人（尤以傳媒）在考慮披露資料時，足夠地保障廉署調查貪污的工作可以公正地進行。正如樞密院在《明報》一案中所述，在條文加入例如可能對調查造成妨礙之類的句語，就可以達到預期目標的說法，是難以成立

的。因為要確定在甚麼情況下披露資料才符合妨礙準則，並不是一件容易的事。這個限制若要發揮功效，並不能劃分造成妨礙，以及不造成妨礙的披露。我們十分支持應採取樞密院這個評語，所以我們不支持何俊仁議員的修正案。

我亦認為何俊仁議員的修正案不能有效保護受調查人的聲譽，特別是法例上應給予披露人，特別是傳媒一個明確的準則，使其知道在甚麼情況下禁止披露廉署的調查。這些準則要清楚及容易明白，避免記者在一個為了爭取資料的市場競爭下，披露了特別是一些清白人士被調查的情況。

第二點我要補充的是，相比之下，周梁淑怡議員的修正案就可令市民更安心，並指明若披露廉署有指定調查人的情況下才屬違法。這是一個很清楚的原則，是值得支持的。

相比之下，民協會支持陸恭蕙議員的修正案，理由是這項修訂指出了在六種明確的情況下，可以披露廉署的調查，這些準則十分清楚。在這六種情況下，相信廉署的調查已進入一個較成熟或非常成熟的階段，且已有指定的調查人，也不會嚴重妨礙廉署的調查權力。這做法是一個適當的平衡。

最後，民協認為政府的修正案並不是一個適當的平衡安排，對市民知情權及新聞自由的保障，引入不適當的限制。故此，民協反對政府對第30條的修訂。

謝謝主席先生。

ATTORNEY GENERAL: Mr President, I wish to thank the Chairman of the Bills Committee, the Honourable James TO, and members of the Committee for their thorough scrutiny of this important Bill.

The debate in the Chamber this afternoon, serious and high-minded, underscores the importance this Council and the community attaches to the work of the Independent Commission Against Corruption (ICAC) while reflecting proper concerns over checks and balances over the use of the ICAC's powers.

I am pleased that almost all issues of concern to the Bills Committee have been resolved to the satisfaction of Members. The Administration has agreed to a number of Committee stage amendments, which I will be moving later this afternoon.

The Committee stage amendments

Mr President, I will now describe the major amendments to the Bill. I will propose that clause 1 should be amended so that the Ordinance will come into operation on a date to be appointed by notice in the Gazette, By virtue of section 20 subsection (3) of the Interpretation and General Clauses Ordinance, it will be possible for different dates to be fixed for different provisions. The ICAC will need some lead-time before some of the new provisions can be brought into operation. This is the case, for example, where the provisions require court applications to be made. Members of the Bills Committee have, however, asked me to undertake to bring all provisions into effect as soon as practicable, and I agree to do so.

Clause 4 is to be amended so that further restrictions are placed on the Commissioner's powers of investigation under section 13 of the Prevention of Bribery Ordinance. That section enables the Commissioner to require persons to produce certain documents. The Chairman of the Bills Committee had proposed that the powers under section 13 should be subject to court control. The Administration considers that a distinction should be made between requirements imposed under the section directed at suspects, and those directed at third parties, such as banks. Where a suspect is required to disclose a document, he may be required, in effect, to incriminate himself. This being so, we accept that there is a case for imposing court control over such requirements.

However, we do not believe that there is any similar justification for requiring a court order before third parties can be required to produce documents relating to a suspect. Moreover, precedents exist in the Securities and Futures Commission Ordinance and the Companies Ordinance for a power to require the production of documents without any court control.

The Committee stage amendment in respect of section 13 therefore

imposes court control over requirements directed at a suspect. It also restricts the scope of section 13:

- by restoring to section 14 (and therefore imposing court control over) the power to require a person in charge of a public body to furnish documents to the ICAC;

- by deleting references to safe-deposit boxes; and

- by introducing a requirement that there must be reasonable cause to believe that the documents to be produced are "likely to be relevant" for the purposes of the investigation.

The Administration believes the amendments proposed will achieve the twin objects of:

- introducing court control where it is appropriate; and

- ensuring that ICAC investigations can continue to be undertaken effectively and in confidence.

The Committee stage amendments to clause 5 of the Bill relate to new section 13A of the Prevention of Bribery Ordinance. That section would have enabled any ICAC investigating officer to make an application to the High Court for an order requiring the Commissioner of Inland Revenue to produce to the ICAC material held by him. The proposed amendments limit the persons who may make such an application; provide that applications lie to the High Court in chambers; and set out further guidelines to the court in deciding whether it is in the public interest to make such an order.

Further amendments to clause 5 are proposed in the form of a new section 13C. This new section reflects the concern, expressed by the Honourable Eric LI, that confidential information about a taxpayer that is held by the Commissioner of Inland Revenue may be obtained by the ICAC and publicly revealed in a subsequent prosecution. I wish to emphasize here that the Bill will permit the disclosure of Inland Revenue information obtained by the ICAC only for the purposes of proceedings relating to, or any prosecution of an offence, under the Prevention of Bribery Ordinance. I can assure Members that the

information may not be otherwise disclosed.

The proposed new section 13C will apply where it is intended to use such information for those purposes. It will enable the taxpayer, and the person who may have supplied the information to the Commissioner of Inland Revenue, to apply to the court for an order preventing the identity of the taxpayer from being publicly revealed. The court, when deciding whether to make such an order, will be required to consider whether the public interest in the publication of such information is outweighed by the privacy and confidentiality of the information, the prejudice that might result from publication, and the public interest in preserving the secrecy of tax information. This approach is, I suggest, a good way of dealing with the competing interests at stake, and I am grateful to the Honourable Eric LI for drawing attention to the problem and in assisting in finding a solution.

The proposed amendments to clause 6(a) of the Bill relate to the power under section 14 of the Prevention of Bibery Ordinance to obtain information. The Bill subjects those powers to court control. The Committee stage amendments provide that an application to the court for authority to use the powers is to be made in chambers, and prohibit the court from authorizing the use of certain of the powers unless the information sought is likely to be relevant to the corruption investigation or proceedings. It is essential that applications to the court under the section are handled in confidence, and I will be raising with the Judiciary how this can be best achieved.

The proposed amendment to clause 6(b) of the Bill restores to section 14 the power to require a person in charge of a public body to furnish documents to the ICAC. The effect of this amendment is that the power will become subject to court control.

The proposed amendment to clause 10(a) provides that the powers of search under section 17 of the Prevention of Bribery Ordinance can only be exercised if the court or the Commissioner is "satisfied" of relevant matters, rather than if it "appears to" them that this is the case.

A new clause 14A is to be added to the Bill. This is a savings provision to ensure that notices already served under section 14A or 14C of the Prevention of Bribery Ordinance will continue in effect notwithstanding the repeal of the

former section and the amendment to the latter. It also has the effect that extensions of such notices are subject to court control.

Mr President, I now turn to section 30 of the Prevention of Bribery Ordinance, on which so much has been said and written, and on which the Bills Committee spent much anxious time. Section 30 makes it an offence for a person, without lawful authority or reasonable excuse, to disclose details of an investigation in respect of an offence alleged or suspected to have been committed under the Ordinance.

The Bill, as introduced, proposed no amendment to section 30. The Bill, as Members will recall, was introduced to give effect to those recommendations of the ICAC Review Committee which required legislation. The Review Committee proposed no change to section 30, which had been amended by this Council in 1992 to ensure consistency with the Bill of Rights Ordinance. The Review Committee was satisfied that section 30 achieved the right balance. But that view was not shared by members of the Bills Committee as we have heard this afternoon. However, it is significant, Mr President, to note that, after exhaustive deliberations, no member of the Bills Committee has suggested that section 30 should be repealed. But the Bills Committee was not able to reach agreement with the Administration over the way in which the section should be amended. As a result, I will be moving two Committee stage amendments in respect of the section and three Members, as we have heard, will move their own amendments. I will say more about all these proposed amendments when the Bill is in Committee stage.

But, Mr President, I cannot leave section 30 without responding briefly to the suggestion made by a Member that the *Ming Pao* prosecution was an abuse of power. I would like to refute that suggestion as being completely unfounded. The prosecution was properly brought based on the view of the evidence and the law as it was then thought to be. There was no abuse of power by the ICAC. There was no abuse of the prosecution process.

The Committee stage amendments will also contain amendments to the Bill's provisions in respect of the Independent Commission Against Corruption Ordinance, to which I now turn.

Clause 15 of the Bill relates to the power to dismiss ICAC officers under

section 8 of that Ordinance. The clause is to be amended so that, before terminating an appointment, the Commissioner must consult the Advisory Committee on Corruption. The Report of the ICAC Review Committee recommended that this should be the case, and the Administration has agreed that this recommendation should be reflected in the legislation.

Clause 16 of the Bill is to be amended to reflect the fact that, since the Bill was Gazetted, an authentic Chinese version of the Independent Commission Against Corruption Ordinance has been produced.

A new clause 16B is to be added, amending section 10D of the ICAC Ordinance. That section enables the ICAC to take fingerprints, photographs and measurements of persons arrested under section 10. The Bill will enable the ICAC, if it wishes, to serve a summons on a person, instead of arresting him or her. This being so, it is considered appropriate that the ICAC should have the power to take fingerprints, photographs and measurements of a person on whom a summons is served. The Committee stage amendment so provides.

Clause 17 of the Bill amends section 13(2) of the ICAC Ordinance so that, in order to perform his corruption-prevention duties, the Commissioner may gain access to documents held by public bodies. The Bills Committee was concerned, as we have heard, that this power might be too broad and so the Administration has agreed to limit the power so that it applies only to documents that an authorized ICAC officer reasonably considers will reveal the practices and the procedures of the public body.

The Committee stage amendments also include drafting improvements to the Bill. The amendment to clause 7, and the proposed new clauses 12A and 16A, are cases in point.

Conclusion

Mr President, when I introduced this Bill into the Council, I described it as an essential step in reaffirming the ICAC's mandate in the light of present day circumstances and the changing expectations of the people of Hong Kong. The

Administration is pleased that, subject to the Committee stage amendments that I have referred to, the Bill has received the support of the Bills Committee. The enactment of this Bill will therefore indeed be a strong reaffirmation of the ICAC's mandate as it continues its vital work in the years ahead.

Thank you, Mr President.

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

Bill read the Second time.

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

CRIMES (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 6 December 1995

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).

NON-LOCAL HIGHER AND PROFESSIONAL EDUCATION (REGULATION) BILL

Resumption of debate on Second Reading which was moved on 8 November 1995

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).

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 22 May 1996

何承天議員致辭：主席先生，本人謹以1996年工廠及工業經營（修訂）條例草案委員會主席身分發言。

此條例草案旨在賦權勞工處處長向工業經營的東主發出敦促改善通知書及暫時停工通知書。

鑑於最近發生一連串的工業意外，本人深信各位議員、政府當局及廣大市民都十分關注工業安全的重要性，並希望有關法例得以早日通過。與此同時，條例草案委員會有責任詳細研究此條例草案。由於時間緊迫，條例草案委員會在過去兩星期左右曾與政府當局及各代表團舉行過四次會議。本人現概述各委員所提出的一些主要關注事項。

委員普遍支持有關發出敦促改善通知書的建議。然而，委員關注到東主在接獲敦促改善通知書後，會否仍因為違反某些特定條文而遭受檢控。政府當局表示，在一般情況下，倘東主遵從敦促改善通知書的指示，他便不會因該等違例行為而遭受檢控。本人希望教育統籌司在其答辭中會進一步證實此點。

至於暫時停工通知書，委員察悉，在實際執行時，當勞工處的工廠督察在巡察時發現危險情況，他便會當場對有關東主提出口頭警告，並將情況向其上司報告。暫時停工通知書須由勞工處的一位副首席工廠督察總監批准，始可發出。這個三重管制的安排會導致由巡察至實際發出暫時停工通知書之間，可能相隔一段時間。政府當局在回應此項關注時同意會修訂有關指引，使暫時停工通知書得以盡快發出，而在任何情況下，也會在巡察後24小時內發出。

委員普遍認為，作為程序的一部分而發出口頭警告並不足夠，而應適當修正擬議第9C條，以便規定在發出暫時停工通知書前，負責巡察的督察應首先當場向東主發出書面通知，表明向他發出暫時停工通知書的意向，並指明導致發出該通知書的危險事項為何。書面通知可使東主充分了解有關的危險情況，並採取所需的補救行動。政府當局不反對執行此項安排，但已拒絕將此安排列入法例內。因此，本人將會在委員會審議階段動議所需的修正案，以便將此規定納入條例內。本人將於委員會審議階段再次詳述這點。

關於勞工處處長在暫時停工通知書發出後14天內進行覆核一事，部分代表團及委員曾質疑，勞工處處長徵詢工業安全及健康委員會的意見，在程序上是否屬恰當的安排，因為工業安全及健康委員會並非法定機構，僅是勞工顧問委員會下的小組委員會。至於覆核所需的時間，政府當局表示可以給予東主一個選擇。如他選擇不把其個案交由工業安全及健康委員會處理，處長可在較短時間內就其個案作出決定。

政府當局沒有接納部分代表團提出在條例內附加技術備忘錄的建議，其理由是技術備忘錄是用以載述技術規格，而非執法指引。不過，當局答應會公布程序指引，並會在確立指引及建議對指引作出重大改動前，徵詢各有關方面的意見。教育統籌司發言時可能會進一步解釋這點。

各委員亦獲悉，東主因應敦促改善通知書或暫時停工通知書而進行的補救工作，不一定被詮釋為自認犯罪，因此，部分委員詢問是否可在條例草案內加入條文以說明這點。政府當局在徵詢法律意見後確定其政策立場，表示不會加入此一條文，理由是認為無此必要。

根據建議中的制度，勞工處的督察須迅速採取行動，特別是在發出暫時停工通知書、查核補救工作、以及在有需要時撤銷暫時停工通知書方面。委員已要求政府當局作出所需的人手安排，以確保能及時採取行動。

最後，本人感謝條例草案委員會各委員給予合作，令條例草案的商議工作得以從速進行。主席先生，本人謹此陳辭，支持條例草案。

陳婉嫻議員致辭：主席先生，我們一向支持推動預防工業意外的措施或政策，而本條例草案賦予勞工處處長發出敦促改善通知書和暫時停工通知書的權力，以改善工業安全措施。本人與工聯會的同事站在保障工人生命的角度來說，自然責無旁貸地支持政府。

主席先生，由於在目前的情況下，即使勞工處處長有理由相信有關工人即將遇到危險，也絕對無權中止任何工程操作，他必須向法院裁判官申請停止工程操作令，這樣最少要花上十數日才可發出禁制令，期間可能會發生嚴重的工業意外，因此，本條例草案正正針對這個問題，以協助減少工業意外發生的機會。

在條例草案委員會會議席上，委員曾討論政府發出暫時停工通知書的程序，政府官員在會上明言，勞工處工廠督察如果在巡查時發現有危險情況，便會當場發出口頭通知，後來改為書面警告，並將情況向上司報告，才發出停工通知書，但不會把這個程序寫入法例中，而是以彈性的方式來處理。本局一些同事對此提出修正案，把這個程序寫入法例條文中。本人與工聯會並不認同這項建議，因為這樣會令政府做事時“束手束腳”，直接或間接影響一群有專業水平的工廠督察的巡查工作，並對防止工業意外有一定程度的影響。

此外，主席先生，我要明言，我所說的“束手束腳”實際上不是指束着政府的手腳，而是這個做法有可能危害工友的工作健康和安全。基於這個大前提，本人及工聯會同事也不會支持本局同事有關這方面的修正案。工聯會認為既然工廠督察已有一套發出上述書面令的手冊，就沒有必要應本局一些同事的意見去做，因這樣只會令有關承建商多些機會走法律漏洞，對工作中的每一名運作者都有百害而無一利。

主席先生，在條例草案委員會的會議中，有議員提出東主如已因應勞工處要求，對有關危險情況作出改善，不一定可詮釋為“自認犯罪”，本局同事對此提出修正案，工聯會不表認同，因為律政署的官員已經明言，而勞工處及教育統籌科亦表示，這是不合法理依據的。此外，立法局法律顧問在這方面也有相同的見解。主席先生，試問我們作為立法者，又怎能認同一些違反法律專材意見的修正案呢？

最後，我要指出，工聯會只會支持政府這項技術修訂及原草案。對於政府終於答應修訂工廠督察巡查工地的內部程序，使暫時停工通知書得以在巡查後24小時內發出，及會在人手調配上加以配合，以因應有關法例的生效，我們表示十分歡迎。

主席先生，我謹此陳辭，我和工聯會的同事會支持政府這方面的議案。多謝。

何敏嘉議員致辭：主席先生，民主黨一向都爭取改善勞工法例，希望通過修訂法例來改善工地的安全情況。我們支持今天這項《工廠及工業經營條例》的修訂，因為這項修訂把以往只有法院才可簽發的暫時停工通知書，改為由勞工處處長簽發。這是一個進步，使有關的通知書可以更快簽發，因而能夠更有效率地去改善工地的安全。

在暫時停工通知書和敦促改善通知書能夠盡快簽發的同時，我們還希望政府通過行政運作和運用其彈性，把簽發這些通知書所需的時間盡量縮短。對於政府承諾把在48小時內簽發暫時停工通知書的原建議改為在24小時內便可簽發，我們十分欣賞；不過，我們很希望將來簽發這些通知書的時間可以遠遠短於24小時。此外，政府還把原來以口頭通知，發出停工通知意向的安排，改為以書面通知，我們亦接納這項改變，並同意以行政程序去執行。我們贊同這個行政程序基本上足以保障工人，對有關的東主也公平。我們將會支持教育統籌司的技術修正案，但不支持夏佳理議員和何承天議員的修正案。至於有關修正案的條文，我們將會在委員會審議階段時才再次發言。

謝謝主席先生。

MR RONALD ARCULLI: Mr President, before I deal in substance with the amendment, that is, the Bill before the Council today, I would like to make one point quite clear. In the course of the Bills Committee's deliberation of this particular Bill, it transpired that the present procedure requires the Commissioner of Labour to actually attend court to obtain a suspension of works order. But no application has been made to court since the early eighties. We were told that the reason is because of the procedure is cumbersome and time consuming. It is no wonder that the labour sector is unhappy with that state of affairs and welcome the present amendment proposed in the present Bill.

Indeed, Mr President, I rise to speak in support of the Bill. But, firstly, I must chastise the Government for not bringing this measure in sooner.

My colleague, the Honourable Edward HO has outlined the purpose of the Bill and indeed some of the concerns expressed by my constituents in the property and construction sectors. Their concerns are not with the introduction of the improvement or suspension notices. Their concerns reflect what I believe to be the shortcomings in the Bill which were revealed in the course of and as a result of scrutiny by the Bills Committee. I will try to outline these concerns as

briefly as I can.

First, in the course of scrutiny, we were informed by the Administration that in respect of a suspension notice, it would be issued subject to a three-tier administrative control. In brief, whenever a Factory Inspector discovers any imminent risk of serious bodily injury he should immediately but verbally warn the management of the industrial undertaking and report the situation to the Divisional Factory Inspector who, after assessing the situation, would forward his recommendations to a Deputy Chief Inspector for approval to issue a suspension notice. In the original draft guidelines, the Labour Department stated that the suspension notice will be served as soon as practicable but in no case later than two working days. On probing by the Bills Committee, this was reduced to the 24 hours as everyone in this Chamber has heard, as well as the Labour Department accepting that the verbal warning should be in writing although by an administrative measure.

Mr President, members of the Bills Committee were unable to pursuade the Administration that this written notice should be a statutory requirement rather than an administrative measure. The reasons advanced by the Secretary for Education and Manpower, in his letter dated 9 July this year to Members of this Council, are that it is unnecessary, unacceptable and will impose an undue burden on the proprietors and on the Administration. Mr President, what I cannot understand is why does the Administration want to avoid making statutory what it is otherwise prepared to do anyway? The only difference is that all the proprietors, and indeed all the workers, will know where their rights are and if this is set out in the law so much the better. We are being asked to give the Commissioner of Labour a pretty tough legal power to use these notices. I would have thought that the Commissioner would welcome this clear-cut requirement.

Mr President, the Honourable Edward HO mentioned that there was concern over the need for a 14-day period for the Commissioner to review the issue of a suspension notice. On being queried why such a lengthy period was required, the Bills Committee was told by the Labour Department that the Commissioner intended to consult with the Committee on Industrial Safety and Health which is a subcommittee of the Labour Advisory Board. It seems extraordinary that the Commissioner would embark on such an exercise outside the scope of the Bill and indeed the Ordinance, however well-intentioned these consultations may be. I made the point during our deliberations that if that were the case, what the Commissioner should do is to actually include this process in

the relevant subsection in the Bill and that it would receive the support of this Council. But alas the Administration's response is that it was up to the Bills Committee to decide. I resisted using emotive remakes, but it does seem astonishing that in the exercise of a statutory power to review a suspension notice, the Commissioner intends to consult with a non-statutory committee and probably in the absence of the applicant. This may well explain why the Administration feels that a statutory notice is unnecessary, unacceptable and an undue burden.

Mr President, I shall deal with another concern which in simple terms is simply this: What is the effect of compliance with an improvement or suspension notice? The way in which the Commissioner is empowered to issue these notices, to say the least, implies that a contravention of the Ordinance is occurring or has occurred. Hence there is some doubt as to whether compliance by the proprietor with such notices can amount to evidence against him in any criminal or disciplinary proceedings. It seems to me that the policy objective of the Government must be to encourage compliance with such notices. But would this be achieved if there is a concern that compliance could be used as evidence against such proprietor? It is common sense that it will discourage rather than encourage compliance. My proposed amendment therefore is to preclude the act of compliance as being evidence. Mr President, I hasten to add that my proposed amendment is not intended to and does not preclude a prosecution or disciplinary proceedings. It simply excludes compliance as evidence of contravention. If there is cogent evidence of contravention and in serious cases, I am sure the Commissioner may well prosecute or indeed instigate disciplinary proceedings. I am not seeking to prevent that. Indeed you would expect that there would be other evidence to support the issue of the notices anyway. My proposed amendment, contrary to the Secretary for Education and Manpower's assertion, would not and cannot undermine efforts to bring to justice offending proprietors in serious cases.

Mr President, the choice for Members is clean and simple: encourage compliance by supporting my amendment without affecting criminal or disciplinary proceedings.

In conclusion, Mr President, my constituents, The Real Estate Developers Association and The Hong Kong Construction Association support the spirit

behind the Bill. Like this Council, they are conscious of the urgency of this Bill and attended meetings to ensure its quick resolution. All they seek is clear and fair amendments and not to leave major issues to administrative measures as asserted by the Administration. Is that really too much to ask? I believe not! Mr President, I hope Members of this Council will support my amendments.

李卓人議員致辭：主席先生，我支持政府這項條例草案。我清楚記得在一九八四年當我還在工業傷亡權益會工作的時候，我已經提出政府需要有發出暫時停工通知書的權力，但我記得當時政府答覆我說政府有權到裁判司署申請禁制令。我很高興政府在條例草案委員會會議席上的表現，可以說是以今天的我來打倒昨天的我。當局向我們承認，其實他們並沒有行使這項權力，到裁判司署申請禁制令，因為程序非常繁複，所以一直都沒有運用這個權力。

我認為如果這項條例草案獲得通過，工廠督察便有權簽發這些通知書，而香港工人就可說是擁有一個“免死金牌”，因為整項條例草案的目的，是讓政府的工廠督察，若認為有關的情況非常危險或是有傷亡機會時，可以簽發暫時停工通知書。我們相信如果當局發出暫時停工通知書，而有關承建商又遵守的話，就等於一個“免死金牌”，因為進行中的工序會即時停止。這並不是要整個地盤停工，只是停止某一個工序，因此，我認為這項條例草案很重要。我希望這項條例草案通過後，工廠督察獲賦權力，可以在進行巡查時更有效率地停止有機會傷害工人身體的工序，或一些危險的工作程序。

剛才夏佳理議員也提過，在條例草案委員會的會議上，業內人士曾批評政府建議在上訴期間須諮詢勞工顧問委員會（“勞顧會”）的工業安全及健康委員會。我當時也有出席工業安全及健康委員會的會議，所以我想在此特別澄清一點，當時提出要諮詢勞顧會的並非勞方代表，而是資方代表，是僱主的代表想政府去諮詢勞顧會的。其實勞方代表的立場，最重要的是當局簽發暫時停止通知書，然後希望有關的僱主能夠遵從。如果要提出上訴，不論是向勞工處處長提出，還是向上訴行政委員會提出，對勞方來說都是一個方法，所以我要在這裏澄清一下。剛才夏佳理議員說他們不滿意為何勞工處處長既獲授這個法定權力，卻要諮詢一個非法定的機構。我想告知各位議員，其實是僱主要求將這個程序包括在內。

我相信政府稍後會解釋說已解決了這個問題，方法就是讓接獲暫時停工通知書的僱主或承建商選擇是否交由勞顧會工業安全及健康委員會處理，如

果選擇不交該委員會處理的話，政府相信不需要14天這麼長時間作決定。我相信政府會向各位解說這個問題。

至於夏佳理議員和何承天議員所提出的修正案，我會全部反對，我會在委員會審議階段時提出我的反對理由。

謝謝主席先生。

教育統籌司致辭：主席先生，條例草案委員會主席何承天議員和其他委員迅速審議並支持本條例草案，我要先向他們致謝。

《1996年工廠及工業經營（修訂）條例草案》旨在授權勞工處處長發出暫時停工通知書，以便消除可能即將對工人造成的危險，以及發出敦促改善通知書，糾正沒有那麼嚴重的危險情況。這是一項有關工業安全的重要法例，授權勞工處處長迅速採取預防措施和執法行動。

我將於稍後動議我名下的條例草案的三項修正案。這三項修正案全屬簡單的技術修正，並已獲得立法局條例草案委員會的支持。不過，何承天議員和夏佳理議員已發出通知，他們將會動議一些實質的修正案。政府認為這些修正案是不必要和不適合的。

何承天議員建議的修正案，是在緊接發現任何足以發出暫時停工通知書的事項後，勞工處處長須向該工業經營的東主發出通知書，述明擬發出暫時停工通知書及將在該暫時停工通知書上指明的事項。

夏佳理議員提出的建議的第一部分，與何承天議員的建議修正案一樣，都是要求勞工處處長向有關的工業經營的東主發出通知書。不過，夏佳理議員更進一步建議通知書應訂明格式，以及勞工處處長可在憲報刊登公告修改格式。事實上，政府已同意在勞工處發出暫時停工通知書的程序指引中訂明，以書面通知工業經營的東主政府擬發出暫時停工通知書。政府反對這些修正案，是因為這些修正案不但把行政程序變成法例，而根據夏佳理議員的建議，更在法例內訂明本屬行政性質的通知書的格式和內容。所以有關修正案將會嚴重削弱勞工處處長極為需要的靈活應變能力，以便應付人命攸關的情況。

夏佳理議員提出的建議的第二部分，是有關遵從敦促改善通知書的要求的事實或暫時停工通知書指示的事實，均不可接納為針對東主的證據的修正

建議，我們是完全不能接受這個建議的。因為這會影響政府致力打擊嚴重違例東主的工作。我將在稍後詳細解釋政府反對這些修正案的論點。我在此謹請議員表決反對何承天議員和夏佳理議員動議的修正案。

我可以向各位議員保證，勞工處處長已就在何種情況下發出暫時停工通知書和敦促改善通知書，以及發出和撤銷這些通知書的程序，擬備詳細指引。政府現正審議這些指引，以確保它們足以防止可能發生的濫用權力的情況，並與法例的規定及一般法律上和行政上的慣常做法相符。如本條例草案獲立法局通過，勞工處處長將在本條例草案生效時，公布這些指引。

我們會根據指引的成效不時檢討指引。指引如有重大修改，勞工處處長將會通過現有的諮詢機制，徵詢有關團體的意見。諮詢對象包括勞工顧問委員會（“勞顧會”）及其專家委員會、職業安全健康局，以及有關的僱主聯會及工會。

勞顧會在討論該條例草案的建議時表示，勞工處處長在決定根據第9C(4)條申請進行檢討時,應徵詢勞顧會轄下工業安全及健康委員會的意見。勞工處處長接納勞顧會的建議，是因為工業安全及健康委員會是一個專家委員會，成員包括人數相等的僱主及僱員代表，以及多名安全從業員。

條例草案委員會認為，一些東主可能不需要工業安全及健康委員會的意見。有見及此，勞工處處長同意，她會根據覆核申請人的意願，選擇是否向工業安全及健康委員會尋求意見。

研究條例草案的過程中，議員及條例草案委員會對一些問題深表關注。我的同事於委員會會議中，已經詳細地討論過這些意見。我想在此回應一些較重要的問題。

條例草案委員會委員及一些有關的代表指出，既然暫時停工通知書的作用是保障工人的性命及安全，那麼在發現危險情況後，便應立刻發出該項通知書。另外，由於通知書發出後，會令工程進度受阻，因此，在涉及危險情況的問題得到解決後，應盡快撤銷通知書。有鑑於此，我們作出承諾，勞工處處長不論是發出或撤銷暫時停工通知書，都應在實際可行的情況下盡快進行；無論如何，應在發現危險後24小時內發出通知書，以及在妥善採取補救措施後24小時內把通知書撤銷。

謝謝主席先生。

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).

AVIATION SECURITY BILL

Resumption of debate on Second Reading which was moved on 5 June 1996

MR HOWARD YOUNG: The Aviation Security Bill, as laid before this Council is, a bill which is necessary for Hong Kong and has the support of the aviation industry, which is part of the tourism industry which I represent.

Hong Kong has had a good track record for many, many years as being a safe, secure place to carry out aviation business and aviation activities. And that has enhanced Hong Kong's reputation as an aviation and communications centre in this part of the world.

For historical reasons, aviation security, which to the layman deals with things such as hijacking of aircraft and the protection of passengers and aircraft, has been under the umbrella of United Kingdom civil aviation legislation which now, with the transfer of sovereignty, it is proper and correct that such laws should be localized to be implemented in Hong Kong beyond 1997.

Whilst the Bill itself has the support of the industry, I wish here to make one or two points which the industry which I represent is concerned with in relation to aviation security plus the main problem which this Bill tries to address, that is, the commandeering of aircraft.

Although the Bill deals with instances where aircraft may not be unlawfully taken over or commandeered in flight or at airports, there have been in recent years instances of where, for non-terrorist or reasons of hijacking and the like, passengers or people have in certain airports in the region have occupied

aircraft unnecessarily whilst they are on the ground. Such instances have happened in recent years in Taipei and in Manila and most of them, although they have nothing to do with the ambit of this Bill in the sense of aviation security when it is related to hijacking or terrorist activities, in fact do have a side-effect of possibly affecting passenger and aircraft safety.

We all know that aircraft, although they must be secure whilst they are in the air or on the ground for refuelling or transiting, must stick to strict schedules and must take off and land according to aviation and aircraft control procedures. If these are not adhered to, they could indirectly have a bad impact not just on commercial scheduling and commercial interests, but also on the air traffic control in general which indirectly could also impact on the security of aircraft and passengers waiting to land or take off.

Mr President, in this context, I have had discussions with the Economic Services Branch, Civil Aviation Department and Security Branch. Whilst we all agreed that in the particular context of this Bill, it may not be proper to actually try and insert clauses in this to also prohibit the commissioning of commandeering of aircraft without the consent of its operator's owners whilst on the ground, there may be other measures to be taken such as when the Administration discusses by-laws with the Airport Authority in particular in relation to the new airport to prevent such instances from marring Hong Kong's reputation as an efficient and secure and safe aviation centre. In this respect, I hope that the Government, after the passage of this Bill, will not let the matter rest lightly.

Apart from these remarks, Mr President, the industry which I represent does fully support the contents of the Bill.

SECRETARY FOR SECURITY: Mr President, the Aviation Security Bill was introduced into the Legislative Council for its First and Second Readings on 5 June 1996.

The Bill seeks to localize United Kingdom legislative provisions, concerning international conventions on aviation security, which are currently extended to Hong Kong by Orders-in-Council. It also includes provisions to apply other internationally recommended aviation security measures which are

currently being implemented in Hong Kong through administrative means. The enactment of the Bill will enable us to establish a comprehensive statutory framework for implementing aviation security measures, now and beyond 1997.

Our aim is to implement our aviation security requirements in co-operation and consultation with the aviation industry. To this end, we have widely consulted within the aviation industry including with the airlines, airport tenants and the Airport Authority.

Although it is not directly related to the Bill, I wish to assure Mr Howard YOUNG that we are happy to continue with our consultation on any matters which ensure that we have the highest standard of effectiveness in operation of our airport as well as the highest standard in maintaining our security standards. I just wish to record my thanks for Honourable Members' immediate support for this Bill. With the passage of this Bill, we shall be sending a very strong message to the international community that Hong Kong is meeting and will continue to meet internationally accepted aviation security standards and obligations. There are only a few technical amendments which I shall move later at the Committee stage.

Mr President, I recommended the Aviation Security Bill to this Council.

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

Bill read the Second time.

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

IMMIGRATION SERVICE (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 7 February 1996

劉慧卿議員致辭：主席先生，本年二月七日，政府向立法局提交《1996年人民入境管理隊（修訂）條例草案》，立法局的內務委員會亦於兩天後決定成立條例草案委員會，研究該條例草案。條例草案委員會在三月二十九日展開工作，我被選為主席，我們先後共舉行了五次會議。主席先生，本條例草案旨在重新訂定或擴大人民入境管理隊（“管理隊”）人員的權力，以便調查有關生死註冊、婚姻註冊和人事登記方面的罪行，以及在《刑事罪行條例》下偽造文件的罪行。條例草案建議把調查這些罪行的職責，由警方移交給人民入境事務處負責。

條例草案建議讓管理隊全面負責調查其職責範圍內的罪行。現時管理隊的人員有權拘捕、拘留、搜查和檢取物品。不過，在調查有關生死登記、婚姻登記、人事登記，以及偽造文件的罪行方面，卻沒有明確訂定其權力範圍。當遇到這些罪行時，管理隊可以作出初步調查，如表面證據成立，便要轉交警方進行全面調查及提出檢控。

當局認為這種做法會造成工作重疊，降低工作效率。

此外，為了紓緩警署拘留所過於擠迫的情況，本條例草案建議管理隊可決定將被捕者解往警署，還是拘留在人民入境事務處（“入境處”）的辦事處，作進一步調查。

當局表示將會改建馬頭角道政府合署的空置樓宇，預期工程於一年後完成，屆時將可羈留90人。長遠來說，當局計劃設立一所可容納300人的新羈留中心，以取代現時入境處的域多利中心。

主席先生，議員非常關注若管理隊獲賦予這些新權力，他們會否適當使用，以及會否受到監察。當局表示一直有為管理隊提供調查及羈留方面的訓練，並會發出指引，列明在入境處的辦事處內拘留疑犯的正確處理程序。入境處在設立羈留中心後，會與警方及懲教署接觸，為管理隊提供所需的訓練。此外，入境處亦會發出管理羈留中心的指引。主席先生，當局亦承諾稍後會向本局保安事務委員會提交文件，詳述為管理隊所提供的訓練、所制訂的指引，以及設立申訴制度，讓市民投訴濫用職權的事宜。

在審議這項條例草案時，議員極為關注涉及人身自由的問題，包括要在法例訂明最高的扣留時限。主席先生，我說的是扣留，不是羈留，即是指扣留某人以進行調查的最長時限。我們對此斟酌了很久，有些議員建議以兩小

時為限，但政府認為不行，因為有關人員須計算着時間來進行調查。我當時曾表示，假如我被拘捕，我必定數着每一秒，所以政府要計算着每一分一秒來工作，我相信是可以接受的。主席先生，最後議員及政府當局同意，在這情況下的扣留不得超逾12小時。

此外，條例草案亦訂明，公眾人士有權拒絕讓管理隊人員在公眾地方搜查他們，這與警方的情況不同，現時警務人員在街上如要截停任何人搜身，他們沒有權表示不想在那裏被搜身，但根據這項條例草案，管理隊人員必須告知當事人，他們有權拒絕在街上被搜查，因為政府已同意在工作程序內寫明這點。管理隊人員可把有關人士帶返入境處辦事處、那人的家裏或私人地方進行搜查。這件事議員是支持的，我個人則希望警方可以向入境處學習一下。不過，主席先生，這只是我自己的意見。

當局已接受議員建議，寫明在有關部門的工作程序內，讓調查員知道在進行搜查前，必須告知當事人他有權拒絕在公眾地方被搜查。因為很多人都不知道這些權利，他們在街上遭截查時通常都很驚慌，所以我們要求管理隊告知當事人其權利，並希望入境處的人員都記着這點。

主席先生，條例草案委員會經過多番討論後，決定支持條例草案，以及保安司在委員會審議階段提出的修正案。

我謹此陳辭，支持條例草案二讀。

涂謹申議員致辭：主席先生，劉慧卿議員已經代表條例草案委員會說出我們的集體意見，現在我只想說一、兩點旁支的意見。

我預期這項條例草案通過後，人民入境事務處（“入境處”）工作人員的工作挑戰性將會大為提高，而在執法時所造成的衝突場面亦會較現時的調查隊為多，因為入境處大部分的資源及訓練都明顯不是針對衝突場面或需要運用強制權力的場面而設。因此，我希望政府特別注重這方面的訓練，包括運用怎樣的技巧來處理問題。原本這些工作是由警方負責的，而任何一名警務人員，不論是軍裝或是偵緝探員，都已接受全面的訓練，足以處理可能發生衝突的場面，其中包括涉及羈留、調查及追捕，甚至情報方面的工作。因此，我認為政府須就這方面加強入境處人員的訓練。

第二，正如劉慧卿議員所說，政府承諾在將來再與我們商討有關投訴的機制，以及監察投訴的機制。我明白這些部門可能會因為衝突場面而被投

訴，但我預期在最初時不會有太多投訴，因為有關事件的數目不會很多。我原則上支持設立一個全面的獨立調查機制，但在資源方面，這並不是一個最有效的安排。不過，無論如何，我希望政府就如何監察投訴提出一些積極的建議，使市民亦滿意這是公正的安排。由於入境處將會擁有更多強制權力，處理可能發生衝突的場面，而根據警隊的經驗顯示，這方面的投訴比率將會日漸提高，因此，我希望政府能夠盡早就有效機制提出建議，讓大家討論。

保安司致辭：主席先生，政府於一九九六年二月七日向立法局提交《1996年人民入境管理隊（修訂）條例草案》。本草案旨在授權人民入境管理隊成員調查該隊職權範圍之內與登記事宜有關的罪行，以及《刑事罪行條例》（第200章）所訂定的某些偽造罪行。本草案並規範人民入境管理隊成員處理被捕人士的程序。

劉慧卿議員和條例草案委員會各委員已詳細審議本條例草案，並在委員會審議階段提出多項寶貴的建議，對此，我深表謝意。

社會人士可能會對本草案賦予人民入境管理隊的額外權力表示關注，而上述程序在這方面大有幫助，政府可相應仔細修正本條例草案，以消除該等疑慮。

我們建議在委員會審議階段就本條例草案作出一些主要修正案，以保障正接受調查或被捕人士的權利：

(a) 第一，我們建議在正式拘捕之前，最長的拘留期間，不得超過12小時；

(b) 第二，我們建議，由有關人士最初被拘留接受調查，至帶上裁判法庭或獲釋為止，總拘留時限最多為48小時；及

(c) 第三，我們建議修正第13(1)和(2)條，刪除“似乎有權控制該地方或居住在那裏”一句，並以“居住在或主管該地方”一句代替。這是以《警隊條例》（第232章）第50(3)條作為藍本，並在人民入境管理隊成員搜查私人樓宇時，為後者提供更佳保障。此外，我們又建議在本條例草案作出多項輕微修正案，俾能與規管其他紀律部隊權力的其他法例配合一致。

我可以向議員保證，雖然當局有意確保人民入境管理隊成員獲得所需的調查權力，執行其法定職責，但對於應有足夠的制衡，防止濫用權力，亦同樣關注。我們相信本條例草案，連同委員會審議階段的修正案，正好達到平衡，而現行的嚴格保障已十分有效，足以防止濫用權力。

至於劉慧卿議員和涂謹申議員所關心的問題，我想在此一談。我們已為人民入境管理隊的調查人員提供調查工作和權力的廣泛訓練。在本條例草案頒布後，人民入境事務處便會開辦新訓練課程，並會舉行簡介會，確保擁有該等新權力的人民入境管理隊人員，熟習有關法律，在行使賦予的權力時能夠勝任。此外，又會發出適當的常務訓令，指引及規管有關人員行使這些建議的權力。事實上，本草案所賦予的權力，大多與《人民入境條例》授予的現行權力相若。我們相信，入境處人員在執行新的調查職責時，將不會遇到困難。

政府將應條例草案委員會的要求，在本條例草案生效時，向立法局保安事務委員會提交一份文件，詳述有關處理投訴的程序，以及為入境處人員提供的訓練。這項承諾，我們一定會跟進。

主席先生，我謹推薦《1996年人民入境管理隊（修訂）條例草案》。

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).

BUILDINGS (AMENDMENT) (NO. 3) BILL 1995

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

MR RONALD ARCULLI: Mr President, I rise to speak in my capacity as the Chairman of the Bills Committee formed to study the Buildings (Amendment) (No. 3) Bill 1995.

The said Bill was introduced into this Council at the first regular sitting of the current Session on 18 October 1995. The Bills Committee has taken one Legislative Council year to complete scrutiny of the Bill. Altogether the Bills Committee has held 19 meetings, paid one visit to a construction cite and received over 300 written submissions. I shall highlight some of the major issues considered by the Bills Committee.

The first part of the Bill deals with the regulation of building professionals. Members of the Bills Committee welcome the proposals under the Bill to improve the existing registration system of Authorized Persons (AP) and Registered Structural Engineers (RSE) by bringing the criteria for registration in line with those under other building professional registration Ordinances, namely, the Architects Registration Ordinance, the Engineers Registration Ordinance, and the Surveyors Registration Ordinance. The only major query raised by members is the proposal to include a lay member in the AP Registration Committee and the RSE Registration Committee. The Administration had explained that the policy of including a lay member is intended to allow public views be reflected in each Registration Committee because the duties of these building professionals are closely related to public interest and judgement factors will be considered in dealing with registration matters. The Bills Committee, whilst accepting the Administration's explanations, considers the proposed nomination mechanism for lay members unsatisfactory. At the suggestion of members, the Administration has agreed to improve the nomination system, the registration and the renewal procedures and the disciplinary proceedings for AP and RSE. Amongst these improvements, a major one is to empower the Building Authority (BA) to establish panels of members including lay persons for appointment to the AP Registration Committee and the RSE Registration Committee, and to appoint more than one Registration Committee of each type at any one time.

Regarding the registration system for contractors, the Bills Committee supports the proposed new contractor registration system to replace the existing one with a view to upgrading the standards of building contractors. However, members share the concern of the trade that this objective should be pursued with regard to the practical situation. To enhance certainty as to the criteria for registration, the Administration has worked jointly with the trade and come up with a set of criteria which will be specified in the Bill. The Administration has also assured members that a registered contractor will not be struck out from the

list or be refused for retention of name because of absence or lack of physical works for a certain period. A contractor's name will only be removed on the ground that it has ceased to engage in the building business. This assurance has allayed the trade's concern on the matter.

On the transitional arrangements, the Administration has taken on board members' suggestion to amend the Bill to reflect that the registration of a contractor who is registered at the commencement of the new registration scheme will continue in force for two years. This arrangement will allow the existing contractors who have entered into building contracts before the enactment of the Bill to honour their contractual obligations and fulfil the new requirements.

Mr President, the Bills Committee has spent considerable time examining the proposed requirement under the Bill for the submission of a supervision plan by the AP to the BA for approval prior to the commencement of building or demolition works. The professional institutions have pointed out a number of deficiencies of such a proposal. To mention just a few; a prescribed supervision plan is excessively rigid and will not accommodate changes if site circumstances so require. Since the professionals are required to follow a prescribed plan, it will inhibit the exercise of professional judgement. Moreover, at the design stage of a building project, it is practically impossible to prepare a detailed supervision plan outlining the level of supervision at each stage and the manpower necessary to carry out the required level of site supervision. The professional institutions have repeatedly stressed that AP and RSE are design professionals and they are not in control of the day-to-day site operation the responsibility for which rests with the registered contractors.

To overcome shortcomings of a prescribed supervision plan but without compromising the standards of site supervision, the Administration, modeled on a counter proposal proposed by the professional institutions, has put forth alternative proposals to address the concerns of members raised in the course of deliberation. Under these alternative proposals, no consent to commence works shall be issued by the BA, unless a supervision plan for the works has been submitted. The AP shall submit an outline supervision plan, followed by a series of detailed supervision plans prepared by AP, RSE or registered contractor at different stages of works. The professional responsibility will rest with the person who prepares the plans. Both members of the Bills Committee and the professional institutions have agreed that the Secretary for Planning, Environment and Lands shall issue a Technical Memorandum which will set out

the requirements, format and content of a supervision plan.

I need to point out that the most controversial issue lies with the proposal to make it a criminal offence for failure to provide proper supervision of building works in the prescribed manner. Whilst there is no doubt that everybody considers site safety important and agrees that appropriate measures should be taken to enhance safety, but it calls into question whether applying criminal sanction to persons in the building trade is the right way to do it. The building professionals have expressed strong sentiments on the matter. The Bills Committee has had thorough and in-depth discussion on the merits of criminal sanction. Since my colleague, the Honourable Edward HO, will move a Committee stage amendment on behalf of the Bills Committee to delete the provisions about criminal sanction, I shall leave this area to Mr HO for elaboration.

Mr President, I wish to take this opportunity to thank the Hong Kong Institute of Architects, the Hong Kong Institution of Engineers, the Hong Kong Institute of Surveyors, the Hong Kong Construction Association and the Real Estate Developers Association of Hong Kong for the participation in the scrutiny of the Bill. Their invaluable contributions in terms of time, effort and suggestions have helped improve the Bill in a much workable and practicable form. On behalf of the Bills Committee, I would also like to thank the Administration for their hardwork and endeavour to co-operate with members, notwithstanding that it holds different views from those of the Bills Committee on the question of criminal sanction.

Mr President, subject to the amendments to be moved by the Administration and the Honourable Edward HO, I commend the Bill to Members.

MR EDWARD HO: Mr President, the building industry is in support of any measures to improve safety on sites. They support the Buildings (Amendment) (No. 3) Bill 1995 which is part of a series of legislative measures to enhance safety. But they do not support in its totality because of the problems I shall deal with later in my speech. The Buildings (Amendment) (No. 3) Bill 1995 can be roughly divided into three parts, and I shall deal briefly with these parts individually.

Registration of Authorized Persons (Aps) and Registered Structural Engineers (RSEs)

The Bill provides for revisions to the composition of the relevant Registration Committees for APs and RSEs to provide for more self-regulation by professionals nominated from the relevant Registration Boards. I fully support these proposals which have been worked out with the support of the professional institutions.

Registration of contractors

I welcome the introduction of a system of registration for general building contractors which will take into account their qualifications, competence and experience. This will ensure that only contractors who possess the required level of competency will be allowed to carry out building works. The system will also allow the introduction of registers of specialist contractors to do more specialized types of construction works. This is also strongly supported.

The proposed register of general building contractors only calls for one class of contractors for any scale and complexity of buildings. In other words, the qualification and experience of registered contractors will be determined by the lowest common denominators. I hope that the Administration will give serious consideration to my proposal of a classification system whereby contractors will be qualified for different levels of scales of projects. It is important that only suitably qualified contractors are allowed to take on large scale building works, whilst not depriving the smaller contractors to work on smaller sized projects.

Supervision plans

The Bills Committee has to meet 20 times, including the visit, on this Bill, mainly because of the difficulties encountered with the concept of the introduction of supervision plans. The original Bill was conceived as if the sole intention was to enable the Administration to impose criminal sanctions on as many as possible of the parties involved, regardless of whether any or all of these

parties have been responsible. I called that the "shot-gun" approach.

One example was that the supervision plan was to be prepared collectively by the Authorized Person (AP), the Registered Structural Engineer (RSE) and the contractor, despite the very different roles and responsibilities of the various parties involved in the building process.

Mr President, it is fortunate that due to the capable leadership of the Honourable Ronald ARCULLI, the persistent and conscientious efforts of members of the Bills Committee, and if I might say also, the very pragmatic approach of the Administration especially since the appointment of Dr CHOY, and representatives from the concerned professional and trade organizations, a number of amendments will be proposed at the Committee stage, which if supported by Honourable Members, will render the Bill much fairer in the distribution of responsibilities, and much clearer for practising professionals and contractors to follow.

Insofar as supervision is concerned, let me explain that the professional's role is quite different to that of the contractor. The former's responsibility is one of periodic supervision to ensure that the contractor was in general compliance with the provisions of the contract and the relevant government regulations. He exercises his judgment as to the frequency of his inspections, and what part of the works should be inspected, much like the medical practitioner exercising his professional judgment on how frequent he needs to visit his patient. The professional's role is also limited to that of the permanent works. The contractor, on the other hand, has the responsibility of continuous supervision, and to the safety of temporary works. He has also the responsibility of ensuring a safe working environment for the workers under the provisions of the Factories and Industrial Undertakings Ordinance.

Members of the Bills Committee have been unanimous in removing criminal sanctions due to deviation from the supervision plans. They have considered this question very carefully. They have considered it more appropriate to introduce disciplinary proceedings for professional negligence, which in the worst case will remove the professional from the register of AP or RSE. In addition, they are aware that professionals are already burdened with very major civil and even criminal liabilities as a result of professional negligence. I shall elaborate on these and other relevant aspects when I move

my amendment at the Committee stage to remove the criminal sanctions.

Finally, I wish to make two further points here. The first is that the Administration has agreed to issue a Technical Memorandum to deal with aspects of the supervision plans which will be subject to the vetting of this Council. There should be different and earlier effective dates for other provisions of the Bill so that such matters of registration of contractors can proceed as quickly as possible. The second issue is related to the issuance of cease work orders. These have very major economic impact on building projects. Cease work orders should be withdrawn as soon as remedial action has been taken on non-compliance that has caused such an order.

Mr President, the Bill, after going through all the amendments at the Committee stage later on, will be a much better version than that before scrutiny by the Bills Committee. It will provide a sound framework for improving safety on site. With these remarks, I support the Bill as amended later on.

陳偉業議員致辭：主席先生，民主黨歡迎《1995年建築物（修訂）（第3號）條例草案》的有關修訂。這些修訂對工業安全會有一個顯著的改善。這條例草案涉及的範圍很複雜，並涉及繁複的技術性問題，所涉及的人士不獨包括發展商，也涉及與發展有關的各類專業人士，甚至涉及從事建築工作的勞動階層，特別是管工也可能因此受到嚴重影響。條例草案委員會在討論政府提出的建議後，提出很多修正建議，政府接納了委員會絕大部分的意見。政府稍後會在委員會審議階段作出相應的修正。剛才委員會主席夏佳理議員和何承天議員已就條例內很多方面作出解釋和評論，我不再重複。

我只想指出一點，我覺得整條條例中最美中不足的是，直至今天為止，刑事制裁的部分仍未得到一個圓滿的解決和處理。民主黨原則上支持就安全方面作出刑事制裁，因為在這方面作出刑事制裁，會增強法例的有效性，對那些在工業安全方面做得不足的人，加強阻嚇作用。不過，現時仍有兩個問題未得到充分解決和處理，其一是現時的條文並不適用於政府工程。民主黨認為在“法律面前，人人平等”的原則下，沒有理由政府工程出現與私人工程同樣問題時，有關人士無須面對刑事制裁，但私人工程的有關人士則需要。我們認為這點不能接受，因為很多政府工程都是同樣由私人承建商承辦的。在這樣的制度下，政府沒有理由特別受到優待和豁免。在法律精神上，這是一個不能接受的原則。

第二個問題似乎較少受到討論，但其實由這項條例草案審議初期，我已經提出這條例草案不獨針對專業人士，（專業人士在過去十個月已積極提出意見），在提到沒有跟隨監管計劃書而可能出現刑事檢控時，其實工地上的建築工人，特別是管工，也大有可能同樣須面對刑事檢控。但很不幸，在過去數個月，就工人可能面對刑事檢控這方面的問題，並沒有進行廣泛的討論，也沒有工會提供積極的意見。在過去數月，我在不同場合曾詢問一些從事建築工作的勞工，他們絕大部分反對自己會因沒有依循監管計劃書而須負上刑事責任。有關監管計劃書很多方面的內容，正如剛才何承天議員所說，將來會以技術備忘錄形式清楚列出細節。究竟對工地的勞工有多大影響，現時有一部分仍然未清晰，所以在現階段便把工地勞工也包括在刑事檢控範圍之內，我們認為是一個不成熟的取向和決定。

基於在法律上不平等，以及對勞工的影響這問題仍未作充分討論和諮詢的情況下，民主黨不贊成在現階段便進行刑事制裁，所以我們會支持何承天議員提出的修正案。但民主黨要向政府清楚表示，我們原則上認為刑事制裁是需要的。在最後一次的條例草案委員會會議上，政府第一次公開說政府原則上不反對將刑事責任這點放在政府的工程項目上。因此，在政府也不反對的原則下，民主黨認為刑事制裁是一個重要環節。我們在此向政府積極呼籲，如果何承天議員的修正案獲得通過的話，即有關刑事制裁的條文遭否決，我們希望政府在下一立法年度，從速提出一項新的修訂草案，將刑事責任那一部分也包括在內，並將政府所有工程項目也包括在條文的範圍以內。如果政府在下一年度不提出這項修訂，民主黨可能會提出議員條例草案，將這部分包括在內，並希望同時處理工地上勞工受影響的問題，作出全面檢討和提出一項新修訂草案。

主席先生，在我自己的五年立法局生涯中，我沒有涂謹申議員參與這麼多條例草案委員會。在建築物安全方面，這條例草案是一條較為複雜和需時討論的議案，但可惜參與這個委員會的議員並不多。經過20次會議後，委員會的成員對有關的修訂條文，意見一致。我希望各位議員能支持委員會就這條例草案所提出和支持的修正案。

謝謝主席先生。

鄭耀棠議員致辭：主席先生，本人與工聯會對於推動防止工業意外，一直十分關注。至於使工地專業人士，包括建築師、工程師須就工業意外負上刑事責任的《建築物（修訂）（第3號）條例草案》，我和工聯會都十分支持。

主席先生，條例草案建議有關專業人士負上刑事責任是至為重要的。其實目前法院對有關專業人士判以刑事責任難乎其難，除非證實他們故意疏忽，而造成工業意外，並有人命傷亡，否則，不能判以重刑。

因此，本人及工聯會認為，如果《建築物（修訂）（第3號）條例草案》不能令建築專業人士須負上刑事責任，就等如是“無牙老虎”、“剩得個樣”，最後對防止工業意外，是無補於事的。

工聯會認為，作為上述工程的專業人士，在防止工業意外方面負上一定責任，是他們既有的專業操守問題，他們是責無旁貸的。《國際勞工公約》有關建築業的安全和衞生條款第九章也申明，根據國家法律、條例及實踐，負責建築工程設計及規定的人員應考慮建築工人的安全及衞生問題。英國政府也於九五年三月三十一日實施《建造（設計及管理）規例》，教育統籌科於去年發表的《香港工業安全檢討諮詢文件》亦有同樣建議。

主席先生，既然國際層面的勞、資、官三方也認同有關建議，並寫入《國際勞工公約》，本人與工聯會實在十分希望《建築物（修訂）（第3號）條例草案》能在本局盡快通過政府議案。

至於有些聲言不支持政府建議的議員，所持的理由只是因為政府的原草案，並不包括政府工地上的建築專業人士，他們無須對工業意外負上刑事責任，因而反對政府的草案，而支持何承天議員的修正案，這種說法並不恰當。然而，因現條例草案不包括政府工地的專業人士，而反對原草案，使此條例草案不能通過，放過了私人工地專業人士的責任，致使工業安全不能得以改善，就說不過去了。我們大可先支持政府的原草案，在通過後繼續爭取其最終目標擴展至政府工地，這才是致力推動工業安全所應該做的事情。本人及工聯會也會在條例草案通過後，繼續循此途徑爭取改善機會。

主席先生，本人謹此陳辭。

葉國謙議員致辭：主席先生，隨着社區老化，要重新發展社區，拆卸和興建新建築物的工程將日漸增多。相信九四年彌敦道一項拆卸工程外牆倒塌和西環拆樓石屎柱飛墮的意外，促使政府關注如何改善建築及拆卸工程地盤的安全，並進行了有關的檢討工作，以致今天能有這項條例草案提交本局審議。

條例草案建議改善建築專業人士註冊制度，亦同時加強管制建築工程及正在進行工程的地盤安全水平，這精神值得支持，方向亦是正確的。但最令

人遺憾的是，政府同時建議在條例草案中引入對未能保證地盤安全水平的人士，提出刑事制裁的條文，民建聯對此不表贊同。

對於不注重地盤安全而引致意外，涉及人命損傷的承建商或工程師，現行的法例已有刑事制裁的條款。根據現有的《建築物條例》，負責建築地盤的有關人士，包括建築商和有關專業人士違反有關條例，明知偷工減料、欺詐、知情不報或沒有執行定期巡視地盤的責任，現時法例已經規定要負上刑事責任。但現時政府的建議，就是要有關的專業人士負上即時刑事責任，即不需要控方證明其觸犯法例的動機及因由，這對業內人士是不公平的。

其次，政府在此條例上製造了雙重標準，刑事制裁只適用於私人機構的建築專業人士，由政府自己部門負責和由政府自己專業人士負責的地盤建築、拆卸工程，如發生問題，佔了全港工程一半的政府公職人員卻可以受到豁免，這是極不公平的，出現了“一例兩制”，亦違反了“法律面前，人人平等”的法治精神。

除此之外，條例中亦訂明地盤各方人士，包括註冊工程師、業主和承建商，也包括施工中的工人，都必須遵守所訂下的工程程序，如有違反，亦須受到刑事制裁。但問題癥結是，認可人士及註冊工程師並不掌管地盤的日常工作，規定他們須就未能遵守監工計劃負上刑事責任，等於是要他們負上一項他們無法履行的責任。

主席先生，民建聯認為刑事制裁未必能確保地盤安全，承建商及工人缺乏工業安全概念及適當訓練才是問題的關鍵所在。政府應要加強這方面的工作。民建聯支持何承天議員的修正案。

本人謹此陳辭。

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I would like to thank the Honourable Ronald ARCULLI, Chairman of the Bills Committee, and other members for their very careful and detailed deliberation on this Bill in the past nine months.

This Bill serves two main purposes. The first aims to strengthen supervision and safety management at construction and demolition sites through

the introduction of a supervision plan system. The second is to improve the registration system for Authorized Persons, Registered Structural Engineers and building contractors.

The Bills Committee and other concerned parties, such as the relevant professional bodies and the contractors associations and Real Estate Developers Association, have given many valuable comments on specific provisions of the Bill. The Administration agrees with most of these comments, and I shall move the necessary amendments to the Bill at the Committee stage later on. However, it may be useful if I could explain in some detail the Administration's response to a number of points raised by the Bills Committee and other organizations.

With regard to the registration of Authorized Persons and Structural Engineers, there will be panels of members from whom the Building Authority may appoint more than one Registration Committee. The Building Authority will be empowered to direct the Registration Committee to hold meetings in order to help ensure that the applications for registration as Authorized Persons and Structural Engineers will be processed expeditiously. The registration will continue to be in force while an application for renewal is still being processed, subject to any order of the Disciplinary Board. This is to obviate the administrative problem of processing a large number of applications within a fixed time limit.

I also wish to assure the Honourable Edward HO that his suggestion of a classification system for contractors will be seriously considered.

The Building Authority will be required to give reasons why an application for inclusion, retention or restoration of name in the relevant register is rejected. He will also be required to inform an Authorized Person or Registered Structural Engineer before removing the latter's name from the relevant register. Furthermore, a legal adviser will be appointed to assist in the proceedings of the Disciplinary Board for Authorized Persons and Registered Structural Engineers.

The power of a judge to dismiss an appeal against a decision of the board if he considered that there had been no substantial miscarriage of injustice, even if he was of the opinion that the point raised in the appeal might have been decided in favour of the appellant, will be removed. These measures will serve to further improve the fairness of the disciplinary proceedings.

Similar amendments will be moved by me to other provisions of the Bill relating to the registration of general building contractors and specialist contractors. Moreover, the factors which will be taken into account in considering whether an applicant qualifies to register as a contractor will be clearly set out. In the case of general building contractors, the Building Authority will be allowed to accept relevant local experience as a substitute for the required qualifications. As a transition arrangement, the registration of existing contractors will continue to be in force for two years after the commencement of the relevant provisions of the Bill.

To implement the supervision plan system, the Building Authority may refuse to give his consent to the commencement of works where the Authorized Person has failed to lodge a supervision plan. The format and content of the plan have to comply with the requirements set out in the Technical Memorandum which will be formulated by the Building Authority in consultation with the professional institutes and the construction industry, and approved by this Council under the negative vetting procedures.

To ensure that supervision plans are complied with, we will recommend a three-tier sanction system. Minor deviations from the supervision plan may entail administrative warnings given by the Building Authority. Material deviations or repeated minor deviations will be made a disciplinary offence. Material deviations which directly result in injury to persons or damage to property or a risk of injury or damage will be made a criminal offence. However, provisions will be made for exceptional circumstances when urgent action is required for safety reasons to permit deviations from the supervision plan.

The Building Authority will be empowered to order works to cease when the conditions of approval or consent given by him has not been or is not able to be complied with, or when there is material deviation from the Technical Memorandum or the supervision plan, which may lead to dangerous or potentially dangerous situations.

I am, like the Honourable Ronald ARCULLI, pleased to note that the Bills Committee has indicated support for all but one of the amendments to be moved

by me, that is, criminal sanction provision when material deviations from the supervision plan directly result in injury to persons or damage to property or a risk of injury or damage. I will further explain the views of the Administration and clarify any misunderstandings like those expressed by the Honourable Albert CHAN and the Honourable IP Kwok-him about government architects and engineers not subject to criminal sanctions on the issue during the Committee stage.

Thank you, Mr President.

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

Bill read the Second time.

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

BUILDINGS (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 14 February 1996

陳偉業議員致辭：主席先生，我謹在此向各位匯報1996年建築物（修訂）條例草案委員會的商議結果，我是這個委員會的主席。

本條例草案委員會在一九九六年二月十六日成立，曾與當局舉行兩次會議。一如規劃環境地政司在條例草案二讀時所解釋，條例草案的其中一個目的，在於賦予建築事務監督權力，着令業主勘察影響斜坡安全的排水渠及污水渠。條例草案委員會關注到，建築事務監督可能會要求建築物業主進行不必要的勘察工程。為避免建築事務監督可能會濫用權力，議員認為有需要訂明建築事務監督在何種情況下才可發出命令。當局接納議員的建議，同意修正條例草案，以訂明決定發出命令準則的範圍包括建築物的排水管、污水管或水管有否出現漏水、損毀或不足的可能性。此外，當局亦在議員的建議下，同意條例草案的適用範圍應涵蓋水管。為此，條例草案已加入“水管”一詞的定義，而建築事務監督要求業主進行勘察的權力亦相應擴大，以包括影響斜坡安全的水管。

主席先生，條例草案委員會關注的另一問題是，如出現損漏的排水管或污水管位於官地或政府土地上，因此而須進行的斜坡穩定工程，究竟應由誰人負責的問題。當局指出，私人樓宇業主須負責其建築物排水管的維修保養，不論該等排水管位於何處，不過，他們卻無須付出為符合經提高的標準，而進行鞏固該等公共斜坡的工程所涉及的額外成本，因為這方面明顯是政府的責任。位於未批租土地的排水管及污水管的私人建築物業主均不會獲豁免，必須負責有關的維修工程。為澄清此點，使之在全無疑問下，在條文內清楚列明，當局將會動議一項委員會審議階段修正案，加入有關條文。

條例草案委員會亦知道，建築事務監督一般會在緊急情況下、在業主未有遵照建築事務監督發出的命令或在業主要求之下，代其進行勘察工程。只要有關的命令已在土地註冊處登記，即可向在勘察工程完工時身為業主的任何人士追討有關的費用。對於在工程竣工後拒絕付款的業主，所欠的款項會登記在土地註冊處，作為欠下政府的一筆債項的紀錄。

主席先生，當局向議員保證，條例草案在制定後，將可賦予建築事務監督更大權力，可以着令業主勘察影響斜坡安全的排水管、污水管和水管，藉此加強斜坡安全。有關收回費用的修訂條文，將可使建築事務監督較易收回其工程費用。與此同時，可能購買物業人士的利益亦因為這項修訂而受到保障，因為他們在購買物業前便可得知可能須承擔的債務。各議員亦接納，當局動議的委員會審議階段修正案將可解決條例草案委員會有關剛才所說那些表示憂慮的事項。

最後，在當局積極協助下，本委員會得以迅速完成研究本條例草案的工作，對此我謹代表委員會向政府當局，特別是向負責草擬條文的律政署代表致以謝意。

主席先生，我謹向各議員建議，稍後政府當局提交上述修正案，請各位予以支持。

謝謝主席先生。

THE PRESIDENT'S DEPUTY, MR RONALD ARCULLI, took the Chair.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy, I would like to thank the Honourable Albert CHAN, Chairman of the

Bills Committee, and other members for supporting this Bill and the Committee stage amendment that I will propose.

This Bill has three purposes: empowering the Building Authority to order owners to carry out investigations into drains and sewers for slope safety reasons; facilitating the recovery of the cost of works carried out by the Building Authority on behalf of building owners; and making clear that a closure order will cease to have effect when the concerned structures are demolished or cease to exist. In scrutinizing the Bill, some Members proposed that water pipes should also be covered by the Bill. We agree, and have prepared Committee stage amendments to this effect. Upon the enactment of the Bill, the Buildings Department will maintain close liaison with the Water Supplies Department in exercising the new power to require investigations into water pipes and remedial works regarding any leakage, defect or inadequacy identified.

Members have also expressed concern over the discretion of the Building Authority in serving orders requiring investigations into water pipes, drains and sewers. We have prepared Committee stage amendments to provide that, where the Building Authority is of the opinion that no leakage, defect or inadequacy is likely, no order shall be served. In forming his opinion, the Building Authority should take into account all relevant matters and information such as the age of the water pipes, drains or sewers and records of previous investigations and maintenance works. The Building Authority's decision is also subject to appeal to the Appeal Tribunal under Part VI of the Buildings Ordinance, the members of which are mainly independent legal or building professionals. We believe this provides the necessary safeguard against potential abuse of power.

We have also prepared a Committee stage amendment to ensure that an owner is responsible for the maintenance of and investigations into the water pipes, drains and sewers serving his building irrespective of where such pipes, drains and sewers are laid.

Thank you, Mr Deputy.

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).

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1996

Resumption of debate on Second Reading which was moved on 1 May 1996

MR ERIC LI: Mr Deputy, I speak to applaud the introduction of this Bill which is part of the 1996-97 Budget proposals. The objective of the amendment Bill is to exempt from profits tax liability in respect of non-residents' investment activities through stock brokers and fund managers in Hong Kong.

As the Legislative Council representative for accountants in Hong Kong, I recognize with appreciation that this Bill represents a positive response to one of our specific budget recommendations. In the course of my examination of this Bill, I have received many representations from my constituency members acting on behalf of the Stock Exchange and other eminent professional bodies.

The main complaints were technical in nature and have focused on the narrowness of the assistance offered by the exemption in its draft form. In particular, section 20AA of the Bill, which seeks to add certainty to the tax liability of brokers and approved investment advisors acting as agents for non-resident investors, seemed to have worked quite the other way.

The accountancy profession submits that the exclusion of associates, a vague term introduced in this new section, from the exemption is unnecessarily restrictive. We consider that all restrictions on local brokers should be removed so that they can freely carry on their business and hence further enhance the development of Hong Kong securities in the international market. This, we believe, to be the true spirit of the Financial Secretary's original Budget proposal.

However, since this is the last sitting of the Legislative Council before the long summer break and any amendment at a late stage of the Bill's scrutiny may cause substantial delay and hence the implementation of other provisions in the Bill which are of equal importance to the securities industry, we therefore accept with some reluctance the amendment Bill in its present form together with the Administration's assurances of giving advance rulings and the issue of clear Departmental Interpretation and Practice Notes by the Commissioner of the

Inland Revenue on matters in the various correspondences between myself, the Administration and the professional bodies concerned, which now form part of the record of the House Committee.

Nevertheless, I would still request the Administration to consider appropriate amendments to section 20AA and section 20AA(1)(a) at the earliest or subsequent opportunity in order to remove any remaining doubts in the implementation of this valuable exemption.

I would also like to record my personal appreciation of the professionalism, responsiveness and efficiency in the way in which the Administration has handled this Bill. It was our mutual willingness to get on with business which has helped me to sort out this rather complex and technical Bill with the Administration expeditiously and without the need to set up yet another Bills Committee, and also in the spirit of mutual trust and co-operation. I am convinced that, given the circumstances, the timely balance struck will best serve the financial services industry of Hong Kong.

With these remarks, Mr Deputy, I support the Bill and urge honourable colleagues to do likewise.

SECRETARY FOR THE TREASURY: Mr Deputy, I am grateful for Members' support for the resumption of the Second Reading debate of the Bill. The Bill has two objectives. First, it seeks to reflect existing practices and provide greater certainty in law by:

(a) excluding stock brokers and investment advisers from potential profits tax liability in respect of share trading and fund investment profits derived by non-resident investors for whom they act as agents; and

(b) including a specific tax exemption for certain income derived from *bona fide* offshore funds managed in Hong Kong.

Secondly, the Bill seeks to extend the current tax exemption for stock borrowing and lending transactions to cover also stocks not listed in Hong Kong. This is in response to a request made by the financial services sector for promoting stock

borrowing and lending transactions in Hong Kong.

After the publication of the Bill, we have received submissions from the Law Society of Hong Kong, the Hong Kong Society of Accountants, the Joint Liaison Committee on Taxation, the Taxation Institute of Hong Kong and the Stock Exchange of Hong Kong. We are grateful for their views on the Bill. I would also like to thank in particular the valuable advice on the Bill given to us by the Honourable Eric LI. We have carefully examined these views and, as a result, I will move at Committee stage a number of amendments. I shall explain at that stage the reasons for the amendments; but I would like to take this opportunity to address two points concerning the legislative intent of the Bill in respect of the first objective which I have just described.

Section 20AA as proposed in the Bill seeks to exclude brokers and investment advisers from potential profits tax liability for acting as agents for non-resident investors. We note the concern expressed by various parties in respect of the restriction imposed under the Bill that the provisions in section 20AA would not apply in cases where the investors and the agents have an "associate" relationship. We have thoroughly examined this issue and remain of the view that the imposition of the restriction is justified and necessary. In such cases, the agent, being the associate of his client, should be able to ascertain whether there is any potential liability to profits tax and the question of uncertainty which we aim to address in the Bill by providing the tax exemption therefore should not arise. There is a limit to how far the tax exemption provided under the proposed legislation should go without creating opportunities for tax avoidance. We believe that we have struck the right balance in the Bill. Our proposal does not imply that the parties concerned under an "associate" relationship would automatically be chargeable to profits tax. This is by no means the case. Whether a tax liability arises will depend on the circumstances of each case and on the application of the existing provisions of the Inland Revenue Ordinance. The situation for these cases with "associate" relationship will not be inferior to what it is now, before the proposed legislation is enacted. There is also no question of the proposed legislation preventing a non-resident investor from, or placing any restriction on him in, making use of an associated agent in Hong Kong.

However, to reflect better our legislative intent, the Commissioner of Inland Revenue will issue a Practice Note to clarify issues relating to the application of the "associate" restriction and the interpretation of the term

"non-resident" as requested by the various parties concerned.

We also note the concern of various parties that section 20AB as proposed in the Bill, which is modelled on legislation in the United Kingdom and sought to provide a specific tax exemption for certain income derived from *bona fide* offshore funds managed in Hong Kong, is not easy to follow. Instead of achieving its objective, it may on the contrary complicate the existing tax system in this area. We have reviewed the approach and concluded that a simpler way to achieve the policy objective and to reflect our legislative intent is to amend existing section 26A(1A) of the Inland Revenue Ordinance to extend the present tax exemption under the section to cover also mutual fund corporations and unit trusts established outside Hong Kong or similar collective investment schemes, provided that the Commissioner of Inland Revenue is satisfied that the mutual fund corporation, unit trust or collective investment scheme is a *bona fide* widely held investment vehicle which complies with the requirements of a supervisory authority within an acceptable regulatory regime. We are pleased to note that this revised approach is welcomed by the various parties concerned. I will move amendments at Committee stage to delete the proposed section 20AB and replace it with a new clause to this effect.

No prior approval from the Commissioner is necessary for an individual investment vehicle to qualify for the proposed tax exemption under section 26A(1A) provided that the requirements as stipulated in this Bill are satisfied. The Commissioner is prepared to give advance ruling if there is doubt in individual cases. The Commissioner will also issue a Practice Note to clarify the interpretation of such terms as "supervisory body" and "acceptable regulatory regime" under the Bill.

Thank you, Mr Deputy.

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

Bill read the Second time.

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

SUPPLEMENTARY APPROPRIATION (1995-96) BILL 1996

Resumption of debate on Second Reading which was moved on 26 June 1996

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

Bill read the Second time.

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

Committee Stage of Bills

Council went into Committee.

PREVENTION OF BRIBERY (MISCELLANEOUS PROVISIONS) (NO. 2) BILL 1995

THE PRESIDENT resumed the Chair.

Clauses 2, 3, 8, 9, 11 to 14 and 18

委員涂謹申議員致辭：主席先生，草案第2條建議將“Crown servant”一詞包含在“public servant”的定義之內，特別是處理有關法官這個特別類別的問題，以致他們須受《防止賄賂條例》所約束。

主席先生，我希望促請政府考慮兩點，第一，由於最近有一連串議員接受利益的風波，我希望政府能藉此機會，檢討應否在《防止賄賂條例》內，將“Crown servant”或“public servant”的定義也涵蓋議員。現時我們要求公務員遵守絕對的操守規則。他們收受任何利益，即使不能證明與公職有關，也會遭受檢控。我希望政府檢討這個尺度能否也適用於各級議員。我暫時對此並沒有定見，但基於最近公眾的討論，我希望政府能夠就此作出檢

討。

另一方面，草案第 3 條有關《防止賄賂條例》第 10(2)條假設的條文，我同意這項修訂是因應《人權法》的改動而修改，但是我們最近看到，在何樂基一案中，實際上這項假設條文依然可能會產生不公平的情況，而上訴庭也作出了裁定。整件事原於這項假設條文使第三者的財產也被歸入被告的資產中，以考慮其有否違反第 10(1)條的規定。不過，被告本身並沒有調查權，更沒有任何查問第三者擁有資產的權力。在條例草案委員會中，我曾建議，控方如須假設第三者的資產也作為被告的資產，是否最少也須應被告的要求，盡可能找出第三者，並將第三者交給法庭，讓其在證人台上接受盤問。這對於被告來說會較為公平。

另一方面，條例草案委員會也曾討論可否給予被告一項權力，使其在審訊前可以傳召第三者來盤問，以便可以預先得到更多資料，作為答辯的理由。政府在最初時表示同意，但經研究後卻拒絕這項建議，原因是這會開創一項刑事審訊法規的先例。不過，無論如何，我希望政府考慮在這種檢控的情況下，如有需要的話，廉署應該盡量在人力物力方面協助被告尋找第三者。

Clauses 2, 3, 8, 9, 11 to 14 and 18 were agreed to.

Clauses 1, 4 to 7, 10, 15, 16 and 17

ATTORNEY GENERAL: Mr Chairman, for the reasons given earlier today in the debate on this Bill, I move that clauses 1, 4 to 7, 10, 15, 16 and 17 be amended as set out under my name in the paper circulated to Members.

Proposed amendments

Clause 1

That clause 1 be amended, by deleting the clause and substituting —

"1. Short title and commencement

(1) This Ordinance may be cited as the Prevention of Bribery (Miscellaneous Provisions) (No. 2) Ordinance 1995.

(2) This Ordinance shall come into operation on a day to be appointed by the Attorney General by notice in the Gazette.".

Clause 4

That clause 4 be amended, by deleting the clause and substituting —

"4. Special powers of investigation

Section 13 is amended -

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

"(1) where the Commissioner is satisfied that there is reasonable cause to believe -

(a) that an offence under this Ordinance may have been committed by any person; and

(b) that any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account or other account of whatsoever kind or description, and any banker's books, company books, documents or other article of

or relating to any person named or otherwise identified in writing by the Commissioner are likely to be relevant for the purposes of an investigation of such offence,

he may for those purposes authorize in writing any investigating officer on production by him of the authorization if so required -

(i) to investigate and inspect such accounts, books or documents or other article of or relating to the person named or otherwise identified by the Commissioner;

(ii) to require from any person the production of such accounts, books, documents or other article of or relating to the person named or otherwise identified by the Commissioner which may be required for the purposes of such investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts, books or documents or of any relevant entry therein and photographs of any other article.

(1A) The Commissioner shall not, without the leave of the High Court obtained on

ex parte application in chambers, issue an authorization under or by virtue of which any particular person who is alleged or suspected to have committed an offence under this Ordinance can be required to comply with any requirement of the description mentioned in subsection (1)(i) and (ii).

(1B) The High Court shall not grant leave for the issue of an authorization under subsection (1)(i) and (ii) unless, on consideration of an application under subsection (1A), it is satisfied as to the matters that the Commissioner is required to be satisfied under subsection (1).";

(b) in subsections (2)(a) and (3), by repealing ", safe-deposit box".".

Clause 5

That clause 5 be amended —

(a) in the proposed section 13A(1), by deleting everything before "order" and substituting -

"(1) The Commissioner or an investigating officer with the approval of the Commissioner or the Deputy Commissioner may, for the purpose of an investigation into, or proceedings relating to, an offence suspected to have been committed under this Ordinance, make an ex parte application to the High Court in chambers for an".

(b) in the proposed section 13A(2), by deleting paragraph (c) and substituting -

"(c) there are reasonable grounds for believing that it is in

the public interest, having regard to -

(i) the seriousness of the offence suspected to have been committed;

(ii) whether or not the suspected offence could be effectively investigated if an order under this subsection is not made;

(iii) the benefit likely to accrue to the investigation or proceedings if the material is so produced or if access to it is given; and

(iv) the public interest in preserving secrecy with regard to matters relating to the affairs of persons that may come to the knowledge of the Commissioner of Inland Revenue or to any officer of the Inland Revenue Department in the performance of their duties under the Inland Revenue Ordinance (Cap. 112),".

(c) by adding -

"13C. Restriction on publication of information disclosed under section 13B

(1) This section applies -

(a) to information of the description mentioned in section 13B which has been furnished to the Commissioner of Inland Revenue or to any officer of the Inland Revenue Department in respect of the liability, responsibility or obligation of any person ("the person named") under the Inland Revenue Ordinance (Cap.

112);

(b) where that information is disclosed to the Attorney General under section 13B;

(c) where the Attorney General decides that any of the information so disclosed is to be adduced in evidence by the prosecution for the purpose of any prosecution of an offence under this Ordinance, not being an offence alleged to have been committed by the person named;

(d) where a venue for and a date and time of hearing of those proceedings has been fixed; and

(e) where those proceedings may result in the information being publicly revealed.

(2) As soon as practicable after having made a decision of the description mentioned in subsection (1)(c), and in any case not less than 14 days before the date referred to in subsection (1)(d), the Attorney General shall serve notice in writing of that fact on the person who furnished the information as mentioned in subsection (1)(a) and on the person named.

(3) A notice under subsection (2) shall be accompanied by a statement in writing so as to adequately inform the person on whom it is served of -

(a) the details of such information

disclosed to the Attorney General that is to be so adduced;

(b) the venue for, date and time of the hearing of those proceedings; and

(c) the substance of this section.

(4) Within 14 days after the service on him of a notice under subsection (2), the person on whom it is served may on notice in writing to the Attorney General make an application in chambers to the court before whom the proceedings are to be heard for an order under subsection (5) and the Attorney General shall be given an opportunity to be heard on that application.

(5) On application made to it under subsection (4), the court may by order give directions prohibiting or restricting the publication of any information so disclosed to the Attorney General which may lead to the identity of the person named being publicly revealed.

(6) In the making of an order under subsection (5), the court shall in considering whether or not to make an order, have regard to the views of the Attorney General on the application, if any, and those of the applicant and shall consider whether the public interest in the publication of any information being the subject of the application, without prohibition or restriction, outweighs -

(a) the privacy and confidentiality of that information;

(b) any prejudice to the person named which might result from the publication of that information

without prohibition or restriction; and

(c) the public interest in preserving secrecy with regard to matters relating to the affairs of persons that may come to the knowledge of the Commissioner of Inland Revenue or to any officer of the Inland Revenue Department in the performance of their duties under the Inland Revenue Ordinance (Cap. 112).

(7) If in the course of any prosecution of an offence under this Ordinance after the making of an order under subsection (5) the court by whom the order was made is satisfied, after giving the person in favour of whom the order was made an opportunity to be heard, that the effect of that order is to impose a substantial and unreasonable prohibition or restriction upon the reporting of those proceedings or the reporting of that prosecution and that, notwithstanding the matters referred to in subsection (6)(a), (b) and (c) and the views of the person in favour of whom the order was made, if any, it is in the public interest to remove the prohibition or to relax the restriction, the court or the judge shall direct that the order shall not apply to such information in respect of which that order was made as is specified in the direction.

(8) Any person who publishes or broadcasts information being the subject of an order under subsection (5), including an order in respect of which a direction is made under subsection (7), in contravention of that order commits an offence and is liable on conviction to a fine of $10,000 and to imprisonment for 6 moths.".

Clause 6

That clause 6(a) be amended —

(a) in the proposed subsection (1A), by deleting everything after "committed" and substituting "by any person under this Ordinance, make an ex parte application to the High Court in chambers for an order under subsection (1).".

(b) by adding after the proposed subsection (1A) -

"(1B) The High Court shall not make an order under subsection (1) unless on an ex parte application made to it under subsection (1A) it is satisfied that there are reasonable grounds for suspecting that -

(a) in the case of an application relating to subsection (1)(c), that the information to be required from the person being the subject of the application is likely to be relevant to the investigation or the proceedings;

(b) in the case of an application relating to subsection (1)(d) or (e), that the person being the subject of the application has or may reasonably have access to information likely to be relevant to the investigation or the proceedings.".

That clause 6(b) be amended, by deleting subparagraph (ii).

Clause 7

That clause 7 be amended, by deleting paragraph (g) and substituting —

"(g) in subsection (6), by repealing "A third party on whom a restraining order has been served in accordance with subsection (3)" and substituting -

"A suspected person or third party on whom a copy of a restraining order has been served in accordance with subsection (3) or (3B)";".

Clause 10

That cluase 10(a) be amended—

(a) in the proposed subsection (1A), by deleting "it appears to the court" and substituting "the court is satisfied".

(b) in the proposed subsection (1B), by deleting "it appears to the Commissioner" and substituting "the Commissioner is satisfied".

Clause 15

That clause 15 be amended, in the proposed subsection (2)(a), by adding "after consulting the Advisory Committee on Corruption," before "terminate".

Clause 16

That clause 16 be amended, in the Chinese text, by deleting the clause and substituting —

"16. 逮捕後的程序

第 10A 條現予修訂 -

(a) 在第(3)(a)款中，在“並須”之後加入“在如此報到後再”；

(b) 加入 —

“(3A) 任何人根據第(3)款獲釋，並 —

(a) 在已指定的進一步的其他時間前往廉政公署辦事處報到；及

(b) 在報到時知會廉署高級人員他會拒絕在進一步的其他時間(不論有否指定)報到，

則該人須獲發還為第(2)款的目的而存放的款項，並且不須受就其報到而作出的任何擔保所約束。”。

".

Clause 17

That clause 17 be amended, in the proposed subsection (2), by deleting paragraph (b) and substituting —

"(b) in so far as is necessary for the performance of any of the Commissioner's functions under section 12(d) or (f), access to such records, books and other documents in the possession or under the control of a public body as the Commissioner or such officer reasonably considers will reveal the practices and procedures of that public body;".

Question on the amendments proposed.

委員涂謹申議員致辭：主席先生，對於草案第1條，在律政司承諾盡早實施各項條文的大前提下，條例草案委員會建議各位議員支持這項修正案。

主席先生，另一方面，我個人對於生效日期的意見，是希望律政司能夠盡早實施這項條例。我對於剛才律政司在二讀辯論時所作出的辯解，有點質疑。因為實際上審議這項法例至今，即由九五年年中至今已經超過15個月，而廉署在審議的過程中，也曾就很多方面作出了準備，甚至廉署九五年的年報也提到他們已經作出了準備。此外，廉政專員在九五年十月因總督施政報告而對議員作出的來年工作簡報中的演辭，也提到他已經就這項法例所須做的事情作出了準備。唯一我認為要作出準備的，可能是法庭要訂立一些“Court Rules”，而廉署也可能須透過一些內部行事守則，來配合新法例的實施。不過，無論如何，我希望律政司能夠盡快在不超過三個月內，將這項法例實施。

至於草案的第4條條文，條例草案委員會建議議員支持，而律政司剛才已談論過修正案。本人也有一些意見。雖然今次政府在《防止賄賂條例》第13條上作出了讓步，但我認為原則上，專員所有權力都應向法庭申請行使，而現時這只不過是經妥協的一個折衷辦法。我希望政府日後檢討可否將專員這唯一可以自行行使的權力，也交予法庭作獨立的監察。

至於草案的第5條，條例草案委員會也建議議員支持有關的委員會審議階段修正案。我在此不再重複。本人的意見是，這項條文涉及稅務紀錄，最強的理由不外乎是調查與稅務局或其員工貪污有關的個案。至於超乎稅務局員工貪污以外的個案，我覺得那個論據並不充分，也會削弱了有關稅務人的保密制度。另一很重要的問題是，稅務資料往往是稅務人和稅務局之間的一些妥協結果，如果我們將這些稅務紀錄作為呈堂證供的話，可能會對審訊造成極不公平的情況。

至於草案的第6(a)和6(b)條，條例草案委員會建議各位議員同意政府的修正案。

至於草案的第7條，條例草案委員會注意到這項草擬修正案不會帶來其他施政影響，因此也建議各位議員同意這項修正案。

至於草案的第10條，條例草案委員會認為新訂的第17(1A)條提出的準則“法庭覺得”和新訂的第17(1B)條提出的準則“專員覺得”應該仿效第14條一樣，以“法庭信納”來取代，因此，條例草案委員會同意政府就這方面提出的修正案。我個人的意見是，由於廉政專員仍在緊急的情況下保留一項

權力，可以無須經法庭而自行發出手令，所以我要求政府能夠做三件事，第一，訂定內部指引，指明在何種情況下才算是緊急情況，專員可無須經法庭而發出搜查令。第二，我希望政府能夠承諾，會定期向審查貪污行動覆檢委員會報告有多少宗個案是緊急情況，沒有向法庭申請，而是專員自行發出搜查令的。第三，我希望在每一年的廉署年報內，都會載列專員自行發出搜查令的數目，以向公眾交代。

主席先生，有關草案第15條，條例草案委員會也要求各位議員支持政府的修正案。

MR ERIC LI: Mr Chairman, the accountancy profession has shown serious concern in recent months on the gradual weakening of the protection of tax secrecy provided by section 4 of the Inland Revenue Ordinance. In this context, I am most grateful for the very understanding remarks made by the Attorney General in the Bill's Second Reading debate.

Despite these serious concerns in safeguarding the interests of taxpayers, the accountancy profession, as a responsible public body, also recognizes the very high priority that this community as a whole accords to the combat of corruption. We also accept that there may be a need to have access to confidential tax records in the most exceptional circumstances. I understand from the Commissioner of the ICAC during the Bills Committee's meeting held on 12 June 1995 that there should only be two or three such cases in a year, and hence there is no question .....

CHAIRMAN: Mr LI, which clause are you referring to? Which clause are you speaking on?

MR ERIC LI: It is on section 13C but I believe it is clause 5, but because of the ..... clause 5.

CHAIRMAN: Clause 5?

MR ERIC LI: Clause 5, yes. So I am correct.

CHAIRMAN: Please continue.

MR ERIC LI: I just referred to the meeting held on 12 June 1995 and that there is no question of ICAC officers using the provision to launch a fishing expedition for evidence. The present Committee stage amendment does effectively protect the identity of innocent taxpayers and third parties from being specifically disclosed.

However, I have expressed some reservation during the Bills Committee's examination that this may not have gone far enough. Ideally, I would have liked to widen the Committee stage amendment to ensure that all the circumstantial information which may lead to the revelation of the identity of the persons involved be also brought within the scope of the court application. This is particularly relevant if the persons concerned are well-known public figures and that the detailed events of the corruption case has already been well-publicized.

Nonetheless, in appreciation of the immense goodwill displayed by the Administration and members of the Bills Committee in reaching a difficult consensus, I am content to give the present Committee stage amendment a chance to prove its worth. Nonetheless, I would still urge the Administration to monitor its actual application carefully and to consider further appropriate amendments at the first sign of detecting any inadequacy.

With these remarks, Mr Chairman, I thank the Administration for taking over the Committee stage amendment and urge Honourable colleagues to join me in support of these Committee stage amendments.

委員涂謹申議員致辭：主席先生，不好意思，剛才我漏了就草案第17條發言。

CHAIRMAN: You may not repeat yourself.

委員涂謹申議員致辭：我不會再提之前的部分，我只是漏了第17條。

主席先生，當局因應條例草案委員會的建議而提出對草案第17條，即對《總督特派廉政專員公署條例》第13條的修正案，因此，委員會希望各位議員支持政府這項修正案。

主席先生，我自己對這條有以下的意見。首先，我基礎上反對一個概念，就是廉署可以強迫或強制地取得一些資料，而這些資料只不過是用作給予某公共機構意見，以改善它在防止貪污方面的情況，即強迫取得資料而協助他們改善貪污情況，但草案或法例中卻沒有相應地強制迫令這些公共機構作出改善的權力。因此，我覺得如果強制權力不配套的話，在邏輯上是犯駁的；而我認為強制權力只可以運用於調查案件或真實罪行的投訴，而不能以協助之名，來強制別人改善程序。不過，我也同意政府這項修正案已免除了我部分的憂慮，因為它限制了資料的範圍只在於作業的程序，而不是任何資料。

最後，我仍然擔心可能會出現濫用的情況，就是如果防止貪污處作為廉署的一部分，能擁有這項廣泛權力的話，可藉防止貪污的名義，實際上作出一般貪污情報的收集。不過，無論如何，我也支持政府，更希望政府能作出密切監察，而廉署本身也作出密切監察，令這種情況不會出現。

ATTORNEY GENERAL: Thank you, Mr Chairman. If I can just respond very briefly to some of the points that have been made by the Honourable James TO and the Honourable Eric LI.

If I can just deal with Mr James TO's point on clause 1. Let me restate, Mr Chairman, that I undertake to bring all the provisions of this Bill when enacted into effect as soon as practicable. As I noted in my speech on the resumption of the Second Reading debate, there will have to be some lead time, for example, where provisions require court applications to be made, but we are as conscious as the Honourable James TO and other Members of this Council that, having spent so much time in anxious deliberation in the Bills Committee, it is in the public interest that the enacted Bill be converted into effective law as soon as possible. That is as much our wish as it is the wish of Members of this Council.

I have noted carefully the Honourable James TO's points concerning clause 4, and my remarks here will extend to other points on this Bill. We will have to see how these provisions work in practice. We are changing the law, introducing court control for the first time in relation to the ICAC's powers. We will obviously want to see how those powers work and to consider them in the light of experience. That applies particularly, I would suggest Mr Chairman, in relation to clause 5 which concerns tax records, on which, as I say, the Honourable James TO and the Honourable Eric LI expressed concerns. These are new powers. Clearly a balance has to be struck. We do not want the ICAC hampered in their task of fighting corruption. We recognize fully concerns over the secrecy of taxpayers' records. Once again, we will want to keep these provisions under scrutiny and to monitor their operation, to monitor how the courts are applying them, to see whether in the light of experience further changes should be made.

I have also noted carefully the Honourable James TO's points concerning clause 10 of the Bill. That deals with powers of search under section 17 of the Prevention of Bribery Ordinance, and those are matters that I will, if I may, refer to the Commissioner of the Independent Commission Against Corruption for his further consideration.

Finally, Mr Chairman, I note once again what the Honourable James TO said about clause 17 of the Bill in relation to section 13(2) of the ICAC Ordinance. That section has as its scope the highly laudable objective of corruption prevention. I think that we should not be seeking to inhibit, and I know that is not the intention, the ICAC in that most laudable of aims. But I have once again heard the concerns expressed and I am sure the ICAC will take those to heart.

Thank you, Mr Chairman.

Question on the amendments proposed, put and agreed to.

Question on clauses 1, 4 to 7, 10, 15, 16 and 17, as amended, put and agreed to.

New clause 12A Further provisions relating to security, appearance, etc.

New clause 14A	Savings
New clause 16A	Search warrants
New clause 16B	Power to take finger-prints and photographs

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

ATTORNEY GENERAL: Mr Chairman, for the reasons given earlier today in the debate on this Bill, I move that new clauses 12(A), 14(A), 16(A) and 16(B) as set out under my name in the paper circulated to Members be read the Second time.

Question on Second Reading of the clauses proposed.

委員涂謹申議員致辭：主席先生，條例草案委員會同意政府提出的這項修正案，因此希望各位議員支持。

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

Clauses read the Second time.

ATTORNEY GENERAL: Mr Chairman, I move that new clauses 12A, 14A, 16A and 16B be added to the Bill.

Proposed additions

New clause 12A

That the Bill be amended, by adding —

"12A. Further provisions relating to security, appearance, etc.

Section 17C(1) is amended by repealing "Where a person fails to comply with the terms of a notice under section 17B(2) or an order under section 17B(6)" and substituting -

"Where a person granted an application under section 17B fails to comply with the requirement of any condition imposed under that section".".

New clause 14A

That the Bill be amended, by adding —

"14A. Savings

(1) Notwithstanding the repeal of section 14A of the principal Ordinance by section 14 of this Ordinance, a written notice issued under section 14A(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance, shall continue in force according to its tenor for such period as it would have continued in force had section 14A of the principal Ordinance not been repealed and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the principal Ordinance prior to its amendment by section 7 of this Ordinance.

(2) Notwithstanding the amendment of section 14C of the principal Ordinance by section 7 of this Ordinance, an order issued under section 14C(1) of the principal Ordinance and in force immediately before the coming into operation of this Ordinance shall continue in force according to its tenor for such period as it would have continued in force had section 14C of the principal Ordinance not been amended and shall as from the coming into operation of this Ordinance be treated as if it were an order made by the District Court and served under section 14C of the

principal Ordinance prior to its amendment by section 7 of this Ordinance.".

New clauses 16A and 16B

That the Bill be amended, by adding —

"16A. Search warrants

Section 10B is amended by repealing "16 or section".

16B. Power to take finger-prints and photographs

Section 10D(1) is amended by adding before ", any officer" -

"or, has been served with a summons under section 8(2) of the Magistrates Ordinance (Cap. 227) in respect of a section 10 offence".".

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

New clause 13A Offence to disclose identity, etc. of persons being investigated

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

CHAIRMAN: The Attorney General, Mrs Selina CHOW and Mr Albert HO have separately given notices to propose the addition of new clause 13A to the Bill. I will first call upon the Attorney General to speak and move the Second Reading of his proposed new clause 13A, as he is the Public Officer in charge of the Bill.

ATTORNEY GENERAL: Mr Chairman, I move that new clause 13A as set out under my name in the paper circulated to Members be read the Second time. The new clause repeals and replaces section 30 subsection (1) of the Prevention of Bribery Ordinance.

Section 30 makes it an offence for a person, without lawful authority or reasonable excuse, to disclose details of an investigation in respect of an offence alleged or suspected to have been committed under the Ordinance. This section has been a key element in the overall scheme for tackling corruption in Hong Kong.

In the recent *Ming Pao* case, the Privy Council stated that the restrictions on freedom of expression created by section 30 are consistent with the Bill of Rights Ordinance. The Privy Council said in that case:

> "It cannot be denied that there is a pressing social need to stamp out the evil of corruption in Hong Kong. Investigation by the ICAC is an important means of achieving that end and the protection of the integrity of such investigation is essential."

The Privy Council also accepted that the section affords protection to the reputation of suspects, although it considered that this protection is of secondary importance to the protection of the integrity of the investigation.

The fact that section 30 is consistent with the Bill of Rights Ordinance does not mean that this Council cannot decide, as a matter of policy, to amend the section. The question, therefore, is whether section 30 should be amended and, if so, in what way.

The Administration's proposals

The Report of the ICAC Review Committee concluded that "No changes should be made to section 30, which strikes the right balance between the need to protect the reputation of an individual under investigation and the secrecy of an investigation at the covert stage on the one hand, and the freedom of expression on the other." The Bill does not therefore include any provision to amend

section 30.

Some members of the Bills Committee nevertheless considered that there should be some relaxation of the restrictions in the section. The Administration has listened carefully to those views and has agreed that subsection (1) of section 30 should be amended as follows:

> firstly, the offence will be expressly limited to disclosures made by a person who knows or suspects that an ICAC investigation is taking place; and
>
> secondly, it will only apply to disclosures relating to an investigation into an offence under Part II of the Ordinance;

The proposed new clause 13A will achieve this. I will shortly be moving the addition of a new clause 13B which will further limit the scope of section 30.

As well as proposing these relaxations to the section, the Administration strongly believes that a recently discovered loophole in section 30 must be plugged. The Privy Council decided in the *Ming Pao* case that section 30 applies only to an investigation in respect of a specified person. Disclosure of the details of a general investigation, as occurred in that case, is not an offence.

Mr President, the Privy Council came to its decision as a matter of statutory interpretation. It did not express any view as to whether there is any justification for distinguishing between the two types of investigation. The Administration strongly believes that there is no justification for such a distinction. A general investigation needs to remain covert, and is equally vulnerable to being prejudiced by a disclosure as one in respect of an identified suspect.

It is undeniable that an investigation may be prejudiced by a disclosure even though no particular suspect has been identified. For example, an investigation may relate to a small group of people, one of whom is in fact a corrupt person. A disclosure of details of that investigation may be as damaging as one which relates to an investigation into that person. The corrupt person may destroy all evidence of his corruption or may disappear.

ICAC investigations need to be kept confidential, particularly at the early and particularly vulnerable stages of the investigation. If details of the early stages of an investigation can be freely disclosed, simply because there is no identified suspect, the investigation may never get to the stage where there is an identified suspect. All evidence of the crime may have been destroyed as a result of the disclosure.

I will shortly be proposing amendments that relax the restrictions on disclosure at the more mature stages of the investigation, when there is less need for secrecy. But I urge Members to support the amendment I propose to section 30(1) which will ensure that the most vulnerable stage of an investigation is properly protected.

Question on the Attorney General's motion on Second Reading of the clause proposed.

CHAIRMAN: As Mrs Selina CHOW and Mr Albert HO have also given notices to propose the addition of new clause 13A to the Bill, I propose to have the Attorney General's motion and the respective proposals by Mrs Selina CHOW and Mr Albert HO debated together in a joint debate.

Committee shall debate the Attorney General's motion and the respective proposals by Mrs Selina CHOW and Mr Albert HO together in a joint debate. I will call upon Mrs Selina CHOW to speak first on the Attorney General's motion as well as her own proposal and Mr Albert HO's proposal. After Mrs CHOW has spoken, I will call upon Mr Albert HO to speak on the Attorney General's motion and Mrs Selina CHOW's proposal as well as his own proposal. However, no motion on the Second Reading of either Mrs Selina CHOW's proposal or Mr Albert HO's proposal is to be moved at this stage.

MRS SELINA CHOW: Mr Chairman, I do not wish to repeat what I said during the Second Reading debate of this Bill except to urge Members to vote for my amendment. The Administration's amendment does not just plug a loophole as the Attorney General just put it, but aims to widen the scope of the present law to restrict disclosure on general investigation, and therefore is contrary to the general direction of liberalization, while Mr HO's amendment introducing the

"likely to prejudice" test would in fact render the necessary restriction ineffective.

I commend to Members my amendment which strikes the right balance between the public's right to know and freedom of expression on the one hand, and the protection of the integrity of investigations with identified suspects and the protection of reputation on the other.

委員何俊仁議員致辭：主席先生，當民主黨考慮應否保留第30條抑或加以修訂時，我們首先要提出的第一個問題是，究竟第30條是否需要保留在我們的法例中？事實上，我們曾經要求政府給我們看一些實行普通法的外國國家的有關條文，我們發現類似第30條禁止傳媒披露政府對某些人的調查的條文，如果不是完全沒有的話，也是絕無僅有的。因此，我們非常質疑究竟香港是否需要有這些條文。當然，最後條例草案委員會和我們民主黨願意容忍這條文的存在，主要是基於兩點：第一，我們覺得有理由相信調查貪污是一項相當艱鉅的工作，而在未來，尤其是九七之後，這工作將會更為艱鉅。我們希望能夠照顧到將來廉署在調查時，會給他們一些他們認為需要的小小保障，這保障純粹出於廉署人員的心理或士氣的需要。第二，更重要的是，在委員會審議條例草案期間，政府作出了很多我們認為是相當好的讓步，包括他們願意給答辯人有很多法定的抗辯理由，包括如何是合理的披露原因、傳媒或第三者可以披露廉署的一些不合法行為、濫權行為、疏忽的行為或基於公眾利益，例如有利公安、公眾秩序、公共衞生及安全等而披露資料。政府也同意當調查發展至成熟的階段時，那些禁止披露的條文再不能生效。

主席先生，現在最具爭議性的是這條文的第一部分，也是我自己提出修正的部分，其中有兩點最具爭議性。第一，剛才律政司也提到，鑑於樞密院作出判決後，他們覺得存有漏洞，覺得他們原本所理解的法律不是這樣的，所以現時希望進行修改，使他們即使未有一個調查對象，即開始所謂一般調查後，第30條已經適用。大家都知道，以前的條文經過樞密院的解釋後，是一定要有一個調查對象，第30條才可以應用。

主席先生，事實上，我很難理解有多少調查是沒有一個對象的。任何投訴都牽涉一個投訴對象。即使調查對象不止一個人，也是一個對象，例如律政司所說的有一批人，是有四個人或五個人，但我覺得他們仍然是一個調查對象。法例並沒有指明一定要有很合理的理由懷疑，而只是剩下一個人，快要控告他，他才是調查對象。我覺得法例並不是這個意思。只要很清楚有一個人被投訴，而又有理由覺得他應被調查的話，即使是超過一個人，這已

經是一個調查對象。因此，在這樣的情況下，我覺得絕大部分(即使不是全部)的調查都必定有對象。當然，廉署或律政司可能說，有時剛剛收到投訴說關注某些地方可能會有貪污活動，所以他們開始要關注。但這些投訴是可以很多的，廉署可以關注的範圍也可以很闊，是否每逢他們需要關注某一個範圍的活動，或擔心某一個政府部門有貪污的行為，開了檔案，但不知道要偵查何人時，就可以稱這為“應該受到保障的調查”？

主席先生，我剛才發言最初時提到我們容忍第30條，是因為政府願意作出修正，我也希望不應不必要地擴大第30條的應用範圍。因此，基於我剛才的分析，我覺得政府的所謂擔憂，說剛開始的調查不受保障，是過慮的。事實上，我剛才也重申，其實絕對不難說找到對象，因為如果一項調查連對象也沒有，我懷疑這是否真正一項具體的調查。基於這點，我反對政府的修正案。我希望能保持原來的文本，即必須有調查的對象後才適用。

第二點很具爭議性的，也是我今次修正案所提出的一個主要部分，那就是如果控方引用第30條的舉證責任，他必須證明那是可能妨礙調查的披露，然後才可以定罪。有關這方面，我必須指出，如果說會妨礙調查會有三種情況：一種是真正對調查構成妨礙或損害。我不是要求這樣，因為事實上很難證明。有些人也說不容易真的證明如何妨礙調查，例如說有些人通風報訊，於是有人毀滅證供，甚或有些證人離開等，我不是要求這樣。我也不是要求證明披露的人有一個動機，蓄意妨礙調查，我也不需要證明這件事，因為動機也是很難證明的。我只要求一件事，就是法庭面對已經披露的資料，須視乎這宗案件的案情，作一個客觀的判斷，究竟會否構成妨礙。這是三種情況之中，較為容易舉證的一種情況，但我覺得仍然是需要的。因為事實上，可能在很多情況下，披露資料根本完全沒有影響，完全不會對調查構成妨礙，而如果這樣仍然可以引用第30條來入罪的話，我們覺得是非常不公平的。

主席先生，我們也曾考慮一些同事的意見，他們懷疑這樣寫法的後果會否不太清楚，很難估計法庭如何判決。不過，正正是這樣，加了這條條文也不會減少第30條的作用，那就是如果一些人準備披露資料時，他們應想清楚會否因而被起訴。條文仍然有這種作用。最重要的是，如果說要證明披露資料是否妨礙公正，這是不可能的事，沒有辦法做得到，但為何又會有一些抗辯理由，是證明披露資料會有利於公眾利益、公眾秩序？這些又怎樣證明呢？同樣是根據一個客觀的情況，法庭看過全部的環境證供，然後作出推論。這是完全可以做到的，我實在看不到為何說會使政府不可能舉證。我覺

得這是不可以接受的。

民協的廖成利議員說恐怕如果有這條文的存在，會容易損害第三者的名譽，我真的不能理解他的理據何在。因為事實上大家都知道，當我們考慮第30條時，我們主要是考慮，如有需要的話，如何保證調查不會受到一些不合理、任意的披露，從而使一些證人可以收到通風報訊，作出一些行為，破壞了該項調查。我們由始至終都覺得保障名譽這事，可以留待現行有關誹謗的法例來保障。我們亦看不到我加入的“有可能導致妨礙調查”這構成部分，會與保障名譽有關係。

周梁淑怡議員非常倚重樞密院法官所給予的意見，但我必須強調，當樞密院法官評論會否構成妨礙調查時，他分成兩段加以說明。第一段提及會否構成實際的損害，他說這點很難證明，甚至是沒有可能證明。第二段當他提及有否可能構成妨礙，他說比較困難。他用的是“困難”一詞，而不是“不可能”。我同意這會有一定的困難，但這件事不是沒有可能，法官可以視乎每宗案件的案情而作出決定。

我們覺得政府利用這一條文來限制新聞自由，當它引用這條文作出起訴時，它應該有較高的舉證責任。更重要的是，當樞密院作出評論時，只說是否符合《人權法》，它是從這個理念出發，說第30條是否符合《人權法》，而沒有評論如果這條文加上這些構成因素，是好抑或不好。最重要的是，我想強調一件事，就是當樞密院考慮會否構成妨礙調查時，他是否知道英國也有一條相同的條文，就是有關不讓媒介披露一些關於“洗黑錢”的調查。他是否知道其實有這樣的一條條文呢？條文清楚說明，如果說一個傳媒或第三者是非法披露資料的話，他要證明有可能對調查構成妨礙。這是第一個例子。第二個例子是，澳洲新南威爾斯州有關防止賄賂的條例內也有同樣的條文，載明任何被懷疑的人，當他接到反貪污機構的手令或有關傳訊時，其中說明不准披露，但他作出披露而又被控告的話，其中一個舉證責任也是要證明有關披露會妨礙調查。這些資料是由香港大學提供給ICAC Review Committee的，有關其他國家對新聞媒介披露資料的限制。這些資料是由香港大學提供的，雖然我沒有查證，但我相信他們所說的是準確的。

總括來說，我們覺得應該引進這條條文，增加政府的舉證責任，因為我們覺得傳媒能夠在特定的情況下，行使新聞自由，來監察廉署，使公眾有知情權，這是非常重要的考慮。即使加入了這條條文，我覺得傳媒日後的報道也會相當小心，因為事實上，是很難評估究竟披露資料會否有可能對調查

構成妨礙。基於這點，我覺得我所提出的修正案，是照顧了新聞自由，以及調查可受到一定的保護這兩方面的公眾利益的平衡。事實上，我的修正案也得到香港記者協會和大律師公會的支持。我相信他們，特別是記者協會，不會單從自己行業的利益出發而考慮這問題。

最後，我希望各位議員聽過剛才我所陳述的理由後，支持我的修正案。

多謝主席先生。

CHAIRMAN: Members may now debate the Attorney General's motion as well as the respective proposals by Mrs Selina CHOW and Mr Albert HO.

MISS CHRISTINE LOH: Mr Chairman, I would like to seek a point of clarification. I am looking at the voting procedures later on. It seems like we will be voting on the Attorney General's motion first, followed by Mrs Selina CHOW's if the Attorney General's amendment should fail, and then by the Honourable Albert HO's amendment. I am just wondering that all three amendments could fail. What then would be the position?

CHAIRMAN: If no Second Reading of any new clause has been agreed to, the existing section 30 remains standing.

MISS CHRISTINE LOH: Yes, thank you. That is the clarification that I am looking for.

CHAIRMAN: Yes, Mr James TO, a point of order?

MR JAMES TO: No.

CHAIRMAN: Do you wish to speak? Mr TO, please.

委員涂謹申議員致辭：主席先生，我當然不希望出現剛才陸恭蕙議員所詢問的情況，如果是這樣的話，即連僅有的放寬也沒有達到，返回原位。因此，民主黨稍後會反對政府的修正案，也會反對周梁淑怡議員的修正案。不過，如果周梁淑怡議員的修正案獲通過，到最後只剩下這個可能性，我們都會贊成，否則，就會全部返回原位。

我同意剛才何俊仁議員所說的論點，我只想補充兩點。第一，何俊仁議員提到，有關披露必須有可能妨礙調查“likely to prejudice”，才算犯法。我想多舉一個例子，剛才何俊仁議員舉了新南威爾斯和英國追討法律得益的例子，而我所舉的例子可能更值得大家深思。英國在一九八九年有一項防止恐怖分子或防止恐怖活動的法例，其中對很多關於拘捕和調查恐怖分子的項目等的相關權力，作出很苛刻的規定。在英國和全世界，甚至人權委員會都批評這項條例非常苛刻。為甚麼會這樣？因為在英國的情況下，須對付恐怖分子，而那些並不是簡單和跟你說道理的人。他們策劃爆炸和炸彈案件，顯然會導致很多人死亡，對整個社會所構成的遺害和恐怖情況，不下於貪污；以我個人的意見，甚至較貪污來得更直接和更恐怖。可是，當英國這項法例考慮到禁止披露時，也將“有可能妨礙調查恐怖活動”來作為禁止的標準。換句話說，在危急存亡的情況下，在英國的國情下，他們仍然同意將“有可能妨礙調查”作為先決條件。

另一方面，在香港的法例中，追討販毒得益的條例也有相似的條文；而追討販毒得益的條文還有多一個限制，就是如果是犯法的話，必須是他知道或懷疑那些披露有可能妨礙調查。換言之，“妨礙調查”這點亦需要有一個意圖，甚至是知悉資料或懷疑這事會妨礙調查。不過，何俊仁議員的修正案並沒有將這點包括在內。

我為甚麼要將這個作出比較，因為在追討販毒得益的條例中，我們談論的情況是“financial tracing”，換言之，是追討一些得益。他們的追查行動的性質與廉署追查這些貪污交易後所匿藏的金錢是同樣道理和性質。但在這裏除了本身加了“有可能妨礙”外，還加上他要知道或懷疑其披露是有可能妨礙，所以我希望各位同事在考慮時，特別是在考慮這點時，要留意比例的問題，因為在《人權法》眾多判例中提到，我們要限制新聞自由或任何自由，我們用的手段，必須與我們需要對付的社會禍害相稱。

我想說的第二點是，在一般調查或已界定疑人的調查方面，究竟在何處落墨？我只想說一點，其實在《明報》那宗案件中，我很不滿政府的處事方

法，因為在《明報》那宗案件中，政府顯然不承認有已界定的疑人、疑犯或受調查的人。但實際上，明眼人和社會人士都知道， — 主席先生，那宗案件已經完結，所以我覺得可以作為公眾的討論範圍， — 是有可以界定的受調查的人。不過，在這宗案件內，廉署卻不肯承認，而令整個調查，甚至令根據《防止賄賂條例》第30條的控告，最後樞密院以技術理由推翻。我覺得在該案件中，廉署可能因受嫌疑的人是一些大富翁、大地產商，所以廉署不肯承認，甚至到了樞密院或法庭也不肯承認已經有一個可界定的疑人，但事實上，那宗案件應已可界定疑人。因此，我覺得廉署在這方面並沒有用盡其權力，它不能歸咎是法律的問題。

最後，即使通過了周梁淑怡議員或何俊仁議員的修正案，傳媒又怎會有膽量，甚至何來資料知道廉署內部的事情？在某一個階段要披露消息時，傳媒怎知道廉署是否已有界定的人物？如果不知道的話，無論是傳媒主管也好，抑或法律顧問也好，也一定會相當克制，因為他們根本不知道是否犯法，是否到達臨界點？因此，我覺得政府所說的擔心只不過是過慮。

MR JAMES TIEN: Mr Chairman, I have to confess I am not very knowledgeable in this subject but, based on what the Honourable Miss Christine LOH has just asked, the possibility is based on section 30. I would just describe the proposal by Attorney General as the most restrictive. The amendment moved by the Honourable Mrs Selina CHOW is a little bit more relaxed, and the amendment by the Honourable Albert HO is even more relaxed.

Now, at the procedure, if the Attorney General's motion is voted down because of the Liberal Party and Democratic Party's position, and subsequently if the Liberal Party's position is voted down by the Democrats and others, then at the end, the Honourable Albert HO's amendment is again voted down by the Liberal Party and the rest, we will revert back to the current section 30, which is the most restrictive of all. Now, on that analysis, I would urge the Democratic Party to really consider voting for Mrs Selina CHOW's amendment. Thank you.
委員涂謹申議員：主席先生，這並非質詢程序，我覺得這樣是.....

CHAIRMAN: Mr TO, I need to call your name first?

委員涂謹申議員：對不起，主席先生。我認為田北俊議員剛才其實不是就程序上提出質疑，我反而想提出一項程序上的質疑。不知主席先生會否考慮將

表決程序扭轉，即首先就律政司的議題進行表決。因為根據程度而言，律政司的修正案是最緊的，而何俊仁議員的修正案是最寬鬆的。如果將何俊仁議員的修正案的表決次序排在第二，而其修正案不獲通過的話，民主黨願意支持周梁淑怡議員的修正案。在程度上，未知主席先生可否以邏輯來判斷，作出一個最好的安排，甚至如有需要的話，可以休會一段時間來考慮。

CHAIRMAN: Honourable Members, I think that some Members are trying to get myself involved in the debate. I regard both speeches to be speeches, not enquiries. I have ruled that the order of voting on the three alternative new clause 13A should be: the Attorney General's, Mrs Selina CHOW's and then Mr Albert HO's. Does any other Member wish to speak? If not, I will invite Mrs Selina CHOW and Mr Albert HO as sponsors of alternative new clauses to speak for a second time. Mrs Selina CHOW, do you wish to speak?

MRS SELINA CHOW: I have nothing to add.

MISS MARGARET NG: Mr Chairman, forgive me, I have been raising my hand but I have not been able to catch your eye. The order of the voting obviously is of very great importance, and section 30 is obviously a very important provision of very great public interest. I wonder, because of how it will affect the outcome, you would agree to rest for a short time so that we could re-think the order of voting so as to make any submissions to you?

7.49 pm

CHAIRMAN: I suspend the sitting for five minutes.
8.07 pm

Committee then resumed.

CHAIRMAN: Honourable Members, as I said earlier, there are three new clause 13A, proposed by the Attorney General, Mrs Selina CHOW and Mr Albert HO. They were received at the same time, so I cannot rely on the first-come

first-served principle. In deciding on the order of moving the motions on the three new clause 13A, I have had regard to Standing Order 25(4). I have ruled that the Attorney General should first move his motion by virtue of his being the Public Officer in charge of the Bill, to be followed by Mrs Selina CHOW by virtue of her seniority, and lastly by Mr Albert HO. It stands to reason that the voting on the three proposals should follow the same order, or else the Council will be setting a very bad precedent for the future.

I am not prepared to make an exception in this case or in any other case. As the custodian of the rules and practice of this Council, my role as the President and as the Chairman of the Committee of the whole Council is to rule on whether or not the propositions are in order and, secondly, the order in which they are to be taken, that is, to be moved and voted on. It is not the President's or the Chairman's job to involve himself in the merits or otherwise of the alternative propositions. It is a matter for Members themselves. So I have taken both Mr James TIEN's point and Mr James TO's point to be speeches.

ATTORNEY GENERAL:

The Honourable Mrs Selina CHOW's proposal

Mr Chairman, the only difference between Mrs CHOW's amendment and my own is that her amendment does not plug the loophole that I have mentioned earlier. It would allow disclosures of details of a general investigation, no matter how harmful the disclosure may be to the investigation.

I would ask Members to consider the example in which a report is made to the ICAC of the most serious corruption by a member of a senior group of government officials — corruption striking at the heart of good government. Suppose the report does not identify a particular person, but gives information that seems credible, concerning a unit within a certain government department. The ICAC begin to investigate. They uncover clear evidence of corruption but have not yet identified any particular suspect. Then a newspaper publishes details of the investigation. The guilty party flees from Hong Kong taking his ill-gotten gains with him. Just consider what effect that would have on the confidence of the community and their faith in the ICAC.

If Members support Mrs CHOW's amendment, they will be saying that they are content for such publications to take place, regardless of the consequences. Therefore, I urge Members to support my amendment. If that amendment is negatived, I would urge Members however to support Mrs CHOW's amendment and to reject Mr HO's amendment to which I now turn.

The Honourable Albert HO's proposal

The amendment proposed by the Honourable Albert HO would also allow disclosures in respect of general investigations. I have already spoken on that and would urge Members to reject it.

There is, however, a further aspect to Mr HO's amendment. The effect of that amendment would be to limit restrictions contained in section 30(1) to disclosures which are "likely to cause prejudice to the investigation." Mr Chairman, this is unacceptable for two reasons. Firstly, it would deprive the section of its role in protecting the reputation of suspects. Secondly, it would inadequately protect the integrity of investigations.

Let me quote from the judgment of the Hong Kong Court of Appeal in the *Ming Pao* case.

> "..... it cannot be assumed that every time an offence under the Ordinance has been alleged or suspected to have been committed, and an investigation is underway, it necessarily leads to a person being charged. The allegations and suspicions may, ultimately, turn out to be groundless. The protection of the reputation of suspects, who may have to undergo the opprobrium of investigation over a long period, is a matter of considerable importance: particularly if the suspect is a Crown servant having to perform his duties *vis-a-vis* the public in the meanwhile. No time limit is imposed by statute for the process of investigation."

It is no answer to say that the law of defamation can protect the reputations of suspects. Truth is a defence to an action in defamation. A disclosure of the fact that a person is being investigated by the ICAC, if true, would not therefore give that person any remedy in defamation.

The effect of Mr HO's amendment would be that a person could make a malicious report to the ICAC of corruption by a particular person and then disclose to the media the fact that the person was under investigation. The

media could then publish the story, with the result that the person's reputation was seriously tarnished. Provided the disclosures were not likely to prejudice the investigation, no offence would have been committed.

It may be argued that persons who are under investigation for non-corruption offences do not have any protection for their reputations beyond that provided by the law of defamation. But corruption offences are in a category of their own, and call for special measures, both to further investigations and to protect those subject to investigation. There are several reasons why corruption suspects need special protection:

- a large percentage of allegations received are, after investigation, not substantiated

- the ICAC is under a duty to investigate all allegations and is given special powers to do so

- a corruption investigation may continue for a long period of time

- a serious stigma attaches to corruption, and those under investigation for corruption, however innocent, may be unfairly tainted.

The ICAC has quite properly been given special powers of investigation, but hand in hand with those powers must go special measures to protect suspects who may be entirely innocent. Mr HO's proposed amendment offers no protection to the reputation of suspects.

Mr HO's amendment would also inadequately protect the integrity of investigations. This is not simply the view of the Administration. The Privy Council, in the *Ming Pao* case, which so much reference have been made today, made the following comments on the second limb of section 30 subsection (1), which prohibits disclosures to persons other than the suspect.

> "Lord Lester argued that the restrictions in the second limb were disproportionate in that they criminalised disclosures even when no prejudice was caused or likely to be caused to an ICAC investigation and even if the accused believed that there would be no prejudice. The

difficulty about this argument is that in many cases it will be impossible to know whether disclosure has prejudiced an investigation or not, for example, a suspect might destroy incriminating documents of which the investigator was not and never would be aware but which he would have discovered had there been no prior disclosure. For the same reason the suggestion that the desired aim could have been achieved by qualifying the second limb subsection with some such words as "likely to prejudice the investigation" fails because of the difficulty of establishing when a disclosure satisfied the test. If the restriction is to be effective it cannot draw distinctions between prejudicing and non-prejudicing disclosures nor have regard to the state of mind of the discloser." That was what the five law lords in the Privy Council had to say.

The "likely to prejudice" test would fail to achieve the desired aim of protecting the integrity of ICAC investigations because of the difficulty of establishing when a disclosure satisfied the test. Let me give another example. Let us assume that a government official is under investigation but he does not know this. Someone in the same department as the suspect learns of the investigation and tells a colleague. The colleague tells someone else, and so on. Would any of these disclosures be likely to prejudice the investigation and, if so, which one? The fact that the suspect may or may not eventually learn of the investigation does not answer the question. The suspect may overhear a conversation that was not, of itself, likely to prejudice the investigation. If he then destroys all evidence of his corruption, the disclosure would still not have been an offence. Even if the suspect is informed of the investigation by a colleague, that does not necessarily mean that the disclosure was likely to prejudice the investigation. Under the "likely to prejudice" test, it is not clear whether it would be an offence for a person to disclose to a suspect the fact that he was under investigation. It is in general terms unacceptable from a legal policy point of view that a criminal offence should be subject to such uncertainty.

These examples show that the "likely to prejudice" test does not adequately protect ICAC investigations. I am aware that a similar test appears in certain other pieces of legislation. But that, Mr Chairman, proves nothing. Two of the precedents for the "likely to prejudice" test relate to investigations into drug trafficking and terrorism which we have heard this afternoon. Investigations into such offences are of a completely different nature to investigations into corruption. Let me once again quote from the Privy Council

decision. This is what they had to say:

> "The fact that disclosure of investigations into other offences is not so severely restricted does not render the provisions of section 30(1) disproportionate or unnecessary. In many offences involving dishonesty there will be a party who suffers and who has an obvious interest to report the matter to the authorities with the result that the offender can expect that some investigation into the offence will take place. In cases of bribery, however, neither party to the transaction is likely to have any interest to report the matter rather the reverse, since both are likely to be satisfied with what has occurred. This means that bribery offences are particularly difficult to detect and the maintenance of secrecy as to an investigation is even more important in order not to put the suspect on his guard."

Once again, I emphasize that those are the views of the five eminent law lords in the Privy Council. I am also aware that the anti-corruption legislation of New South Wales contains the "likely to prejudice test". However, in February of this year, the Australian Royal Commission into the New South Wales Police Service published an interim report, dealing with police corruption. The report concluded that the internal anti-corruption work of the New South Wales police service, and the anti-corruption work of the elements of the New South Wales ICAC that targeted the police, have failed. The report recommended that a new agency be established and that the agency be given "an appropriate secrecy provision". I trust that I have said enough to indicate how dangerous it is to point to a precedent from another jurisdiction and assume both that the precedent is effective in that jurisdiction and that it would be effective here.

In contrast to the position in New South Wales, the success of the anti-corruption work of the ICAC in Hong Kong is widely recognized. The Report of the ICAC Review Committee stated that:

> "Almost all submissions acknowledged the success of the ICAC in combating corruption and bringing it under control. They perceived the danger of a significant increase in corruption during the run-up to 1997 and expressed a belief that the independence and effectiveness of the Commission remained crucial to the continued development and prosperity of the community."

One of the reasons for the ICAC's success, I believe, is the protection afforded to the integrity of investigations by section 30. At this crucial time in Hong Kong's history, we should not be putting the effectiveness of the ICAC at risk by weakening the main elements of section 30. The "likely to prejudice" test would do just that.

For all these reasons, I strongly urge Members of this Council to vote against Mr HO's amendment.

Thank you, Mr Chairman.

Question on the Attorney General's motion put and negatived.

CHAIRMAN: As the Attorney General's motion on the Second Reading of his proposed new clause 13A has not been agreed, I will now call on Mrs Selina CHOW to move the Second Reading of her proposed new clause 13A.

MRS SELINA CHOW: Mr Chairman, I move that new clause 13A as set out under my name in the paper circulated to Members be read the Second time.

Question on the motion proposed and put.

Voice vote taken.

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

Mrs Selina CHOW and Mr TSANG Kin-shing claimed a division.

CHAIRMAN: Committee shall proceed to a division.

CHAIRMAN: Members may wish to be reminded that they are now called upon to vote on the question that the new clause 13A moved by Mrs Selina CHOW be read the Second time. Will Members please press the top button and then proceed to vote by choosing one of the three buttons below?

CHAIRMAN: Are there any queries? Members may wish to check their votes. The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the motion.

THE CHAIRMAN announces that there are 29 votes in favour of the motion and 27 votes against it. He therefore declares that the motion is carried.

CHAIRMAN: As Mrs Selina CHOW's motion on the Second Reading of her proposed new clause 13A has been agreed, it is not possible for Mr Albert HO to move the Second Reading of his proposed new clause 13A.

Clause read the Second time.

MRS SELINA CHOW: Mr Chairman, I move that new clause 13A as set out under my name in the paper circularized to Members be added to the Bill.

Proposed addition

New clause 13A

That the Bill be amended, by adding —

"13A. Offence to disclose identity, etc. of persons being investigated

Section 30 is amended by repealing subsection (1) and substituting -

"(1) Any person who knowing or suspecting that an investigation in respect of an offence alleged or suspected to have been committed under Part II of this Ordinance is taking place, without lawful authority or reasonable excuse, discloses to -

(a) the person who is the subject of the investigation (the "subject person") the fact that he is so subject or any details of such investigation; or

(b) the public, a section of the public or any particular person the identity of the subject person or the fact that the subject person is so subject or any details of such investigation,

shall be guilty of an offence and shall be liable on conviction

to a fine of $20,000 and to imprisonment for 1 year".".

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

New clause 13B Offence to disclose identity, etc. of persons being investigated

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

CHAIRMAN: Both the Attorney General and Miss Christine LOH have given notice to propose the addition of new clause 13B to the Bill. I will call upon the Attorney General to speak and move the Second Reading of his proposed new clause 13B first as he is the Public Officer in charge of the Bill.

ATTORNEY GENERAL: Mr Chairman, I move that new clause 13B as set out under my name in the paper circulated to Members be read the Second time.

The existing subsection (1A) of section 30 of the Prevention of Bribery Ordinance provides that the restrictions on disclosure cease to apply after the person who is the subject of the investigation has been arrested. Under my proposed amendment, the restrictions would also cease to apply after a warrant has been issued for the arrest of the person who is the subject of the investigation, or after a restraining order has been served on any person under section 14C(3) of the Ordinance.

Where an arrest warrant is issued, the investigation will clearly have reached a mature stage and have a specific direction, similar to that where a person is actually arrested. A restraining order prohibits a particular person from disposing of, or otherwise dealing with specified property. Such an order will only be made after considerable investigations have taken place. In addition, such orders give rise to a degree of publicity in that, if they relate to immovable property, they are registered in the Land Registry. The Administration therefore considers that, if an arrest warrant is issued or a restraining order is made, it is difficult to justify continuing the restrictions of

section 30.

The existing subsection (2) of section 30 provides that the Commissioner, ICAC, may disclose the identity of a suspect if any of five specified events occur. Two of those events are the issue of an arrest warrant and the making of a restraint order. As I have just explained, the occurrence of either of those two events will, under my proposed amendment, cause all restrictions on disclosure to be lifted.

That leaves three further events in the existing subsection (2), namely, where the person subject to the investigation fails to comply with a notice under section 14(1)(a) or (b) requiring him to give details of his assets; where his residence has been searched under a warrant issued under section 17; and where he has been required to surrender a travel document under section 17A.

The amendment that I am moving will have the effect that, if any of those three events occur, any details of the investigation may be disclosed by the Commissioner, or by the subject person, or by any other person with the consent of the Commissioner or the subject person.

Mr Chairman, this is a considerable relaxation of the section, but it ensures that third parties will not be able to disclose details of an investigation after one of the specified events has occurred, unless the Commissioner or the suspect consents to this. The Administration considers that, even though one of those events has occurred, there are still good reasons for imposing such restrictions on disclosures. In particular, there is still a need to protect the reputation of the subject person.

As I have said, in the three situations described, third parties should not be permitted to make disclosures without the consent of the subject person or of the Commissioner. However, my amendment provides that, where the Commissioner or the subject person has consented to a disclosure being made by a particular person to the public or a section of the public, he is to be treated as having consented to such a disclosure by any other person. This provision will be of particular assistance to the media since, if the subject person is content for details of the investigation to be made public, it will not be necessary for each newspaper or broadcaster to obtain the consent of that person before it can run the story.

The amendment I am moving will also permit disclosures to be made by any person if, but only to the extent that, the disclosure reveals any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by the ICAC; or a serious threat to public order or to the security of Hong Kong or to the health or safety of the public.

The combined effect of these amendments will relax the restrictions imposed by section 30 in significant respects.

Thank you, Mr Chairman.

Question on the Attorney General's motion on Second Reading of the clause proposed.

CHAIRMAN: As Miss Christine LOH has also given notice to propose the addition of new clause 13B to the Bill, I propose to have the Attorney General's motion and Miss LOH's proposal debated together in a joint debate.

Committee shall debate the Attorney General's motion and Miss Christine LOH's proposal in a joint debate. I will call upon Miss Christine LOH to speak on the Attorney General's motion as well as her own proposition, but will not ask Miss Christine LOH to move the Second Reading of her motion unless the Attorney General's motion has been negatived. If the Attorney General's motion is agreed, that will by implication mean that Miss Christine LOH's proposal is not approved.

MISS CHRISTINE LOH: Mr Chairman, let me begin by mentioning the two points of agreement between the Attorney General's amendment and mine. First, there is no dispute that section 30 should cease to apply to an investigation after the suspect's arrest or issue of a warrant for his arrest or service of a restraining order in connection with the investigation.

Second, both amendments only come into play at a mature stage in the investigation when secrecy is neither possible nor needed. Both my amendment and the Attorney General's, therefore, permit the suspect himself to publicize the investigation freely. Protecting the integrity of investigation is not in issue here, so let us put that aside in case there are any Members of the Council who are still

pondering about this particular issue.

The difference between the two amendments lie in their treatment of three overt acts by the ICAC against the suspect. These acts are: confiscation of the suspect's travel documents; search of his home; and service of a section 14 notice compelling him or her to divulge information about his or her assets. My amendment proposes to terminate the application of section 30 after any of these acts. The Administration's amendment also relaxes section 30 in similar circumstances but only to the extent authorized by the suspect or by the Commissioner of the ICAC.

The Administration claims that the approach it takes is necessary to protect the suspect's reputation. Mr IP Kwok-him, the Honourable Mrs Selina CHOW and Mr Bruce LIU all took up this argument in their Second Reading debate and said that they intended to vote against my amendment. I urge them to listen to my explanation. I would like to put it to them that once an investigation reaches the advanced stage whether either of the two amendments comes into play, such concern over reputation is no longer appropriate. The amendments we are debating do not concern the investigation of raw corruption allegations when there may be little or no real evidence to implicate the suspect.

These amendments only come into play after the ICAC has already uncovered significant, and I repeat, Mr Chairman, significant evidence that the suspect is guilty. Before the ICAC may serve a section 14 notice or confiscate travel documents, it must satisfy a court that it has reasonable grounds to suspect the targeted person is guilty. This is exactly the same degree of suspicion required to arrest that person. Significant suspicion is also required before a court will issue a warrant to search a suspect's home and the court must be shown reasonable cause to believe his or her home contains evidence of an offence he or she committed. Being a lawyer, I am sure the Honourable Bruce LIU will appreciate this. When the ICAC has already uncovered significant evidence of a person's corruption, this should moderate concern that an innocent reputation is at stake and tilts the balance in favour of treating the corruption suspect like any other suspect. That is, free speech should be allowed subject to defamation laws.

That is why the new section 30 ceases to apply after the suspect is arrested as it was amended by this Council in 1992. The same considerations apply when, on the basis of the same or similar suspicion, the ICAC chooses not to arrest a suspect immediately but does confiscate his or her passport or search his or her home or serve him or her with a section 14 notice. The Administration points out that a person whose home is searched, or whose passport is confiscated, may nonetheless later be found to be innocent. The Administration fails to mention that this applies as well to a person who is arrested who may in fact never be charged or against whom all charges may be dropped later. But observations of this type miss the point. The point is that these are all major overt actions by the ICAC taken only at the advanced stage of an investigation on the basis of significant evidence against the suspect. I argue, therefore, that section 30 should cease to apply after any of them.

The Administration instead errs dangerously in the opposite direction. In the name of protecting reputation, the Administration in effect gives the suspect the power to control publicity about the investigation. Under the Administration's amendment, it is the suspect who determines what details of the investigation may lawfully be publicized and to whom such disclosure may be made. This extraordinary power to tailor section 30 for a suspect's own benefit will not be available to a suspect in the early stages of an investigation when there is often no real evidence that he or she committed any offence. Rather the Administration's amendment exclusively benefits suspects against whom the ICAC has already taken overt action on the basis of significant evidence of corruption. Mr Chairman, that does not seem to make sense to me.

The ICAC will also retain its own comparable power to authorize selective publicity. The Administration's amendment will predictably give rise to battles of disclosure fought in the media as media-savvy suspects and the ICAC launch competing disclosures to influence public opinion. Both the suspect and the ICAC in these battles will be armed and armoured by the amended section 30 as proposed by the Attorney General. The victim in such battles will be the public's unprotected rights to full and accurate information. A reporter who publishes any detail that has not been authorized by either the Commissioner or the suspect will still be criminally liable under section 30 as amended by the Attorney General regardless of the report's accuracy.

Again the better approach is simply to terminate section 30's application to

the investigation instead of making it selectively permeable to both the interested parties.

For these reasons, the Administration's partial relaxation of section 30 at the advanced stage of investigation is not a sensible approach. I urge Members to give what I said good consideration and to support my amendment instead.

CHAIRMAN: Members will now debate the Attorney General's motion and Miss Christine LOH's proposal together.

委員涂謹申議員致辭：主席先生，首先，不論是陸恭蕙議員或政府的修正案，就《防止賄賂條例》第30(3)條都有一個共通點。我希望告知大家，在條例草案委員會的審議過程中，在這項目上，我們花了相當多的時間進行討論，並得到共識，即委員會就第3款達到一項共識。在這方面，我認為是一項很大的進步，使日後傳媒及香港市民，如果在極端的情況下，需要披露一些有關廉署濫用權力、或嚴重疏忽操守、或非法活動時，又或對一些重要的公共事務或安全性質事務，可以作出披露。這是一項很好的放寬，也是十分重要的放寬。

我同意政府在這項修正案中，作出了一些實質性的讓步，我也同意政府在第30(2)條中，將數項原本只能由專員披露的觸發項目交給公眾。換句話說，例如疑犯被拘捕，原本只有專員可以披露，但現時當疑犯被拘捕後，公眾也能立即獲知，傳媒也可以作出報道。在這點上，這是一項實質的放寬。

至於現時陸恭蕙議員與政府兩者的修正案之間的分別，其實在於三種情況。剛才陸恭蕙議員也有談及，而觸發點在於是否需要受疑人同意。

首先，政府已完全排除爭論這點，是因為會影響調查的緣故，因為既然已可以提及受疑人，政府的調查就不會依靠不說出來而有所保護。我們所討論的，只不過是聲譽保障的問題。經過分析後，我認為政府的立論是相當難以成立的。

假設有一個人正受到廉署調查，因此住所被廉署搜查，廉署的說法是，在廉署完成搜查行動後，也許日後不會對那人提出檢控，甚至不會拘捕那人。在同一道理下，如果一個人被警方搜查住所，懷疑他藏有毒品或其他事物，而警方在搜查過後，也許也沒有拘捕那人。事實上，傳媒可以報道警方搜查那人的住所，但卻不可以報道廉署搜查那人的住所，例如有關詳情，

甚或是哪人的住所。

我自己認為，一個人受到廉署調查時所牽涉的聲譽受損程度，絕不會較一個人被警方調查更嚴重，例如如果一名知名人士被指藏有毒品，我相信是一件大事；甚至如果指稱一間上市公司，包括主席或董事等，牽涉商業罪案調查科某些商業詐騙案件，也是一件大事。因此，我不同意廉署搜查某人住所後，那人的聲譽會大大受損，因而須受到保障，但如果是警方或其他執法機構搜查他的住所後，他的聲譽便無須受到保障。我認為這是不合理的。

第三，這是我在昨晚凌晨三時所想到的。其實陸恭蕙議員所提出的修正案的其中一個觸發點是，當廉署根據《防止賄賂條例》第14條發出資產限制令，便可以作出披露。我認為其中不完美的地方在於，事實上現時政府已同意《防止賄賂條例》第13條同樣可以向高等法院申請，命令一個受疑人交出一些帳目等。我認為不論是政府或陸恭蕙議員的修正案的觸發點，應在第14條再加上一項，即“以及第13條”，因為這是屬於同樣的道理。

最後，剛才我在辯論時的發言可能令政府誤會了我的意思。我提及《明報》案件中廉署的調查，我並不是指政府說謊。我的意思是，政府或廉署當時只是判斷上有錯誤。我認為（你們當然也可說我的判斷錯誤），廉署當時已能作出判斷，實際上是有指明或已確定的受疑人，而並非它所說的未能確定。我絕無意思指廉署當時是故意說謊，或是明顯已能確定受疑人，但它仍說未有確定。這並非我的意思，謹此澄清。

委員廖成利議員致辭：主席先生，謝謝你給我發言。可能由於英文翻譯上有少許誤會，以致陸恭蕙議員弄錯了，以為民協不支持她。實際上，民協是支持她的修正案的。

謝謝主席先生。

MISS CHRISTINE LOH: Mr Chairman, I am most pleased by the Honourable Bruce LIU's comments, so let us get on with the vote. Thank you.

ATTORNEY GENERAL: Mr Chairman, under the amendment proposed by the

Honourable Miss Christine LOH, section 30 would cease to apply where a notice is served on the subject person under section 14(1)(a) or (b); where his residence has been searched under a warrant issued under section 17; or where he has been required to surrender his travel document under section 17A. The Administration strongly opposes this amendment, because of its possible impact both on a suspect's reputation and on ICAC investigations.

Subject's reputation

In the three situations I have described, there is still a need to protect the subject person's reputation. There is no reason why section 30 should cease to apply simply because a person has been required to give details of his assets. Needless to say, that person may be entirely innocent and may, by complying with the notice, establish this to the satisfaction of the ICAC. A search of the suspect's residence may reveal no evidence of criminality and, if the suspect is required to surrender his travel document, he may subsequently get it back. In none of these situations is there any compelling reason why details of the investigation should be freely disclosed, and the subject person's reputation ruined. However, if the subject person wished to disclose details of the investigation; or there has been serious ICAC misconduct; or there is a serious threat to public order or to the security of Hong Kong or to the health or safety of the public, disclosure will be possible under the amendment I am moving.

Miss LOH has argued that section 30 should cease to apply if any of the three events I have mentioned has occurred, since the same degree of suspicion is required for those events as for the arrest of the subject person. With respect to her, this is not an adequate justification. A suspect's reputation should not be exposed to attack merely because there are reasonable grounds for suspecting that he has committed a corruption offence. As I have explained earlier this afternoon, there are valid reasons for protecting the reputation of those under ICAC investigation. That protection should only be removed if there is a compelling reason to do so.

The arrest of the suspect, or the issuing of a warrant of arrest, indicates that the investigation has reached a mature stage, and that the suspect has been deprived, or will be deprived, of his liberty. Members of the public have an overriding right to be informed of this. The making of a restraint order in

respect of land already involves public registration, and so it is difficult to justify further restraints on disclosure. But Miss LOH is proposing that all restrictions on disclosure should be lifted after three events which merely form part of ongoing investigations, and which are not of such significance that there is an overriding reason for the public to know about them. I do not believe that a suspect's reputation should be so exposed.

Protection of investigations

I turn now to the protection of the integrity of an investigation. Miss LOH has argued that there is no practical need for secrecy after any of the three events had made the suspect aware of the investigation.

There is a fallacy in her argument. It assumes that all suspects who know they are under investigation will tip-off any other guilty parties. This is not the case. Firstly, the suspect may be entirely innocent and may not know who the guilty parties are. He will not tip them off. Why should third parties be permitted to disclose details of the investigation and thereby alert the guilty parties? Secondly, the suspect may be guilty and may be assisting the ICAC by giving evidence against his co-conspirators. In that situation, he will not want to tell the co-conspirators what he is doing. Third parties should not be permitted to do so.

In contrast to Miss LOH's proposed amendment, my amendment does afford protection to an investigation in situations where neither the Commissioner nor the suspect wants to disclose any details of it.

Conclusion

Mr Chairman, the Administration objects to Miss LOH's proposed amendment because it affords inadequate protection to the reputation of suspects and to the integrity of investigations. The amendment I have moved will relax the restrictions imposed by section 30 in several important respects, whilst still affording adequate protection to reputations and investigations. I urge Members to support the Administration's amendment.

Question on the motion put.

Voice vote taken.

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

Mr James TO claimed a division.

CHAIRMAN: Committee shall proceed to a division.

CHAIRMAN: I would like to remind Members that they are now called upon to vote on the question that the Attorney General's new clause 13B be read the Second time. Will Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

CHAIRMAN: Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted for the motion.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan,

Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the motion.

THE CHAIRMAN announced that there were 23 votes in favour of the motion and 31 votes against it. He therefore declared that the motion was negatived.

CHAIRMAN: As the Attorney General's motion on the Second Reading of his proposed new clause 13B has not been agreed, I will now call on Miss Christine LOH to move the Second Reading of her proposed new clause 13B.

MISS CHRISTINE LOH: Mr Chairman, I move that new clause 13B as set out under my name in the paper circulated to Members be read the Second time.

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

Clause read the Second time.

MISS CHRISTINE LOH: Mr Chairman, I move that new clause 13B as set out under my name in the paper circularized to Members be added to the Bill.

Proposed addition

New clause 13B

That the Bill be amended, by adding —

"13B. Offence to disclose identity, etc. of persons being investigated

Section 30 is amended by repealing subsections (1A) and (2)

and substituting -

"(2) Subsection (1) shall not apply as regards disclosure of any of the descriptions mentioned in that subsection where, in connection with such investigation -

(a) a warrant has been issued for the arrest of the subject person;

(b) the subject person has been arrested whether with or without warrant;

(c) the subject person has been required to furnish a statutory declaration or a statement in writing by a notice served on him under section 14(1)(a) or (b);

(d) a restraining order has been served on any person under section 14C(3);

(e) the residence of the subject person has been searched under a warrant issued under section 17; or

(f) the subject person has been required to surrender to the Commissioner any travel document in his possession by a notice served on him under section 17A.

(3) Without affecting the generality of the expression "reasonable excuse" in subsection (1), a person has a reasonable excuse as regards disclosure of any of the descriptions mentioned in that subsection if, but only to the extent that, the disclosure reveals -

(a) any unlawful activity, abuse of power, serious neglect of duty, or other serious misconduct by the Commissioner, the Deputy Commissioner or any officer of the

Commission; or

(b) a serious threat to public order or to the security of Hong Kong or to the health or safety of the public.".".

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

CRIMES (AMENDMENT) BILL 1995

Clauses 1, 3 and 4 were agreed to.

Clauses 2, 5 and 6

ATTORNEY GENERAL: Mr Chairman, I move that clauses 2, 5 and 6 be amended as set out under my name in the paper circulated to Members.

When considering the Bill, members of the Bills Committee were concerned that the Bill sought to incorporate into law provisions in relation to the definition of "attempt" and the offence of incitement which were only recommended by the English Law Commission but not yet enacted in England.

In England, incitement to commit an offence still remains a common law offence despite its presence in the draft Criminal Code. Members of the Bills Committee were concerned that, unlike attempt or conspiracy, the merit of codifying the offence of incitement has not been tested in England. The Administration accepts that this may not be the appropriate time to codify the offence of incitement. Accordingly, I will shortly move a Committee stage amendment to delete the relevant provisions in the Bill in respect of that offence. However, Mr Chairman, we will keep this matter under review, tracking developments in England and elsewhere since I believe that there remain sound reasons for eventually putting incitement into codified form.

I now turn to the Committee stage amendments to clause 2. The amendments to clause 2 delete the definition of "fault element" and an intention to commit an offence in relation to attempting an offence and delete the proposed

codification of incitement as an offence. The proposed new section 159H defines what constitutes the offence of attempting to commit an offence. It further provides that, and I quote, "an intention to commit an offence is an intention with respect to all elements of the offence other than fault elements except that recklessness with respect to a circumstance suffices where it suffices for the offence itself." The purpose of this section is to provide for circumstances where it is an offence to do an act recklessly. It will also be an offence for a person to be reckless in attempting to do that act. This section follows a decision of the English Court of Appeal in a case of attempted rape.

Although the Criminal Attempts Act 1981 does not contain a similar revision, the English Law Commission recommended such a clause in its draft Criminal Code for the protection of victims against violent or drunken offenders. In the course of examining the proposed section 159H, members of the Bills Committee have considered the position by referring to various precedents in England after the enactment of the Criminal Attempts Act 1977. They take the view that such a provision may be of little use since the English case law suggests that the courts accept that, where recklessness with respect of a circumstance suffices for the substantive offence, then recklessness as to those specific circumstances should be enough for the offence of attempt. The Bar Association also shares the view that the inclusion of such a clause in the Bill is not appropriate.

Members of the Bills Committee have also come to the view that the concept of "fault element" is new to Hong Kong and there are few precedents available to be of assistance if interpretation of the term is called into question.

In the light of the comments of the members of the Bills Committee and the Bar Association, I accept that it is not entirely clear whether the proposed provisions will produce the desired result at this point in time. In this regard, I will move an amendment to delete subsection (2) of proposed new section 159H in its entirety. In addition, proposed new section 159G, which provides for the definition of "fault element" and subsection (4) of proposed new section 159J, which defines an intention to commit an offence of attempt under other enactments in the same manner as section 159H subsection (2), should likewise be deleted.

The amendment also deletes from clause 2 proposed new sections 159M, 159N and 159O which would have codified the offence of incitement. Consequential amendments are made to clauses 5 and 6.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended —

(a) by deleting the proposed section 159G.

(b) by deleting the proposed section 159H(2).

(c) by deleting the proposed section 159J(4).

(d) by deleting the heading **"Incitement"** before the proposed section159M.

(e) by deleting the proposed section 159M.

(f) by deleting the proposed section 159N.

(g) by deleting the proposed section 159O.

Clause 5

That clause 5 be amended, by deleting the clause and substituting —

"5. Reference to an offence to include aiding, etc.

Section 101C(1)(i) and (iii) is repealed.".

Clause 6

That clause 6 be amended, by deleting paragraphs (a) and (b) and substituting —

"(a) in subsection (1), by repealing "subsections (2), (3) and (4)" and substituting "subsection (2)";

(b) by repealing subsections (2)(b) and (4).".

Question on the amendments proposed.

MR AMBROSE LAU: Mr Chairman, I rise to support the amendments that the Attorney General has just moved as they are the result of detailed deliberation by the Bills Committee which I chaired to study the Bill.

In the course of deliberation, the Bills Committee reviewed the definition of the offence of attempt. It found that the term "fault element" might create problems and confusion in operation. Its inclusion would render the Hong Kong legislation different from that of the English legislation and would thus put in doubt the value of precedents of the English case law. Further, the reference to "recklessness" might confuse rather than clarify the mental element which the English courts have had no difficulty in interpreting under the Criminal Attempts Act 1981.

After full discussion with the Administration, the Bills Committee has agreed that the Administration should move Committee stage amendments to delete the proposed sections 159G, 159H(2) and 159J(4) from clause 2 of the Bill, in order to remove references to "fault element" and "recklessness" in relation to the offence of attempt and in order to bring the definition in line with that of the English Criminal Attempts Act 1981.

Regarding the codification of the offence of incitement, since in England, the draft Criminal Code which reinstates the existing law in respect of incitement has not been enacted, the majority of members of the Bills Committee feared that

Hong Kong would be in a difficult position if it were to adopt the draft Code in advance. They also queried the proposed codification of incitement, as follows: (a) that it may be impractical to codify such a concept of uncertain width; (b) that after codification, the offence may lose the assistance of existing case law; (c) that the new definition of the offence of incitement, particularly the Chinese version, may lead to more confusion; and (d) the term "incite" is not defined.

In the end, the Administration conceded that they were unable to convince the Bills Committee that it is timely to include "incitement" in the condification exercise, although they believe that there are good reasons to do so. The Administration has agreed to move amendments to delete the proposed sections 159M, 159N and 159O from clause 2 and to amend clauses 5 and 6 of the Bill and that the Attorney General has just done.

ATTORNEY GENERAL: Thank you, Mr Chairman. I just want to take this opportunity of thanking the Honourable Ambrose LAU and members of the Bills Committee for the time and the care which they took over this Bill. I would only like to add that the Bill in its amended form will be a modest but important step towards the goal of codification, bringing in enhanced accessibility, ease of reference and comprehension and providing for consistency and certainty in its application.

Thank you, Mr Chairman.

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 5 and 6, as amended, put and agreed to.

NON-LOCAL HIGHER AND PROFESSIONAL EDUCATION (REGULATION) BILL

Clauses 1, 2, 3, 5, 6, 8, 9, 10, 13, 14, 16, 19, 21, 23, 27, 39 and 40

教育統籌司致辭：主席先生，我謹動議依照提交各位議員傳閱的文件所載，修正條例草案。所有修正案已獲條例草案委員會同意。有關第1、3、5、6、16、19、23、27、39和40條的修正案及第2、8、10、13和14條的某些修正案，是屬於技術性質，或為了更清楚及更明確地反映條例草案的目標而提出的。此外，條例草案委員會在審議這條例草案時特別關注某些事項，我想在此解釋因應這些關注而提出的修正案。

保障學生免受金錢損失

條例草案委員會最關注的事項之一，是保障學生避免由於課程提前中止而蒙受金錢損失。條例草案委員會和政府均同意，解決這個問題的最佳方法，是規定課程的主辦者預先向學生收取與課程有關費用的上限，以及規定主辦者必須作出安排，在訂明的情況下退還費用。

為了落實這個方法，我動議在第10(3)條加入新的第(e)款，這樣便可將為課程費用的支付及退還作出令人滿意的安排，列為申請課程註冊的條件之一。我們所持的原則是要求有關安排在照顧課程的運作需要的同時，亦保障學員不會因課程提前結束而蒙受金錢上的損失。

此外，條例草案委員會認為需要進一步限制課程的主辦者預先收取的學費，不可超過在未來三個月應繳學費的總額。政府同意提出這項限制，但非本地高等及專業教育課程註冊處處長（下稱“處長”）須有酌情決定權，如認為情況需要，例如課程開始前需要足夠款項籌辦課程，便可容許主辦者不遵照這項規定。因此，我動議在條例草案第10(3)條加入第(d)款。

此外，我提出對第13(1)條及第14(1)條的修正案，將會授權處長遇到主辦者未能對費用的支付及／或退還作出滿意安排，以及未有遵守有關預先收取學費的規定時，發出將該課程的註冊撤銷的建議，以及撤銷有關課程的註冊。這些修正案將可確保主辦者在課程註冊後繼續作出妥善安排，保障學生在財政方面的利益。

監察獲豁免課程

條例草案委員會另一關注事項，是非本地高等教育機構及非本地專業團

體（下稱“非本地機構及團體”）與本地高等教育機構或專上學院合辦的課程的質素保證。條例草案規定，有關的本地高等教育機構的行政主管每年須向處長提交一份證明書，確認有關課程屬合辦性質、合辦課程的非本地院校具有認可地位，以及課程的水平可與非本地院校在本國開辦同類課程的水平相比，這項合辦課程便可獲豁免註冊。根據這項規定，監察和確保獲豁免課程質素的工作，主要是由有關的本地高等教育機構而非處長負責。

條例草案委員會在審議條例草案時，關注到對獲豁免課程的規管或會過於寬鬆。雖然政府知道本地高等教育機構在質素保證方面有豐富驗，亦會在充分了解非本地高等教育機構的資料和個別課程的詳情後才決定合辦課程，不過，政府亦明白有需要增加獲豁免課程的透明度和問責性。因此，我動議以下修正案，鼓勵本地高等教育機構更積極確保獲豁免課程的質素，以及讓處長和公眾人士更容易取得與這些課程有關的資料。

我對條例草案第2(1)條提出的修正案及稍後對附表1提出的修正案，會指明本地高等教育機構的行政主管是有關院校的校長、監督或院長，從而確定應由誰人負責提交豁免課程註冊所需的證明書。此外，我動議修正條例草案第8條，加入第(4)款，規定如發現這些證明書是虛假或不正確，證明書即屬無效。我動議加入第(8)及(9)款進一步容許處長在有需要時徵詢專家意見，以核實證明書的內容，並就因徵詢專家意見而招致的開支，向有關的本地高等教育機構收取費用。

我動議修正條例草案第8條，加入第1(c)、(5)、(6)及(7)款，以及修正第9條，使處長從課程主辦者及／或本地高等教育機構取得更多有關獲豁免課程的資料。處長可視乎情況，讓公眾人士查閱這些資料，以及獲豁免課程的證明書和年報。與此同時，我動議修正條例草案第10(7)及第21條，賦予處長相同的權力，讓公眾人士查閱從經註冊課程主辦者取得的資料和文件。

此外，為保障報讀獲豁免課程的學員免受金錢損失和他們的人身安全，我動議在條例草案第8(1)條加入第(e)款，訂明獲豁免課程的主辦人必須遵守有關收取學費和退還款項的規定，以及遵守為授課而使用的處所的有關規定。

主席先生，我謹提出議案。

Proposed amendments

Clause 1

That clause 1(2) be amended, by deleting ", other than sections 3, 41 and 42,".

That clause 1(2) be amended, by deleting "人力" and substituting "統籌".

That clause 1 be amended, by deleting subclauses (3) and (4).

Clause 2

That clause 2(1) be amended —

(a) in the definition of "local institution of higher education", by adding "column 2 of" after "specified in".

(b) in the definition of "relevant accreditation authority", by deleting ", evaluation and official recognition of" and substituting "and evaluation of and give official recognition to".

(c) by adding -

""executive head" (行政主管), in relation to a local institution of higher education, means the person specified opposite to the institution in column 3 of Schedule 1 and includes any person duly authorized to act in his capacity,".

That clause 2(1) be amended —

(a) in the definition of "高等學術資格", by deleting "名銜或稱" and substituting "稱銜或名".

(b) in the definition of "專業資格", by deleting "員資格" and substituting "員身分".

That clause 2(4) be amended —

(a) in paragraph (b), by deleting the semicolon and substituting a full stop.

(b) by deleting paragraph (c).

That clause 2(6) be amended —

(a) in paragraph (a), by deleting "conductor" and substituting "person".

(b) in paragraph (b), by deleting "an examiner or conductor of the tests or assessments, as the case may be," and substituting "a person".

That clause 2 be amended, by adding —

"(7) Where the duration of a regulated course exceeds 3 months -

(a) each month during which the course is conducted; and

(b) the month in which the course commences or ends,

shall, for the purposes of sections 10(3)(d), 13(1)(ba) and 14(1)(ba), be taken as a part of the course.".

Clause 3

That clause 3(1) be amended, by repealing everything after paragraph (c) and substituting —

"unless -

(i) the course is an exempted course;

(ii) the course is a registered course; or

(iii) the course is conducted -

(A) by a school registered or provisionally registered within the meaning of section 3 of the Education Ordinance (Cap. 279); or

(B) by a local institution of higher education,

otherwise than in collaboration with a non-local institution or non-local professional body.".

Clause 5

That clause 5(2) be amended, by deleting "for the purposes of this Ordinance".

Clause 6

That clause 6(2) be amended, by deleting paragraphs (b), (c) and (d) and substituting —

"(b) section 14(1); and

(c) section 22.".

Clause 8

That clause 8(1) be amended —

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

"(ii) the course -

(A) is not funded wholly or partly by any fund

allocated by the Government out of the general revenue to that local institution of higher education; or

(B) is funded wholly or partly by any fund allocated by the Government out of the general revenue to that local institution of higher education with the written consent of the Secretary for Education and Manpower; and".

(b) in paragraph (a)(iii)(A), by deleting "leading to the award to a non-local higher academic qualification by that" and substituting "purporting to lead to the award of a non-local higher academic qualification by that non-local".

(c) in paragraph (a)(iii)(B), by deleting "leading to the award of a non-local professional qualification by that" and substituting "purporting to lead to the award of a non-local professional qualification by that non-local professional".

(d) in paragraph (a)(iii)(B)(I), by deleting everything after "recognized by" and substituting "that professional body for the purpose of awarding the qualification or of the claimed purpose referred to in section 2(2)(b)(ii); and".

(e) in paragraph (a)(iii)(B)(II), by deleting "and" at the end.

(f) in paragraph (b)(ii), by deleting the full stop and substituting a semicolon.

(g) by adding -

"(c) the certificate referred to in paragraph (a) is accompanied by such information or document as may be specified by the Registrar;

(d) the certificate referred to in paragraph (a) or (b)(ii) is accompanied by the prescribed fee;

(e) no rule made under section 39(1)(c) or (d) has been contravened in relation to the course; and

(f) the requirement of subsection (9) is complied with in relation to the course.".

That clause 8(1)(a) be amended, by deleting "首長" and substituting "主管".

That clause 8(1)(b)(ii) be amended, by deleting "首長" and substituting "主管".

That clause 8 be amended, by adding —

"(4) A certificate referred to in subsection (1)(a) or (b)(ii) shall be of no effect if it is false in any material particular.

(5) The Registrar may by notice in writing require the operator of an exempted course to give to the Registrar within such period as is specified in the notice (being a period not less than 1 month beginning on the date of the notice) any information or document which -

(a) relates to the course; and

(b) is in possession of the operator or under his control.

(6) The Registrar may in his absolute discretion extend the period specified in a notice under subsection (5).

(7) An operator who without reasonable excuse fails to comply with a requirement made of him under subsection (5) commits an offence and is liable on conviction to a fine at level 3.

(8) The Registrar may obtain, from the Accreditation Council or such other person or organization as he thinks fit, such advice as is reasonably required to enable him to verify the content of any certificate

referred to in subsection (1)(a) or (b)(ii).

(9) Where the Registrar incurs any expenses in obtaining an advice under subsection (8) in respect of a certificate furnished by the executive head of a local institution of higher education -

(a) that institution shall pay to the Registrar a sum of money equal to such expenses within such reasonable period as the Registrar may specify;

(b) such sum, if unpaid under paragraph (a), shall be recoverable from that institution as a civil debt.".

Clause 9

That clause 9 be amended, by deleting the clause and substituting —

"9. Disclosure of certain information by Registrar

The Registrar may send a copy of any certificate or report received by him pursuant to section 8(1)(a) or (b) or any information or document received by him pursuant to section 8(1)(c) or (5) to such persons as he thinks fit and -

(a) shall make such certificate and report; and

(b) may make such information or document,

available for inspection by the general public at the office of the Registrar during normal office hours free of charge.".

Clause 10

That clause 10(1)(c) be amended, by adding —

"(ia) a sum the amount of which is specified by the Registrar;".

That clause 10(3) be amended —

(a) in paragraph (a), by deleting "leading" where it first appears and substituting "purporting to lead".

(b) in paragraph (b), by deleting "leading" and substituting "purporting to lead".

(c) in paragraph (b)(i), by adding "or of the claimed purpose referred to in section 2(2)(b)(ii)" after "qualification".

(d) in paragraph (b)(ii), by deleting "and" at the end.

(e) in paragraph (c), by deleting "subsection (1) or (2) have been complied with in relation to the course." and substituting "subsections (1) and (2) have been complied with in relation to the course;".

(f) by adding -

"(d) it is or will be an express term in the contract between the operator and students that the tuition fee charged for any part of the course shall not be payable before -

(i) the period of 3 months; or

(ii) such other period as the Registrar may in his absolute discretion allow in a particular case,

before the commencement of that part of the course; and

(e) satisfactory arrangements for payment and refund of the fee charged for the course are in place to -

(i) cater for the operational need of the course; and

(ii) protect the students against financial losses resulting from pre-mature cessation of the course.".

That clause 10 be amended, by deleting subclauses (4) and (5) and substituting —

"(4) The Registrar may -

(a) obtain, from the Accreditation Council or such other person or organization as he thinks fit, such advice as is reasonably required to enable him to determine an application under subsection (1); and

(b) for such purpose send a copy of the application or any part of it or any information or document received by him pursuant to subsection (1)(c)(iii) or (2) to the Accreditation Council or such person or organization, as the case may be.

(5) Where the Registrar incurs any expenses in obtaining advice under subsection (4) in respect of an application -

(a) the applicant shall be liable to pay to the Registrar a sum of money equal to such expenses;

(b) the Registrar may apply the sum tendered under subsection (1)(c)(ia) in respect of the application towards the payment of such expenses and upon such application -

(i) where such expenses exceed the sum tendered under subsection (1)(c)(ia) -

(A) the applicant shall pay to the Registrar an additional sum equal to the amount of such

excess; and

(B) such additional sum, if unpaid under sub-subparagraph (A), shall be recoverable from the applicant as a civil debt;

(ii) where the sum tendered under subsection (1)(c)(ia) exceeds such expenses, the Registrar shall refund the balance to the applicant as soon as practicable after the determination of the application.

(5A) Where the Registrar does not incur any expenses in obtaining advice under subsection (4) in respect of an application, he shall refund the sum tendered under subsection (1)(c)(ia) to the applicant as soon as practicable after the determination of the application.

(5B) A sum tendered under subsection (1)(c)(ia) shall not bear interest.".

That clause 10(6) be amended, by deleting "subsection (5)" and substituting "subsection (5)(b)(i)(A)".

That clause 10(7) be amended, by deleting everything after "a course," and substituting —

"he -

(a) shall issue a certificate of registration to the operator of the course;

(b) may make -

(i) the application or any part of it; or

(ii) any information or document received by him in

relation to the course pursuant to subsection (1)(c)(iii) or (2),

available for inspection by the general public at the office of the Registrar during normal office hours free of charge.".

Clause 13

That clause 13(1) be amended —

(a) in paragraph (b)(i), by adding "or of the claimed purpose referred to in section 2(2)(b)(ii)" after "that qualification".

(b) by adding -

"(ba) any tuition fee charged for any part of the course is collected before -

(i) the period of 3 months; or

(ii) the period allowed by the Registrar under section 10(3)(d)(ii) in relation to the course,

as the case may be, before the commencement of that part of the course;

(bb) the arrangement for payment and refund of the fee charged for the course fails to -

(i) cater for the operational need of the course; and

(ii) protect the students against financial losses resulting from premature cessation of the course;".

(c) in paragraph (d), by deleting "or 21(3) is not" and substituting ",

21(3), 21A(2)(a) or 35(2) has not been".

That clause 13(2) be amended —

(a) in paragraph (b), by deleting everything after "notice of the" and substituting -

"proposal -

(i) in English in at least one newspaper in the English language circulating daily in Hong Kong; and

(ii) in Chinese in at least 2 newspapers in the Chinese language circulating daily in Hong Kong; and".

(b) in paragraph (c), by deleting everything after "notice referred to in" and substituting -

"paragraph (a) -

(i) in English in at least one newspaper in the English language circulating daily in Hong Kong; and

(ii) in Chinese in at least 2 newspapers in the Chinese language circulating daily in Hong Kong.".

That clause 13(3) be amended, by adding "or published" after "given".

Clause 14

That clause 14(1) be amended —

(a) in paragraph (b)(i), by adding "or of the claimed purpose referred to in section 2(2)(b)(ii)" after "that qualification".

(b) by adding -

"(ba) any tuition fee charged for any part of the course is collected before -

(i) the period of 3 months; or

(ii) the period allowed by the Registrar under section 10(3)(d)(ii) in relation to the course,

as the case may be, before the commencement of that part of the course;

(bb) the arrangement for payment and refund of the fee charged for the course fails to -

(i) cater for the operational need of the course; and

(ii) protect the students against financial losses resulting from pre-mature cessation of the course;".

(c) in paragraph (d), by deleting "or 21(3) is not" and substituting ", 21(3), 21A(2)(a) or 35(2) has not been".

That clause 14(1) be amended, by deleting "依" and substituting "按".

That clause 14(2) be amended —

(a) in paragraph (b), by deleting everything after "notice of the" and

substituting -

"cancellation -

(i) in English in at least one newspaper in the English language circulating daily in Hong Kong; and

(ii) in Chinese in at least 2 newspapers in the Chinese language circulating daily in Hong Kong; and".

(b) in paragraph (c), by deleting everything after "notice referred to in" and substituting -

"paragraph (a) -

(i) in English in at least one newspaper in the English language circulating daily in Hong Kong; and

(ii) in Chinese in at least 2 newspapers in the Chinese language circulating daily in Hong Kong.".

That clause 14(3) be amended, by adding "or published" after "given".

Clause 16

That clause 16(3)(a) be amended, by deleting everything after "cancellation under" and substituting —

"section 14 -

(i) in English in at least one newspaper in the English language circulating daily in Hong Kong; and

(ii) in Chinese in at least 2 newspapers in the Chinese language circulating daily in Hong Kong;".

That clause 16(5)(a) be amended, by deleting "has been" and substituting "was".

Clause 19

That clause 19(2) be amended —

(a) in paragraph (a), by deleting "is terminated" and substituting "ceases to be operated".

(b) by adding -

"(ca) the arrangement for payment and refund of the fee charged for a registered course is changed;".

(c) in paragraph (e), by adding "or of the claimed purpose referred to in section 2(2)(b)(ii)" after "that qualification".

Clause 21

That clause 21 be amended, by adding —

"(4) The Registrar may -

(a) send a copy of any informaiton or document received by him pursuant to subsection (1) to such persons as he thinks fit; and

(b) make such information or document available for inspection by the general public at the office of the Registrar during normal office hours free of charge.".

Clause 23

That clause 23(3) be amended, by deleting "A prescribed" and substituting "A police".

Clause 27

That clause 27(a) be amended, by deleting "has been" and substituting "was".

Clause 39

That clause 39(1) be amended —

(a) by deleting "Registrar" and substituting "Secretary for Education and Manpower".

(b) in paragraph (a), by deleting "exempted courses or registered courses" and substituing "regulated courses and courses which, but for the operation of section 2(5) or (6), would have fallen within the definition of "regulated course" in section 2(1) by virtue of section 2(4)".

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

"(c) providing for collection of fees charged for exempted courses or registered courses and refund of such fees in prescribed circumstances;".

(d) in paragraph (d), by adding "exempted or" before "registered".

Clause 40

That clause 40 be amended, by deleting "人力" and substituting "統籌".

Question on the amendments proposed.

委員張炳良議員致辭：主席先生，我以這個條例草案委員會的主席身分發

言。條例草案委員會支持政府在委員會審議階段提出的所有修正案。事實上，多項修正案都是政府當局應委員會的強烈要求而提出的。

剛才教育統籌司特別提到的例如第10條的修正案，是關於一些課程中途停辦，所謂“爛尾”或出現“貨不對辦”的時候而中止註冊，須向學員發還學費；又或規定主辦機構在收取預繳學費時，限定不能超越其後三個月應繳學費的總額。這些都是由於條例草案委員會非常重視從消費者保障的角度去考慮這條例草案，而向政府提出的。我們樂於見到經過大家一番討論後，政府當局接納了條例草案委員會的建議。

同樣，條例草案第8條及第9條，對於一些獲豁免的課程所作出的保障，包括有關對主辦的專上院校所提供的證明書內容的審查，以及容許市民可要求查閱一些豁免註冊的課程所提交的報告或資料，這些都有助加強消費者及學員對有關課程的認識。

我們認為政府對此條例草案所作出的修正案，在保障消費者方面走了向前的一步。我代表條例草案委員會向本局同事推薦有關的修正案。

多謝主席先生。

教育統籌司致辭：主席先生，條例草案委員會主席張炳良議員和委員會所有委員，詳細審議《非本地高等及專業教育（規管）條例草案》，並提出寶貴意見，令條例草案可以更為完善，我謹此致謝。

Question on the amendments put and agreed to.

Question on clauses 1, 2, 3, 5, 6, 8, 9, 10, 13, 14, 16, 19, 21, 23, 27, 39 and 40, as amended, put and agreed to.

Clauses 4, 7, 11, 12, 15, 17, 18, 20, 22, 24, 25, 26, 28 to 38, 41 and 42 were agreed to.

New clause 21A Registrar may obtain advice

New clause 40A Transitional

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

教育統籌司致辭：主席先生，我謹動議二讀提交各位議員傳閱的文件所載新增的第21A條及第40A條。

新增的第21A條授權處長在有需要時，可自香港學術評審局或其他有關組織獲取意見，以便核實由經註冊課程主辦者提交的周年申報表、文件或資料。課程主辦者須向處長補還因徵詢意見而招致的開支。

新增的第40A條給予須符合條例草案有關註冊或豁免規定的非本地課程的主辦者六個月寬限期。剛才我動議對條例草案第1條所作的兩項修正案，加上這項新增條文，將會使只有現正進行的課程的主辦者，才有資格獲得寬限期。這項規定的目的，是盡量減少新法例在生效後，對已經開辦的非本地課程所造成的影響。在建議的法例生效日期起計六個月內，這些課程的主辦者仍可繼續在香港開辦課程和刊登招生廣告。主辦者如有意繼續在香港開辦課程，便應在這段寬限期內，為有關課程申請註冊或豁免。

在另一方面，主辦者如計劃在建議的法例生效當日或以後才在香港開辦非本地課程，必須先符合註冊或豁免的規定。這項條文可使新課程在香港開辦前，質素已獲得保證。

主席先生，我謹提出議案。

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

Clauses read the Second time.

教育統籌司致辭：主席先生，我謹動議將新增的第21A條及第40A條加入條例草案。

Proposed additions

New clause 21A

That the Bill be amended, by adding —

"21A. Registrar may obtain advice

(1) The Registrar may obtain, from the Accreditation Council or such other person or organization as he thinks fit, such advice as is reasonably required to enable him to verify -

(a) the content of any annual return sent under section 20(1); or

(b) any information or the content of any document received by him pursuant to section 21(1).

(2) Where the Registrar incurs any expenses in obtaining an advice under subsection (1) in respect of a course -

(a) the operator of the course shall pay to the Registrar a sum of money equal to such expenses;

(b) such sum, if unpaid under paragraph (a), shall be recoverable from the operator as a civil debt.".

New clause 40A

That the Bill be amended, by adding —

"40A. Transitional

During the period of 6 months after the day appointed under section 1(2), sections 3(1), 33(1), 41 and 42 shall not apply in relation to any regulated course which has commenced before such day.".

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

Schedule 1

教育統籌司致辭：主席先生，我謹動議依照各位議員傳閱的文件所載，修正

條例草案附表1。我剛才已解釋需要修正附表1的原因。

主席先生，我謹提出議案。

Proposed amendment

That Schedule 1 be amended, by deleting the Schedule and substituting —

"SCHEDULE 1 [SS. 2(1) & 40]

LOCAL INSTITUTIONS OF HIGHER EDUCATION

Item	Institution	Executive head
1.	Hong Kong Shue Yan College registered under the Post Secondary Collegues Ordinance (Cap. 320)	The President of Hong Kong Shue Yan College.
2.	Lingnan College incorporated by the Lingnan College Ordinance (Cap. 422).	The President within meaning of section 2 of the Lingnan College Ordinance (Cap. 422).
3.	The Hong Kong Institute of Education established by The Hong Kong Institute of Education Ordinance (Cap. 444)	The Director within the meaning of section 2 of the Hong Kong Institute of Education Ordinance (Cap. 444).
4.	University of Hong Kong established by the University of Hong Kong Ordinance (Cap. 1053)	The Vice-Chancellor of the University.
5.	The Hong Kong Polytechnic University established by the Hong Kong Polytechnic	The President of the University.

	University Ordinance (Cap. 1075)	
6.	The Chinese University of Hong Kong established by The Chinese University of Hong Kong Ordinance (Cap. 1109)	The Vice-Chancellor of the University.
7.	Hong Kong Baptist University established by the Hong Kong Baptist University Ordinance (Cap. 1126)	The President and Vice-Chancellor within the meaning of section 2 of the Hong Kong Baptist University Ordinance (Cap. 1126)
8.	City Unveristy of Hong Kong established by the City University of Hong Kong Ordinance (Cap.1132).	The Vice-Chancellor within the meaning of section 2 of the City University of Hong Kong Ordinance (Cap. 1132).
9.	The Hong Kong Academy for Performing Arts established by The Hong Kong academy for Performing Arts Ordinance (Cap. 1135).	The Director within the meaning of section 2 of The Hong Kong Academy for Performing Arts Ordinance (Cap. 1135)
10.	The Hong Kong University of Science and Technology established by The Hong Kong University of Science and Technology Ordinance (Cap. 1141).	The President of the University.
11.	The Open Learning Institute of Hong Kong established by The Open Learning Institute of Hong Kong Ordinance (Cap. 1145).	The Director within the meaning of section 2 of The Open Learning Institute of Hong Kong Ordinance (Cap.

1145).".

Question on the amendment proposed, put and agreed to.

Question on schedule 1, as amended, put and agreed to.

Schedule 2 was agreed to.

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1996

Clauses 1, 4 and 5 were agreed to.

Clause 2

CHAIRMAN: The Secretary for Education and Manpower and Mr Edward HO and Mr Ronald ARCULLI have separately given notices to amend the proposed section 9C in clause 2. The order of moving amendments is determined in accordance with Standing Order 25(4).

Mr Edward HO has given notice to move an amendment to the proposed section 9C in clause 2, by adding subsection (1A). Mr Ronald ARCULLI has also given notice to move an amendment to the same proposed section 9C by adding subsection (1A) and to add a related new clause 4A. I propose that the amendments proposed by Mr Edward HO and Mr Ronald ARCULLI be debated together in a joint debate.

Committee shall debate the amendments proposed by Mr Edward HO and Mr Ronald ARCULLI in a joint debate. I will first call upon Mr Edward HO to move his amendment by virtue of his seniority.

委員何承天議員致辭：我動議修正草案第2條內的建議的第9C條，修正案內

容一如發送給各位議員的文件內於我名下所載。

主席先生，首先我要申明，我這項修正是代表條例草案委員會而提出的，我在條例草案委員會提出這項修正時，所有委員都一致支持，並沒有提出反對。此外，我亦已向內務委員會作出報告，當時也沒有人反對。就此事而言，我對王永平先生最近在報章和向一些議員所發表的言論，感到不滿，並覺得當中帶有誤導成分。報章提到“王永平作最後游說工作，籲議員反對自由黨修正案”，文內也有提及我的名字，好像說我所動議的修正案就是自由黨的修正案，更給公眾一個印象，以為自由黨不支持加強工地安全的問題。其實正好相反，稍後我會解釋為甚麼我的修正案能使處長更有效地執法，更有效地加強工地的安全，我認為有需要在這方面作出解釋。

王永平先生提出三個理由反對我的修正案：第一，政府認為沒有必要提出此修正案，因為政府當局已同意把敍明當局有意發出暫時停工通知書的書面通知列為勞工處程序指引的一部分。就此而言，雖然政府認為沒有需要，可是條例草案委員會卻認為有需要。當時的考慮是，原本條例草案列明如果督察發現有即時危險時，便要以口頭通知東主，然後向勞工處處長請示，繼而發出暫時停工通知書。條例草案委員會卻覺得這安排並不圓滿，因為只是以口頭作通知，很難交代究竟說了些甚麼，說漏了甚麼，還是根本甚麼都沒有說過，所以我們呼籲當局把口頭通知改為書面通知，而當局也認為有這樣的需要，並且同意簽發書面通知，這可以算是一項進步。不過，我們卻不明白為甚麼既然同意發出書面通知，並同意將其列於程序指引內，但為甚麼卻不能在法例內註明這點呢？

第二，王永平先生認為，如果支持我這項修正案，便會引致當局在執行時缺乏靈活性。我們提出的修正案，（我說“我們”是因為當時委員會一致支持我的建議），清楚說明這是一個意向通知，應該不會限制政府的靈活性。因為這只是一個意向，對於政府當局隨後的行動是不應該有約束力的，我們只要求當局在程序上加上這一點。

第三，王永平先生說書面通知書的內容可能會令勞工處處長在其後發出暫時停工通知書時受到約束。我要強調，書面通知只是一個意向通知，不應該對處長隨後採取的行動有約束力。另一方面，如果工廠督察認為有關情況非常嚴重 — 我們當然期望他們是以嚴肅的專業角度來判斷，因為發出暫時停工通知書會對有關的工廠有很嚴重的影響 — 而他們應該是根據其專業基礎作判斷，並且是有了這個意向才發出暫時停工通知書的。既然他們具有專業基礎，那麼又怕甚麼在回去請示後可能會有變更呢？當然，變更權最終都是在處長手上，他可能會在看過報告後表示情況並非這麼嚴重，

無須簽發通知書。另一方面，他可能指示要發出通知書，而且除了工廠督察提出的理由外，還有其他理由導致要發出通知書。因此，我認為政府當局所提出的論點並不成理，所謂意向通知書是絕對不會約束當局的行動的。

主席先生，條例草案委員會委員並不是想為處長製造許多障礙，使他難以根據此條例執行其工作，因而影響工地安全。相反，我們的建議是希望此程序能得到一個法定地位，以便能有效地加強工業安全。因此，我認為稍後所進行的辯論，並不是支持或反對加強地盤安全的辯論，而是辯論怎樣才能最有效地達到這目的。我是以我的專業眼光來看，而稍後夏佳理議員亦以他自己的專業眼光來看這問題。我認為我的建議或夏佳理議員的建議都是實事求是的，希望能夠實際一點去做這事，所以我希望各位議員支持我動議的修正案。謝謝。

Proposed amendment

Clause 2

That clause 2 be amended, in the proposed section 9C, by adding —

> "(1A) Immediately upon discovery of any matter which warrants the issue of a suspension notice under subsection (1), the Commissioner for Labour shall issue to the proprietor of the industrial undertaking a notice in writing, stating his intention to issue a suspension notice and the matters which will be specified in the suspension notice."

Question on the amendment proposed.

CHAIRMAN: I now call upon Mr Ronald ARCULLI to speak on the amendment moved by Mr Edward HO as well as his own proposed amendments, but will not ask Mr Ronald ARCULLI to move his amendments unless Mr Edward HO's amendment has been negatived. If Mr Edward HO's amendment is agreed, that will by implication mean that Mr Ronald ARCULLI's proposed amendments are not approved.

MR RONALD ARCULLI: Mr Chairman, I completely agree with every word that the Honourable Edward HO has said in support of his amendment. The

difference between Mr HO's amendment and mine is that mine is a little bit more extensive because mine includes, Mr Chairman, a form that would be issued to the proprietor of an industrial undertaking, indicating to him the areas which the factory inspector will consider issuing a suspension notice.

The origin of that form has found its way from the Administration. During our deliberations, we were given a guideline by the Administration who enumerated a number of possibilities and circumstances under which a suspension notice might be issued, and to be fair to the Administration, it concludes by saying that the list is not exhaustive and there could be other circumstances which might occur that could bring about the issue of a suspension notice. So, all I did was copied the form, included an extra paragraph to say "others", which means other situations or circumstances. So, within the form that I have proposed to be added to the Ordinance, there is complete flexibility on the part of the Labour Department to indicate what were the reasons for a possible suspension notice.

Now, why did the Labour Department give us that guideline setting out those instances? For a very simple reason. We were told that even with a verbal warning to the proprietor of an industrial undertaking, the proprietor would be told the reasons and what was wrong with the set-up and what needed change. We were then further told by the Labour Department that the factory inspector will go away and try and get the suspension order issued, maybe within a short time but not more than at that time 48 hours, now 24 hours. He will then come back to the industrial undertaking with the suspension order in his pocket. If the offending processes or circumstances were rectified, the suspension notice would be kept in his pocket and he would go away. It will not be served.

The whole reason why we asked for it to be in writing is so as to give the proprietor of the industrial undertaking the first possible opportunity, the first possible opportunity, Mr Chairman, of rectifying what might be a dangerous process, a danger to the workers, a danger to life, limb or indeed perhaps even property. So, we were hoping that the Labour Department officials would actually tell the proprietor, "Look, listen, that process is wrong and that is why it is wrong", and whilst they are in the process of sorting out the possible suspension notice, the proprietor could call in help or whatever and rectify the process. That is the whole purpose, Mr Chairman, of the form.

Now, the Administration says, "Oh, no, that is too cumbersome. We are

not going to give a form because it will tie our hands." Well, I will ask the Secretary for Education and Manpower, in that written notification that he intends to use by administrative measure, does the Labour Department propose to be helpful, to tell the proprietor what is wrong so that the proprietor can rectify or indeed stop that process so as not to expose any workers to any danger? If he does not then I would like him to explain why. If he does, what is the difference between the two forms? Is he afraid that the factory inspectors or indeed the Labour Department will specify wrong reasons or inadequate reasons?

As Mr HO has explained, this is intended to help remedy situations that nobody wants to exist, but we need the help of the Labour Department to do that. We need to be given the opportunity, and that is why the form is suggested in my amendment, and I think I would urge my colleagues in this Council to actually make the requirement of serving a notice a legal requirement rather than an administrative measure. If the proprietor gets some wishy-washy notification to say, "oh, I am going to go away and get a suspension notice", without any reason, how does that help anybody?

We have similar situations, Mr Chairman, in the Building Ordinance. If there is a dangerous slope — which we have been talking about this afternoon — which requires remedial work, the Building Authority quite often serves on the owner of the property a notice to say, "I think your slope is dangerous. Please put in proposals for remedial works." That is what happens. It is a prescribed statutory form. He do not write a little letter and by administrative measures, and in those circumstances it may not be an immediate danger to anybody in the property or indeed in the vicinity. Even then there is a prescribed statutory form. So, I really cannot understand why there is this incredible objection by a move on my part to ask the Labour Department actually for help, to help rectify the situation.

Mr Chairman, I think in terms of that particular amendment, I would say to Members that, if they decide not to support Mr HO's amendment because they prefer to have a prescribed form, then I would ask them to vote against Mr HO's amendment which, I believe, is indeed an amendment of the Bills Committee. If they wish to have this prescribed form in a statutory manner because of a statutory duty imposed on the Commissioner for Labour, they can vote for my amendment and they will give exactly the same remedy except that there will, in fact, be the addition of a form.

Thank you, Mr Chairman.

CHAIRMAN: Members may now debate the amendment moved by Mr Edward HO as well as the amendments proposed by Mr Ronald ARCULLI.

委員陳婉嫻議員致辭：主席先生，我較早前聽取了條例草案委員會主席何承天議員的意見。我想在此說清楚，我們這個委員會用了很短的時間召開了四次會議，實際上我們有些意見未能統一，並非如何議員所說的一樣，書面通知是否應納入法例內便是一例。對於暫時停工通知書方面，我們同意將口頭通知改為書面通知，這是可以接受的，而政府當時亦接受了我們的意見。至於將書面通知亦納入法例之內，我們認為並無此需要。因此，在委員會內出現了不同的意見。我們不同意將書面通知亦納入法例內，是因為我們認為在十分緊急的情況下，要研究一項法例時，可能會阻礙了整個過程的發展。此外，我們亦擔心，現在建築地盤被成功起訴的比率較低，而根據一些罰則提出的起訴的成功率亦不高。我們十分擔心一旦書面通知亦納入法例後，需要在法庭上審判，屆時可能有些因為疏忽工業安全而應被懲罰的人得以脫身。這是條例草案委員會部分同事的意見。我想回應較早前何議員所提有關委員會的意見，我認為他提出的並非全部委員的意見，而是部分委員的意見。

此外，對於夏佳理議員動議的修正案，我們亦另有看法。就現時政府所提及的有關發出暫時停工通知書的內部指引來說，實際上政府現時已列明了十項或十數項指引，因此，我們懷疑是否真的要將有關安排亦納入法例之中。而這點正如我在較早前所說的一樣，我亦非常擔心把書面通知納入法例內會導致法庭的成功起訴率偏低。過去在處理工業安全事宜的過程中，我們看到一些情況，而地盤的安全主任以及一些工人亦對我們說，為何現時法例所訂的罰款是20萬元，但實際上在法庭提出起訴的個案平均只是罰款萬多元。這正是由於當中有程序重疊等情況出現，引致起訴工作變得困難。基於這點，工聯會和我都反對何承天議員及夏佳理議員所動議的修正案。

謝謝。

委員李卓人議員致辭：主席先生，我發言反對何承天議員及夏佳理議員的修正案。

剛才何承天議員說政府指他所動議的是自由黨的修正案，對他來說很不公平，我也相信這說法對他是不公平的。不過，問題是何承天議員說那是條例草案委員會建議的修正案，我則覺得相當奇怪，因為最後一次的會議並沒有提到條例草案委員會將會提出修正案。我記得當時的說法是政府同意將口頭通知變作書面通知，我還以為問題已經完全解決。同時亦聽說夏佳理議員會提出修正案，當時我們還未看到有關措辭，但清楚記得條例草案委員會本身沒有提到將會動議修正案，把書面通知變為法律文件。

至於我們反對將書面通知變成一項法定責任的原因，主要是我認為這樣會引致兩個不良效果。第一，在某程度上會約束政府工廠督察，就是那些站在前綫工作的同事。工廠督察在遇到附加的項目或須作出修改時，便要先行修改有關的書面通知。如是者的話，就不可能有一個24小時制度的情況出現。例如前綫的工廠督察人員在某處巡查時已用書面寫明有不妥之處，但向上司報告時卻發現還有其他問題，如果這項向上司報告的程序是法定的話，那末他又要從頭再寫另一份文件去修改原來的文件，這麼一來可能不是在24小時內，而是可能要超過24小時才能發出通知書。這樣，危險的情況便可能會繼續下去。因此，我十分關注這個“約束”的問題。

另一方面，對位於前綫的工廠督察人員而言，要發出書面通知的責任在某程度上是一種壓力。政府的原意是將整個責任由副首席工廠督察總監去作最後“把關”，而不是由前綫的人員肩負法律責任去決定是否發出暫時停工通知書。最後應由誰負起法律責任呢？應該是副首席工廠督察總監。但要將書面通知變成法律規定的話，那麼前綫人員便要肩負這責任。這跟政府所界定的責任承擔原則是完全不同的。

另一方面，我認為夏佳理議員所提的表格其實很空泛。若根據他的表格去選擇項目，其實並不能具體地說明哪一層樓哪一個地方沒有欄杆，但他的表格只是單單選擇沒有欄杆這個項目便算了。如果那是一個行政上的書面通知，應具體說明哪一個地方及哪一層樓沒有欄杆，我認為這表格比較空泛，對承建商沒有甚麼幫助。

夏佳理議員提出的另一項修正案，就是承建商若遵從暫時停工通知書的規定，將來在法庭上並不能構成一項認罪的證據。夏佳理議員曾說提出這項修正案的目的是鼓勵承建商遵守規定。我不反對鼓勵承建商遵守規定，但目前的情況已經到了生命攸關的危險地步。有時政府愛用紅蘿蔔或棍的方法，但在面對這般危險的情況時，我認為一定要用棍了，應清楚表明要停工，而不是鼓勵承建商去跟循暫時停工通知書行事，明確表示若不跟循便會遭懲

罰，這是用棍的時候了。

另一方面，我反對夏佳理議員關於不能在法庭上作為呈堂證據的修正案，因為他這項修正案在某程度上可能會有副作用，就是減低當事人入罪的機會，因為法庭不能因他遵守書面通知的規定所作出的改善而視之為證據，於是在某程度上法庭不能接受所有圍繞那件事的證據，因此，會對那違例的僱主或承建商有利。

我們的法律顧問也曾在條例草案委員會會議上答覆我們，他認為若按法律的要求去辦事，不應成為法庭定罪的其中之一項指標。因此，法律顧問清楚表明不必為此擔心。最後，我認為最重要的是不要限制法庭，希望法庭能參考所有的證據。

謝謝主席先生。

委員何敏嘉議員致辭：主席先生，民主黨反對夏佳理議員和何承天議員分別加入的(1A)和(1A)(a)的條款，但我們歡迎政府將原來以口頭通知的方式轉為書面通知。我們認為，政府今天所承諾的行政安排，已經足夠，我們接受這行政安排。我們認為不一定需要將這行政安排納入法律內，因為我們希望能有最大的彈性，可以在最快最方便的情況下發出暫時停工通知書，以保障工人的生命安全。我們亦會以同樣的理由反對稍後夏佳理議員所提議加入第4(A)條的修正案。謝謝主席先生。

MR RONALD ARCULLI: Mr Chairman, I shall try and be very brief. I think despite all the reasons advanced by my colleagues for not supporting my amendment and for supporting the Government's position, I am still at a loss to understand what their objection is. In terms of a form, my colleague, Mr LEE Cheuk-yan, says that, well, you know, it is inflexible, it does not specify which particular area. Look at my form! There is space to fill it in. If they want to do it, they can do it. But the whole idea is for the factory inspector who now — the original proposal was to give a verbal warning — to give it in writing. So, even the letter, however informal, that is going to be issued will be issued by the factory inspector or certainly as a result of what he has seen, not by his

superior who is not going to go there to have a look at it just to issue a notice that they intend to go for a suspension notice.

On the second point regarding danger, we are not just talking about dangerous situations, we are talking about situations which call for improvement notice. And I still maintain that, in terms of encouraging proprietors of industrial undertakings to act speedily, to co-operate, you have to use carrot and stick. As I said earlier, the fact that the form or the compliance with the notice should not be adduced in court as evidence, does not preclude a prosecution. Clearly the factory inspector, when he goes to a site, he will see something that is not right. It is based on what he sees that the improvement notice or suspension notice will be issued.

Compliance with that does not take the offence away. If an offence has been committed he will see it, so on his evidence there is evidence for the court to act on, but what we want is for the proprietor to act speedily. What we want to do is not just to punish, we want to encourage him to act speedily. We want him not to dispute whether or not the factory inspector is right. We just want him to do as the factory inspector requests. So, if you want people to do that, and yet you tell them that they run the risk of being in court, obviously it is not the perfect solution. So, it really is up to you. If you choose not to support that sort of approach, fine, but I do not want to stand here in a year's time and say, "I told you so", if in fact the scheme does not work out as well as all of us hope.

Mr Chairman, I realize that I am probably speaking to deaf ears and I have not even heard the Secretary for Education and Manpower, but in view of his apparent success, I hope that he will be as brief as possible!

教育統籌司致辭：主席先生，我相信我要令何承天議員和夏佳理議員同樣失望，因為首先我不會評論報章有關本人或此條例草案的報道，其次，我的回應不會是很簡短的。政府認為何承天議員動議的修正案是不必要和不適合的，並會產生問題。雖然我很多謝何議員嘗試替我解釋政府的立場，但我希望有機會自己解釋政府不同意這項修正案的理由：

(a) 第一，這項修正案建議立例訂明，勞工處處長須以書面通知工業經

營的東主政府擬發出暫時停工通知書。這項修正案是不必要的，因為政府已同意在勞工處發出暫時停工通知書的程序指引中訂明，以書面通知工業經營的東主，政府擬發出暫時停工通知書。程序指引亦將會公布周知。

(b) 第二，根據勞工處程序指引而發出的通知書，內容屬一般性質，並沒有約束力，只有隨後發出的暫時停工通知書，才會使有關的東主受到約束。在修正建議中，通知書須述明在擬發暫時停工通知書上指明的事項，這將會使勞工處處長在其後發出暫時停工通知書時受到掣肘。勞工處處長不時須因應需要而規定不同或額外的事項，甚或更改已指明的事項，遇到這些情況時，她便要發出另一份通知書。這樣對有關的東主和政府都會造成不必要的負擔，而更重要的，是有關修正案將會削弱勞工處處長遇到需要即時採取預防措施及補救行動的情況，可靈活地迅速作出回應的能力。

(c) 第三，事實上，建議的修正案會把一項行政程序變成一項法例規定。目前，勞工處向工廠東主發出視察報告，告訴他勞工處人員在視察期間所發現的違例事項，就是一項行政程序。同樣，勞工處在執行《工廠及工業經營條例》時所採用的各項程序，以及政府其他部門在執行本身法例時所採用的各項程序，亦屬行政程序。制訂行政程序的目的，是為了有關當局在執行工作時能靈活應用，因此，我們認為這項修正案不能接納。

基於上述種種原因，我謹請議員表決反對何承天議員動議的修正案。

正如何承天議員的建議修正案一樣，夏佳理議員提出的建議亦是要求勞工處處長向有關的工業經營的東主發出通知書。不過，夏佳理議員更進一步建議通知書應為訂明格式，以及勞工處處長可在憲報刊登公告修改格式。這些修正不單把行政程序變成法例，更在法例內訂明本屬行政性質的通知書的格式和內容。

我必須強調，沒有一份訂明格式可以涵蓋在工業經營中各種各樣的危險情況，特別是建築地盤，因為那裏採用的是具有潛在危險的裝置、設備和操作程序，並使用化學品。我們如接納建議的修正案，工業經營的情況、裝置、設備、操作程序或使用的物料如有變更，便須在憲報刊登公告修改訂明格式。這類公告等同附屬法例，必須根據《釋義及通則條例》（第1章）第34

條的規定進行不否決或不提出修訂的審核程序。這些工作需要時間，因此將會削弱勞工處處長極為需要的靈活應變能力，以便應付人命攸關的情況。在這些情況下，時間和迅速的回應至為重要。

基於上述原因，以及我在較早時回應何承天議員提出的建議修正案所作的解釋，我謹請議員亦表決反對夏佳理議員動議的修正案。

謝謝主席先生。

委員何承天議員致辭：主席先生，首先我要回應王永平先生，我並沒有嘗試解釋政府反對我的理由，我只是根據他今天給每一位議員的信內所載的三個理由發言。現在時間已經很晚，所以我不想說得太久。另外，我亦不想再與本條例草案委員會的議員爭論究竟誰對誰錯，不過秘書處亦應該存有錄音和筆記等。

我只想回應一兩點，陳婉嫻議員說列為程序已經足夠，無須訂明在法例之內，因為以往要成功起訴是很困難的。我認為就是這個問題，因為有人犯法，就應該把這項程序列明在法例內，這才是法律精神。如果有人犯法，當局便可以成功起訴那人。但是如果為免難於成功起訴，每樣事情也不用立法，那倒不如全用程序算了，我認為這並不符合立法精神或法律精神。

另一方面，李卓人議員說應否由前綫工作的工廠督察負起法律上的責任，我認為工廠督察應該依法做事，即使這程序列明在法例內，他們都是根據法律和他們的職權範圍工作。我認為他們需要負起那責任，只是不需要超過那種責任。我們老是說要政府向市民負責，就是不想看到政府事事靠自己的程序，在地盤時以書面寫的理由是甲乙丙，但經諮詢後就用丁戊己為理由。這正如剛才王永平先生所說，因為處長在不同的情況之下，可能會用不同的理由。坦白說，我認為都不成理由，我也不想見到有這種情況發生。我想我已經說得太久，大家亦已有決定了。多謝。

Question on the amendment put.

Voice vote taken.

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

Mr Edward HO claimed a division.

CHAIRMAN: Committee shall proceed to a division.

CHAIRMAN: May I remind Members that they are now called upon to vote on the question that the amendment to the proposed section 9C in clause 2 moved by Mr Edward HO be approved? Will Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below.

CHAIRMAN: Members may wish to check their votes. Are there any queries? I think I see one short of 56. I think we are one short of the head count. The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mrs Miriam LAU, Mr CHIM Pui-chung, Mr Henry TANG, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN and Mr Paul CHENG voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr James TO, Dr Samuel WONG, Dr Philip WONG, Dr YEUNG Sum, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Andrew CHENG, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Mr LAU Chin-shek, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

Mr Ronald ARCULLI abstained.

THE CHAIRMAN announced that there were 12 votes in favour of the amendment and 43 against it. He therefore declared that the amendment was negatived.

CHAIRMAN: Now that Mr Edward HO's amendment to the proposed section 9C in clause 2 has been negatived, I now call upon Mr Ronald ARCULLI to move his amendment to the proposed section 9C in clause 2 and the addition of a related new clause 4A.

MR RONALD ARCULLI: Mr Chairman, since Standing Order 46(5) stipulates 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(5) be suspended in order that my proposed new clause 4A may be considered ahead of the other amendments to clause 2 and the amendment to clause 3?

CHAIRMAN: Mr Ronald ARCULLI, as only the President may give consent to move, without notice, a motion to suspend Standing Orders, your request cannot be dealt with in Committee. I therefore order that Council shall now resume.

Council then resumed.

PRESIDENT: Council is now resumed. Mr Ronald ARCULLI, you have my consent.

MR RONALD ARCULLI: Mr President, I move that Standing Order 46(5) be suspended to enable the Committee of the whole Council to consider my proposed new clause 4A ahead of the other amendments to clause 2 and the amendment to clause 3.

Question proposed, put and agreed to.

Council went into Committee.

New clause 4A Schedule added

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

MR RONALD ARCULLI: Mr Chairman, I am grateful to Members for prolonging my agony! If they had voted "no", I should not be standing here, but since I am, Mr Chairman, I move that new clause 4(A), as set out under my name in the paper circularized to Members, be read the Second time.

委員何敏嘉議員致辭：正如剛才我發言反對夏佳理議員所提出加入第1A(a)款一樣，我們不同意有一個法例規定的表格，所以我們對於加入第4A條的修正案，亦會投反對票。謝謝主席先生。

教育統籌司致辭：主席先生，我今次不會令夏佳理議員失望，我已經很詳細解釋了我們為何反對夏佳理議員的建議，我不會在此重複。我只不過是謹請議員表決反對夏佳理議員動議的修正案。

MR RONALD ARCULLI: Very briefly, Mr Chairman. I am grateful for the Secretary for Education and Manpower for his brevity, but he simply used that as an occasion to stab me yet again!

Question on the motion put and negatived.

CHAIRMAN: Mr Ronald ARCULLI, as your proposed new clause 4A has not been agreed, it is not possible for you to move your proposed amendment to the proposed section 9C, as they are related.

教育統籌司致辭：主席先生，我謹動議依照提交議員傳閱的文件所載我名下的議案，修正條例草案第2條建議的第9C條。

政府建議在條例草案建議的第9C(6)條中，刪去“該東主接獲該通知書”而代以“該通知書根據第9D條送達該東主”。這項修正案的目的是消除所有與暫時停工通知書送達工業經營東主的日期，以及通知書所載指示的生效日期有關的疑問及爭議。我明白條例草案委員會同意此項修正案。

主席先生，我謹提出議案。

Proposed amendment

Clause 2

That clause 2 be amended, in the proposed section 9C(6) by deleting "received such notice" and substituting "been served with such notice under section 9D".

Question on the amendment proposed, put and agreed to.

MR RONALD ARCULLI: Mr Chairman, I move the amendment proposed in paragraph (b) of my amendment to clause 2 as set out in the paper circularized to Members. Mr Chairman, I have already given my reasons and I hope Members would reconsider their position despite some very clear indications. I hope they will support the amendment.

Proposed amendment

That clause 2 be amended, by adding —

> **"9E. Compliance with notices not admissible in proceedings**
>
> In any criminal or disciplinary proceedings against a proprietor of an industrial undertaking, the fact of compliance with any requirement in an improvement notice issued under section 9B

or any direction in a suspension notice issued under section 9C shall not be admissible in evidence against the proprietor.".

Question on the amendment proposed.

委員何敏嘉議員致辭：主席先生，我們民主黨會反對夏佳理議員提出的修訂第9E條。我們反對的理由是，首先，在審議的過程中，立法局的法律顧問給我們一個非常清晰的意見，就是這項修正案其實是不需要的。更重要的是，我們同意如果東主跟隨發出暫時停工通知書意向文件所提及的項目而作出一些改善，並不等同這些東主承認違法。但是，夏佳理議員提出的第9E條提及，敦促改善通知書要求的事實，或暫時停工通知書指示的事實，並不可接納為針對該東主的證據。

主席先生，我們認為作出改善不等同認罪，是可以接納的，但是有關的事實不能作為呈堂證據，則是兩回事。正因為如此，我們不同意這項修正案，即立法禁止某些可以用作檢控證據的事實呈堂。我們相信，在法庭審判下，不同的證供可以有公平的處理。因此，我們反對夏佳理議員這項修正案。

民主黨並不希望因為這項修正案而使可以用作檢控的證據減少，或變為間接鼓勵一些不負責任的東主重複地違反工業安全的法例。

我謹此陳辭。

委員李卓人議員致辭：主席先生，我不希望延長夏佳理議員的痛苦，只是剛才他提到關於敦促改善通知書的問題，我在較早時的發言中並沒有提及。

關於這點，我很清楚政府曾經向條例草案委員會表示，如果有關東主跟隨敦促改善通知書的要求去做的話，在正常情況下是不會被檢控的。因為敦促改善通知書本身的層次較低，在不是人命攸關的情況下，敦促改善通知書是不會構成檢控的。因此，其實大家無須擔心跟隨敦促改善通知書的要求去做，將等於在法庭時會對有關東主不利，因為根本是不會提出檢控的。

謝謝主席先生。

教育統籌司致辭：主席先生，政府認為夏佳理議員建議的修正案是不能接受的。因為這項修正案會局限為了證明東主違反條例須向法庭援引證據的範圍，法庭因而無法得到多一項可以有助裁定東主是否違反規定的證據。這項

建議帶來的另一項不利影響，是會鼓勵違反者重複違反條例的規定。我亦要指出，建議的修正案若獲得通過，將會影響政府致力打擊嚴重違例東主的工作。

基於上述理由，我謹請議員表決反對夏佳理議員動議的修正案。謝謝主席先生。

MR RONALD ARCULLI: Mr Chairman, I am not surprised that the Secretary for Education and Manpower did not refer to the legal advice received by his office because there were two different opinions. Mr Michael HO, in referring to the opinion given by the Legal Adviser of this Council, again omitted those two references to the legal advice given to this branch. So it was really with that somewhat mixed legal opinion — as Members can understand when you ask lawyers for an opinion, the chances of your winding up with different opinions is actually very high —so, my amendment was actually intended as an avoidance of doubt position and not to preclude, as I said earlier and I repeat, prosecution of offending proprietors who deserve of prosecution, or indeed any other action.

But be that as it may, Mr Chairman, those are the reasons for which I hope Members will support this particular amendment.

Question on the amendment put and negatived.

Question on clause 2, as amended by the Secretary for Education and Manpower, put and agreed to.

Clause 3

教育統籌司致辭：主席先生，我謹動議依照提交各位議員傳閱的文件所載我名下的議案，修正條例草案第3條。

這是兩項簡單的技術修正案，第一項建議修正是在條例草案第3條建議的第(8)款中，刪去“在關於該工業經營的敦促改善通知書所指明的期限內遵從該”而代以“遵從關於該工業經營的敦促改善”。由於遵從敦促改善通知書所指明的期限已是通知書的條款之一，建議刪去的措辭實屬多餘。

第二項修正案是在條例草案第3條建議的第(9)款中，刪去“的全部或部

分”。東主如違反規定，不論是全部或部分，均屬犯罪，建議的修正案可刪去不必要的措辭。

條例草案委員會已同意這兩項修正建議。

主席先生，我謹提出議案。

Proposed amendment

Clause 3

That clause 3 be amended —

(a) in the proposed subsection (8) by deleting "within the period specified in that notice".

(b) in the proposed subsection (9) by deleting "the whole or part of".

Question on the amendment proposed, put and agreed to.

Question on clause 3, as amended, proposed, put and agreed to.

AVIATION SECURITY BILL

Clauses 1, 3, 6 to 11, 13, 14, 16 to 48, 50 to 57 and 59 to 65 were agreed to.

Clauses 2, 4, 5, 12, 15, 49 and 58

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

The amendments put forward are technical in nature. Amendments to clauses 4, 5, 49(2) and 58 will remove several minor inconsistencies between the English and Chinese texts of the Bill. Amendments to clauses 15 and 49(4) seek to rectify two clerical errors. Amendments to clauses 2 and 12 will clarify the scope of several provisions relating to explosives.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2(1) be amended, in paragraph (a) of the definition of "act of violence", by adding "or 54" after "53".

Clause 4

That clause 4(4)(a) be amended, by deleting "是予" and substituting "予".

Clause 5

That clause 5 be amended, by adding "構成" before "國際".

Clause 12

That clause 12(1) be amended, by adding "or 54" after "53".

Clause 15

That clause 15(2) be amended —

(a) in paragraph (b), by deleting everything after "an aerodrome,".

(b) by adding after paragraph (b) -

"in such a way as to endanger or be likely to endanger the safe operation of the aerodrome or the safety of persons in the aerodrome.".

Clause 49

That clause 49(2)(a) be amended, by deleting "自該執行通知的送達日期起計" and substituting "該執行通知的送達日期之後".

That clause 49(2)(b) be amended, by deleting "自該日期起計" and substituting "該日期之後".

That clause 49(4) be amended, by deleting "加" and substituting "如".

Clause 58

That clause 58(4) be amended, by deleting "有關".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 4, 5, 12, 15, 49 and 58, as amended, put and agreed to.

Schedules 1 and 2 were agreed to.

IMMIGRATION SERVICE (AMENDMENT) BILL 1996

Clauses 1, 3 and 6 to 11 were agreed to.

Clauses 2, 4 and 5

SECRETARY FOR SECURITY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members

These amendments contain the proposed changes to the Immigration Service (Amendment) Bill 1996 which I have already referred to in the Second Reading debate and also some technical amendments. They have been discussed in detail by the Bills Committee and have received the Committee's endorsement.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2(b) be amended, by adding —

""designated place" means any place designated under section 13A(10) as a designated place;".

Clause 4

That clause 4 be amended —

(a) in the proposed section 12 -

(i) in subsection (1)(b) and (d), by adding "subject to subsection (3A)," at the beginning;

(ii) in subsection (3), by adding "at the request of a member of the Service" after "his aid";

(iii) by adding -

"(3A) A person shall not be detained under subsection (1) (b) or (d) for more than 12 hours.".

(b) in the proposed section 13 -

(i) in subsections (1), (2) and (3), by adding "at the request of a member of the Service" after "his aid";

(ii) in subsection (1), by deleting "appearing to him to have control of the place or to be residing therein" and substituting "residing in or in charge of the place";

(iii) in subsection (2), by deleting "appearing to a member of the Service to have control of a place referred to in subsection (1) or to be residing therein" and substituting "residing in or in charge of a place referred to in subsection (1)".

(c) in the proposed section 13A -

(i) in subsection (2)(a), by deleting "any other place" and substituting "a designated place,";

(ii) in subsection (3) -

(A) by deleting "deposited" and substituting "been released on bail on his depositing";

(B) in paragraph (b), by deleting "such a member" and substituting "any such member";

(iii) in subsection (4), by deleting "entered" and substituting "been released on bail on his entering";

(iv) in subsection (7), by deleting "at an office of the Service under subsection (2)(a) shall be charged and brought before a magistrate within the period of 48 hours immediately following his arrest unless" and substituting -

"under subsection (2) (a) shall be charged and brought before a magistrate -

(a) subject to paragraph (b), within the period of 48 hours immediately following his arrest; or

(b) where he has immediately before his arrest

been detained under section 12(1)(b) or (d) or both, within the period of 48 hours immediately following the time when he began to be detained under section 12(1)(b) or (d) or both, as the case may be,

unless";

(v) by deleting subsection (8);

(vi) by adding -

"(10) The Secretary for Security may, by order published in the Gazette, designate any place as a designated place for the purposes of this section.".

(d) in the proposed section 13D, by adding "at the request of a member of the Service" after "his aid".

Clause 5

That clause 5 amended, by adding —

"(c) in the proviso to subsection (2), by repealing "be destroyed forthwith or delivered to such person" and substituting "as soon as reasonably practicable be destroyed or, if the person prefers, delivered to that person".".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 4 and 5, as amended, put and agreed to.

BUILDINGS (AMENDMENT) (NO. 3) BILL 1995

Clauses 1, 3, 6, 10, 14, 16, 19 to 23, and 26 to 29 were agreed to.

Clauses 2, 4, 5, 7, 8, 9, 11, 12, 13, 15, 18, 24 and 25

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that the clauses specified be amended as set out under my name in the paper circularized to Members.

Clause 2(e) is amended to clarify the definition of the terms "Registration Committee" and "specialized works", and to define the term "supervision plan" as a plan setting out the plan of safety management of building works or street works lodged by the Authorized Person with the Building Authority prior to or at the time of application for consent to commence works or as a result of carrying out urgent works.

Clause 4(2), (3), (4) and (5) are deleted, and substituted by the new clause 4(2) to: (a) establish two panels with sufficient members from whom the Building Authority may appoint more than one Authorized Persons Registration Committee or a Registered Structural Engineers Registration Committee at the same time; (b) set out the functions of the Registration Committee; (c) change the quorum for a meeting of the Authorized Persons Registration Committee from six to five, and that of the Registered Structural Engineers Registration Committee from five to four; (d) allow the Building Authority to invite such bodies as he may think fit to nominate persons for his consideration for appointment to each of the respective Registration Committees; and (e) empower the Building Authority to direct the Registration Committee to hold meetings in order to prevent any unreasonable delay in the consideration of applications for inclusion in the relevant register.

Clause 4(11) is amended to ensure that the registration of an Authorized Person or Structural Engineer will continue to be in force despite any delay in the processing of his application for retention in the Register.

A new clause 4(11A) is added to require the Building Authority to inform an Authorized Person or Registered Structural Engineer before removing the latter's name from the relevant register.

Clause 4(18) is amended to clearly specify that the registration of an Authorized Person or a Structural Engineer will cease once his name is removed from the relevant register.

A new clause 4(19) is added to ensure that an applicant is informed by the Building Authority of the reasons for rejection of his application for inclusion, retention or restoration of name in the relevant register.

Clause 5 is renumbered as clause 5(1) and is amended to oblige the chairman of an Authorized Persons and Registered Structural Engineers Disciplinary Board to appoint a legal adviser to assist in the conduct of the hearing of the disciplinary proceedings, and to advise the Board on points of law that arise during the hearing.

Clause 7 is amended for several purposes, including establishing a panel of members from whom the Building Authority may appoint more than one Contractors Registration Committee, setting out the functions of the Contractors Registration Committee, and reducing the number of lay members in the Registration Committee so as to better effect the principle of self-regulation by the building industry.

A new proposed section 3A is added to allow the Building Authority to direct the Contractors Registration Committee to hold meetings in order to help prevent any unreasonable delay in the consideration of applications for registration.

The proposed section 8A(4)(a) is amended to ensure a contractor who does not carry out any building works or street works but remains in the building business will not have his name removed from the relevant register.

The proposed section 8B is amended to: (a) set out the factors which the Building Authority will consider in deciding whether or not an applicant is suitable to register as a General Building Contractor or a Specialist Contractor or both; (b) ensure that only an applicant with the necessary experience and qualification to undertake a particular category of works is allowed to register as a Specialist Contractor for that category of works; and (c) allow the Building Authority to take relevant local experience as a substitute for academic or

technical qualifications in considering an application for inclusion in the register for General Building Contractors.

Under the proposed section 8B, the Building Authority may refer an application back to the Contractors Registration Committee for reconsideration if he does not agree with the latter's recommendation.

The proposed section 8C is amended to ensure that the registration of a contractor will continue to be in force despite any delay in the processing of the application for inclusion, retention or restoration of his name in the relevant register. The Building Authority is also required to inform a contractor before removing the latter's name from the relevant register.

A new proposed section 8DA is added to ensure an applicant is informed by the Building Authority of the reasons for rejecting his application for inclusion, retention and restoration of name in the register for General Building Contractors or Specialised Contractors.

The proposed section 8F is amended to ensure the registration of the existing registered contractors and registered ventilation contractors will continue to be in force for two years after the Bill commences unless a disciplinary board orders otherwise.

Clause 9(4) is added to oblige the chairman of a Contractors Disciplinary Board to appoint a legal adviser to assist in the conduct of the hearing of the disciplinary proceedings and to advise the Board on points of law that arise during the hearing.

Clause 11 is amended to: (a) make deviating in a material manner from the supervision plan, drawing up a supervision plan that does not comply with the material requirements under the Buildings Ordinance and repeatedly drawing up supervision plans that do not comply with the requirements under the Ordinance by Registered General Building Contractors or Registered Specialist Contractors, a misconduct and be subject to investigation of the Disciplinary Board; (b) empower the Disciplinary Board to impose a fine not exceeding $250,000; and (c) remove the power of a judge in dismissing an appeal against a decision of the

Disciplinary Board if he considers no substantial miscarriage of injustice had actually occurred, even if he was of the opinion that the point raised in the appeal might have been decided in favour of the appellant. This further protects the rights of appellants.

Clause 12 is amended to make failure in lodging the supervision plan a ground for the Building Authority to refuse to give consent to commencement of works.

Clause 15 is amended to empower the Building Authority to order works to cease if there is a material deviation from the technical memorandum for the preparation of the supervision plan, which may lead to a dangerous or potentially dangerous situation or if a condition attached to the approval or consent given by the Building Authority has not been or is not able to be complied with.

Amendments to clauses 24 and 25 are technical and consequential to the recent authentication of the Chinese version of the regulations made under the Air Pollution Control Ordinance.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2(e) be amended —

(a) by deleting the definition of "Registration Committee" and substituting -

""Registration Committee" means an Authorized Persons Registration Committee, a Structural Engineers Registration committee or a Contractors Registration Committee, as the case requires;"

(b) in the definition of "specialized works", by deleting "a registered specialist contractor must carry out" and substituting "are required to be carried out by a registered specialist contractor".

(c) by deleting the definition of "supervision plan" and substituting -

""supervision plan" means a plan setting out the plan of safety management of building works or street works lodged by an authorized person with the Building Authority -

(a) prior to or at the time of application for consent to the commencement of building works or street works; or

(b) as a result of carrying out urgent works,

and includes a revised supervision plan lodged as a result of any amendments necessary under this Ordinance;".

Clause 4

That clause (4) be amended, by deleting subclauses (2), (3), (4) and (5) and substituting —

"(2) Section 3(5) is repealed and the following substituted -

"(5) The Building Authority is to establish 2 panels with sufficient members from whom he is to appoint committees to be know respectively as Authorized Persons Registration Committees and Structural Engineers Registration Committees. The Building Authority may appoint more than one Registration Committee of each type at any one time.

(5A) The function of a Registration Committee is to assist the Building Authority in considering applications for inclusion in the relevant register by -

(a) examining the qualifications of applicants;

(b) inquiring as the relevant Registration committee considers necessary to ascertain whether an applicant has the relevant experience;

(c) conducting professional interviews with applicants; and

(d) advising the Building Authority to accept, defer or reject applications for inclusion in the relevant register.

(5B) An Authorized Persons Registration Committee consists of -

(a) 4 authorized persons nominated by the Architects Registration Board from the list of architects in the authorized persons' register;

(b) 2 authorized persons nominated by the Engineers Registration Board from the list of engineers in the authorized persons' register;

(c) 1 authorized person nominated by the Surveyors Registration Board from the list of surveyors in the authorized persons' register;

(d) an Assistant Director of Buildings nominated by the Building Authority; and

(e) 1 person selected by the Building Authority from among the persons nominated in accordance with subsection (5E).

(5C) A Structural Engineers Registration Committee consists of -

(a) 3 registered structural engineers nominated by the Engineers Registration Board;

(b) 1 authorized person nominated by the Architects Registration Board from the list of architects in the authorized persons' register;

(c) 1 authorized person nominated by the Surveyors Registration Board from he list of surveyors in the authorized persons' register;

(d) an Assistant Director of Buildings nominated by the Building Authority; and

(e) 1 person selected by the Building Authority from among the persons nominated in accordance with subsection (5E).

(5D) The Building Authority is to appoint an officer of the Buildings Department as the secretary of each Registration Committee, who is not a member of either Registration Committee and may not case a vote.

(5E) For the purpose of subsections (5B) and (5C), the Building Authority is to invite such bodies as the Building Authority may think fit to nominate persons for the Building Authority to consider for appointment to each of the respective Registration Committees.

(5F) A person appointed to be a member of the Authorized Persons' and Registered Structural Engineers' Disciplinary Board Panel under section 5A must not be member of a Registration Committee.

(5G) The quorum for a meeting of a Registration Committee is -

(a) the Chairman of the committee;

(b) the Assistant Director of Buildings nominated under subsection (5B)(d) or (5C)(d); and

(c) 3 other members for an Authorized Persons Registration Committee and 2 other members for a Structural Engineers Registration committee.

(5H) At least one member of the Registration Committee at a meeting hearing an application for inclusion in a register must be -

(a) for an Authorized Persons Registration Committee, on the same list in the authorized persons' register as that on which the applicant wishes to be included; and

(b) for a Structural Engineers Registration Committee, a registered structural engineer.

(5I) The Chairman of a Registration Committee is elected by its members.

(5J) A Registration Committee is required to meet as often as the Building Authority directs.".

That clause 4(11) be amended, by adding after proposed subsection (9D) —

"(9E) The registration of an authorized person or structural engineer will continue to be in force if he makes an application for rentention within the time limit and pays the retention fee until has application for retention is finalised by the Building Authority, subject to any decision of the relevant Disciplinary Board.".

That clause 4 be amended, by adding —

"(11A) Section 3(11) is amended by adding ", after sending by post notice of his intention to the last known address of the person," after "structural engineers' register".".

That clause 4(18) be amended, by deleting "whether or not the person's name is removed from the relevant register" and substituting "unless the person's name is removed from the relevant register by order of a disciplinary board".

That clause 4 be amended, by adding —

"(19) Section 3 is amended by adding -

"(16) The Building Authority is required to give reasons in writing for a decision not to include, retain or restore a person's name in a register at the time of giving notice of the refusal.".

Clause 5

That clause 5 be amended —

(a) by renumbering it as clause 5(1).

(b) in subclause (1), after the end of proposed section 5(2)(a), by adding "and".

(c) by adding -

"(2) Section 5(2) is amended by repealing "and" at the end of paragraph (b) and by repealing paragraph (c).

(3) Section 5 is amended by adding -

"(2A) The chairman of a disciplinary board shall appoint a legal adviser to assist in the conduct of the hearing of the disciplinary proceedings and to advise the disciplinary board on points of law that arise during

the hearing. The disciplinary board may confer with the legal adviser after the conclusion of the hearing and before it hands down its decision but only after giving the person who is the subject of the hearing and his legal representative, if any, the right to be present while the legal adviser gives advice to the disciplinary board and the right to comment on the matters raised by the legal adviser to the disciplinary board.

(2B) An authorized person or a registered structural engineer, against whom disciplinary proceedings are taken, is entitled to be represented by a legal practitioner at disciplinary proceedings.".".

Clause 7

That clause 7 be amended —

(a) by deleting proposed section 8(1), (2) and (3) and substituting -

"(1) The Building Authority is to establish a panel with sufficient members from whom he is to appoint committees to be known as Contractors Registration Committees. The Building Authority may appoint more than one Registration Committee at any one time.

(2) The function of a Contractors Registration Committee is to assist the Building Authority in considering applications for inclusion in a register by -

(a) examining the qualifications of applicants;

(b) inquiring as the relevant Registration Committee considers necessary to ascertain whether an applicant has the relevant experience;

(c) conducting interviews with applicants; and

(d) advising the Building Authority to accept, defer or reject applications for inclusion in the relevant register.

(3) A Contractors Registration Committee consists of -

(a) the Building Authority's representative;

(b) 3 persons, 1 of whom is nominated by each of the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors and the Hong Kong Institution of Engineers from the lists of authorized persons and registered structural engineers;

(c) 3 persons nominated by The Hong Kong Construction Association Ltd.

(d) 1 person nominated by the Hong Kong E & M Contractors' Association Limited;

(e) 1 person selected by the Building Authority from among persons nominated by such bodies as the Building Authority may think fit.

(3A) a Contractors Registration Committee is required to meet as often as the Building Authority directs.".

(b) in proposed section 8A(4)(a), by adding "the business of" after "engage in".

(c) in proposed section 8B, by adding -

"(1A) An applicant must satisfy the Building Authority

on -

(a) if it is a corporation, the adequacy of its management structure;

(b) the appropriate experience and qualifications of his personnel;

(c) his ability to have access to plant and resources;

(d) the ability of the person appointed by the applicant to act for the applicant for the purposes of this Ordinance to understand building works and street works through relevant experience and a general knowledge of the basic statutory requirements.

(1B) An applicant for registration as a specialist contractor must satisfy the Building Authority that he has the necessary experience and, where appropriate, professional and academic qualifications, to undertake work in the specialist category.".

(d) in proposed section 8B, by adding -

"(6A) The Building Authority may take into account relevant experience in Hong Kong as a qualification in considering an application for inclusion in the register of general building contractors.".

(e) in proposing section 8C, by adding -

"(2A) The registration of a contractor will continue to be in force if he makes an application for renewal within the time limit and pays the renewal fee until his application for

renewal is finalised by the Building Authority, subject to any decision of the Registered Contractors' Disciplinary Board.".

(f) in proposed section 8C(5), by deleting "(with or without notice to the person concerned)" and substituting ", after sending by post notice to the last known address of the person,".

(g) by adding -

"8DA. Building Authority to give reasons

The Building Authority is required to give reasons in writing for a decision not to include, retain or restore a contractor's name in a register at the time of given notice of the refusal.".

(h) in proposed section 8E(2), by deleting ", whether or not the contractor's name is removed from the relevant register" and substituting "unless the contractor's name is removed from the relevant register by order of a disciplinary board".

(i) by deleting proposed section 8F and substituting -

"8F. Transitional

(1) A registered contractor who is registered as at the date of the commencement of section 8 as enacted by section 7 of the Building (Amendment) (No. 3) Ordinance 1995 (of 1995) is taken to be a registered general building contractor and the registration will continue to be in force for 2 years after the date of the commencement of this section.

(2) A registered ventilation contractor who is registered as at the date of the commencement of this section is taken to be a registered specialist contractor in the

appropriate category and the registration will continue to be in force for 2 years after the date of the commencement of this section.

(3) Subsections (1) and (2) do not prevent a disciplinary board appointed under section 11(1) from ordering that the name of the contractor be removed from a register for disciplinary reasons.

(4) On the first registration of a general building contractor or a specialist contractor after the commencement of this section, the Building Authority may register the contractor for such period less than the 3 years as applied for so as to make the renewal date correspond with the renewal date that would have occurred but for the enactment of the Buildings (Amendment (No. 3) Ordinance 1995 (of 1995) and may only require the applicant to pay a fee proportionate to the period of registration.".

Clause 8

That clause 8 be amended —

(a) in proposed section 9(5)(a) and (6)(a), by deleting "the prescribed manner" and substituting "accordance with his supervision plan".

(b) by deleting proposed section 9A(3).

Clause 9

That clause 9(3) be amended, by adding —

"(c) by repealing "and" at the end of paragraph (c) and by repealing paragraph (d).".

That clause 9 be amended, by adding —

"(4) Section 11 is amended by adding -

"(3A) The chairman of a disciplinary board shall appoint a legal adviser to assist in the conduct of the hearing of the disciplinary proceedings and to advise the disciplinary board on points of law that arise during the hearing. The disciplinary board may confer with the legal adviser after the conclusion of the hearing and before it hands down its decision out only after giving the person who is the subject of the hearing and his legal representative, if any, the right to be present while the legal adviser gives advice to the disciplinary board and the right to comment on the matters raised by the legal adviser to the disciplinary board.

(3B) A registered general building contractor or a registered specialist contractor, against whom disciplinary proceedings are taken, is entitled to be represented by a legal practitioner at disciplinary proceedings.".".

Clause 11

That clause 11 be amended —

(a) in proposed section 13(1), by deleting "that a registered general building contractor or a registered specialist contractor has been convicted by a court of such an offence, or has in the carrying out of building works or street works been guilty of such negligence or misconduct, as" and substituting "the matters set out in subsection (1A) in relation to a registered general building contractor or a registered specialist contractor if the conduct referred to the disciplinary board may".

(b) in proposed section 13(1)(a), by deleting "renders" and substituting "render".

(c) in proposed section 13(1)(b), by deleting "makes" and substituting

"make".

(d) by deleting proposed section 13(1)(c) and substituting -

"(c) render the contractor deserving of suspension from the register, a fine or a reprimand.".

(e) in proposed section 13, by adding -

"(1A) The matters referred to in subsection (1) are that the person -

(a) has been convicted by any court of an offence relating to building works or street works;

(b) has been negligent or has misconducted himself in building works or street works;

(c) has deviated in a material manner from a supervision plan without reasonable cause;

(d) has drawn up a supervision plan that does not comply with the material requirements of this Ordinance;

(e) has repeatedly drawn up supervision plans that do not comply with the requirements of this Ordinance.".

(f) in proposed section 13(3), by deleting "or has been guilty of the negligence or misconduct" and substituting ", has been negligent or has misconducted himself in building works or street works or has deviated in material manner from a supervision plan without reasonasble cause or has drawn up a supervision plan that does not

comply with the material requirements of this Ordinance or has repeatedly drawn up supervision plans that do not comply with the requirements of this Ordinance, in the manner referred to in subsection (1A)(a), (b), (c), (d) or (e)".

(g) in proposed section 13(3)(b), by deleting "under section 33 as though it were the cost of works carried out by the Building Authority" and substituting "as a debt due to the Government".

(h) by deleting proposed section 13(8).

Clause 12

That clause 12 be amended —

(a) by deleting subclauses (1) and (2).

(b) in subclause (3), by adding -

"(bc) the authorized person has not lodged a supervision plan for the works;".

Clause 13

That clause 13 be amended, by deleting the clause.

Clause 15

That clause 15 be amended, by deleting the clause and substituting —

"15. Building works, etc. to cease on order of Building Authority

Section 23 is amended —

(a) by renumbering it as section 23(1);

(b) in subsection (1)(b) -

(i) in subparagraph (ii) by adding "or" at the end;

(ii) by adding -

"(iii) are in dangerous conditions within the site of the building works,";

(c) in subsection (1) by adding "general building contractor or registered specialist" after "registered";

(d) by adding -

"(2) The Building Authority may by order in writing served on the registered general building contractor, registered specialist contractor or other person carrying out building works or street works require that the works cease if there has been a material deviation -

(a) from the technical memorandum for the preparation of a supervision plan for the building works or street works; or

(b) from the supervision plan for the works,

which in the opinion of the Building Authority may lead to a dangerous or potentially dangerous situation.

(3) The Building Authority may by order in writing served on the registered general building contractor, registered specialist contractor or other person carrying out building works or street works require that the works cease if he is satisfied that a condition imposed on the giving of his approval or consent has not been, or is not able to be, complied with.

(4) If the Building Authority orders that the works cease, the person carrying out the building works or street works shall cease to continue the works as quickly and as safely as possible.

(5) The Building Authority may in withdrawing an order that works cease make the withdrawal subject to reasonable conditions.".".

Clause 18

That clause 18 be amended, by deleting the clause.

Clause 24

That clause 24 be amended, by deleting everything after "is" and substituting —

"amended -

(a) in the definition of "authorized person" by repealing paragraphs (a), (b) and (c) and substituting -

"(a) as an architect therein; or

(b) as an engineer therein; or

(c) as a surveyor therein;";

(b) in the Chinese text, in the definition of "認可人士" -

(i) in paragraph (a), by repealing "第Ⅰ冊";

(ii) in paragraph (b), by repealing "土木工程師或結構" and "第ⅠⅠ冊";

(iii) in paragraph (c), by repealing "第 III 冊".".

Clause 25

That clause 25 be amended, by deleting everything after "is" and substituting —

"amended -

(a) in the definition of "authorized person" by repealing paragraphs (a), (b) and (c) and substituting -
"(a) as an architect therein; or

(b) as an engineer therein; or

(c) as a surveyor therein;";

(b) in the Chinese text, in the definition of "認可人士" -

(i) in paragraph (a), by repealing "第 I 冊";

(ii) in paragraph (b), by repealing "土木工程師或結構" and "第 II 冊";

(iii) in paragraph (c), by repealing "第 III 冊".".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 4, 5, 7, 8, 9, 11, 12, 13, 15, 18, 24 and 25, as amended, put and agreed to.

Clause 17

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move the amendments proposed in paragraphs (a) and (b) of my amendments to clause 17 as set out under my name in the paper circularized to Members, so that the Authorized Persons, Registered Structural Engineers,

Registered General Building Contractors and Registered Specialist Contractors will not be criminally liable for failure to supervise in the prescribed manner.

After lengthy discussion with the professional institutes and in the Bills Committee, the Administration believes that there should be a three-tier sanctions system. Minor deviations from the supervision plan should attract administrative warnings. More serious deviations or repeated minor deviations should attract disciplinary proceedings. Criminal sanctions should only apply when works were carried out contrary to a supervision plan to the extent that the contravention constitutes a material deviation from the plan resulting directly in injury to persons, damage to property or a risk of injury or damage.

After Members have agreed to the deletion, I will move amendments to give effect to the Administration's intention. Mr Chairman, I beg to move.

Proposed amendment

Clause 17

That clause 17 be amended —

(a) by deleting subclause (2)(a).

(b) by deleting subclause (2)(c).

Question on the amendment proposed.

MR RONALD ARCULLI: Mr Chairman, I just want to briefly remind Members of the slightly complicated clause 17. The motion by the Secretary for Planning, Environment and Lands to delete subclauses 2(a) and 2(c) of the existing clause 17, as he says quite rightly, simply removes what was the original suggestion in terms of the criminal sanction. So, I would urge Members to support the deletion of those two paragraphs.

In terms of the amendment to be proposed by the Honourable Edward HO, that is simply a tidying up exercise in terms of deletion of the existing clause 17(3)(b) in the present Bill. That should really go along with subclause 2(a) and subclause 2(c).

The Administration will later introduce a further amendment to bring in a different form of criminal sanction. The form of criminal sanction as it stands in the Bill, therefore, will not be very sensible or operative, in fact, with all the other amendments that have actually gone through. So Members should actually support the Secretary for Planning, Environment and Lands in his present motion and support Mr Edward HO in his motion to delete clause 17(3)(b) and vote against the Secretary for Planning, Environment and Lands when he introduces the new criminal sanction if they are not minded to support criminal sanctions.

Thank you, Mr Chairman.

委員陳偉業議員致辭：主席先生，民主黨支持政府就第17(a)和第17(b)條提出的修正案。第17(c)條關於刑事責任而較為富爭論性的部分，會遲一步才處理。但就第17(a)和第17(b)條，我們支持政府的提議。

Question on the amendment put and agreed to.

MR EDWARD HO: Mr Chairman, I move that clause 17 be further amended as set out under my name in the paper circularized to Members, and I would like to thank the Honourable Ronald ARCULLI for explaining to Members the technical nature of this particular amendment, and I think on this one, the Administration actually agrees with my amendment.

So, for those Members who wish to make a decision on the question of criminal sanction, it will be a little bit later, when the Secretary for Planning, Environment and Lands moves his amendment under paragraph (c), and I will also speak on that subject at that time. Thank you.

Proposed amendment

Clause 17

That clause 17 be further amended, by deleting subclause (3)(b).

Question on the amendment proposed.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, the Administration supports the Committee stage amendment moved by the Honourable Edward HO.

Question on the amendment put and agreed to.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I further move the amendment proposed in paragraph (c) of my amendments to clause 17 as set out under my name in the paper circularized to Members, so that the carrying out of works contrary to a supervision plan to the extent that the contravention constitutes a material deviation from the supervision plan, resulting directly in injury to persons or damage to property or a risk of injury or damage will be a criminal offence.

On conviction, the maximum penalty is a fine of $250,000 plus imprisonment for three years. The proposed offence is necessary to deter failure in providing proper supervision which is essential to site safety.

To allow both the industry and the Government to gain experience with the new system, provisions relating to criminal offences will come into effect one year after the commencement of the Bill.

Mr Chairman, I beg to move.

Proposed amendment

That clause 17 be further amended, by adding —

"(6) Section 40 is amended by adding -

"(2BA) Any person directly concerned with building

works or street works who -

(a) carries out building works or street works, or authorizes or permits building works or street works to be carried out contrary to a supervision plan to the extent that the contravention constitutes a material deviation from the supervision plan and as a direct result injury to any person or damage to any property occurs; or

(b) carries out building works or street works, or authorizes or permits building works or street works to be carried out contrary to a supervision plan to the extent that the contravention constitutes a material deviation from the supervision plan and as a direct result injury to any person or damage to any property is likely to occur,

is guilty of an offence and is liable on conviction to a fine of $250,000 and to imprisonment for 3 years.".".

Question on the amendment proposed.

MR EDWARD HO: Mr Chairman, I should state at the outset that it is the unanimous decision of the Bills Committee formed to study the Buildings (Amendment) (No. 3) Bill 1995 that the provision regarding criminal sanction should be deleted, and I am sure that this time no one will challenge me on that because the written report by the Chairman of the House Committee, Mr Ronald ARCULLI, has been fully discussed in the Bills Committee.

The Bills Committee has had intensive and extensive discussion on the

merits of applying criminal sanction to persons engaged in the building industry. There is no dispute that safety at construction sites should be improved but both members of the Bills Committee and the professional institutions cannot agree with the Administration that criminal sanction is the right way to do it. It is worth to note that under the existing provision of the Buildings Ordinance, any person, including Authorized Persons, Registered Structural Engineers and Registered Contractors, who allows the carrying out of building works in such a manner as to cause injury or risk of injury to any person or damage to any property is liable on conviction to imprisonment for three years. So, it is there already.

Under the common law, the building professionals will be liable as a professional person if they are found to be negligent. The professionals will face various consequences for professional negligence that causes an accident. Apart from that, professionals will have to compensate for any loss incurred due to delayed completion of a project under commercial obligations.

Given that the building professionals are already subject to severe penalty for professional misconduct under the existing system, it is highly doubtful as to how the proposal about criminal sanction will help enhance safety standards at construction sites.

I need to point out that the proposed criminal sanction will be applied only to building professionals working for the private sector. Public officers and professionals engaged in public projects are exempted and will not be subject to criminal liability. Such a disparity in treatment and double standard arrangements can hardly be justified. Should the Administration's proposal be enacted, it will discourage building professionals from joining the private sector and dampen the morale of the whole building industry.

Members may wish to note that to ensure that the building professionals will perform their supervisory duties, the Bills Committee, the professional institutions and the Administration have jointly worked out a proposal on the sanction system to deter deviations from the supervision plans deposited with the Building Authority and submitting a plan that does not comply with the

Technical Memorandum.

Under the graduated sanctions system, for minor offences, the Building Authority will give an administrative warning. For more serious offences, the responsible AP, RSE or RC will be subject to investigation of the Disciplinary Board established under the Buildings Ordinance. The Building Authority will also be empowered to order works to cease whenever there is a breach of the conditions of consent to commence works, including material deviations from a supervision plan.

Members of the Bills Committee are of the view that these measures will have sufficient deterrent effect to ensure the following of supervision plans, coupled with the improvement made to the registration of and disciplinary proceedings for professionals. The Bills Committee and the professional institutions considered that there is no urgent need to improve criminal sanction at this stage. The need for criminal sanction should be reviewed after the coming into operation of the new Bill for a certain period of time. As such, the Bills Committee arrives at the decision that the clause about criminal sanction should be repealed.

With these remarks, Mr Chairman, I object to the amendment.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, the Administration recommends a three-tier sanctions system because we believe these different levels of sanctions will provide a flexible and effective system of deterrent against breaches of site safety requirements.

The disciplinary procedures will allow the professional bodies and Contractors' Association to exercise self-regulation, while criminal prosecution is required to deal with serious breaches. At the early stage, the Building Authority will, where appropriate, issue warnings instead of initiating disciplinary action.

The following reasons have been cited for not supporting any form of criminal sanction: (a) the proposed criminal sanction would, in many cases, fall on junior site staff; (b) disciplinary sanctions on the professionals will suffice; and (c) it would be unfair to apply criminal sanction to private sector projects and

not to government and Housing Authority projects.

Now, in response to the first one, I must point out that site safety requires the joint efforts of all concerned parties, including Authorized Persons, Registered Structural Engineers, building contractors and the technically-competent persons. The supervision plan, which I agree with the Honourable Edward HO, is an improvement on the existing system because the supervision plan will set out the duties of the concerned parties and reflect their roles on site. The Technical Memorandum will set out the circumstances in which a person's supervision duty may be delegated or assigned to another person. So, all parties' responsibilities for the site management and safe management of construction works will be clearly set out in the supervision plan. These measures will prevent any abuse, including junior staff being used as scapegoats.

As to the second reason, that is, that disciplinary sanctions would be enough because we are dealing with professionals, the Administration does not agree that disciplinary sanction is sufficient nor appropriate in the case of serious deviation from the supervision plan. We do not see why a person should be exempted from criminal liability when his fault directly causes death or injury or damage to property or danger to the public. Under the existing Buildings Ordinance, many less serious offences already entail criminal sanction. For example, a person is currently criminally liable for material deviation from the approved building plan, whether or not injury or danger is caused.

Moreover, disciplinary proceedings are not applicable to all people engaged in building works. There is therefore a vacuum in the system where those responsible for supervising or executing certain works are not subject to sufficient sanctions for non-compliance with the supervision plan.

As regards the third reason, that is, while the private sector engineers and Authorized Persons may be liable while the government architects and engineers are not, the Administration has clearly stated at the Bills Committee that it is willing to look into the matter of extending the scope of the Buildings Ordinance to cover public sector projects, so we are willing to act, but it is only a question of time.

Why time? Members will appreciate that the existing dual control system

of building works, one for private sector and one for the public sector, has been in place for decades, many, many years. To apply the Buildings Ordinance to public sector projects will entail far-reaching policy and resource implications. The procedures and organization structures and the division of responsibility among many government departments will need major changes. Furthermore, we need to consider the implication on civil servants' immunity to criminal liability in the course of performing public duties. All these are very complex issues and must be thoroughly considered first. We will examine the matters expeditiously and discuss it with this Council's Planning, Lands and Works Panel.

In 1995, the overall accident rate in private sector projects is three to four times higher than that in government projects. Some claim that such statistics are misleading, but they have failed to substantiate their claim. The safety record of government and Housing Authority projects is far better than that of the private sector projects. While the Administration is not complacent with its own performance and agrees that there is still room for further improvement, the significant difference in the accident rate does indicate that the improvement of safety control in private sector projects is an urgent matter and should be tackled first. This is the reason for the timing, and this is the principle aim of the Bill. Members should not be side-tracked by the proposal to extend the scope of the Buildings Ordinance which the Administration will, as I said, consider in depth and intends to come up with a recommendation on the way forward.

The Administration firmly believes that the three-tier sanctions system is reasonable and workable and necessary for safety assurance. The public is concerned with the high accident rate in building projects and hope that tighter and effective sanctions could be provided so as to improve the situation. I therefore look forward to Members' support for the Administration's Committee stage amendments.

Thank you, Mr Chairman.

Question on the Secretary for Planning, Environment and Lands' further amendment to clause 17 put.

Voice vote taken.

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

Mr LEE Cheuk-yan claimed a division.

CHAIRMAN: Committee shall proceed to a division.

CHAIRMAN: Members may wish to be reminded that they are now called upon to vote on the question that the amendments proposed in paragraph (c) of the Secretary for Planning, Environment and Lands' amendments to clause 17 be approved. Will Members please register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?
CHAIRMAN: We are still three short of the head count. Will Members please check their votes? Are there any queries? The result will now be displayed.

Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr LAU Chin-shek, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mrs Selina CHOW, Mr Martin LEE, Mr NGAI Shiu-kit, Mr SZETO Wah, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Mr Henry TANG, Mr James TO, Dr Samuel WONG, Dr Philip WONG, Dr YEUNG Sum, Mr Howard YOUNG, Mr WONG Wai-yin, Mr James TIEN, Mr Andrew CHENG, Mr Paul CHENG, Dr Anthony CHEUNG, Mr CHOY Kan-pui, Mr David CHU, Mr Albert HO, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted against the amendment.

THE CHAIRMAN announced that there were 10 votes in favour of the amendment and 45 votes against it. He therefore declared that the amendment was negatived.

Question on clause 17, as amended, put and agreed to.

New clause 4A	Appointment and duties of authorized person or registered structural engineer
New clause 6A	Disciplinary proceedings for authorized person or registered structural engineer
New clause 11A	Section added
New clause 11B	Section added
New clause 13A	Provision for urgent work
New clause 16A	Section added

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that the new clauses 4A, 6A, 11A, 11B, 13A and 16A, as set out under my name in the paper circularized to Members be read a Second time.

The new clause 4A is added for two purposes. First, it is to remove the status of a Registered Structural Engineer as the consultant to the Authorized Person. This is to reflect the distinct role of the Registered Structural Engineer in site supervision during particular phases of building works or street works. The amendment does not change the duties of the Authorized Person under the Buildings Ordinance, including that of acting as the co-ordinator of works.

Second, this new clause is to require Authorized Persons or Registered Structural Engineers to provide supervision in accordance with the supervision plan.

The new clause 6A is added to empower the disciplinary board to investigate cases such as permitting a material deviation from the supervision plan, drawing up a supervision plan that does not comply with the material requirements under the Buildings Ordinance and repeatedly drawing up supervision plans that do not comply with the requirements under the Ordinance by Authorized Persons or Registered Structural Engineers. This is to deter submission of defective supervision plans or non-compliance with supervision plans, both of which may lead to inadequate site supervision and thereby affect safety.

The new clauses are added also to empower the disciplinary board to impose a fine not exceeding $250,000.

The new clause 11A is added to allow an applicant to appeal to the High Court when his application for inclusion, retention or restoration of his name in the register for General Building Contractors or Specialized Contractors, or both, is rejected.

The new clause 11B is added to: (a) make clear that the Building Authority is not deemed to have consented to the commencement of works if the Authorized Person has not lodged a supervision plan; (b) require the supervision plan to be prepared in accordance with the Technical Memorandum current at the time of lodging the supervision plan and make clear that the person who prepares the supervision plan is himself responsible for the content of the plan.

The new clause 13A is added to permit deviation from the supervision plan when urgent works are required for safety reasons, provided the Building Authority is notified and a revised supervision plan is prepared as soon as possible.

The new clause 16A is added to empower the Secretary for Planning, Environment and Lands to issue technical memoranda which will be subject to the executive vetting of this Council. The memorandum will set out the

required format and content of the supervision plan, such as the manpower and level of supervision to be provided, the site safety management structure, the qualifications and specific tasks of the personnel involved, and so on. Furthermore, the memorandum will cover the procedure for the submission and amendment of the supervision plan.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that new clauses 4A, 6A, 11A, 11B, 13A and 16A be added to the Bill.

Proposed additions

New clause 4A

That the Bill be amended, by adding —

"4A. Appointment and duties of authorized person or registered structural engineer

(1) section 4(1)(b) is amended by repealing "as a consultant to the authorized person on" and substituting "for".

(2) Section 4(3)(a) is amended by repealing "the prescribed manner" and substituting "accordance with the supervision plan".

(3) Section 4(4) is amended by repealing "as a consultant".".

New clause 6A

That the Bill be amended, by adding —

"6A. Disciplinary proceedings for authorized person or registered structural engineer

(1) Section 7(1) is repealed and the following substituted -

"(1) The Building Authority may bring to the notice of a disciplinary board appointed under section 5 the matters set out in subsection (1A) in relation to an authorized person or a registered structural engineer if the conduct referred to the disciplinary board may -

(a) render the person unfit to remain on the relevant register;

(b) make further inclusion of the person on the relevant register prejudicial to the due administration of this Ordinance; or

(c) render the authorized person or registered structural engineer deserving of suspension from the register, a fine or a reprimand.

(1A) The matters referred to in subsection (1) are that the person -

(a) has been convicted by any court of an offence related to carrying out his professional duties;

(b) has been negligent or has misconducted himself in a professional way;

(c) has permitted a material deviation from a supervision plan for which he is

responsible without reasonable cause;

(d) has drawn up a supervision plan that does not comply with the material requirements of this Ordinance;

(e) has repeatedly drawn up supervision plans that do not comply with the requirements of this Ordinance.".

(2) Section 7(2) is amended —

(a) by repealing "or has been guilty of such negligence or misconduct, such" and substituting ", has been negligent or has misconducted himself in a professional way or has deviated in a material manner from a supervision plan without reasonable cause or has drawn up a supervision plan that does not comply with the material requirements of this Ordinance or has repeatedly drawn up supervision plans that do not comply with the requirements of this Ordinance, in the manner referred to in subsection (1A)(a), (b), (c), (d) or (e), the disciplinary";

(b) by adding -

"(ba) order that the authorized person or registered structural engineer be fined a sum not exceeding $250,000, which is recoverable as a debt due to the Government; or".

(3) Section 7(4)(a) is amended by repealing the proviso.".

New clause 11A

That the Bill be amended, by adding —

"11A. Section added

The following is added -

"13A. Appeal against Building Authority's decision

(1) An applicant for registration, renewal of registration or restoration of his name to a register who is dissatisfied with a decision of the Building Authority may appeal to judge of the High Court.

(2) On an appeal the judge may confirm, reverse or vary the decision of the Building Authority.

(3) The practice for the appeal is subject to any rules of court made under the Supreme Court Ordinance (Cap. 4).

(4) The decision of the judge is final.".

New clause 11B

That the Bill be amended, by adding —

"11B. Section added

The following is added -

"14A. Building Authority not deemed to consent if supervision plan not lodged

(1) The Building authority is not deemed to have consented under section 15, if the authorized person has not ledged a supervision plan for the building works or street works.

(2) Subsection (1) does not apply where the Building Authority does not require a supervision plan.

(3) The person preparing a supervision plan must comply with the technical memorandum current at the time of lodging the supervision plan.

(4) The person preparing a supervision plan is responsible for the content of the supervision plan.".

New clause 13A

That the Bill be amended, by adding —

"13A. Provision for urgent work

Section 19 is amended by adding -

"(3) Any person may deviate from a supervision plan if urgent works are required to ensure safety of building works or street works to which the supervision plan relates.

(4) The authorized person is required to give to the Building Authority as soon as practicable after the urgent work arises notice of -

(a) any material deviation from the supervision plan;

(b) the urgent work;

(c) a revised supervision plan prepared by the registered general building contractor, the registered specialist contractor, the registered structural engineer or the authorized person, as the case may require, detailing the procedures adopted to meet

the urgent work; and

(d) any further amendments to any supervision plan arising out of the urgent work.".".

New clause 16A

That the Bill be amended, by adding —

"16A. Section added

The following is added -

"39A. Technical memorandum

(1) The Secretary for Planning, Environment and Lands may issue a technical memordandum dealing with -

(a) the circumstances in which a supervision plan is not required for building works or street works;

(b) the classes of supervision that the Building Authority identifies as appropriate to various types of building works and street works having regard to the complexity of the building works or street works, the manpower required and level of supervision required for each of the classes of supervision;

(c) detailed supervision requirements for various types of building works and street works including the management structure required to

ensure site safety, the manpower required for each element of the management structure, the qualifications and experience of the personnel involved and the specific tasks to be associated in each element of the management structure;

(d) the method statement of various types of building works and street works, the types of precautionary and protective measures required to be undertaken for the safety of the site, the workers and the public, and such other details relating to site safety as the Building Authority may consider necessary;

(e) the qualifications and experience required for technically competent persons to be appointed for supervisory work under supervision plans;

(f) the circumstances in which an authorized person, registered structural engineer, registered general building contractor or registered specialist contractor is permitted to notify in retrospect for minor deviations from a supervision plan;

(g) the method and timing of notification of, and the amendment procedures for, a proposed or actual deviation from a supervision plan,

including deviations caused by an emergency;

(h) the form and content of a supervision plan;

(i) the general responsibilities of the site supervision personnel for the various types of building works and street work for the various types of building works and street works;

(j) the procedure, timing and sequence for the submission of supervision plans.

(2) The Secretary must publish a technical memorandum issued under this Ordinance in the Gazette and cause it to be laid on the table of the Legislative Council at the next sitting after publication.

(3) Where the Secretary has caused a technical memorandum to be laid on the table of the Legislative Council, the Legislative Council may, by resolution passed at a sitting of the Legislative Council held before the expiry of a period of 28 days after the sitting at which it was laid, provide that the technical memorandum be amended in any manner consistent with the power to issue the technical memorandum.

(4) If the period for passing a resolution would, but for this subsection, expire -

(a) after the end of a session of the Legislative Council or after a dissolution of the Legislative Council; but

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

the period is deemed to extend to and expire on the day after that second sitting.

(5) Before the period for passing a resolution, or that period as extended, expires, the Legislative Council may, for a particular technical memorandu, extend, by resolution, the period or the period as previously extended to the next sitting.

(6) A resolution passed by the Legislative Council under this section must be published in the Gazette not later than 14 days after the resolution is passed or within such futher period as the Secretary may allow in any particular case.

(7) A technical memorandum issued under subsection (1) is not subsidiary legislation.

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

(9) Unless the Secretary appoints a later date either in the memorandum or by notice in the Gazette, a technical memorandum commences to have effect -

(a) if the Legislative Council does not pass a resolution amending the technical memorandum, upon the expirty of the period, or the period

as extended, as the case may be, for passing an amending resolution; and

(b) if the Legislative Council passes a resolution amending the technical memorandum, at the beginning of the day of the publication in the Gazette of the resolution.

(10) If the Secretary issues a technical memorandum under this Ordinance, he must make available a copy of the technical memorandum for inspection by the public free of charge at such offices of the Government as the Secretary directs during business hours.".".

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

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Clauses 1, 3 to 6 and 8 were agreed to.

Clauses 2, 7 and 9

THE PRESIDENT'S DEPUTY, MR RONALD ARCULLI, took the Chair.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clauses 2, 7 and 9 be amended as set out under my name in the paper circularized to Members.

Clause 2 is amended to add a definition to the term "water pipe" which means any water-carrying pipe and fittings thereto, other than a drain or sewer, but does not include any pipe or fitting maintained at the cost of the Water Authority.

Clause 7 is amended for several purposes. First, the Building Authority

is empowered to order owners to carry out investigation into water pipes as well as drains and sewers for slope safety reasons. Second, provisions regarding action to be taken following investigation, which are similar to those provisions in existing section 27(a) on dangerous hillsides, are added.

The Building Authority is empowered to order the submission of proposals by owners for remedial works based on the investigation results within the specified time. On giving approval to the proposals, the Building Authority may order the owners concerned to carry out such approved works within the specified time. All investigations and works specified in the order must be carried out to a standard acceptable to the Building Authority and in compliance with regulations under the Buildings Ordinance.

Where the owners cannot be found, the Building Authority's orders are not complied with or the proposals for remedial works are refused, the Building Authority may carry out all or any part of the investigation or remedial work as he considers to be necessary or expedient and recover the cost incurred from the owners concerned.

Third, the Building Authority is not allowed to serve orders requiring the investigation into water pipes, drains or sewers when he is of the opinion that no leakage, defect or inadequacy of the water pipes, drains or sewers is likely. In forming his opinion, he should take into account all relevant matters including the age of the water pipes, drains and sewers and records of previous investigations and maintenance works. The Building Authority's decision is subject to appeal to an Appeal Tribunal under Part VI of the Buildings Ordinance.

Clause 9 is amended to make, failure to comply with the Building Authority's orders to carry out within a specified time work to remedy the leakage, defect or inadequacy of the water pipes, drains or sewers without reasonable excuse, a criminal offence. Anyone who is convicted will be liable for a fine of $50,000 and imprisonment for one year, and a daily fine of $5,000 in the case of a continuing offence.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2 be amended, by adding —

""water pipe" means any water carrying pipe and fittings thereto other than a drain or sewer but does not include any pipe or fitting forming any part of a fire service or inside service within the meaning of the Waterworks Ordinance (Cap. 102) the costs of maintenance of which shall, under section 17(2)(b) of that Ordinance, be borne by the Water Authority.".

Clause 7

That clause 7 be amended, by deleting the proposed section 27C and substituting —

"27C. Water pipes, drains or sewers laid in slopes, etc.

(1) If -

(a) a water pipe, drain or sewer of any building is laid in, on or under the ground in or in the vicinity of any natural, formed or man-made land, or any earth-retaining structure; and

(b) subject to subsection (12), in the opinion of the Building Authority any leakage, defect or inadequacy of the water pipe, drain or sewer may result in a landslip of the land or a collapse of the structure, either totally or partially, and such landslip or collapse may cause, or may be likely

to cause, a risk of injury to any person or damage to any property,

the Building Authority may make and serve on the owner of the building such order as referred to in subsection (2).

(2) The order shall be in writing and may require the owner of the building -

(a) to appoint an authorized person to carry out such investigation in relation to the water pipe, drain or sewer as may be specified in the order;

(b) to cause such investigation to be commenced and completed within such times as may be specified in the order;

(c) to cause a written report on the findings of such investigation to be prepared by the person appointed to carry out the investigation, and to submit such written report to the Building Authority within such time as may be specified in the order; and

(d) to submit for approval by the Building Authority proposals for work to be done to remedy any leakage, defect or inadequacy of the water pipe, drain or sewer, based on the findings of such investigation, within such time as may be specified in the order.

(3) Where proposals for work are submitted pursuant to an order under subsection (1), the Building Authority may -

(a) approve the proposals;

(b) require amendments to or substitution of the proposals; or

(c) refuse the proposals

(4) On giving approval to proposals for work required to be submitted under subsection (2), the Building Authority may by order in writing served on the owner referred to in subsection (1) require the carrying out of such approved work within such time as may be specified in the order.

(5) All investigation and work specified in an order under this section shall be carried out to such standard acceptable to the Building Authority and in compliance with regulations.

(6) The Building Authority may, upon the service of an order under subsection (1), cause the order to be registered by memorial in the Land Registry against the Building to which the order relates.

(7) Where the owner referred to in subsection (1) cannot be found or fails to comply with the requirements of an order served under this section or any part of the order or where there is a failure to comply with the requirement of subsection (5) or where proposals submitted under this section are refused, the Building Authority may, without further notice, carry out or cause to be carried out -

(a) all or any part of the investigation or work specified in the order;

(b) such other investigation as he considers to be necessary or expedient; and

(c) such work as he considers to be necessary or expedient to remedy the leakage, defect or inadequacy, having regard to the findings of the investigation in relation to the water pipe, drain or sewer, whether such investigation is carried out by the owner referred to in subsection (1) or by the Building Authority,

and, subject to subsection (8), the Building Authority may recover the costs of such investigation and work from that owner.

(8) If the order has been registered with the Land Registry in accordance with subsection (6), the cost of the investigation or work that the Building Authority carried out or caused to be carried out under subsection (7) shall be recoverable from any person who, as at the date of completion of the investigation or work (as the case may be), is the owner of the building to which the order relates.

(9) A certificate purporting to be under the hand of the Building Authority and stating the date of completion of the investigation or work carried out under subsection (7) shall be prima facie evidence of that fact.

(10) In cases of emergency, the Building Authority may carry out or cause to be carried out such investigation and work in respect of any leakage, defect or inadequacy of the water pipe, drain or sewer referred to in subsection (1) as may appear to him to be necessary by reason of the emergency either with or without notice to the owner referred to in that subsection, and the cost of such investigation and work shall be recoverable from that owner.

(11) The decision of the Building Authority that an emergency exists shall not be subject to an appeal under section 44.

(12) (a) If the Building Authority is of the opinion that no leakage, defect or inadequacy of the water pipe, drain or sewer referred to in subsection (1)(b) is likely, no order shall be served under subsection (1).

(b) In forming his opinion under paragraph (a), the Building Authority may have regard to all matters which he considers relevant and on which information is available to him, and such

matters include but are not limited to -

(i) the age of the water pipe, drain or sewer; and

(ii) records of investigation and maintenance works in respect of the water pipe, drain or sewer.".

Clause 9

That clause 9 be amended, by deleting paragraph (a) and substituting —

"(a) in subsection (1B) -

(i) in paragraph (b), by adding "27C(1) or (4)," before "28(2)(a)";

(ii) in paragraph (ii), by adding ", 27C(1) or (4)" before "or 28(3)";".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 7 and 9, as amended, put and agreed to.

New clause 10 Exemptions

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that the new clause 10 as set out under my name in the paper circularized to Members be read the Second time.

The new clause ensures that an owner will not be exempted from the duty under the new section 27C to carry out investigations or remedial works of the water pipes, drains or sewers serving their building merely because they are laid in government land or that of other parties referred to in section 41(1) of the Buildings Ordinance. 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 PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that new clause 10 be added to the Bill.

Proposed addition

New clause 10

That the Bill be amended, by adding —

"10. Exemptions

Section 41 is amended by adding -

"(1A) Nothing in subsection (1) shall exempt an owner of any building that is not a building referred to in paragraph (a), (aa) or (b) of that subsection from the operation of section 27C merely by reason of the fact that any water pipe, drain or sewer of the building is laid in, on or under -

(a) any land vested in the Housing Authority or in any person behalf of Her Majesty's naval, military or air force services;

(b) any unleased land within the meaning of the Crown Land Ordinance (Cap. 28); or

(c) any street or access road vested in and maintained by the Crown or the Government.".".

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

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1996

Clause 1 was agreed to.

Clauses 2 and 3

SECRETARY FOR THE TREASURY: Mr Deputy, I move that clauses 2 and 3 be amended as set out in the paper circulated to Members.

The amendment to clause 2(1)(a) of the Bill seeks to add the term "United Exchange" to the section and the term will have the same meaning as that in the Stamp Duty Ordinance for the sake of consistency.

The amendment to clause 2(1)(b) seeks to ensure that the term "specified securities" under the Bill will cover Hong Kong stocks the sale and purchase of which in Hong Kong are not subject to the rules and procedures of the United Exchange.

The amendment to clause 2(2), by amending proposed section 15E(9) and adding a new subsection 10, seeks to ensure that "specified securities" under the Bill would be covered by provisions on stock borrowing and lending in the Inland Revenue Ordinance. For consistency purpose, the meaning of terms involved in the definition of "specified securities", that is, "Hong Kong stock", "unit" and "unit trust scheme" will be the same in the relevant provisions of the Inland Revenue Ordinance and the Stamp Duty Ordinance.

The amendment to section 20AA(3) in clause 3 seeks to ensure that under the Bill, transactions of a non-resident investor arising from the activities of an approved investment adviser will be taken as "carried out through" the adviser.

The amendment to section 20AA(6) in clause 3 seeks to remove the

reference to section 20AB in the proposed section 20AA and extends the meaning of broker and approved investment adviser under the Bill to include dealers and investment advisers exempt from registration under the Securities Ordinance.

The remaining amendment to clause 3 seeks to delete section 20AB which is to be replaced by the new clause 4. I will explain the operation of the new clause later on when I deal with the Committee stage amendment for adding a new clause to the Bill.

Mr Chairman, I beg to move.

THE PRESIDENT resumed the Chair.

Proposed amendments

Clause 2

That clause 2(1)(a) be amended, by deleting ", "unit" (單位) and "unit trust scheme" (單位信託計劃)" and substituting "and Unified Exchange" (聯合交易所)".

That clause 2(1)(b) be amended, in the proposed definition of "specified securities", by adding "the sale and purchase of which in Hong Kong are subject to the rules and practices of the Unified Exchange" after "stock".

That clause 2(2) be amended, by deleting the proposed subsection (9) and substituting —

"(9) For the purposes of construing a term by reference to the Stamp Duty Ordinance (Cap. 117) in subsection (8) a reference in the corresponding term in the Stamp Duty Ordinance (Cap. 117) to "Hong Kong stock" or to "Hong Kong stock the sale and purchase of which in

Hong Kong are subject to the rules and practices of the Unified Exchange", is construed as including a reference to specified securities that the Commissioner has specified under subsection (8).

(10) For the purpose of the definition of "specified securities" in subsection (8), the terms "Hong Kong stock", "unit" and "unit trust scheme" have the same meanings as in the Stamp Duty Ordinance (Cap. 117).".

Clause 3

That clause 3 be amended —

(a) by deleting -

"Sections added

The following are added -"

and substituting -

"Section added

The following is added -".

(b) in the proposed section 20AA(3) by adding "to have been carried out through the approved investment adviser and" after "(the "taxable profits"),".

(c) in the proposed section 20AA(6) -

(i) by deleting "and section 20AB";

(ii) by deleting the definition of "approved investment adviser" and substituting -

""approved investment adviser" (認可投資顧問) means -

(a) a person registered as an investment adviser under part VI of the Securities Ordinance (Cap. 333); or

(b) a person who would otherwise be required to be registered as an investment adviser under the Securities Ordinance (Cap. 333) but is exempted from registration as an investment adviser under that Ordinance, to the extent that the person carries on business as an investment adviser only;";

(iii) by deleting the definition of "broker" and substituting -

""broker" (經紀) means -

(a) a person registered as a dealer under Part VI of the Securities Ordinance (Cap. 333); or

(b) a person exempted from registration as a dealer under Part VI of the Securities Ordinance (Cap. 333), to the extent that the person carries on business as a dealer only;".

(d) by deleting the proposed section 20AB.

Question on the amendments proposed, put and agreed to.

Question on clauses 2 and 3, as amended, put and agreed to.

New clause 4 Exclusion of certain profits from tax

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

SECRETARY FOR THE TREASURY: Mr Chairman, I move that new clause 4 as set out in the paper circulated to Members be read the Second time.

The new clause seeks to amend section 26A(1A) of the Inland Revenue Ordinance to provide that sums received by or accrued to a mutual fund corporation or trustees of a unit trust established outside Hong Kong or a similar collective investment scheme, where the Commissioner of Inland Revenue is satisfied that it is a *bona fide* widely held investment vehicle which complies with the requirements of a supervisory authority within an acceptable regulatory regime, will not be included in the profits of the corporation or trustees or the person chargeable to tax for the profits of the collective investment scheme, as the case may be. As I undertook during the debate on the resumption of the Second Reading of the Bill, the Commissioner of Inland Revenue will issue a Practice Note to clarify the interpretation of such terms as "supervisory authority" and "acceptable regulatory regime" under the new clause.

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 THE TREASURY: Mr Chairman, I move that new clause 4 be added to the Bill.

Proposed addition

New clause 4

That the Bill be amended, by adding —

"4. Exclusion of certain profits from tax

Section 26A(1A) is repealed and the following substituted -

"(1A) For the purposes of this Part, sums by way of -

(a) gains or profits arising from the sale or other disposal or on the redemption on maturity or presentment of securities;

(b) gains or profits under a foreign exchange contract or futures contract; and

(c) interest,

received by or accrued to -

(i) an authorized mutual fund corporation;

(ii) trustees of an authorized unit trust;

(iii) a mutual fund corporation established outside Hong Kong where the Commissioner is satisfied that the mutual fund corporation is a bona fide widely held investment corporation which complies with the requirements of a supervisory authority within an acceptable regulatory regime;

(iv) trustees of a unit trust established outside Hong Kong where the Commissioner is satisfied that the unit trust is a bona fide widely held investment unit trust which complies with the requirements of a supervisory authority within an acceptable regulatory regime; or

(v) any other similar collective investment scheme

where the Commissioner is satisfied that the collective investment scheme is a bona fide widely held investment scheme which complies with the requirements of a supervisory authority within an acceptable regulatory regime,

shall not be included in the profits of the corporation, trustees or person chargeable to tax in respect of the profits of the investment scheme (as the case may be).".".

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

SUPPLEMENTARY APPROPRIATION (1995-96) BILL 1996

Clauses 1 and 2 were agreed to.

Council then resumed.

Third Reading of Bills

THE ATTORNEY GENERAL reported that the

PREVENTION OF BRIBERY (MISCELLANEOUS PROVISIONS) (NO. 2) BILL 1995 and

CRIMES (AMENDMENT) BILL 1995

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

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

Bills read the Third time and passed.

THE SECRETARY FOR EDUCATION AND MANPOWER reported that the

NON-LOCAL HIGHER AND PROFESSIONAL EDUCATION

(REGULATION) BILL and

FACTORIES AND INDUSTRIAL UNDERTAKINGS (AMENDMENT) BILL 1996

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

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

Bills read the Third time and passed.

THE SECRETARY FOR SECURITY reported that the

AVIATION SECURITY BILL and

IMMIGRATION SERVICE (AMENDMENT) BILL 1996

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

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

Bills read the Third time and passed.

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

BUILDINGS (AMENDMENT) (NO. 3) BILL 1995 and

BUILDINGS (AMENDMENT) BILL 1996

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

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

Bills read the Third time and passed.

THE SECRETARY FOR THE TREASURY reported that the

INLAND REVENUE (AMENDMENT) (NO. 3) BILL 1996

had passed through Committee with amendments and the

SUPPLEMENTARY APPROPRIATION (1995-96) BILL 1996

had passed through Committee without amendment. He moved the Third Reading of the Bills.

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

Bills read the Third time and passed.

MEMBER'S MOTIONS

HONG KONG ROYAL INSTRUCTIONS 1917 TO 1993 (NOS. 1 AND 2)

MR RONALD ARCULLI to move the following motion:

> "That the Standing Orders of the Legislative Council of Hong Kong be amended by adding thereto the text in the Chinese language of the Standing Orders of the Legislative Council of Hong Kong set out in the Annex to this resolution."
>
> (The Annex to resolution and subsequent amendments to the Annex were circulated on 27 June 1996 and 8 July 1996 under LegCo Paper No. CB(3) 976/95-96 and LegCo Paper No. CB(3) 1038/95-96 respectively. For details, please refer to the published Chinese text of the Standing Orders.)

MR RONALD ARCULLI: Mr President, I move the resolution standing in my name on the Order Paper. The resolution seeks to add the Chinese version to the Standing Orders of this Council so that our Standing Orders will be both in English and in Chinese. I hasten to add that I am no expert in the Chinese language. I am moving the motion in my capacity as the Deputy Chairman of

the House Committee as the Chairman who normally moves such motions is out of town and cannot attend this sitting.

Soon after his election to the Chair of this Council, the President appointed an internal working group consisting of staff of the Legislative Council Secretariat to translate the Standing Orders of this Council. The working group has held as many as 25 meetings, and in the course of its work, it has consulted numerous reference works, not the least, English dictionaries, Chinese dictionaries, English/Chinese dictionaries and Chinese/English dictionaries.

I understand from authority in this area that the Chinese version of Standing Orders now before Members has been prepared in a professional way. The Chinese draft before Members has been considered by the Subcommittee on Procedural Matters and also endorsed by the House Committee.

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

Question on the motion proposed, put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MRS SELINA CHOW to move the following motion:

"That the Hotel and Guesthouse Accommodation (Fees) (Amendment) Regulation 1996, published as Legal Notice No. 224 of 1996 and laid on the table of the Legislative Council on 5 June 1996, be repealed."

周梁淑怡議員致辭：主席先生，本人謹遵照議事程序表所列，提出本人名下的議案。議案的目的，是要廢除《1996年旅館業（費用）（修訂）規例》。

由本人出任主席，研究有關規例的小組委員會,於一九九六年六月七日成立。委員會與當局舉行過兩次會議，並接見了香港酒店業主聯會和香港旅遊業賓館聯會的代表。

在詳細研究當局建議的新訂牌照收費表，並聽取團體代表的意見後，小組委員會決定該規例應予廢除。小組委員會關注到牌照費的大幅提高，特別是酒店方面，以及整個收費制度的不公平結構。

根據政府的建議，收費表共分十個等級，而不是現行的六個等級，除了一至五間房的度假屋以外，其他等級的旅館和酒店都要面對大幅增加牌照費。特別對於500間房以上的酒店，增幅尤其驚人，分三年把現有收費提高11倍。據牌照事務處的資料，有大概兩成的酒店是在發牌制度九一年實施後才開業，這些酒店都應已完全符合條例的要求，然而，這些酒店卻要面對最大的收費升幅和負擔最大部分的發牌成本。

小組委員會委員認為政府只按房間數量多少這單一因素來計算牌照費的取向，對持牌人是不公平的。每間酒店和旅館的發牌成本總額，應視乎個別具體情況而定，並須考慮到每間旅館的設施。再者，小組委員會委員亦質疑執行《旅館業條例》所需的運作成本，因為當局的發牌隊伍及監管與檢控的隊伍，在工作上可能互有重疊。

香港酒店業主聯會關注到大幅增加牌照費，會進一步對經營成本構成沉重負擔，影響酒店業的發展。該會指出，除了要遵守酒店牌照的條件外，酒店經營者還要因應酒店內不同的輔助設施，而要符合各種發牌規定，例如舞會大廳、游泳池、購物商場等(部分旅館的經營者須要領取超過20個牌照)。此外，當局更向酒店徵收5%的房租稅。由於酒店和賓館的性質有所不同，聯會認為當局對這兩類旅館應有不同的處理；總而言之，要酒店業承擔大部分的發牌成本，酒店業方面認為是不公平的。

香港酒店業主聯會亦認為政府新的收費制度是對守法的酒店經營者不公平，因為要他們承擔政府為數以千計的無牌經營賓館、聯誼會及度假屋發牌所涉及的龐大費用。

香港旅遊業賓館聯會反對新定的牌照收費表，因為當局並沒有採取行動對付無牌經營的賓館，而計算牌照費的方式亦值得商榷。

小組委員會委員都認同兩個聯會的意見，我們對現行的發牌制度有所保留，而且認為應重新檢討這政策。我們認為首次簽發牌照與牌照續期，兩者的收費應有不同。我們認為政府應該研究能否簽發一種“綜合”牌照，將酒店所有設施的營運納入其中。此舉可令各政府部門不會重複工作，資源可免浪費，而酒店亦無須繳付雙重費用。此外，當局簽發此類牌照，酒店經營者無須在不同時候應付不同政府部門，減省對經營者的滋擾和可能構成的混亂情況。

當局解釋他們在釐訂他們建議的收費表時，完全沒有將監管及檢控非法

經營者的費用納入計算，因此不存在持牌旅館津貼無牌旅館的問題，也不存在酒店業津貼賓館業，又或後者津貼前者的情況。鑑於業內人士指出現行申領多個不同牌照涉及繁瑣手續，當局已經開始研究有關簽發“綜合”牌照的可行性。

當局就新定收費表的計算方法所提出的理據，未能取得小組委員會的信服，因此，委員會不能支持政府提出的收費規例。

主席先生，我正是因為上述原因而提出此議案。

主席先生，我作為小組委員會的主席，已經就小組委員的工作作出了匯報，以下我想說一下自由黨的看法：

政府提議調整酒店及旅館的牌照費，提出了《1996年旅館業(費用)(修訂)規例》，引來業界嘩然，正如剛才在小組委員會主席的報告中指出，政府就大部分等級旅館牌照費的建議，都是大加特加，加幅更有高達三年累積為現有費用的11倍之多。

我認為小組委員會提出廢除加費規例是最理想的安排，唯一美中不足的就是規例內提及一至五個房間的度假屋可能會獲減收費用，但若是廢除的話，可能會引致減價不成。因為政府如想提高收費，就得提供更詳盡的資料和具說服力的理據，並在考慮到對業界經營條件的影響下，重新提出另一個加費建議供立法局審議。我相信如果政府肯盡量降低運作成本，減省不必要的資源浪費，並訂出一個合理的收費計算方法，才是一個負責任而照顧到工商業經營的務實做法。

可惜小組委員會在廢除政府所提的規例的議案，並未得到民主黨的完全同意，他們希望能通過修訂，使到五個房間或以下的旅館可以達致減價的目的，而其餘都會酌量增加牌照費，只是幅度較政府建議的略為溫和。自由黨諮詢了酒店業主聯會的代表和其他業界人士，他們都認為如果加幅不超過通脹，他們認為還勉強可以接受，於是我們將意見很清楚地轉達給民主黨，而很高興見到單仲偕議員終於採納了意見，提出了一個業內可以接受的最終修訂，把民主黨原本所考慮的加幅調低。我想澄清一點，自由黨同意修訂後的加幅，並不表示我們認同政府這個不合理的收費政策，我亦趁現在要求負責的政務科詳作檢討，制訂一個合理而符合成本效益的發牌及續牌制度。

我們支持政府收回成本的原則，但我們從近期事例中，一再看到這個原則被政府某程度上的濫用，官員奉之為金科玉律，完全不考慮對行業的影

響，就盡快全數收回，不惜大幅提高收費，在旅館業收費的本來提議，就竟然有三年多於十倍的增幅。

我們認為一個原則的落實，總不能脫離市民和工商業的承擔能力。政府一再犯上相同的錯誤，反映的，只是政府根本沒有汲取教訓，仍然不改他們的官僚的死硬態度。我們不明白政府為何要急於在很短的年期內就收回所有成本，為何不可以攤長些時間以達至此目標？

僵化的政府，不理民間疾苦的官僚作風，都只會引來市民的抗議，影響到政府的誠信與公信力，更可能不必要地挑起社會的不安和對峙，這於社會又有何益呢？

Question on the motion proposed.

PRESIDENT: Mr SIN Chung-kai has also given notice to move a motion under the Interpretation and General Clauses Ordinance to amend the same Regulation, that is, the Hotel and Guesthouse Accommodation (Fees) (Amendment) Regulation 1996. Mr SIN Chung-kai's motion has been printed in the annex to the Order Paper. As the contents of Mrs CHOW's and Mr SIN's motions relate to the same subject, the two motions are cognate. I propose to have them debated together in a joint debate.

The two motions shall now be debated together in a joint debate. Members may now speak on either or both of the motions. At the end of the debate, we will first vote on Mrs Selina CHOW's motion. If Mrs Selina CHOW's motion is agreed, that will by implication mean that Mr SIN Chung-kai's motion is not approved. If Mrs CHOW's motion is not carried, Mr SIN Chung-kai will be called upon to move his motion, but the question on Mr SIN's motion will be put without further debate.

Mr SIN Chung-kai, you may speak on both your motion and Mrs Selina CHOW's motion but you are not to move your motion yet.

單仲偕議員致辭：主席先生，首先我要多謝你容許我動議這項修訂，亦要多謝周梁淑怡議員主持小組委員會，使委員會能夠深入了解這個行業的情況。同時，我亦要向大家道歉，因為我是在小組委員會最後一次會議之後才提出

這項修訂議案，我相信若我在小組委員會中提出，亦可能獲得委員會支持。

我提出修訂的內容主要有三點，一、維持政府的建議，將一至五間房間旅館的費用調低至2,800元；二、將擁有六間至100間以下房間旅館的費用維持在現水平；三、將100間以上房間旅館的費用按九五、九六年兩年共26個月的通脹率（約為18%）而調整。以下我將解釋我的理由。

首先，民主黨支持小組委員會的意見，即剛才周梁淑怡議員所提出對規例本身和發牌制度等的質疑。政府現時所建議的發牌成本計算方式有不少流弊，例如不應將首次簽發牌照制度與續牌、酒店與旅館的收費等同，不應單以房間計算收費，因此我們要求政府重新檢討整個發牌制度及計算成本的方式，訂出合理的目標成本。這點我不詳細闡述，因為較早前周梁淑怡議員已經詳細談及。

民主黨提出這個建議，最終的目的是希望能夠使無論是擁有或是使用一至五間房的度假屋的人士，能夠盡快得到減價的收益，同時，亦可通過100間房以上的旅館來彌補減價的損失。

民主黨提出修訂建議，並不表示要反對政府收回成本的原則，民主黨是支持政府收回成本的做法。不過，民主黨認為政府應顧及企業的負擔，而訂出收回成本的時間表。事實上，政府收回成本的時間一般分三至五年進行，但政府這次只是用最短的時間，以三年時間收回成本，增幅亦非常巨大，單以這次來計算，成本增幅由30%至三倍不等。民主黨希望政府聽取小組委員會的意見，重新檢討整個發牌制度及收費政策。

最後，我亦希望回應周梁淑怡議員的意見，希望大家能夠接受本人的修訂。

謝謝主席先生，本人謹此陳辭。

陳榮燦議員致辭：主席先生，本人是有關《1996年旅館業（費用）（修訂）規例》的議案的小組委員會成員之一，政府新修訂牌照收費表除了“客房數目由一至五間”的度假屋之外，其他所有等級的收費都大幅增加，其中尤以客房的數目超過500間的大型酒店為甚，這些級別酒店所須繳付的牌照費用，會按三年遞增至相當於現行收費11倍之多。

主席先生，酒店業牌照大幅增加，會對酒店業構成沉重的負擔和加重經

營成本，百上加斤，從而威脅酒店業的經營，對增加就業機會沒有好處。所以小組委員會提出反對意見。現在民主黨單仲偕議員提出修訂，其修訂分三部分：（一）一至五間房的度假屋可以減收牌費，（二）六至100間房間的凍結加幅，（三）101間至500間房間或以上的則按通脹增加收費。

不知道民主黨是否因為見近期政府多項增加收費均被否決而提出修訂，讓政府有一些收入。如果這次修訂得到通過，政府應該多謝民主黨的好意。

本人作為酒店及飲食界別議員，研究過修訂議案內容後，覺得修訂案可減輕部分酒店經營者的負擔，此外，亦曾經徵詢香港酒店業主聯會的意見，他們認為“勉強”可以接受。因此，本人和工聯會以及民建聯將會投票支持修訂議案。

不過，本人要指出，政府今後向立法局提出加費議案時，不要隨便訂出加價幅度，更不要提出大幅和不合理加價，否則，政府並不可能像這次這樣幸運。

主席先生，本人謹此陳辭。

馮檢基議員致辭：主席先生，對於今次的議案，我基本上是支持單仲偕議員的修訂的。雖然我是支持這個修訂議案，但是我有以下幾點想提一提。原則上我亦同意政府的提議，就旅館發牌的收費上收回成本，但是因為我們在研究規例的過程中發覺有很多技術上的問題，因此我們對現在的提議很有保留，以致不可以同意。其中包括收回成本時間，只有三年那麼短的時間，自然會令到加幅極高，我們擔心對業內的人士可能會有影響。

第二就是發牌的方法，現在發牌的方法是每年發牌的。我們擔心如果當局今年對某一間旅館或酒店提出了很多的意見，要其維修及改善，但是那些維修改善工程通常不會今年完成，明年就壞了或爛了，又要當局再查一次，那麼第二年是否又要用同樣的人手時間查察同樣的事情呢？是否又要收回同樣、甚至昂貴了的牌費呢？因此，我認為這發牌的方式是很有問題的。

第三點就是計算牌費的方法。我和民協發覺這牌費其實在某些地方可能與旅館業要領取的其他牌照是重疊的，例如防火的問題，發牌當局固然要查看有關情況，但其實消防處亦要查看；又例如酒店或旅館內的一些食肆牌照，發牌當局自然要查看，但市政局亦一樣會查看的。所以我們認為政府應該就着這些重複的事件再整理一下計算收費的方式。

總結來說，無論是周梁淑怡議員的議案或單仲偕議員的議案，其實我

們都同意，同意的目的不在於究竟是不讓政府加費還是只可以加少許，而是要政府拿出一套我們認為恰當合理的牌費計算方法出來。所以我們今天支持單仲偕議員的議案，主要的目的就是希望政府能夠盡快再提出一個檢討牌費的方法，謝謝主席先生。

楊孝華議員致辭：主席先生，酒店是旅遊業內很大的範疇，香港每年有1000萬遊客到訪，差不多其四分之一的消費都是花費在酒店上。作為旅遊界的代表，我在此對《1996年旅館業（費用）（修訂）規例》所作出的幾項修訂提出意見。

首先，旅遊業和酒店業的仝寅，十分多謝這次民協、自由黨、民主黨以及工聯會等其他議員聯手對這次政府提出的加價作出回應。但是，這點並不表示酒店業人士並不同意用者自付的原則。他們感到反感是因為在這原則背後，有很多他們認為不公平、不妥當的地方。自從《旅館業條例》五年前在本局通過後，酒店業，尤其是酒店業主聯會，曾多次與政府接洽，指出其中有很多的運作和標準有非常不公平的地方。

酒店業是一個十分龐大的事業，需要鉅大的投資。若然沒有酒店業，香港旅遊業的其他範疇都會很難發展。酒店業一直都認為政府應該鼓勵投資者多在酒店方面作出投資，這樣對香港整體經濟和香港的就業情況都有益處。當然我們亦承認，政府近年來亦有作出一些回應，例如去年所作出的地積比率的修訂，將過往按住宅大廈方式評估的酒店地積比率改為按商業大廈的方式來評估。但在另一方面，政府亦撤回了當時某些優惠，使某些酒店感到幫助不大。

在今年的財政預算案中，財政司亦曾對酒店業的某些措施，例如裝修的折扣，作出了一些新的計算方法，這些都有一些鼓勵性的作用。在這方面，我們承認政府曾做了一些事情。但在另一方面，酒店業多年來均指出發牌制度需要認真地改善。舉例來說，在酒店開幕前或興建的時候進行嚴格的審查，這點是可以理解的；但酒店業人士一直都認為，當牌照發出後，情況應該類似一個駕駛人士考獲車牌後，每年續期時無須經過重新審定或非常嚴格甚至更改標準的審核，便可以續期。當然，駕駛車輛和興建酒店並非同一回事。不過，既然政府現時已經有三項有關發牌制度的條例草案提交立法局等候召開條例草案委員會研究，我們希望政府在出席討論這些條例草案的會議時，可以考慮怎樣使發牌制度的運作更加公平和更加有效率，因而令收費

無須增加很多。所以，對於這次的修訂，即是暫時按通脹來增加收費，而對小型的賓館則仍是減少收費的建議，我認為基本上是可以作為一個權宜之計的，好讓政府有更多時間來研究如何徹底地檢討這項收費制度，既可長遠來說能達至用者自付的目的，而另一方面亦能產生鼓勵投資者投資酒店業或旅遊事業的作用。

謝謝主席先生。

PRESIDENT: Does any more Member wish to speak? If not, I will give leave for Mr SIN Chung-kai to speak for the second time as he will not be given the opportunity to speak after the conclusion of the joint debate.

單仲偕議員致辭：我呼籲大家稍後投票的時候能夠否決周梁淑怡議員的議案，然後支持本人動議的議案。其實大家的目的也是一樣，都是希望政府能重新檢討那個制度，對不起，周梁淑怡議員，我要求大家否決妳的議案，然後支持我的議案。謝謝各位。

PRESIDENT: Mr SIN Chung-kai, you are not supposed to address other Members. You should only address the President.

SECRETARY FOR HOME AFFAIRS: Mr President, I urge Honourable Members not to repeal the Hotel and Guesthouse Accommodation (Fees) (Amendment) Regulation 1996 and not to support the proposed amendments to the Regulation as moved by the Honourable SIN Chung-kai.

The Hotel and Guesthouse Accommodation Ordinance was enacted in May 1991 to provide for a licensing scheme to regulate fire and building safety, health and hygiene of hotel and guesthouse accommodation. Under the Ordinance, any person operating a hotel or guesthouse is required to obtain a certificate of exemption or a licence.

As the purpose of the Ordinance is to regulate the safety of temporary accommodation for tourists and local people, both hotels and guesthouses are subject to the licensing scheme. Annual inspections are essential before licence

renewal to ensure that the premises continue to comply with the licence conditions. The vigorous enforcement of the Ordinance by the Licensing Authority has contributed to the reputation of our hotels and guesthouses in the context of safety. The Licensing Authority has taken, and will continue to take, robust enforcement actions against unlicensed establishments. I should stress that there is no duplication of work between the Licensing Authority and other government departments, as the Licensing Authority is the one and only agency in the Administration responsible for the licensing of hotels and guesthouses.

It is government policy that fees should in general be set at levels sufficient to recover the full cost of providing the services from the users. This is an important principle which forms an integral part of our revenue structure and which underpins our low tax economy. The Public Accounts Committee in 1994 recommended that the Secretary for Home Affairs should devise an action plan as soon as possible to achieve full cost recovery for the licensing of hotels and guesthouses.

Our proposed fee scale for licensing hotels and guesthouses seeks to reflect the costs of licensing establishments of different sizes more accurately. The proposed scale is more equitable than the existing scale to operators of small guesthouses/holiday flats. Over 600 such establishments will enjoy a 31% reduction in licence fees under the proposed scale.

The cost of operating the licensing scheme is $20.6 million per annum. Under the existing fee scale, we only recover about $9 million or 43% of the cost if all establishments are licensed. Although our proposal seeks to achieve full cost recovery over three years, in the first year, the cost recovery is only about 70%, which means taxpayers are still subsidizing the hotel/guesthouse business by about $6 million.

I wish to stress that the Regulation has little, if any, impact on livelihood and no inflation as local customers account for a very small share of the business turnover of hotels and guesthouses. The proposed fee increases would only have a very mild impact on the operating costs of the industry.

I urge Honourable Members not to repeal the Hotel and Guesthouse Accommodation (Fees) (Amendment) Regulation 1996, otherwise, our taxpayers will have to continue to subsidize hotels and guesthouses, which are private,

profit-making and non-welfare organizations. Clearly, this is against the "user pays" principle and is unreasonable and unfair. The repeal would run counter to the Public Accounts Committee's recommendation and prevent the Administration from rationalizing the fee structure.

I further urge Honourable Members not to resolve to amend the Regulation as moved by the Honourable SIN Chung-kai. The fee scale under the Resolution has little, if any, regard to full cost recovery. Neither could it implement the recommendation of the Public Accounts Committee. It would prevent the Administration from rationalizing the fee structure and cause unacceptable delay in achieving full cost recovery. Under this Resolution, if passed, our taxpayers would continue to subsidize hotels and guesthouses, which I reiterate is unreasonable and unfair.

Thank you, Mr President.

周梁淑怡議員致辭：主席先生，我想通過你向單仲偕議員說不必說“對不起”。知錯能改，善莫大焉。*（眾笑）*下次請早。

作為小組委員會主席，我其實是沒有其他選擇的，只有按委員會的決定去做。剛才已提到廢除規例雖可凍結收費，但不能令度假屋受減價之惠。再者，鑑於委員會最後會議之後的新發展和達到可以得到各方面都能接受的方案，自由黨將會順政務司的意思不支持小組委員會的議案，但要逆政務司的意思支持單仲偕議員的議案。

Question on Mrs Selina CHOW's motion put and negatived.

PRESIDENT: Now that Mrs Selina CHOW's motion has been negatived, I will call upon Mr SIN Chung-kai to move his motion.

MR SIN CHUNG-KAI to move the following motion:

"That the Hotel and Guesthouse Accommodation (Fees) (Amendment) Regulation 1996, published as Legal Notice No. 224 of 1996 and laid on the table of the Legislative Council on 5 June 1996, be amended in

paragraph 3 of the Amendment Regulation by repealing everything after "2,800" and substituting —

"6 - 9	4,065
10 - 20	7,410
21 - 30	12,070
31 - 40	16,015
41 - 50	20,795
51 - 100	24,740
101 - 200	29,400
201 - 300	29,400
301 - 400	29,400
401 - 500	29,400
Over 500	29,400"."

單仲偕議員致辭：主席先生，我動議通過議事程序表內所載於我名下的議案。

Question on the motion proposed put and agreed to.

PRESIDENT: I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates and Members were informed by circular on 8 July. The movers of the motions will each have 15 minutes for their speeches including their replies, and another five minutes to speak on the proposed amendments, where applicable. Other Members, including the movers of the amendments, will each have seven minutes for their speeches. Under Standing Order 27A, I am obliged to direct any Member speaking in excess of the specified time to discontinue his speech.

REVIEW OF SEWAGE SERVICES TRADING FUND

DR JOHN TSE to move the following motion:

"本局促請政府立即檢討《污水處理服務營運基金》（“基金”），從而取消基金在二零零零年全面收回成本的目標、延長基金達致收支平

衡的期限、及增加對基金的注資；而在未完成檢討前，政府必須凍結排污費及污水附加費，以免增加市民及工商業的負擔，並須簡化現行污水附加費的上訴手續，以減少上訴人士所需負擔的費用。"

謝永齡議員致辭：主席先生，我動議通過議事程序表內載於我名下的議案。

主席先生，上星期本局否決了政府增加排污費及污水附加費的建議。有見及此，政府最近提出了新的收費建議，延長《污水處理服務營運基金》的回本期到二零零五年。本來民主黨對於政府“知錯能改”的做法表示歡迎，但可惜政府“做好人”未能夠做到底，新的收費方案只是換湯不換藥，比較舊方案還要差，還要貴。雖然還本期延長了，但所有沉重的污水處理費用仍然由市民單獨承擔。

1. 新方案“將垃圾掃入地氈底”

按政府的新建議，營運基金的回本期雖然延長至二零零五年，但由於延長回本期令到赤字不斷累積，排污費每年的加幅率高達20%，直至二零零五年，排污費將會加至每度水5.16元，累積加幅高達330%，甚至比舊方案的4.47元更昂貴。民主黨認為，現時每度水1.2元已經是十分昂貴，將排污費增加至5.16元更是不可接受，亦令人質疑營運基金的成本效益。在此，民主黨對政府所提出，每年兩成的建議加幅作出強烈反對。同時要留意的是，現時建議的收費不盡不實，並未將二、三、四期污水計劃的運作成本計算在內。當各階段陸續落實後，排污費的升幅將會更加驚大。

毫無疑問，這樣的安排是“將垃圾掃入地氈底”，表面上對市民及立法局做到兩面討好，既不用注資，亦可以令排污費無須立即飆升；但實際上卻不能減輕市民在排污費方面的負擔。民主黨認為要切實解決問題，除了延長回本期外，有必要對基金作出注資。

2. 拒絕注資後果嚴重

對於政府拒絕注資，民主黨表示失望及費解。政府拒絕注資的後果非常嚴重，而基金要達到自負盈虧便只有三條出路。一是關門大吉，我相信沒有香港市民想見到的。二是削減排污服務，但這樣將會違反基金所承諾改善環境的目的；三是大幅增加排污費，但在經濟不景、失業率高企的情況下，將會嚴重影響市民生活，加重市民負擔。事實上，政府現時坐擁大量盈餘，

一九九七年的預算儲備便有1,500億元，但仍然透過營運基金徵收昂貴的排污費，可謂“為富不仁”、“漠視民生”。

3. 要求注資並不違反“污染者自付”

主席先生，政府經常表示，向基金注資將會違反“污染者自付”的原則，但支持“污染者自付”並不等於要百分之百收回全部成本。正如大學學費一樣，支持“用者自付”的原則並不等於要大學生交百分之百的成本，試問有多少大學生有能力支付每年20萬元的成本呢？況且渠務工程作為一種公共建設，政府在這方面的承擔根本是責無旁貸。就以今天早上的工務小組會議為例，政府用3億元公帑挖掘藍巴勒海峽及進出口航道的海床。而同樣是挖掘工程，如通渠服務及污水渠維修等，費用卻要市民支付。同樣工程、兩種準則，令人質疑政府利用營運基金，有心卸責。

其實過往政府亦有撥款渠務署，用以處理及收集污水，單在九四至九五年度，這筆撥款便達到6億元。但在收取排污費後，港府便不再支付這筆經常性費用，改由市民全部支付。因此，民主黨要求政府作出基本承擔，最少繼續將該筆款項注資到基金，與市民共同承擔責任，減少市民的負擔。

4. 過份簡化環保概念、忽略環保意識

另一個要檢討的問題是，政府將“污染者自付”的環保概念，過份簡化為收回成本的會計概念，以致基金注重追回成本，忽略了最重要的目的：改善環境及提高環保意識。在收取排污費的同時，政府並沒有提供措施加強市民的環保意識及行為，變成只為收費而收費，得不到徵收排污費而令市民更環保的結果。事實上，收取排污費後，市民並沒有減少用水。明顯地，收費甚至乎增加排污費，並不是解決問題的單一或最有效的方法。

5. 基金欠缺透明度

此外，基金以“自負盈虧”為加價的理由，但運作卻嚴重欠缺透明度。對於基金如何經營、是否適當的控制成本，或是否善用資源等，普遍市民無從作出監察。在這種接近封閉的運作情形下，難免令人懷疑基金的成本效益，亦同時質疑政府只是巧立名目，以環保為名，賺錢為實。

6. 基金貨不對辦

但更令人失望的是，市民繳付污水費後，本港的水質絲毫沒有改善。一九九零年本港只有十個泳灘被列為“差”及“非常差”，到一九九五年時數目不減反加，共有19個泳灘被列為“差”及“非常差”。更甚者，每日所收集的污水，有八成是未經處理而排入海中。另外每日仍有大約100萬立方米未經收集的污水自動流入維多利亞港，未經收集當然是未經處理了。當市民一手交錢的時候，政府卻不能一手交貨。試問這樣貨不對辦的營運基金如何稱得上“改善服務質素”？

7. 污水附加費收益估計失誤

就工商業污水附加費而言，政府亦未能了解市場的供求，從而提高回報率。在成立的初期，估計收入達2.7億元；但由於陸續實施水污染管制區及大部分用家為避免繳交污水附加費而減少用水，基金實際收入只有7,000萬元。據渠務署資料顯示，污水附加費的收益就由九五年四月至九月的1.08億元，跌至九六年第一季的6,900萬元。這些證據都顯示營運基金一些基本運作失誤。

8. 現行投訴機制繁複

雖然政府表示，如商戶認為本身污水的濃度被高估，或政府錯誤估計排放比率，可向有關部門上訴，但政府規定各上訴團體需要聘請指定的化驗師，定期抽取用戶的污水樣本，而聘請化驗師的費用動輒要二、三萬元。試問上訴費用貴過污水附加費，又會有幾多商戶會上訴呢？大部分商戶亦批評政府的投訴機制過份繁複，寧願繳交附加費了事。在九六年第一季發出的一萬張附加費帳單中，便只有89宗投訴。因此民主黨要求政府盡速簡化有關手續及降低上訴的費用，使更多有疑問的用戶能向政府提出上訴，避免錯誤的徵收排污費及污水附加費。

總括而言，民主黨認為現時是對基金作出全面檢討的時候。成立營運基金的本意是希望(1)改善服務質素；(2) 增加透明度和監察基金的運作及(3) 增加資源運用上的彈性。但經過接近一年的正式運作，基金不但不能達到指定目標，更加是問題“一籮籮”。

最後，民主黨建議政府積極檢討基本運作：(1) 延長基金的回本期；

(2) 以免息貸款的方法注資入基金；(3) 而在未完成檢討前凍結排污費及污水附加費；(4) 簡化污水附加費的上訴手續及(5) 增加基金的透明度，容許市民有效監察基金。在政府未達到以上要求的時候，就“獅子開大口”要求大幅加價，民主黨將會繼續反對加價。

主席先生，我謹此陳辭，提出議案。

Question on the motion proposed.

唐英年議員致辭：主席先生，最近政府向傳媒透露，同意延長營運基金成本回收，由二零零零年延至二零零五年。但每年的加幅，就要提高至20%。政府又表示，誓要堅持“污染者自付”的原則，不會考慮向營運基金作任何注資。對此，本人感到難以理解，因為我根本不明白政府怎可能會認為由上星期我們推翻了的15%，現在說要加至20%，而我們是可能會接受的。自由黨是不會接受的。

我想問政府一句，假如在現時香港經濟放緩的情形下，市民連15%加幅都不能負擔，討價還價之後，政府竟然還要加20%，這是否開市民的玩笑呢？難道政府以為議員會背棄公眾的意願，接受這個與民意偏差極遠的方案嗎？主席先生，政府一再指摘立法局支持“污染者自付”只是空有其言，卻無實際行動。我可以告訴政府，立法局當然願意承擔有關法案所引發出來的代價。不過，正是因為我們代表着民意監察政府，所以，我們所投的每一票，都須向公眾交代，我們不可能隨便的接納政府不合理的建議，我們是支持“污染者自付”的原則，但並不代表我們沒有底綫，或無限量的支持政府拋出來的任何方案。否則，我們就有負市民所託。

主席先生，上星期我已公開了自由黨對有關法案的立場和建議，今日我不準備再陳述多一次，但我希望政府早日回應我們該九項建議，接納或不接納，理據何在。我亦希望政府解釋，延長還本期至二零零五年，需要每年加價20%的詳細數據，以及如果延長20年，有關的收支數字又如何。自由黨的底綫是，我們不會考慮支持每年超過10%的加幅的任何計劃。

政府堅持不肯注資，認為這有違“污染者自付”的原則，但另一方面，又表示政府已對排污工程作出很大的投資，我恐怕政府在這件事上，已矛盾重重。一方面，政府恐嚇議員說，若要政府注資，就有可能要向市民加稅、加差餉，來增加收入。主席先生，我們都是從小嚇到大的，我質疑政府憑甚麼去加稅、加差餉。政府庫房坐擁龐大儲備，我們只不過要渠務署將往年用

在排污上的四億多元放回營運基金，這是合理不過的事，如果這樣便要加稅，還有公理嗎？

同時，將部分差餉撥入基金，又有何不妥？我只考慮一點是，我們有權去監察政府如何運用來自納稅人袋中的公帑，是否用得其所，還是放着大筆儲備在庫房裏不用，卻額外搾取市民血汗錢。事實上，市政局有剩餘的錢，某個程度來說，花錢去買油畫來提高市民藝術的層次，或許是需要的，但若同時強要市民及工商界付出能力範圍以外的巨額，而導致有工廠或食肆因此而倒閉，連累工人失業，甚或推高通貨膨脹，我相信在油畫與飯碗之間的取捨，是顯而易見的。

主席先生，本人謹此陳辭，支持議案。

陳榮燦議員致辭：主席先生，今年一月十日，本人率先在立法局提出有關“排污費”的議案辯論，要求政府“暫緩徵收排污費及附加費及重新釐定收費標準”，指出政府濫收排污費，影響酒店及飲食業的經營運作，特別打擊飲食業，致令食肆倒閉，使更多工人失業。

今天，是今年立法局會期最後一天，謝永齡議員同樣提出和排污費有關的議案辯論，說明了“排污費”的問題複雜性，受市民關注和爭議性較大，同時直接影響民生。

本人在上次議案辯論中指出，政府在推銷“污水處理服務收費計劃”之時，有誤導當時立法局議員成份，以及採取“快刀斬亂麻”手法，通過這條法例，造成日後很大的爭議。很高興在上星期三立法局各議員一致凍結政府排污費和排污附加費加價時，自由黨的唐英年議員以及今次提出議案辯論的民主黨謝永齡議員同時指出，政府在立法的過程中誤導當時立法局議員。

上星期三凍結政府提出的排污費和工商業污水附加費加價議案，本人不敢居功。但本人在立法局的有關議案辯論，以及多次指出排污費及工商污水附加費對飲食業和廣大市民的影響，或多或少有一定作用，從而使各議員有了一個共識，加上本港經濟放緩，失業人多，大勢所趨，所以立法局各議員如此爽快，一致支持凍結排污費及排污附加費的增加。

主席先生，港府當初為了急於在一九九七年之前完成污水處理策略重點

工程計劃，加上要令污水處理服務營運基金的帳目達到收支平衡，就匆忙推出了這個千瘡百孔的污水處理服務收費計劃，一直備受各方嚴厲批評。

而當較早前，港府表示要重新釐訂以後幾年的排污費加幅時，各界嘩然指摘政府，政府解釋原因是當初高估了工商業用戶所要繳交的金額，又低估上訴個案成功得直，致令政府總共減少收入約1億元的“誤差”，政府因此未能達到九四年底預期有8億元收入的目標，而要重新釐訂排污費的加幅。

明顯地，以上種種原因，都是由於政府在制訂政策時出現“計算誤差”所致，再加上，港府初期訂出工商污水附加費的基準及計算方法有欠公允，令部分上訴得直的工商用戶可減少繳交費用。

其實，申訴專員在本年五月初公布的調查結果亦指出，港府在推行工商污水附加費計劃時，已犯上多個失誤，包括對影響最大的餐館業諮詢不足，以及釐訂收費有欠公允。

由此可見，政府在推行這個計劃時實在欠缺周詳細密的財政預算，亦無充分的諮詢和公平、合理的收費標準。

因此，政府要求市民承擔這些錯誤所引起的問題，實為不負責任的表現。昨天，港府聲明不會考慮注資營運基金，本人對政府的態度深感失望。我想指出一點，全港市民過往透過繳交差餉、水費和各種稅項，以支付以前的排污設施的運作費用，因此政府為何不可以將這些行常開支撥入基金，卻將這個包袱完全拋給市民手中，要我們獨力負擔。基於上述兩個理由，工聯會要求政府每年向營運基金注資，承擔起部分開支，以解決基金現在出現虧損問題，政府實在沒有理由推卸原先的責任。

本人就此作出幾點的建議：

1. 要重新釐訂工商業污水附加費的收費標準，落實申訴專員公署的報告建議。

2. 簡化上訴程序，以減低工商業用戶上訴費用。

3. 政府應該注資，負擔起部分排污的責任。

4. 進一步延長收支平衡的目標年期，從而紓緩未來排污費的加幅。

最後值得一提的是，港府在推行排污計劃的策略上，一直忽略了一套完善措施。

主席先生，隨着排污工程的不斷落成，排污服務的營運開支亦將不斷增加，屆時市民負擔排污費的包袱將會更重。因此，政府應切實作出檢討。

蔡根培議員致辭：主席先生，保障香港環境清潔，確保本港水質優良，是每一個香港市民的願望。所以，沒有人會反對投資於污水處理工程。問題是錢從何來？向誰收回這筆資金？為了有效控制成本效益及符合“用者自付”的原則，設立污水處理服務營運基金是值得支持的。由於香港奉行低稅率政策，而稅基狹窄，採取營運基金的形式收回部分或全部成本，不失為一個增加公共收入的良好方法。這也可以說是擴寬稅基的另類方法。為此，本人不認為政府已向市民或者公司徵稅，就沒有理由再徵收排污費。此外，以營運基金形式運作，能夠更有針對性地向用者收回成本。

“用者自付”或“污染者自付”的原則，基本上是可以接受的，但不能脫離實際情況而空談原則。當我們談“用者自付”的原則，不能不顧及誰是“用者”及如何使用。例如：興建馬路，是開放給所有市民使用，難道我們就要向每一個道路使用者收取道路使用費嗎？同樣理由，生活用水是每一個市民所必需的，而他們的正常排污也是必需的，為此，向全港市民一律徵收排污費的做法實在值得商榷。而且若營運基金按用水量而徵收污費，則即使可使一般市民因而減少用水，也不能令他們減少排污量。因此，政府有必要就現行計算排污費的方法，即時進行深入的檢討，對工商界而言，排污費應計算在他們經營成本之內，所以政府執行這個原則時，仍須考慮兩方面的問題：

（一） 目前的工商污水附加費是否合理呢？

根據過去一年的情況來看，現在污水附加費的徵收率很有問題，尤其是對飲食業方面而言。納稅人固然沒有責任津貼工商業，同時，要某一些工商行業對全港的排污處理開支作不成比例的承擔，也屬不公平。

（二） 考慮對整體社會及經濟的影響

利用稅務及公共收支，政府是可以在某個程度促進經濟的發展或避免經濟滑下坡。在目前經濟放緩的情況下，政府大幅增加工商業污水附加費，實在令有關行業的經營雪上加霜。以飲食業為例，這行業屬於勞工密集型，吸納了大量文化水平及技術水平要求較低的工人，若此行業紛紛倒閉，將令本港失業率惡化。所以釐訂污水附加費時，便不能刻板地只顧收支的平衡而忽略了一些社會經濟因素。

基於上述原因，港進聯對於污水處理服務營運基金是否應該達至全面收支平衡有所保留。港進聯認為營運基金中部分收入應由政府每年注入，以補貼處理一般市民排污的開支。此外，港進聯十分質疑污水處理工程的投資須於三、五年內全部收回成本的政策。因為，污染的問題不是今天才發生，是過往長期積累下來的惡果，不應只由目前的污染者全部支付。而排污計劃的完成亦可使下一代受用，故也不應由這一代全部承擔開支。為此，建議營運基金達至收支平衡的期限應為十年以上。

主席先生，本人謹此陳辭。

羅祥國議員致辭：主席先生，從大的原則，民協同意“污染者自付”的目標。但市民日常起居生活用水，則不應被視為污染者。再者，向市民徵收排污費，是否可以減少家庭用水，因而減少污染，其成效是非常可疑的？民協認為對市民徵收排污費，性質是等如“人頭稅”，是一項有累退稅性質的不合理收費。故此民協要求政府立即撤銷向一般家庭住戶徵收排污費，而有關的支出應由一般收入負擔。

民協同意工商界應承擔其所造成的污染責任，並繳付政府興建和經營排污設施的成本，但由於今年經濟仍然比較低迷，一些行業如飲食業、漂染業成本上升比較快，而控制經營的環境亦不容易，大加排污費，會令部分商戶經營更困難，並會使更多人失業。有見及此，民協同意今年凍結排污費及工商業污水附加費。

民協要求政府將渠務署污水營運基金的成本收回期延長至15年或以上，並改善經營效率以減低排污費的加價幅度，而政府亦應考慮增加注資該營運基金，以補助維修保養可能出現的龐大支出、利息上的帳面支出及填補基金

所出現的赤字。

目前，排污費上訴程序複雜，成本高，不少中小型商戶即使上訴得直後，也可能會出現得不償失的情況。民協認為政府應簡化上訴的手續。更重要是制訂一套更完整和公平的污水附加費的計算準則，從根本上減少上訴的必要性。

本人謹此陳辭，支持謝永齡議員的議案，謝謝主席先生。

張炳良議員致辭：主席先生，政府一直以來都稱，基於“污染者自付”原則，污水處理服務營運基金要“收回成本”，所以要增加排污費。我們不反對環保的“污染者自付”原則，我們不反對在特定條件下政府“收回成本”的收費概念，我們也不反對“營運基金”的概念，但是政府上述的論點，明顯地將三個截然不同的概念：即“污染者自付”、“收回成本”及“營運基金”混為一談，劃上等號，造成似是而非的論點，倒果為因，使到市民對環保問題產生誤解。

“污染者自付”原則始自德國的環境保護計劃，其後這個計劃也得到歐洲聯盟的支持，於是歐洲聯盟一九九二年的《馬城條約》裏，亦有要求歐盟各國採用這個環保原則。在一九九二年的聯合國地球高峰會上，世界各國通過的《里約熱內盧宣言》裏第十六號原則明確指出，締約國必須實行“污染者自付”原則，但在實行的同時，也須要照顧公眾的利益，並且也不要因而損害國際間的貿易與投資。

“污染者自付”原則，從字面上來看，即是污染者要為他們污染環境的行為，付出清理的費用。原因很簡單，因為社會需要抽調資源來處理環境破壞的後果。這句說話背後的理念是：不應該為了現時的社會富裕昌盛，而為後代子孫造成難以彌補的環境破壞。這個講法就是環保人士一直倡議的“持續發展”的觀念。

但若果這個訊息不能夠通過宣傳教育的推廣，使市民理解當中的意思，市民會對“污染者自付”產生錯覺，以污水的處理為例，便會以為有錢的人因為負擔得起，便可任意使用食水和排污，反之負擔不起的就要用少些水，去少些洗手間。在這個原則底下的收費，就變成了有階級性質的稅項。

主席先生，縱使“污染者自付”有“持續發展”的概念，但政府卻三番四次向外界說，“污染者自付”就等於“收回成本”。政府說，由於污水處理服務營運基金入不敷支，基於收回成本的原則，於是便要增加排污費。市民因此有另一種錯覺，以為“污染者自付”就等於“收回成本”，鑑於收費過高，於是就反對“污染者自付”原則。

那麼“污染者自付”是否等如“收回成本”？答案是否定的。在剛才我引述的《里約熱內盧宣言》中說，在實行“污染者自付”的原則時要考慮公眾利益。換言之，即使從國際法的觀點，在實施“污染者自付”原則之時，也要考慮在“該原則”底下的收費形式和水平，對公眾是否合理？是否有考慮市民的負擔能力？是否有效做到保護環境的目的？是否能通過“污染者自付”達到令市民明白保護環境的重要性？實際的情況是，政府上星期提出有關排污費及附加費的加幅，遠高於通脹。在加費受到市民強烈反對和本局凍結後，政府更揚言，現時不能加費則日後的加幅更大，市民負擔更重。另外，污水處理要得到“策略性污水排放計劃”第一期於一九九九年完成後才有實質的改善。我們看到，目前的情況是政府未能認真地平衡公眾利益，而市民也看不到“持續發展”的理念，只是看到政府為了彌補不斷上升的成本而需不停地加費。

既然“污染者自付”不等同於收回成本，那麼“收回成本”又是否等同“營運基金”概念？主席先生，這裏首先要釐清甚麼是“營運基金”？正如我在兩星期前本局有關機電工程署成立營運基金決議的發言中指出，在決定一個部門是否成立營運基金時，首要在考慮該部門是否屬於商業性質的運作，然後再考慮這個商業性質的部門能否有條件做到自負盈虧、收回成本。若果能達到上述的要求，才應考慮把該部門轉成營運基金運作，以給予它資源調配上更大的彈性，達到提高效率的目的。

換言之，並非所有政府部門都可以轉成營運基金，後者的服務必須是具有商業性質的。如果不是的話，則所有政府部門的服務，包括警察在街上截查身分證，又或消防員救災後，理論上也可向受惠人士或受影響人士收取費用以彌補開支。其次，並不是所有商業性質的部門也可做到自負盈虧、收回成本。一些服務，如果在市場上無利可圖，無生存空間，即使是商業性質的服務也不能做到全部收回成本，因而也不應該貿然成立營運基金，除非政府願意予以一定的補貼。

有能力“收回成本”是成立營運基金的其中一個主要前提。但政府現時有關污水處理服務營運基金，則把成立營運基金的“條件”說成“目的”，是為了收回成本，而不是因為污水處理服務營運基金可以收回成本，才把它

轉成營運基金運作。政府的說法，倒果為因，混淆了概念。

主席先生，政府當初提出成立污水處理服務營運基金時就信誓旦旦，使議員支持其成立。但當污水處理服務營運基金經營出現不週，成本失控，出現赤字，就用“污染者自付”這個大原則壓下來，向市民開刀，要申請大幅加費。事實上，政府是否在營運基金裏做到真正控制或減低成本呢？如果成本上升，是否應考慮不要做到全部收回成本，而作局部收回成本，又或分階段收回成本，以照顧市民的負擔能力呢？

主席先生，本人謹此陳辭，支持議案。

葉國謙議員致辭：主席先生，在世界各地都講求環保的大氣候下，“污染者自付”的大原則是得到廣泛的支持。民建聯一直是這原則的忠實追隨者，我們贊同作為污染者，應處理自己所產生的污染，但我們反對政府以用水者自付的原則向住戶濫收排污費，更反對政府在經濟不景氣的情況，仍狂加排污費，政府此舉只會“犯眾憎”。上星期三在各同事齊心下，成功凍結了排污費，政府隨即“出言恐嚇”，指凍結排污費，將會令港府缺乏資金改善排污設施，且打亂了基金要五年內收回成本的預算，最後可能使營運基金面對“拉閘關門”的命運。

工務司在上周致辭時指摘議員只空談支持“污染者自付”原則，但又不願承擔加費的責任，要凍結排污費。在這裏我想指出這完全是港府咎由自取的後果，當年港府向議員提供不準確的資料，包括高估工商業用戶的繳費數目，低估了業者上訴成功的數字，且亦承諾每年加幅不高於10%以上，港府當年亦沒有訂下收支平衡目標等，議員是基於以上因素才支持成立營運基金的，但事隔一載，已面目全非，加幅每年高於10%，更甚者是要求在短短五年內做到完全收回成本，對我們香港市民公平嗎？這實在是叫議員難以認同的。

主席先生，早在今年一月陳榮燦議員提出有關排污費議案辯論時，民建聯已指出，根據港府的“污染者自付”收費原則，如果用戶排放的污水日漸減少，排污費的實得收入亦自然減低，整體排污費收入的下降，便不能完全達致收回成本，屆時，港府定必會不斷增加排污收費以收回成本。當時民建聯已提出警告，如果港府不認真解決財政安排上的問題，繼續以收回全部營運成本為目標而收取排污費，這只會是一個令市民痛苦“萬劫不復”，市民負擔“深不見底”的大洞。所以民建聯促請政府信守“諾言”，對營運金進行檢討。

在財政問題上，港府檢討的方向，應考慮向營運基金注資，以達致基金收支平衡。民建聯反對港府在短時間內收回排污計劃的全部運作成本。我們認為要長遠解決營運基金出現虧損的問題，應是港府向基金增加注資。對於這構思，工務司在今年一月的議案辯論曾經在這方面指出，這是有違“污染者自付”原則，因為這會出現“納稅人要資助污染者”，但民建聯認為這論調是不成立的。因為在目前徵收排污費計劃下，有八成多的住戶是要繳交排污費的，換句話說，納稅人本身亦是工務司所說的污染者，故此，即使要求港府注資，資金來源亦是來自納稅人 — 所謂污染者的口袋。

另一方面，民建聯並不反對收回成本，但達致收支平衡的目標期限必須延長，從而紓緩每年排污費的加幅，減輕市民的負擔。雖然政府提出將期限由五年延長至十年的新方案，但建議對紓緩加價對市民的困擾，幫助不大，在九六年至九九年間，新方案加幅仍然維持最低是15%，高峰期更達到37.7%。所以，我們並不贊同二零零五年的目標，民建聯認為港府在制訂收支平衡目標時，一定要注意將排污費的每年加幅不宜訂得太大，以免影響民生。

主席先生，民建聯衷心期望政府能藉着今次排污費加幅被凍結的機會，重新對污水處理營運基金的財政狀況作詳盡檢討，認真考慮除每年叫嚷要加價以外，有否其他更有效改善營運基金財政的方法，包括注資和延長收支平衡的年期，否則，終有一天，營運基金真的會如工務司所言“拉閘關門”。此外，由目前運作的各個營運基金形式來看，民建聯恐怕以“用者自付”為原則的電子道路收費計劃，日後會在無止境的大幅增加收費下，走投無路，失敗告終。故此，民建聯希望港府對營運基金的運作形式，再作細意思量。

主席先生，本人謹此陳辭，支持議案。

THE PRESIDENT'S DEPUTY, MR RONALD ARCULLI, took the Chair.

任善寧議員致辭：代理主席先生，政府強調的“污染者自付”的原則，基本上是可以接受的，但“污染者自付”的精神基本上類同於“用者自付”。在本局今屆會期中“用者自付”的原則引起多次爭議，政府在很多收費上奉此為大原則，要求增加收費。但其實政府政策，不應只考慮一個大原則，亦須同時考慮多方面的因素。例如：港島東區走廊興建費用不菲，是否要向汽車收費呢？兩星期前政府要求本局工務小組通過屯門新市鎮工程拓展計劃，其

中一個路口便要耗用5,000萬元建行人天橋，是否將來行人也要付過天橋費呢？昨天早上政府又再次要求工務小組贊同撥款挖深藍巴勒海床，以利食水深的貨櫃船通過，以免影響貨櫃碼頭生意。為甚麼政府又不不打算採取“用者自付”的原則呢？政府的責任是應該考慮多方面因素，而不是追求硬性公平原則；正如政府應該援助社會上有需要的人士。否則，一切的社會福利計劃均可取消。

所以“污染者自付”也不能作為單一考慮，據此原則而成立的污水處理服務營運基金也因而值得全面檢討。

其實政府經常強調排污費增加只佔飲食業或工商業的營運成本很低的百分比，但若以純利計算，其百分比就相當高。當社會經濟不景，飲食業收入降低，排污費增加便造成純利兩邊收縮，所以打擊不可忽視。中國人有一句“百上加斤”的成語，即是當一個人背着100斤的東西在肩上，已覺得好辛苦時，即其臨界點已達到極限；若果再加多一斤上去，亦是吃不消的。所以，排污費增加過急會形成心理壓力，而間接導致一些生意結束、工人失業。因此我們極力反對排污費大幅增加及要求檢討其制訂污染指數的標準，本人支持這議案延長基金達致收支平衡的期限，希望盡量減低每年增繳的排污費。若果營運基金有經濟困難，一方面政府應該注資入營運基金，另一方面該基金可以倣法地鐵公司向外舉債，以得到足夠的資金繼續經營下去。

代理主席先生，本人謹此陳辭，支持議案。

At this point, Dr Samuel WONG indicated the lack of a quorum.

PRESIDENT'S DEPUTY: Can we count the Council?

Members were then summoned.

A quorum was then formed.

倪少傑議員致辭：代理主席先生，立法局上周三否決政府提出今年增加排污費及工商業污水附加費50%的議案，但問題並未就此完結。在未來數年內，預計污水處理服務營運基金每年將會出現數以億元計的龐大赤字。整個排污計劃是否能夠繼續有效地運作下去，將會是一個非常棘手的頭痛問題。

當初設立排污營運基金的目標，是希望透過仿傚商業運作的模式，提高污水處理的效率，這本是值得我們支持的。可是，現在基金所存在的先天性缺憾，正正是偏離了原有的精神。在市民心目中，政府視污水基金為斂財謀利的工具，基金自負盈虧之後，政府便可放棄對污水處理的承擔。反之，如何確保整個排污計劃在運作上能更具效益，已經變得次要了。政府除了說過渠務署已盡力節省在排污處理方面的人手之外，我看不出政府還做過些甚麼工夫，去提高排污基金的經濟效益。

政府想在未來四年內盡快收回排污基金的成本，故必須逐年大幅提高排污費，累積加幅高達168%。對民間的反對聲音，充耳不聞；對工商界的經營困境，同樣視而不見。看來，政府完全將排污基金視作一盤必定賺錢的生意，市民根本就沒有顧客應有的選擇權利，而只有照單全收的義務。政府訂定的排污費，大家只好啞子吃黃蓮，亦照單全吞。

環顧世界上很多實施排污費的國家，他們的政府在推行“污染者自付”原則的同時，亦兼顧到鼓勵市民減少污染，勉以改善環境為最終目的，政府也不是收回污水處理的全部成本。以德國為例，政府只收取六至七成的處理成本，更視乎用戶減少污染的程度而減少收取排污費，甚至全部豁免，並且整個回收期長達十年之久。政府去年在開始推行排污費計劃之前，曾否參考過這些個家的寶貴經驗呢？

代理主席先生，現時排污基金所面對的財政困難，部分亦是由於政府的錯誤所一手所造成。渠務署最初嚴重高估了須要繳交排污費的工商業機構數目；又忽略了隨着水質管制計劃的實施，污水排放的濃度已大為降低，結果基金首年的收入較原來估計少了2億元。這情況正好顯示當局在缺乏周詳的規劃下，便將計劃匆匆上馬，因而引發社會上怨聲載道，甚至有不少企業無法承擔排污費而要倒閉。我不禁要問，政府的政策是要利民或是要損民，有沒有考慮這種情況的出現呢？

代理主席先生，“污染者自付”的精神是對的，為了改善本港海港的水質，排污計劃是值得推行的。擺在我們面前的燙手山芋，是如何解決排污基金財政緊絀的難題。在這方面，政府官員至今仍只懂在市民身上打主意，工務司表示立法局刻意凍結排污費，只會使下年度的加幅更大；庫務司則說政府要檢討是否繼續經營排污基金，而完全忽略了從成本效益的角度出發，研究如何改善基金的運作問題。

代理主席先生，要真正解決排污收費計劃所出現的問題，本人認為政府即將進行的檢討，應該是全面及周詳的。檢討範圍除了原來的技術細節，例如是否以化學需氧量作為量度污水濃度的唯一標準，以及重新評估各行業的污水排放量之外，更加重要的是，政府必須重新認真研究排污計劃真正的正確目的，和設立污水處理服務營運基金的真正作用。

真正的治本之道，本人建議政府重新檢討污水處理營運基金的回報率，從整體上提高營運基金的效率，以及全面研究污水處理的設施、運作和人手等各方面，並且有必要延長其達致收支平衡的期限，取消在二零零零年收回全部成本的目標。政府將來在檢討排污費加幅時，除了視乎基金的財政狀況之外，還要考慮本港的整體經濟環境，是否能夠負擔，這樣才容易為社會人士所接受。對於當前動議提出政府增加對基金的注資，本人對此有所保留。政府注資或可紓解基金一時的燃眉之急，但在基金支出連年上升，收入卻未能相應提高的情況下，政府的注資等同滄海一粟，不但不能起“止血”作用，更使污水基金隨時可能變成一個無底深潭，成為九七後特區政府的沉重財政負擔。

代理主席先生，本人謹此陳辭。

陳婉嫻議員致辭：代理主席先生，今天，我們討論的是促請政府立即檢討排污服務收費、營運基金的問題及失誤，重新釐訂排污收費加幅等問題。剛才我的同事陳榮燦議員已經闡釋了我們一些看法和立場，我將不再重複。

我想再提出的是，現時政府向住宅用戶收取排污費用，絕對是基於一個不合理的理據和收費準則，亦未能做到鼓勵市民節約用水、推廣環保的目標，至今天為止，只淪為一般“市民有責任付錢”的懲罰性方向。因此，自排污收費實施以來，一直都有市民向我反映意見，批評政府的住宅排污收費過高，同時認為收費極不合理。

還記得，早在九四年十二月，當政府要推出這個排污收費計劃時，我們的同事在港島西曾經作一個問卷調查，訪問區內 400 居民，當時的調查結果顯示：其中超過七成的被訪者認為如果須繳交每季 130 元水費，再加上 40 元的排污費，這個比例實在過高。

現時一個四人家庭平均每季用水 80 度，按這樣的計算須繳付水費 410

元、排污費則要81元，共496元，主席先生，這個數字對於一些基層市民來說是很沉重的負擔。我相信市民已經覺得很貴。因此，較早前政府提出再次重新釐訂排污費的加幅，無論他們提出任方何方案，不論是要五年達到收支平衡或是十年，我相信大部分的市民均不會贊成，予以反對。

現時，我們促請政府要對這個“漏洞百出”的營運基金作出檢討，我在此重新要求政府同時要檢討“向住戶徵收排污費”的意義何在。

其實，市民日常用水為何？是用作煮飯、洗手、大小二便等用途，實際上的污染程度十分輕微，與工商業的污染程度相較更是微不足道。

根據渠務署未經核數的資料顯示，九五至九六年，總共收取 6.9 億元的排污費及工商業污水附加費，當中有 1.8 億元全來自住宅用戶，意即九五至九六年度住宅用戶佔總數的 26%，而政府預計未來亦會向住宅徵收約三成的費用，令我非常質疑的是住宅用戶是否佔整體排污程度的三成？究竟是否存在着住宅用戶補貼工商業用戶的情況？

據我所知，政府整個排放污水計劃工程所採取的化學處理方式主要是針對工業用水，而且政府從來未有提供有關住戶及其他用戶在整個排污系統當中所佔的“損耗比例”，和拿出住宅用戶佔三成的理據。

代理主席先生，我想問政府：

1. 住宅用戶的污染程度是輕微或嚴重？

2. 如果單只是處理住戶的污水，是否需要興建這樣龐大的一期、二期及三期的工程計劃？

我希望政府檢討污水處理營運基金的時候，解釋住宅與工商業用戶各自所造成的污染程度的數據，否則，很難說服為何住戶須要負擔如此鉅額的費用。

我相信唯一可以解釋的原因是，住宅收費只是巧立名目，向全港市民集資，為策略性污水處理計劃的營運基金籌錢。

但是，可能有人會問，如果沒有市民大眾幫手籌錢，又如何令營運基金達到收支平衡？

代理主席先生，我想指出一點，明顯地，政府其實只是將這個“排污公共服務”，以營運基金的方式做擋箭牌，推卸一些政府應負的責任。我們以往是透過各種稅項以支付排污設施的費用，如果現時政府甚麼公共服務都要收支平衡、收回成本，我就不知道我們的稅款究竟如何運用？政府對於注資污水處理服務營運基金再三推搪，完全不願意負擔起這些“公共服務”的部分責任，我感到完全的失望。

代理主席先生，最後，我認為政府在檢討污水處理服務營運基金時，應該重新考慮是否必須將住宅納入徵收排污費之列。

本人謹此陳辭，支持議案。

周梁淑怡議員致辭：代理主席先生，立法局上個星期否決了有關排污費和工商污水附加費的加價申請，當日我已經清楚反映了業界對排污費的種種疑問。其實污水處理服務營運基金的種種問題，並不是這次加費申請的研討才浮現，事實上，早於去年開始徵收排污費不久，就已經有多方面指出整個計劃不妥之處，所以我支持謝永齡議員的議案。

我相信污水處理服務營運基金最需要檢討的，是整個結構的經濟效益、有效性和公平性；在現時基金運作混亂和不斷有上訴的情況下，政府實應該盡快完成檢討，根據一個合適的機制和收費制度，把收費調整至合理的水平。

關於現時的工商業污水附加費，我想政府解釋兩個問題，一是政府如何釐訂餐館業有八成用水會最終化成污水這個比率 — 澳洲的科學化調查，只是四成的餐館業用水會作為污水來排放，政府有沒有做過調查？怎樣調查？還是政府只是信口雌黃地提一個比率？其次，政府如何定出非水質管制區和水質管制區食肆污水的化學需氧量？

政府現時引用作為排污根據的調查，是推行水質管制區時，沿尖沙咀至九龍灣這個非水質管制區內做過的污水調查。這個調查根本不是為計算排污而做，抽查的是在隔油池內未經處理的污水，又沒有控制環境變數。政府單方面“移植”一個沒有沒有代表性、不科學化，而且不相關的調查，本身已經不妥善，但更驚人的是，該次調查之內，根本找不到需氧量每立方米3600克這個數字，政府憑甚麼以此作為計算非水質管制區污水附加費的標準呢？

更荒謬的是，政府是憑空估計水質管制區內餐館業污水的化學需氧量為每立方米2 000克，連作勢的不科學化調查都欠奉；政府是不是因為在現有法例之中，會懲罰那些在水質管制區內排放需氧量每立方米多於2 000克的污水的工商業，因此又做“移植手術”，借這個數字一用就算呢？

上述兩個問題只是最基本的問題，我們還有更多問題可以問政府，例如為何由30個行業共同負擔的工商業污水附加費，結果是餐館業一個行業，就承擔了總收入的82%，一年合共要繳付2.8億元？有一位心水清的業界人士曾作計算，在家中煮食，排污費是一點五仙，在外面食，涉及排污的費用就要三毫半，即是在家中煮食的23倍，難道這些金錢就不會轉嫁在消費者身上？就不會影響民生？

另外一個很大的謬誤，是整個上訴制度，完全是維護政府可以在證明計算錯誤下，仍然可以用錯的數據來多收和繼續多收污水附加費。

一個實實在在的例子，有一間食肆去年四月收到水費單，五月提出上訴，政府要兩個月後才排到期處理，經化驗後，七月底就宣布上訴得直，但政府只是以這個化驗結果來計算未來十二個月的污水附加費，對於由四月至七月所多收的錢，竟可以不退還，這與強搶有甚麼分別呢？

更加“玩死人”的是，上訴得直有效期一年，之後，政府又會用回原先的錯誤假設來計算污水附加費，食肆又要重新做一次上訴！

對於這個程序冗長、年年用錢，而又不能追討多繳費用的上訴制度，政府如果一日不改正，整個上訴機制就只會淪為政府用來壓榨市民的一個手段而已。

須知道，我們所說的每宗上訴，不是三幾千元的事，而是要用三萬多元來做化驗，即使上訴得直，政府也不會補償工商業經營者，為了證明政府犯錯而引致的支出，這究竟是甚麼道理？政府是否要懲罰那些不服氣提上訴的東主？

根據資料顯示，有90%的食肆每年繳交的污水附加費少於3萬元，政府上訴制度的設計，無疑只會打擊這些小商戶的上訴意欲，政府是否根本就有心為他們加設重重難關，令到他們不敢提出上訴呢？

令我們懷疑政府旨在收錢的例證尚不止此，在水質管制區的條例之下，環保署竟然可以拒絕向求助的食肆，提供任何途徑去減少污水中的油脂成份，只是說有辦法做得到，但連可以向何處詢問詳情，環保署都拒絕提供資料！

政府不可以責怪我們對政府的批評，事實上是政府本身以環保為藉口，以達斂財的苛政，而竟然有本局的議員就盲目支持這苛政甚至怪責我們口是心非，這是完全漠視本局應有的責任確保政府合理執行政策的原則。政府旨在罰錢、收錢，根本不是從減少污染的環保角度這個良好意願出發，難怪飲食業的人都要說：“邊有咁多血俾佢吸！”

我曾經想就這個污水處理服務營運基金的檢討工作，在今個會期內成立專責委員會來切實跟進，不過，限於專責委員會的任期必須隨立法局休會而終止，加上政府表示顧問公司會就有關問題進行檢討，我希望明年提出這樣的建議。

代理主席先生，本人謹此陳辭，支持議案。

梁耀忠議員致辭：代理主席先生，對於排污費、污水處理服務營運基金及渠務署近日的表現，我想提幾點意見。

第一點，住宅用戶污染者的問題，政府對於污染者的定義不論住宅或商戶，一概定為污染者。剛才羅祥國議員對污染者的分析，我是十分贊同的，特別對於住戶方面。事實上，我們大家也理解到，住戶排放污水其實是必需的，與一些生意有利益收入是完全不相同，但很可惜政府沒有從這角度去想想這問題，只是將“污染者”這個一般的名稱加諸住宅用戶身上，便徵收這個費用。而這費用其實亦已變相成為徵稅，此稅其實是人頭稅。但如果真的視為稅項的話，我看不到有甚麼理由政府要巧立名目設人頭稅，因為其實政府現在還有盈餘，為甚麼還要特別增加一項稅收呢？所以這是不合理的。如果政府繼續以“污染者”的理據對住戶徵收排污費，實在是無理的做法，我絕對反對這樣做。

第二點，有關對工商業徵收的排污費，其實，如果我們看清楚這個做法的話，我們很希望商戶排放少些污水，但是政府現時的做法，根本沒有一種鼓勵作用，而只是達到懲罰作用。其他國家對於徵收排污費都有不同理解，例如世界銀行最近的一份工作報告指出，美國加州的經驗顯示，河水中三分二的污染，並非來自這些可找到排放來源的工業區，雖然工商業的排放受到

“排污費”的約束，但不能根治整體污染問題，“排污費”對環保的功能亦非常有限。況且向工商業徵收污水附加費，偏重事後補償，根本達不到預防污染，功能有限，很多工商業人士往往將排污費加在成本之中，最終轉嫁到消費者身上，所以，其實對那些人根本起不到任何作用。無論從環保角度或市民的消費能力角度來看，這個排污費及污水附加費政策都是完全失敗的。

第三點，渠務署打算在未來四年大幅增加排污費達168%，使污水處理服務營運基金收回運作成本。我認為耗資鉅大的污水排放建設，屬大型基礎建設，應由政府負責興建，不應由住戶或商戶攤分，今次由於政府打錯算盤，要大幅加費更屬無稽。

第四點，上星期立法局否決了增加排污費，前幾天政府放出聲氣，將五年內收回成本的目標年期延長至十年。我相信這個建議對整個排污計劃，沒有很大幫助，其實，最重要的是政府能否大幅增加注資以解決此問題，若能從這角度考慮的話，反而是做得恰當的。

第五點，政府經常強調、埋怨說徵收排污費是上屆立法局議員通過的，政策怎可以朝令夕改呢？不過，政府並無想深一層，其實我們在座許多立法局議員都不是上屆的議員，希望政府能重視這屆立法局議員的意見。除此之外，其實每一件事物也會不斷改變的，特別是經過一些時間考驗之後，希望政府考慮一下，很多事情我們不能墨守成規，我們要看見社會進步，我們要從經驗中得到一些想法。我們看見立法局每年也有一些修訂法案，其實原因是甚麼呢？原因就是一些過時或不對的法例應修訂過來。所以，我希望政府不要常常用上一屆立法局已通過了此議案而作為擋箭牌，不斷增加污水排污費。

其實政府已在今年一月成立跨部門工作小組，檢討污水附加費，但要到八月才委聘顧問公司就該計劃進行研究，預計明年一月底才完成。但我覺得很奇怪，既然政府在一月說會成立一個跨部門小組研究，為甚麼又要找一間顧問公司去進一步研究此計劃呢？這做法是否浪費公帑呢？其實，我希望政府能夠明白一件事，要實踐環保，應該着重怎樣去預防，而不是藉環保為名去作事後敲詐，所以，我希望政府的研究能着重一下怎樣去預防污染，而不是怎樣去加重對我們的徵費。

代理主席先生，本人謹此陳辭。

陳鑑林議員致辭：代理主席先生，我相信今晨我的發言是我自出任立法局議員以來最短的一篇演辭。對於排污費及污水處理系統問題，民建聯的立場很

清晰。民建聯支持“污染者自付”的原則，但在界定污染者的時候，我們認為廣大市民的日常生活排污不應列入污水處理的主要對象。基於此一理由，政府根本不應向市民徵收家庭用水的排污費。

正如我的同事陳婉嫻議員所說，市民的日常排污莫非真的需要以一個200億元的污水處理系統來處理嗎？

上星期三本局凍結排污費之後，政府高官曾多次聲言會增加稅收來彌補開支以達收回成本。代理主席先生，問題已很明顯，政府在要求通過建設污水處理系統的時候，就努力說環保的大道理，更加信誓旦旦的告知議員日後市民的負擔只是很少。可是今天政府已經對環保這個問題說的很少，反而恐嚇市民謂若不再增加排污負擔的話，便會出現少量的污染者津貼大量的污染者這個理論。

今天，從我們的辯論中，就更可以了解到議員其實已經逐漸醒覺，他們昔日被政府所蒙騙。無疑，今天市民須要為日後排污費用的負擔作出十分沉重的承擔，但政府應重新檢討營運基金，看看其日後的運作應怎樣處理。謝謝代理主席先生。

THE PRESIDENT resumed the Chair.

詹培忠議員致辭：主席先生，我的同鄉陳鑑林議員已表達我的意見，就是大家市民的意見。立法局秘書給我字條，問我是否想發言？我想，我想說的道理就是以後香港政府對大家無所要求，道理就是我們要遵守香港的法律，就是未來的一切由大家掌握，大家坐在此望天，天與地一切代表香港市民對大家的要求，就是公正地表達大家的意見。可能在未來的三分鐘夏佳理議員離座，我要求他在五分鐘內飲他想飲的上帝的酒，就是代表真情的一刻。*（眾笑）*

PRESIDENT: Mr CHIM Pui-chung, please speak to the question. You are not suggesting that Mr Ronald ARCULLI drinks the sewage, are you?

詹培忠議員：曾健成議員快要來到對你抗議，就是你對他們的壓制，就是一切並不代表甚麼，就是大家開心罷了。英國政府的代表彭定康現時正在睡眠中，我們何須那麼緊張，是嗎？未來的一切代表未來的特區政府對香港市民的要求，就是面對真正的未來，真正的未來就是真誠的一切，真誠的一切就代表沒有說假說話。我醉了.....代表未來市民的一切，就是我們永遠政制的領導下，代表我們很開心在主席領導下，進一步爭取我們想做的事。我不想再說話，夏佳理議員你想說，請站起來，代表我說話。 What do you want to say?

PRESIDENT: May I remind Members to speak to the question?

工務司致辭：主席先生，我們在上星期立法局會議上已經辯論了增收排污費及工商業污水附加費的建議。政府有很多論據，例如對飲食業和一般家庭負擔的影響，我不準備在此一一重複。有議員認為普通市民無須負擔排污費用，但大家切勿忘記，每天有600萬人在排污。我相信政府加價的方案已經考慮了社會經濟負擔的因素。很遺憾，立法局通過了凍結兩項收費在現有水平，此舉發放了一個錯誤的訊息給市民大眾，就是污染者無須為他們染污了的環境而負責。

今天，謝永齡議員提出檢討污水處理服務營運基金的議案，給我一個很好的機會再次交代污水處理服務營運基金的未來方向。

污水處理服務營運基金是在一九九四年三月用決議案形式成立。成立營運基金，表示立法局同意排污收費將用作支付營運基金的全部經營成本。我相信這是完全符合“污染者自付”的原則。

根據有關條例，營運基金須要向立法局及公眾交代所有收入和支出。有關帳目由核數署作獨立性稽核。去年十月十八日，我已將一九九四年至九五年度的營運基金帳目提交立法局審閱，讓各位可以清楚知道帳目內一分一毫都是用於污水服務的營運費用。除此之外，謝議員要求一如以往，將投資渠務的工程費用注入基金。其實政府已全部注資興建這些排污設施的基建費用，並且豁免了這些設施的折舊支出。污染者所付出的費用只是支付污水處理日常運作及設施維修的費用。

謝議員今次議案和上星期唐英年議員的演辭，都提及要求延長基金達致

收支平衡的期限。事實上，在六月十九日的小組委員會會議上，政府已提出了一項修訂建議，營運基金的經營成本撇除折舊後的回本期由原來打算在一九九九至二零零零年達致，延長到二零零四至零五年才達致的。謝議員亦提及每年平均增加的20%，其實只是我們其中一個計算方法。但是議員對我們的建議並沒有詳細討論及分析。我在此誠懇地希望各位議員能和政府一起商討，以找出一個大家可接受的方案，令污水處理服務營運基金達致收支平衡。

注資入營運基金來支付營運開支，是不符合《營運基金條例》要求，因為與營運基金應收支相抵的原則不符。注資的後果即是用納稅人的金錢來補貼污染者，這亦是違背“污染者自付”的原則。我們實在難以解釋為何要納稅人為污染者承擔處理污水的費用。

凍結政府排污費及工商業污水附加費在現有水平，將使污水處理營運基金款項於今年底至明年初耗盡，而導致在九五至九六年度將有6,600萬元的赤字。在排污收費不能增加下，正如謝議員所說，消除財政赤字的其中一個方法，就只有減省一些防禦性維修項目，或把新近完成的設施延遲投入服務。當然，這情形是我們不願意看到的，亦會令我們為改善海港水質的努力受到嚴重打擊。

關於簡化污水附加費的上訴手續，我在上星期的立法局辯論上，已表明當局會委派顧問公司檢討現行的工商業污水附加費，而其中會包括檢討現行的上訴程序。這檢討會在明年年初完成，而我們會向立法局小組匯報檢討結果。

主席先生，海港的污染，已到達刻不容緩的地步。污水處理營運基金若不能全面運作，將會令海港污染進一步惡化。於此，我懇請各位議員繼續支持“污染者自付”原則，政府歡迎與各位議員合作尋求一個可行的方案，令污水處理服務營運基金可以在一個可行方案下運作。謝謝主席先生。

PRESIDENT: Dr John TSE, you are now entitled to reply and you have four minutes 10 seconds out of you original 15 minutes.

謝永齡議員致辭：主席先生，我首先想回應工務司以加價解決污染的問題。

有市民跟我說做高官是很易做的，只要懂得加價去解決問題便是了；又有一高官向我說議員都是很易做的，只要懂反對加價便能解決問題。

我今晚很高興（應說今早很高興！）有這麼多議員支持我這個立場，也極少見到立法局如此一致地去支持一個議案。其實，在14位議員的發言中，除了詹培忠議員說很開心之外，又除了有四位議員說政府不應徵收排污費外，我們大致都有一個共識，就是大部分議員都要求注資，因而對工務司一貫的立場謂不準備注資，我感到很失望。除了倪少傑議員之外，差不多所有議員都要求注資。

我所見到的第二個共同立場，是很多議員認為收回成本的速度太快，也希望延長回本期。有很多議員質疑成本效益，我相信這點可和稍後的第四點相提並論的，是很多議員都支持盡快檢討基金的運作。大家均認同基金現時的運作透明度低，即使立法局也很難監察它的經營。個別議員也提及一些頗好的意見。唐英年議員建議政府開源，向市政局入手，也作出一個比較，究竟油畫好，抑或是民生好，我想這方面是值得政府去探討的。

陳榮燦議員代表餐飲業提出那方面的問題，質詢諮詢不足的問題。羅祥國議員說排污費如人頭稅，這概念得到不少議員所認同。但很多議員極力要求注資，可惜工務司沒有解釋為何政府不注資，因為不注資的話，大家都知道後果是相當嚴重的，即使有赤字，若要借貸，也要有“利息”，那麼我不大同意基金須負擔利息。

我希望政府可考慮我提出的議案。其實，我所提出的議案是頗溫和的。若由其他議員提出，甚至要求不徵收排污費，那時便更糟了！大致上，徵收排污費的最終目的是為改善環境，改善香港的水質，保護魚類、野生動物、人類，甚至提供更多的遊戲活動空間。香港有很多海灘現已不能游泳，我希望政府在排污和清潔環境方面會積極改善。謝謝主席先生。

Question on the motion put and agreed to.

STATIONING OF CHINESE ARMED FORCES IN HONG KONG AFTER 1997

DR ANTHONY CHEUNG to move the following motion:

"本局促請中國政府在制定法例規管未來香港特別行政區（“特區”）駐軍時應：

(a) 就草擬中的有關法例向香港市民進行公開諮詢，並真正聽取各方意見；

(b) 在法例中加入條款，確保駐軍不干預特區的內部事務，而只會在特區行政長官正式依法提出請求時，才調派協助維持社會治安和救災的工作；及

(c) 在法例中加入條款，確保駐軍人員在香港涉及民事訴訟及刑事罪行時，均受香港法院司法管轄權的規管，

以達致充分體現《聯合聲明》內“一國兩制”、“港人自治”及“高度自治”的精神。"

張炳良議員致辭：主席先生，我動議通過議事程序表內載於我名下的議案。

今天提出“中國解放軍九七後駐港”的議案辯論，是鑑於中國政府現正草擬法律，以規管未來派駐香港特別行政區的解放軍的活動和行為。有報道說這個駐軍法會在今年年底草擬備妥後，於明年年初交給特區籌委會討論後，再提交全國人大通過後頒布。民主黨認為，在現時駐軍法仍在草擬階段的時候，在本局就此課題作出辯論，提出各方意見，並藉此帶起市民的討論，是非常及時和必要的。

我們並認為，中國政府在擬定駐軍法的初稿後，應該把方案公布，公開諮詢港人，並真正聽取各方面的意見。如何透過駐軍法具體規管未來駐港解放軍的角色和行為，如何釐清對駐港解放軍的司法管轄權，對港人實有切身的關係。在草擬駐軍法的過程中及頒布前，不應只向特區籌委會作內部諮詢，而應就當中的內容，向港人作廣泛和公開的諮詢，吸納社會的意見，這樣才能確保將來駐軍法頒布時能廣為港人所接受。

主席先生，駐軍作為中國的主權象徵，這一點我們不會質疑。而《基本法》第十四條內有關駐港解放軍的三個重要原則：即駐軍只負責防務、不干預特區內政及只有在特區政府提請下才協助香港社會治安及救災，我們也是支持的。為了確定未來駐港解放軍的角色，在駐軍法中有必要重申上述的三

大原則，並據此作出進一步的條述和規範。

其中，港人最關心的是，究竟在甚麼的情況下才會調動軍隊呢？《基本法》第十四條只是制定了基本的原則：即“香港特別行政區政府在必要時，可向中央人民政府請求駐軍協助維持社會治安和救助災害。”在這個原則下，實際上牽涉了兩個層面：就是提請權及調軍權。提請權針對界定何者有權提請調動軍隊，以及提請時應遵循的程序安排等；而調軍權則規限何者擁有調動軍隊的權力和調動的程序安排等。基於其他各國有關軍隊的提請都由地區最高政府領導人作出的慣常做法，我們建議提請權具體地應屬於未來特區行政長官。至於調軍權方面，我們尊重中央政府現時有關的權力，故應由未來中央政府在接到行政長官的正式依法提請，經依法審核後，若同意才下達調動駐港部隊的命令。民主黨認為，調動駐軍的提請不應由特區行政長官直接向駐港解放軍提出，調動的權力應來自中央政府及其調軍系統。調動的目的只限於協助維持社會治安和救助災害，除非涉及戰爭狀態下的防務則另作安排，但也應該在駐軍法中就有關程序作出規定。中國政府制定駐軍法時，應從中央政府的角度，就提請權和調軍權這兩權作出明確規範。

但另一方面，有關提請權方面的監察也很重要。何謂“有必要”，何謂“社會治安”，何謂“救助災害”等，都是屬於特區行政長官面對的情況，因此，我們提議未來特區也應就這方面考慮進行本地立法。為了避免這個駐軍提請權不被濫用，將來特區也有必要就有關提請權的運用制定法例，制訂相關的機制，使特區行政長官可以在有法可依的情況下，適當運用其提請權。具體來說，特區行政長官應盡量在向中央政府作出調動駐軍的提請的同時，向立法機關通報和解釋，並接受必要的質詢。假若情況緊急，也要在最短時間內向公眾作出交代及向特區立法會提交報告。

主席先生，未來駐軍的另一最重要問題，是解放軍的司法管轄權問題。目前《基本法》第十四條只規定，駐軍人員除須遵守全國性的法律外，還須遵守特區的法律。但是，具體的司法管轄權如何行使，卻未有清晰的界定。司法管轄權所涉及的是當駐軍人員牽涉入民事或刑事案件時，應作如何處理。究竟是交由解放軍的軍事法院去審理，抑或是交由特區的民事法院去審理？有一種意見認為，應該採用“軍事法院優先”的原則，即是說，當軍人涉及民事或刑事的訴訟時，應像大陸處理部隊涉案的做法，一概先交由軍事法院審理；而只有當軍事法院決定不予受理的時候，才交由民事法院處理。這種意見指出，由於解放軍一直以來都受中國法律的規管，順理成章，他們比較熟悉內地的法制，對實行普通法的香港不大了解，若採用港法規管他們會造成困難。另一方面，解放軍的地位比較特殊，採用他們較為熟悉的法律

會減少將來法制上所引起的衝突。

事實上，中國國內長期採用“軍事法院優先”的原則。早在一九五一年的“最高人民法院關於現役軍人與群眾間發生糾紛管轄權的批覆”中已經清楚指出，如果軍人為被告，則交由軍事法院處理，但如果被告是平民時，則由所屬地的民事法院處理。到了一九八二年的“關於軍隊和地方互涉案件幾個問題的規定”裏再重申了這個“軍事法院優先”的原則。但是，若一九九七年後對駐軍法沿用這個原則，則會忽略了“一國兩制”下香港這“一制”的特殊性。民主黨認為，未來的特區駐軍法應該做到“三符合”：符合“一國兩制”精神，符合《基本法》及符合港人熟悉的規管及法律原則。《基本法》第十四條已明確規定，駐軍人員也要遵守特區法律，這特區法律包括普通法和成文立法等；而在《基本法》第十九條中，未來香港特別行政區的法院對特區所有案件均有完整的司法審判權（只有國家行為除外）。一刀切地對駐軍採用“軍事法院優先”的原則並不能充分體現特區法院所擁有的司法審判權，也不能體現“一國兩制”下香港這“一制”在法律上繼續奉行普通法精神的特殊性。民主黨認為，只有採用“民事法院優先”的原則才合乎普通法精神。具體的方法可以如下：

（一） 凡是涉及非執勤及軍營外性質的軍人與平民或軍人與軍人之間的民事刑事案件，一概以“民事法院優先”為原則，應交由民事法院審理。除非民事法院認為不適宜時，才交由軍事法院處理。

（二） 若是軍人與軍人間的案件，而涉案的地點又在軍營內，則才以“軍事法院優先”為原則。若軍方人員知會特區行政長官，表明不打算在軍事法院審理，行政長官則可給予有關證明文件，而案件就交由特區法院審理。

或有意見認為，現時駐港英軍的司法管轄權，傾向於“軍事法院優先”，那麼為何不能沿用下去呢？事實上，現時英軍是以殖民地駐軍的形式進駐香港，與未來的駐港解放軍以“一國”的範疇下駐軍的形式有所不同。因此，駐港英軍採用“軍事法院優先”的原則，而不是採用英國普通法一直沿用的“民事法院優先”的做法，本身就是一種殖民地制度，應予取消。

此外，因為這個殖民地駐軍的做法，衍生出英軍現時在本地法例上享有不少的權利和豁免。有關的權利和豁免在一九九七年後，是否應該延續下去，也是一個問題。一些意見認為，為了減省麻煩，索性把現時散見於香港百多條本地法例中有關英軍的權利和轄免，簡單地進行“適應化”，改成由解放軍享有便可。這個做法會把現時的英軍作為殖民地駐軍而享有的特權延

續下去，並不符合將來“一國”範疇下的駐軍的地位。民主黨主張，駐軍的權利和豁免，應按駐軍任務的實際需要作出安排，因為一些現時的安排，有些是源自英國對殖民地駐軍的不平等政治關係，有些因為時間過於久遠以致過時。故此，必須就現時駐港英軍的權利和豁免逐一加以研究是否需要保留或取消。

主席先生，不少港人對解放軍駐軍持有這樣或那樣的憂慮，是一個客觀的現實。他們憂慮的不是解放軍做不到威武之師，而是能否做到守法之師，不搞特權，不干預香港特區的內部事務。假如駐軍法能針對駐軍角色、任務、調動及司法管轄等多項關鍵性問題，經全面廣泛諮詢香港各方意見後，制訂清楚而合乎“一國兩制”和《基本法》的具體規限，則會大大有助於確立駐軍的威嚴形象。

主席先生，本人謹此陳辭，提出議案。

Question on the motion proposed.

PRESIDENT: Mr IP Kwok-him has given notice to move an amendment to this motion. His amendment has been printed on the Order Paper and circularized to Members. I propose that the motion and the amendment be debated together in a joint debate.

Council shall debate the motion and the amendment together in a joint debate. I now call on Mr IP Kwok-him to speak and to move his amendment. After I have proposed the question on the amendment, Members may express their views on the motion and the amendment.

MR IP KWOK-HIM's amendment to DR ANTHONY CHEUNG's motion:

"刪除“本局”之後的所有文字，並以下列取代：

“支持中國政府制定未來香港特別行政區駐軍法，以落實《基本法》第二章第十四條中規定中央人民政府派駐香港特別行政區負責防務的軍隊不干預香港特別行政區的地方事務；香港特別行政區政府在必要時，可向中央人民政府請求駐軍協助維持社會治安和救助災害；及駐軍人員除須遵守全國性的法律外，還須遵守香港特別行政區的法律”。"

葉國謙議員致辭：主席先生，我動議修正張炳良議員的議案，修正內容一如議事程序表內於我名下所載。

主席先生，九七年後中國派遣解放軍駐守香港，是體現主權回歸的一個重要象徵。民建聯亦同意，港人應積極對將來駐軍法的內容提出意見。民建聯曾在過去三年，在北京先後與國務院副總理錢其琛先生、國務院港澳辦主任魯平先生、人民解放軍副總參謀長徐惠滋先生探討駐軍法與特區法院的司法管轄權問題、駐軍如何與特區政府其他部門協調、以至港人最關心的解放軍形象等問題。民建聯透過這方面得知一個明確信息，駐軍法除了會明確規定中央管理本港防務和駐軍的基本原則及政策外，亦會規定駐軍的職責與權限，以及對駐軍的紀律與義務作出限制。

主席先生，原議案要求在制定駐軍法時，中國政府公開諮詢港人意見。不知張議員在提出這項要求時，有否考慮到，以香港現時的實際情況，中國政府根本不可能就草擬特區駐軍法律，向香港市民進行“公開諮詢”？駐軍法是中國法律，特區只有權要求解放軍除遵守中國法律外，也要遵守特區法律，而無權要求中國如何訂定駐軍法。主席先生，假若張議員提出這樣的要求獲通過，民建聯擔心會造成一個假象，中國政府連公開諮詢也不進行，中國政府拒絕聽取港人的意見，罔顧港人的意願，這是民建聯，也是我們香港市民最不希望見到的。

民建聯認為港人應充分利用香港現有的渠道，例如透過特區籌委會積極提出意見，以供內地有關起草駐軍法部門參考。公開諮詢的做法，恐怕是屬於“好聽唔好用”。

張議員日前公布如何劃分將來特區法院與駐軍軍事法院的司法管轄權的建議，以實現他所謂的“民事法院優先原則”。根據張議員的想法，中國駐軍如果觸犯本港法律，而該行為又涉及普通市民的話，有關案件便應交由特區法院審理。

但以目前香港為例，雖然法律規定，駐港英軍須遵守本港法律，本港法庭有權對有關違法行為進行審訊，但是，若有關英軍人員是在執行任務期間犯法，而該行為與其任務有關的話，則有關案件便會交由英國的軍事法庭負責審理。

主席先生，其實一個國家的司法機構，是不會審理任何涉及軍事人員執勤時發生的案件。這是很多國家的通常做法，不會因為是一個殖民地才這樣做。因此，可能會有人擔心，日後的中國駐軍法會削弱特區對駐軍人員的司法管轄能力。這項見解，或可說是誤解，實在是錯誤的。特區有關駐軍司法管轄權問題，《聯合聲明》及《基本法》早已清楚作出原則性的規範。《基本法》第十四條規定，駐軍不會干預特區內部事務。除遵守中國法律外，他們還要遵守特區的法律。此外，《基本法》第十九條更明確指出，香港特別行政區享有獨立的司法權和終審權，除出現該條第二款及第三款所規定的情況：即特別行政區法院對國防外交等國家行為無管轄權外，特區法院對所有案件均有審判權。

由此可見，將來特區有關駐軍司法管轄權問題，已有清楚的規範，因此，我們建議張議員抽時間細讀《基本法》在這方面的論述。

主席先生，今天的議案辯論，已是本局連續第三個星期討論有關對“落實《基本法》信心危機”的題目，辯論題目有點予人感覺到越俎代庖的味道，本局部分議員經常要促請中國政府做這做那。民建聯認為在處理任何事情都應講求“名正言順”，特別作為一個立法機關，這是更為重要的。現時立法局只是殖民地憲制架構下的一部分，立法局提出的議案，應該限於港府施政的範圍，但民主黨的同事卻接二連三的提出超越立法局職能的議案，實在令人感到遺憾。我必須再次強調，民建聯並不是反對香港市民向中國政府反映意見，但作為立法局議員在立法局內就應該做一些恰如其分的工作，正確的途徑應該是透過香港政府向中國政府在這方面表達意見。

主席先生，本人及民建聯的同事認為，既然《聯合聲明》和《基本法》已有明確的規範，而中國政府領導人亦多次向港人作出保證，目前中英聯合聯絡小組亦已成立非正式專家小組研究有關問題，我們有理由相信，將來頒布的駐軍法將會嚴格管制駐軍人員在港活動，以及對特區的司法管轄權提供充分的保障。

本人謹此陳辭，提出修正案。

PRESIDENT: May I enquire, Mr IP, whether you were raising a point of order in your speech or were you making a political point when you said that some motions had exceeded the scope of the power of this Council?

Question on the amendment proposed.

MR DAVID CHU: Mr President, before pressing on, let me say my amendment has been fused with that by the Honourable IP Kwok-him. Our joint effort is intended to illustrate in the clearest terms two opposite approaches towards the future garrison. One approach is fear mongering and another is calm thinking.

Over these three weeks, we have indeed been treated to consecutive motions which have one aim: To fan anxiety about our future with fewer than 365 days to go before China regains sovereignty of Hong Kong. I find both the content and the timing of these motions deplorable. As chosen leaders of our community, we should be easing rather than stirring up public fears.

The People's Liberation Army (PLA) is not a force of foreign occupation. The PLA soldiers are not our enemies. They are the young sons and daughters of people who are like us, people with feelings. They will miss their parents and friends. We should welcome them just as we have long done the same for the British troops. We must not alienate or ostracize them to score political points.

The responsibilities of the PLA garrison are listed clearly in Basic Law Article 14 which states: "Military forces stationed by the Central People's Government in the Hong Kong Special Administrative Region for defence shall not interfere in local affairs of the Region. The Government of the Hong Kong Special Administrative Region may, when necessary, ask the Central People's Government for assistance from the garrison in the maintenance of public order and in disaster relief."

The future role of the PLA is virtually identical to that of the British garrison since 1841. Those of us who have observed the PLA's drills and its high discipline have no doubt that the soldiers posted here will serve with honour and distinction.

Let us debunk a few myths about the PLA as a government within a government. The Vice-Chairman of the Chinese Central Military Commission, General LIU Huaqing, has outlined five broad principles governing the PLA garrison. These principles concern: duties and limits of the power of the garrison; management of that garrison; relations and communication between the garrison and the SAR; relations between the troops' affiliation and leadership command, and the Central Government's management of the garrison for defence purposes. None of these principles threatens the autonomy of the SAR and the liberty of the people of the SAR. They are all derived from Basic Law Article 14.

The future Hong Kong PLA commander Major General LIU Zhenwu has suggested to the British counterpart that the Chinese garrison here may number around 9 000 troops. Such a garrison strength is significantly lower than the 25 000 British troops stationed here at the time the Joint Declaration was signed. We can be sure that our police can deal with public order and also work with the garrison. The PLA will provide maritime patrol and external security just as the British Forces have done for decades.

The motion today also calls for the PLA to be subject to SAR laws. Of course, soldiers outside the barracks are subject to SAR laws just like everyone else. The chances for them breaking the law are, however, slim since they are to have their rest and recuperation not in Tsim Sha Tsui but in Shenzhen.

The PLA will not be a burden on the SAR. The Chinese Central Government shall pay for its full deployment unlike today in which we must continue to pay part of the British garrison's costs. The PLA will cause us no harm, but do us plenty of good. For this, those behind the motion today have not shown enough gratitude.

The Chinese military has voluntarily ceded to Hong Kong between $65 billion and $100 billion worth of defence land for our commercial and residential development. Nobody recalls such generosity from the British Forces.

Yes, I ask legislators to support the amendment so as to send the correct message to China and to its PLA. I want more. I want Hong Kong groups, particularly the youths, to organize regular social events that involve the PLA. By getting together, the soldiers and the civilians would come to know each other

better and overcome any future misunderstanding.

I have children of roughly the same age as some of the PLA soldiers. While my children are abroad, I want them to be treated well by their hosts. My home and my heart are always open to young people, whether or not they are in uniform. I know you share this sentiment.

Thank you, Mr President.

廖成利議員致辭：主席先生，中國政府九七年在香港恢復行使主權時，將根據《基本法》第十四條的規定，派解放軍駐港執行防務任務。可是，《基本法》關於特區法院對駐軍的司法管轄權、駐軍與特區政府的溝通與協調機制、特區政府必要時要求駐軍協助的具體標準，都沒有明確規定，留下灰色地帶。中國政府在制定的駐軍法中應釐清上述《基本法》不清楚的地方，並同時顧及“一國兩制”中香港特區的獨特情況。在人大正式通過駐軍法前，中國政府應先將草案廣泛諮詢港人意見，令制定出來的駐軍法適合香港特區的獨特民情，為港人所接受。

根據政府保安科資料，過去三年駐港英軍觸犯香港刑事法律的個案有兩宗，數目雖然很少，但亦反映出一個事實，就是駐軍在港犯法是有機會發生的。因此，港人關注有關駐軍的香港法院司法管轄權是有理由的。現時中國軍法規定，解放軍無論在軍營內外的刑事行為，即使涉及平民，一律由軍隊內部的軍事法院處理。民協認為基於“一國兩制”的構想，以及香港特區的獨特情況，實行的駐軍制度應作出適當修改，達致令港人安心、易為港人接受的效果。因此，民協認為上述中國軍法的規定不應適用於將來香港特別行政區。將來駐港解放軍觸犯香港法律，只要該行為並非只涉及駐軍人員，而當中涉及香港平民或非駐軍人士，香港法院都應有管轄權。

至於民事管轄權，現時駐港英軍若涉及民事法律，港方當事人要民事起訴肇事英軍，要經英國法庭進行起訴，若勝訴則由英國政府向港方當事人作出賠償。民協認為，九七後駐港解放軍若涉及民事訴訟，港方當事人要民事起訴的話，由於中港法律體系不同，應容許港方當事人在香港法院進行起訴，而無須到中國大陸法院起訴。若港方當事人勝訴，則由中國政府向當事人作賠償。至於只涉及解放軍之間的刑事及民事糾紛，民協認為應交回中國的軍事法庭處理，而無須交由香港法院審訊，避免加重香港法庭審訊案件的負擔。

為了維護香港治安和救助災害屬香港內部事務，《基本法》已有清楚訂明。但《基本法》第十四條寫明："特別行政區政府在必要時，可向中央人民政府請求駐軍協助維持社會治安和救助災害。"這項規定特別指出請求協助的主動權應在香港特區政府手上，因此，駐軍法在這方面應作出交代，而具體程序可由特區將來立法會自行立法，作出一些規定。

駐軍法亦應就如何建立駐軍與特區政府的合作關係作出規定。九七後特區政府就防務方面與駐港解放軍司令部應處於對等地位，雙方應按《基本法》及駐軍法，為了達到維持香港特區社會穩定這任務，建立一種互相尊重、互相合作的夥伴關係。民協建議將來特區政府與駐軍司令部設立一個協調小組，作為常設的溝通機制，而解放軍每當調防或演習時，都應事前通過協調小組知會以及諮詢特區政府，避免雙方出現不協調的地方。這個協調小組也可在特區政府請求駐軍協助時，在維持社會治安及救災安排方面作出適當的合作及協調。

此外，民協促請中國政府與未來特區政府應透過協調小組，加強駐軍與港人的溝通和接觸。具體建議包括定期開放解放軍軍營給市民參觀；動員解放軍參與公益金籌款這類社會服務。民協認為雙方必須增強溝通，使駐軍的形象得以建立起來。建立良好的軍民關係，是有利駐軍更有效執行防務。

最後，主席先生，民協認為今天的兩項議案，其實可說是角色顛倒，即葉國謙議員的修正案應該是原議案才對；而張炳良議員的議案應視為修正案，因為張議員的議案內容是就將來的駐軍法應怎樣落實《基本法》第十四條提出一些很具體的建議。事實上，最理想的次序安排應是本局議員集中火力就張議員的具體建議進行辯論，形成一個香港的主流意見，向中國政府反映香港市民對駐軍法的一些具體要求。如果只對這建議提出一個反建議，修正案提出要落實《基本法》，然後將《基本法》第十四條的條文全部抄一次出來，這不是一個有益、有建設性的辯論的好建議。

基於以上觀點，並在民協本身是支持《基本法》的情況下，我們會對葉國謙議員的修正案投棄權票，支持張炳良議員的原議案。

本人謹此陳辭。

張文光議員致辭：主席先生，香港人一想起解放軍，並不是解放中國時的光榮形象，而是六四鎮壓時屠城者的幫兇，再加上改革開放以來，解放軍的特權、腐敗、官倒、橫行霸道和軍紀敗壞，在香港人心目中，留下極惡劣的形象。因此，如果問香港人的心底話，就是：最好解放軍不駐守在香港；駐守的話，人數越少越好。一旦解放軍違法，最重要的，是由港法治軍，而不是港法以外，還有軍法和軍事法庭，凌駕在港法之上。

港法是甚麼呢？首先是《基本法》。《基本法》中，有關駐軍的條文，非常簡單，語意不清，留下很大的灰色地帶和漏洞，必須予以高度重視，否則，港人難以安心。正所謂：港人遇着解放軍，有理有法說不清。

第一個最重大的問題，是香港法制系統對駐港解放軍的司法管轄權。在《基本法》中，只強調解放軍要遵守全國和香港法律。但是，卻沒有清晰說明，解放軍在軍營外犯法，是否由香港的法庭處理。去年在北京領使館區，有解放軍開槍，死傷者雖為平民及領使館人員，但案件卻交由軍事法庭處理。這種情況是否會在香港重現？在主權和軍權高於一切的原則下，駐港解放軍的軍事法庭，會否剝奪了香港法院的司法管轄權？讓香港的法治出現了一個軍事的真空，讓解放軍可繞過香港的法庭，超然於香港的法律之外。香港是一個法治的地方，在法律之前，不分軍民，人人平等。如果“一國兩制”中“兩制”的意思，是兩種法制，各行其是，則香港獨立的法治蕩然無存，違反了《基本法》第二條香港擁有獨立司法權的承諾。

第二個重大的問題，是行政長官和駐軍司令的關係。究竟是政指揮軍，還是軍政分家？《基本法》規定，特區政府可請求駐軍維持治安和救災。但是，一旦解放軍出動，是聽命於特區行政長官，還是聽命於駐軍司令？一旦完成任務，誰決定解放軍立即撤返軍營？駐軍司令可否以國防名義未經特區行政長官同意，而自行出動，去鎮壓被中央政府視為違反國家安全的行為？特區行政長官會否擁有否決權，去阻止解放軍的出動？這一連串的問題，必先建基於行政長官可以約制或指揮駐軍在香港出動的權力。如果行政長官沒有這種權力，那麼，香港便會出現兩個權力系統。在平常的日子裏，問題不會彰顯，但在危機的日子裏，糾紛便會出現，讓中央政府以國防的名義，踐踏香港的高度自治，違反了《基本法》第二條，特區享有高度自治和行政管理權的承諾。

第三個重大的問題，是特區駐軍法的制定和實施。在《基本法》附件三裏，只有六條全國性法律在香港實施。但是，解放軍要遵守的，不單是香港

法律，還有全國性法律，包括將要頒布的特區駐軍法。究竟特區駐軍法與本港的法律有沒有衝突？特區駐軍法會否凌駕香港的法律，成為全國性法律在香港實施的一個部分？在草擬特區駐軍法時，是否只諮詢籌委，而不諮詢港人？在實施特區駐軍法時，未來的香港立法會是否完全沒有討論和參與的空間？連同駐軍法一併考慮的，是現存規管英軍的法律，怎樣適應化和合理化。過去英國擁有的特權，有很多已經過時和顯得荒謬，例如，非駐港的英軍無需香港入境處官員許可，便可進入香港。倫敦英軍距港十萬八千里，來港不易；深圳解放軍距港不過是一條深圳河，來去自如。同一條法律，簡單地將英軍的特權原封不動，就會造成很大的漏洞和混亂。因此，將規管英軍的法律適應化，必須同時使其合理化，配合時代、地域和人事的特點，否則，就會顯得僵化和荒謬。

葉國謙議員的修正案，基本上是將《基本法》第十四條重抄一次，對於該條文在執行和解釋時的三大漏洞，對於香港人對解放軍的恐懼和憂慮，完全沒有觸及。如果不理民情，重讀一次，這就是另一種僵化。

主席先生，本人謹此陳辭，支持張炳良議員的原議案。

MRS ELIZABETH WONG: Mr President, as a peace-loving person, I would welcome any peace-loving presence of anyone, including the PLA. Some time ago, it was widely reported that PLA armed forces were paid a pittance. I think their average wage, as reported in the media, was HK$800 a month.

Now, I hope my honourable friends with the ears of those in the corridors of power in China will persuade the Chinese authorities to pay PLA a decent salary. I hope too that they are paid a Hong Kong cost-of-living supplement to enable them to live a decent life when they are posted here. Now, this will also enable them to enjoy Hong Kong when they are here and will also, no doubt, endear them to Hong Kong people with their conspicuous consumption. It might also minimize chances, however unlikely, of them succumbing to temptation.

Now, with these words, I would like to say that, like my good friends here, please rest assured that I shall myself welcome PLA with an open mind and if I still have my freedom, despite my contrarian views, I shall welcome them with open arms as well.

With these words, I support the motion.

任善寧議員致辭：主席先生，一般香港人對“解放軍”這個名詞，已經不陌生，但今時今日未必每個人都會細心想一想“解放軍”為甚麼叫“解放軍”。香港回歸，其實是一個大好機會，讓“解放軍”做一些“解放”的工作，將香港人民從“殖民地統治”下“解放”出來；所以，一切為維護“殖民地統治”而賦予英軍的特權、轄免權等，凡屬統治本國人民所不應該有的，均應取消。也就是說，除了在中華人民共和國憲法及其所衍生的法例中，有賦予解放軍特權的法規可應用於香港外，不應因為英軍目前在香港已擁有的，解放軍便照樣擁有；反之應該把它“解放”，才是“名副其實”的“解放軍”，或稱“紅軍”。“紅軍”應發揮毛主席在井岡山的時代已開始不斷宣示的“三大紀律，八項注意”。第一紀律：“絕對服從命令”，不可以因香港是特區，而攪出“將在外，君命有所不受”的局面。第二紀律：“不取人民一針一線”，切勿接受任何利益。第三紀律：“繳獲要歸公”，不可以經商，不可以以權謀私。至於“八項注意”，其精神也在於不做出損害人民的事，不佔便宜；所以，解放軍放棄殖民地英軍的某些特權，是繼承“紅軍”傳統的表現，是摒棄帝國殖民主義的表現，為廣大人民的“當家作主”而作出貢獻。

香港英軍總司令，聽命於總督，故英軍不會干預香港政務，將來這種機制不再存在。為了避免軍人有越軌行為，中共應將駐港解放軍中的政委或黨委書記納入香港工委轄下，再加上由基本法委員會訂立駐軍法，相信可以大致上替代目前的軍人受制約於文官系統的機制。

主席先生，本人謹此陳辭，支持張炳良議員的議案。

MR PAUL CHENG: Mr President, I find myself experiencing a disquieting feeling of deja vu as this Council is once again locked in a debate that serves little or no practical purpose.

Article 14 of the Basic Law makes it very clear that the PLA garrison will not interfere in local affairs, and that in addition to abiding by national laws, members of the garrison will have to abide by the laws of the Hong Kong SAR.

By moving this debate merely serves to stir up unwarranted suspicion and mistrust and create uncertainty over Hong Kong's future in the minds of the potential international investors around the world. It also serves to create the wrong type of newspaper headlines, also around the world. I am quite sure that no debate took place when the British garrison first took up their position in Hong Kong.

With less than a year to go before Hong Kong returns to Chinese sovereignty, it is high time we devote our time and efforts to reassuring our fellow citizens so that we can all work for a brighter future. It is already after 2 am and I am glad we are heading for a summer recess. So, please keep our remarks brief, and I do support the Honourable IP Kwok-him's amendment.

Thank you, Mr President.

何俊仁議員致辭：主席先生，今天我們辯論的議題是解放軍駐港的問題。我記得在八三、八四年間，當《中英聯合聲明》還未公布時，中國為了穩定香港人對“一國兩制”的信心，港澳辦主任姬鵬飛先生、外交部黃華先生，以及國防部部長耿彪先生，曾先後對香港的公眾說不需要在香港駐軍。當時香港很多社會領袖和市民都很同意這個看法。不過，一旦中國偉大的領袖鄧小平說耿彪和黃華胡說八道，並說中央必須在香港駐軍，才能體現中國的主權，之後他的話變成了鐵案，香港人立即噤若寒蟬，不再談論這事。

今天我們藉着這個機會要再提這事。在香港今天的環境，在特區內駐軍，在法理、保安、以至國防上是否有需要呢？其實我們還可以再提出這個問題。難道要在每個城市、每個省、每個縣都要駐軍，才可體現主權？如果說是為了能夠產生必定的防衞作用，香港一向以來是否一個軍事港口，在國防及戰略方面具有重要的價值呢？到了今天，大家都看到，即使對英軍來說，香港也沒有一個很具體和重要的作用。事實上，他們在香港所執行的很多任務，已經為本地的警察所取代。因此，我覺得香港人不應說對於駐軍問題，在今天或以後，無須再檢討。

第二，如果在港駐軍主要是為了體現主權的話，換句話說，這作用主要是象徵性質，我覺得香港人很需要一個保證，就是解放軍並不是以軍事力量來威嚇香港人，更不是要用來鎮壓異己，以達到政治或社會控制的目的。

主席先生，《基本法》第十四條雖然清楚規定解放軍不能干預特區事務，並且只能夠在特區向中央提請的情況下，才可以協助維持治安和救助災害，但我們必須強調，《基本法》第十四條必須以香港法律來具體化其內容，以達到清晰的政策目標，那就是軍人不能在香港特區內問政或參政，更不能以國防理由干預香港內政，也不能以維護國家安全作為一種手段，在香港拘捕那些被他們認為是間諜或破壞國家安全的人。特區要求協助的機制應該以法律清楚釐定，指明要在特區首長的提請下，解放軍才會提供協助；而特區首長所提出的要求，必須得到立法機關的認同。如果立法機關提出不同意見，特區首長應撤銷其呈請。中央政府在收到特區政府的協助要求時，他們才可以指揮解放軍作出協助的行動；而協助的方式應該由特區政府來決定，以配合本地所施行的其他政策。

主席先生，解放軍會否在港享有特權，引起很多人關注。我們強調，解放軍必須遵守香港的法律，特別是當解放軍的行為影響到香港市民的權利、自由而產生任何民事或刑事責任時，他們必須在香港法庭接受審訊。駐軍絕對不能以國防理由，或以實行國家行為之名，而拒絕接受特區法庭的司法審核權。雖然《基本法》和法律並沒有禁止解放軍在本地經商或做生意，但我覺得中央政府必須清楚訂定政策，加以禁止。大家都知道，解放軍在國內的經商行為已經引起很多人的關注，甚至令很多人懷疑及質疑解放軍的特殊地位，可能會引起很多具有特殊性質的影響，從而導致貪污及腐化等行為。

主席先生，我們覺得駐軍法應該是本地的法律，所以應該透過本地的立法機關通過，而不應是中央為香港透過第十八條所制定的全國性法律之一。原因很簡單，因為有關駐軍法並非適用於全國的法律；並非普遍的法律，而是特殊適用於香港的法律，所以必須由香港特別行政區立法機關制定。

基於上述理由，我們希望各位議員支持張炳良議員的原議案。

謝謝主席先生。

李鵬飛議員致辭：主席先生，今天是最後一次會議，民主黨議員連續在三次會議上提出議案，都是有關中國的問題。事實上，有一個很清晰的信息，就是我們對中國的信任是怎樣？

關於駐軍法，張炳良議員提出意見，說應該參考香港人的意見，這本來是無可厚非的。但再聽聽其他民主黨議員，例如張文光議員提出的是解放軍地位特殊；何俊仁議員說解放軍貪污，質疑他們怎會遵守軍令，說他們橫

行無忌。因此，其實甚麼駐軍法也沒有用，借題發揮而已。有了駐軍法又怎樣？他們是否守法之師；是否有特權？

主席先生，最近有一位日本記者來訪問我，問我關於香港將來的事情。他特別提出，解放軍駐港，香港人有否感到害怕；以及為何解放軍要駐港？他問這個問題，我感到十分奇怪，為何他從日本遠道而來只提出這個問題。他說他曾聽聞解放軍過往很多故事，他們將會在香港行使特權，特別是他們沒有任何人管束，會橫行無忌。他問解放軍是否這樣可怕；是否應該駐港？

我首先告訴他，英軍駐港多年，從來沒有香港人質詢英軍應否駐港；而且，英軍的軍費大部分由我們負擔。解放軍駐港，不但是要體現主權，而且還有責任負責香港的防衞工作。我告訴他，我們無須支付軍費，他感到十分驚奇，為何中央政府這樣寬待香港人，無須我們支付費用。我說是無須支付費用的，他覺得很奇怪。我說沒有人告訴你嗎？他說沒有，只是有人告訴他，解放軍駐港只有一個目的，就是鎮壓，當有甚麼事情發生時，就會加以鎮壓。他得到的印象就是如此。

我覺得十分可惜。我說你是日本人，發動第二次世界大戰，侵略中國，在南京大屠殺中殺了數十萬中國人，你們的軍隊很有紀律嗎？他們聽從上司的命令，屠殺南京人民，南京大屠殺是不能抹煞的歷史。難道我們中國人一世都要恨你們入骨，採取報復嗎？如果我們中國人要報仇的話，你們日本人怎麼辦？他聽完我的說話後，向我道歉，說他被一些人誤導了，以為解放軍駐港的目的是為了鎮壓。我說我們中國人的量度十分廣闊，二次世界大戰已是過去的事，如果重提歷史，繼續藉此指責你們，你是日本人又有何感覺呢？

因此，我認為我們身為議員，關心將來的事務是應該的，但卻不能危言聳聽。有關解放軍日後會否在香港犯法一事，我相信會有這機會，但駐港英軍也有犯法的機會，他們應該遵守軍紀。我曾多次見過中國解放軍，他們都是非常年青的部隊，非常有紀律的部隊。當然，他們不應享有任何特殊地位，特別是香港的駐軍更不應享有任何特權。有關他們的行為，一定有法律制裁。《基本法》第十四條列明有關解放軍駐港的事務，規定解放軍的責任，以及駐港人員除了要遵守全國的法律外，還須遵守香港特別行政區的法律，為何《基本法》有這規定？那就是因為當初起草《基本法》時，一些香港人不放心，解放軍是否需要遵守香港的法律。經過諮詢後，終於把這段說話寫

下來。我覺得現時的問題已不單止是解放軍的問題，而是我們對我們的將來抱怎樣的態度；以及我們對中國，我們將來的宗主國的看法。

駐軍法無論寫得怎樣好，也沒有辦法解決香港人的心理問題。如果好像那名日本記者，以為解放軍駐港只是為了一個目的，就是為了鎮壓的話，甚麼話也不用說了，說了也是沒有用的。解放軍駐港不但是主權的體現，而且是有需要駐港。這是中國的責任，負責香港的防衞事務。當香港真的有事情發生時，行政長官可要求解放軍協助，這在《基本法》中說得十分清楚。因此，我覺得這並不是解放軍的問題，我們在這數個星期的辯論，其實都只是圍繞着對香港的將來、對中國的將來是否有信心的問題。

劉漢銓議員致辭：主席先生，《基本法》的制定，便用了四年零八個月時間，期間幾上幾下，反覆公開諮詢各界人士意見，並根據徵求得來的意見，對《基本法》徵求意見稿進行了修改。據統計，《基本法》徵求意見稿共修改了一百多處，涉及實質內容的修改有八十多處，其中五十多處來自諮詢委員會收集的意見。可見，中國政府在制定《基本法》的時候所進行的公開諮詢，是真正聽取了各方意見的。

不僅《基本法》的制定如此，在公開諮詢港人意見方面，中國政府在籌建特區工作方面也是這樣做的。如關於怎樣組成推選委員會的問題，籌委會屬下的推選委員會小組就曾來港展開大型諮詢活動，充分汲納香港各界意見之後，才形成了推委會組成的方案。其他諸如新機場、排污工程、西北鐵路計劃等，需未來特區政府承擔責任的大型基建問題，中國政府亦注意廣泛諮詢香港各界意見。而中國政府在制定法例規管未來香港特區駐軍時，當然亦會諮詢香港市民意見。

主席先生，正是為了維護特區的高度自治權，所以《基本法》第十四條對駐軍問題作出多項規定，其中有：駐軍只負責特區防務，而不管理治安；駐軍不干涉特區地方事務；特區政府在必要時，可向中央政府請求駐軍協助維持社會治安和救助災害；駐軍除遵守全國性法律外，還須遵守特區的法律。《基本法》第十四條的上述規定，是未來特區駐軍必須遵守的法律，而中國政府在制定法例規管未來特區駐軍時，亦將根據《基本法》的有關規定制定，這是很明顯的。

其實未來特區駐軍不干預特區內部事務，正是“一國兩制”方針的重要內容之一，正如周南先生在答美國《時代周刊》記者問題時所說：“堅持全面貫徹一國兩制的方針，是中國的根本利益所在。世界上只有蠢人才會傷害

自己的利益。”

《基本法》清楚說明，國防是中央負責的事務，有議員認為駐軍法應由特區制定，我絕不能苟同這個違反《基本法》的觀點，因為解放軍隸屬中央，駐軍法當然是由中央制定。

主席先生，本局接二連三地提出促請中國政府應怎樣做的議案，我已屢次指出中國政府難免會視之為對其主權事務指手劃腳的做法。本局同事若對中國政府制定對港政策或法律有所建言，應以香港市民一分子的身分，通過有效的溝通渠道向中方反映。動輒以港英立法局的名義促請或指揮中國政府行事，對改善融洽兩地關係並無益處。

主席先生，本人謹此陳辭，反對議案。

鄭家富議員致辭：主席先生，今天我本來沒有打算發言，因為已經這麼晚，但我聽完李鵬飛議員的演辭後，主席先生，我真的感到很不安。他以民族大義對一名日本記者所說的一番話，大義凜然，好像是說某些人誤導了那名日本記者。主席先生，我想說出他的兩點荒謬之處。

第一，他以英軍作比較。我想問李鵬飛議員，香港經英國政府統治了這麼多年，是一個殖民地政府，我們不能利用英軍來比較日後解放軍的做法。如果我們真的要落實“一國兩制、高度自治、港人治港”的精神，我們便不可以用一個殖民地政府去比較，說我們現時要支付英軍的費用，但將來卻不需要支付解放軍的費用，這已經可以表示我們祖國對我們是多麼的寬宏。我覺得這點正正墮入了一個荒謬的邏輯內。

第二，我們更不應該整天說某些人誤導了其他人。我想問，單靠幾名民主派人士在覺得中方有些事做得不對勁時提出來，是否就能誤導別人呢？為甚麼你們不去問問，誤導別人的就是“六、四”屠城的解放軍；就是由於中國政府直到現時仍堅持不肯表白在“六、四”事件中究竟有沒有人犯錯。如果中國政府能夠站出來，說“六、四”是有問題，“六、四”必須平反，解放軍是因為受到當時的統治階層所誤導。為甚麼不想想這樣呢？為甚麼不想想現時“一黨專政”的這個共產黨是誤導別人，使許多香港市民、甚至國際社會也覺得有問題，而並不是我們誤導別人？對於李鵬飛議員提及“誤導”以及“危言聳聽”，我真是聽得很心痛。

我們現在希望按照張炳良議員所提的議案，希望會就解放軍的駐軍法進

行公開諮詢，這樣才能體現“一國兩制、港人治港”的精神。是否這樣就是危言聳聽？我希望其他議員想一想。我們民主派的人士不希望再被你們這樣“扣帽子”，說我們危言聳聽；說我們誤導香港市民；誤導國際社會。有人提及我們對未來香港的看法，難道我們說幾句話，就能使社會不安嗎？我希望他們反思，令社會不安的是現時要“一黨專政”，只是“有佢講，冇人講，家長式統治的共產黨”。

謝謝主席先生。

張炳良議員致辭：主席先生，葉國謙議員的修正案的措辭，表面上好像與我的原議案沒有甚麼衝突，他只不過是說支持中國政府制定未來特區駐軍法，以落實《基本法》第十四條的規定。但如果是這樣的話，為何他不能夠支持我的原議案呢？為何他要修正我的議案呢？

民建聯反對我的議案哪些具體內容呢？我的議案有三點，第一點是公開諮詢港人，民建聯說他們同意港人應該積極提出意見，但又說港人沒有權要求中國政府公開諮詢一些有關中國所制定的法律。他們似乎忘記了《基本法》是由中國政府制定而又影響香港的法律，中國政府在八十年代曾“三上三落”諮詢香港人的意見。因此，怎能說香港人沒有權要求公開諮詢呢？

關於行政長官依法行使提請權方面，我聽不到葉國謙議員提出任何與我議案內容不同的意見。在駐軍人員受特區法院司法管轄權方面，他只是說，凡是軍隊行事，應該交由軍法處理，他似乎忽略了《基本法》內規定特區法院對特區所有案件有司法管轄權這一點。

他最後提到他認為民主黨提出這些議案是有不良動機，他說我們的議案超越了殖民地立法局的權限，剛才立法局主席也指出了這問題。假如葉國謙議員的論點是成立的話，我非常懷疑他為何提這項修正案，因為他的修正案的措辭是“本局支持中國政府”做一些事情，同樣道理，這不也是超越了他所指的殖民地立法局的權限嗎？我不明白這種邏輯。這是政治上的一種表示。

PRESIDENT: Dr Anthony CHEUNG, are you saying that you are making a political point and not making a point of order, so the President should not be involved?

張炳良議員：其實我的原議案只是完全從《基本法》的規定出發。實際上，

剛才發言的議員，包括批評我的議員，他們都不能提出實質上與我提出來的有關司法管轄權、提請權等內容方面的不同意見，包括一些聲稱支持葉國謙議員修正案的議員，他們只說民主黨提出議案是有動機，只在“動機”問題上做文章。

其實葉國謙議員修正案的實際意義，是反對將駐軍法這問題作公開諮詢，不敢面向司法管轄權的問題，只是含糊其詞，其實是一種不肯表態或不敢表態的修正案。我覺得如果同事反對我的議案的精神和取向，因而反對我的議案，我尊重你們的決定，但是你們無須躲在一個空泛的修正案背後。不過，如果有同事認同我的議案的方向和精神，我呼籲他們反對葉國謙議員的修正案。我也呼籲民協的同事，不要因為葉國謙議員的修正案中有提及《基本法》數字，而不作出反對。我覺得如果你們支持我的議案的精神，這也是你們提出來的那套看法的精神，在程序上你們應該反對葉國謙議員的修正案。

謝謝主席先生。

保安司致辭：主席先生，各位議員就張炳良議員的提案和葉國謙議員的修正案，發表了很多意見，我都已經仔細聽過了。由一九九七年七月一日起，中華人民共和國政府負責管理香港的防務。防務責任從英國移交中國，是主權交接其中一項最重要的環節。對中英兩國的駐軍來說，防務職責的交接極具挑戰性；中、英、港三地的政府，都對此項工作十分重視。

容許我先簡單說一下移交軍事用地的進展，然後再進入大家所關心有關駐軍和法律方面的問題，以及駐軍和政府的關係。

中英聯合聯絡小組經過七年磋商後，終於在一九九四年六月就軍用房屋土地的未來安排全面達成協議。這是雙方在防務問題合作上一個重要的里程碑。自從簽署軍事用地協議後，我們已就各項實際事務，加強與中方防務專家接觸。這些實際事務，關乎日後準備移交給中國駐軍的14幅軍事用地和四項重建工程。我們又安排了多次訪問，讓中方人員認識他們即將接管的用地、駐軍日後在港運作的環境、香港的概況等。關於移交上述各項“硬件”的安排，進展十分順利，但我們也沒有忽視“軟件”的重要性。這裏所說的“軟件”，是指日後適用於中國駐軍的法律體系，以及人民解放軍與香港特別行政區政府之間的關係。

我想說說駐軍與法律的問題。雖然《基本法》第十四條規定，“駐軍人

員除須遵守全國性的法律外，還須遵守香港特別行政區的法律”，但該條未有就日後適用於中國駐軍的法律架構，加以詳述。正如在座位各位議員所說，這是一項迫切而重要的課題，也是公眾人士關心的課題。時間越來越少，現在離開主權移交的日子已不足360天。

主席先生，在我們關於移交防務職責的政策中，駐軍與法律是其中一個極為重要的環節。中國政府正在草擬駐軍法，以規管中國人民解放軍在香港特別行政區的運作情況。我們也正盡力提供協助：我們已向中方防務專家，提供了關於本港法律與司法制度的詳細資料；又向他們詳盡介紹過，現時採用甚麼原則，來決定英國駐軍應受本港法庭的刑事與民事司法管轄，以及香港法律對軍方的提述。同時，我們已透過所有正式和非正式的渠道，爭取各種機會，向中方表示我們希望雙方可以進行討論，以便反映我們對駐軍法的意見。

我們很高興知道，中方在聯合聯絡小組第三十六次會議席上，表示樂意給我們就未來駐軍與法律的問題上作出簡介，同時聽取我們的意見。雖然尚未訂定有關的時間表，但我們希望這次與中方專家的對話，是有建設性及能夠取得成果。有些議員強調，必須聽取香港人的意見。我們完全同意這點。雖然這最終是中國政府的事，但我們會鼓勵中方在草擬駐軍法的過程中，應當盡量透明、採取公開和積極的態度。有意提出意見的人，並不限於我們；相信法律及社會各界，都有這方面的專家。由於駐軍法對香港人有直接影響，要爭取大眾支持這項重要的法例，透明度是重要的元素。

主席先生，我現在轉談駐軍人員接受司法管轄的問題。目前是有清楚的法律規則，雖然這是殖民地的規則，駐港英軍人員若觸犯香港法律，便會在香港的法庭受審，除非屬於以下情況：

- 被指稱的罪行屬侵犯駐港英軍的其他人員；或

- 被指稱的罪行屬侵犯英國政府的財產；或

- 被指稱的罪行是由於軍人執行職務及在執行過程中引起的。

我剛才所述的情況，案件都會交由軍事法庭處理，而其他駐港英軍人員如在本地法庭判定有罪，則須根據本港法律罰款或在本地懲教機構內服刑。我們認為這些決定香港駐軍應否接受本港法庭刑事審判的原則，應該在一九九七年後繼續沿用。這些原則行之已久，被認為公正、合理及切實可行。這套安排不但與《基本法》第十四條的內容一致，而且亦符合《基本法》第

十九條的規定，即“香港特別行政區法院除繼續保持香港原有法律制度和原則對法院審判權所作的限制外，對香港特別行政區所有的案件均有審判權”。

在民事司法方面，根據《官方訴訟條例》（第300章）的規定，英國駐軍可免在香港受到檢控。不過，向英國駐軍提出的民事申索，一般都是由當事人庭外和解。申索人若對提出的和解辦法不感滿意，可在英國民事法院向英國政府提出訴訟。但市民可向個別駐軍人員，就其個人身分，在香港法院提出民事訴訟。

第300章所作的現行安排，是否表示在一九九七年後，向人民解放軍提出的民事訴訟，必須在內地法庭進行呢？我們認為不應這樣。現時港英之間可作這種安排，是因為兩地的普通法制度，尤其是侵權法和合約法，極大程度是相同的。我們認為在一九九七年六月三十日後，必須讓香港特別行政區居民和公司可以按照普通法的規定，向中國駐軍提出民事訴訟。有關的案件，須在特別行政區法院內聆訊，而不應交由內地法庭審訊，因為內地法庭是根據不同的法律制度運作。我們相信這個做法不但受到市民歡迎，而且最重要是也符合《基本法》第八、十四、十八及十九條的規定。

我亦聽到有些議員提及賦予英軍權力和豁免權的法律條文的問題，有人認為這些是特權。我較早前曾經在立法局保安事務委員會上詳細介紹這些條文，所以不在此再述，但我很想強調，這所謂英軍的特權並不是個人利益。這些條文不過是給軍方人員能以駐軍的身分在本港有效和合法地執行職務。英軍向香港政府提供協助時，他們的權力範圍是不得超越本港法例所訂的嚴格規限。鑑於中英駐軍有別，我們會仔細審議一切有關的條文，以決定是否適用於未來的駐軍。我們會在法律適應化的範疇內處理。在這項工作之中，我們會透過聯合聯絡小組就所有本港法例向中方提交適應化建議，亦請中方盡快與我們說一下他們對法律適應化的整體意見。

此外，日後中國駐軍人員在行使任何執法權時，都必須符合《基本法》第十四條，這是很多議員所提及的。《基本法》第十四條規定駐軍人員除了遵守全國性法律外，還要遵守香港法律。大家很關心貪污的問題，這不是針對任何軍隊或其他人，而是這是香港既有的文化，我們是很反對貪污的，所以順理成章，我們亦相信香港的法律也應包括香港特別行政區有效和有關賄賂和貪污的任何法律。

最後談談駐軍和特區政府的關係。有議員擔心未來駐軍可能會干預香港特別行政區政府的內部事務，《基本法》其實是明確禁止這做法的。第十四條規定："中央人民政府派駐香港特別行政區負責防務的軍隊，不干預香港特別行政區的地方事務"。《基本法》又明確規定：特區政府負責維持社會治安，而且必須在特區政府向中央人民政府提出請求後，駐軍才可協助維持社會治安及救助災害。

一向以來，香港主要由民政管治，英國駐軍的主要作用，只是英國主權的象徵。英軍雖然沒有受到類似《基本法》第十四條的規管，但也只是在政府提出請求時才提供協助。上一次請求英軍協助政府維持治安，已是一九六七年的事。但當時警隊仍然留守前綫，軍方只擔任輔助角色。過去30年來，本港的保安部隊加強實力，逐步接管了英國駐軍的職能任務；例如一九九二年，警方接管了邊境巡邏工作。因此，我們預期沒有需要請求人民解放軍協助。本港警隊、其他執法機構及緊急救援部隊等，都人手充裕、配備精良、訓練有素，足以應付任何可能預見的內部保安問題。

有些議員提議，當局應擬備詳細的指引和程序，以便特區政府請求人民解放軍協助時有所依據。為求提高公眾信心，及確保符合《基本法》第十四條的規定，我們認為最好當然是清楚訂明特區政府向中央人民政府在非常時期提出請求的機制和渠道。這件事必須交由中央政府、解放軍和特區政府一起處理。當然，大前提一定是定出來的任何機制和渠道必須有效運作，以應付關乎人命、財物、香港安危和不能預計的突發情況，亦為港人能接受的安排。

本局和市民大眾都很關注日後適用於人民解放軍的法律架構，極希望這個架構能夠充分體現"一國兩制"、"港人治港"和"高度自治"的精神。我們相信，中國政府十分了解港人對這問題的感受，我們也時有反映。我們希望，中國政府會設法向港人保證，落實"聯合聲明"和"基本法"的各項承諾。在我們方面，我們會竭盡所能，作出協助。

謝謝主席先生。

Question on the amendment put.

Voice vote taken.

The President could not determine from voice vote.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are now called upon to vote on the question that the amendment moved by Mr IP Kwok-him be made to Dr Anthony CHEUNG's motion. Will Members please register by pressing the top button and then proceed to vote by choosing one of the three buttons below. Press "Present" first.

PRESIDENT: Members please check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted for the amendment.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mrs Elizabeth WONG voted against the amendment.

Mr Frederick FUNG, Dr LAW Cheung-kwok, Mr Bruce LIU and Mr MOK Ying-fan abstained.

THE PRESIDENT announced that there were 26 votes in favour of the amendment and 25 votes against it. He therefore declared that the amendment was carried.

PRESIDENT: Dr Anthony CHEUNG, you are now entitled to your final reply and you have three minutes 27 seconds out of your original 15 minutes.

張炳良議員致辭：主席先生，現在已接近凌晨三時，首先我要多謝各位同事“捧場”，積極就我的議案發言。

剛才在討論時，有人問為何我要提出原議案，我的議案是否多此一舉，因為《基本法》已訂有第十四條，已經足夠，為何我還要提出議案呢？《基本法》當然規定了將來駐軍的一些基本原則，但假如是足夠的話，現時便無須談論如何制定將來特區的駐軍法。

在反對或批評我的議案的議員的論點中，我聽不到任何對我的議案內容的實質批評或反對，他們只是對民主黨提出議案作陰謀性動機的猜測，說我們製造恐慌、製造信心危機。其實是誰沒有信心呢？如果有信心的話，為何不能就我的議案內容的事實來進行辯論呢？我的議案內提到司法管轄權的問題；提到“民事法院優先”的原則，這些原則有甚麼不好呢？我剛才從反對我的議員的演辭內，聽不到任何論點。

任善寧議員說得對（但剛才表決時他不在場），他認為應將香港從英治殖民地體制解放出來，解放軍不應簡單地繼承英軍的做法。剛才在一些批評我的議案的議員的言論中，我聽到一種令我很擔心的信息，即英國人過去所做的，將來我們可以照做，這有何不可呢？

其實，我的議案只是將《基本法》內已定下的規定更進一步。剛才劉漢銓議員也提到，在《基本法》草擬期間，社會上有大量對解放軍的意見，是表示擔憂和有各樣保留，所以現時《基本法》的條文才如此訂定。這在某程度上可以反映當時的憂慮。市民是否害怕解放軍，其實當中國政府決定以封閉式管理方式來進行駐軍安排時，已能點出一些事情。不過，我今天的議案並非討論是否害怕解放軍的問題，而是如何依法對解放軍將來在香港的角色、任務及行為作出規範。

雖然葉國謙議員的修正案已獲通過，但民主黨呼籲支持我的原議案的同事反對經葉國謙議員修正的議案。

Question on Dr Anthony CHEUNG's motion as amended by Mr IP Kwok-him put.

Voice vote taken.

The President could not determine from voice vote.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: Members may wish to be reminded that they are called upon to vote on the question that the motion moved by Dr Anthony CHEUNG as amended by Mr IP Kwok-him be approved. Will Members please first register their presence by pressing the top button and then proceed to vote by choosing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. We are two short of the head count. Are there any queries? Still one short of the head count. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching and Mr NGAN Kam-chuen voted for the amended motion.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and YUM Sin-ling voted against the amended motion.

Mr Frederick FUNG, Dr LAW Cheung-kwok, Mr Bruce LIU and Mr MOK Ying-fan abstained.

PRESIDENT: The result is 26 for the "ayes" and 26 for the "noes". In accordance with Speaker DENISON's decision in 1867 that where no further discussion is possible, decisions in the affirmative should not be taken except by a majority of Members, I hereby exercise my casting vote in the negative.

THE PRESIDENT therefore announced that there were 26 votes in favour of the amended motion and 27 against it. He therefore declared that the amended motion was negatived.

MEMBER'S BILLS

First Reading of Bills

EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY AND AGE) BILL

EQUAL OPPORTUNITIES (RACE) BILL

MASS TRANSIT RAILWAY CORPORATION (AMENDMENT) BILL 1996

KOWLOON-CANTON RAILWAY CORPORATION (AMENDMENT)

BILL 1996
SEX AND DISABILITY DISCRIMINATION (MISCELLANEOUS PROVISIONS) BILL 1996

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

Second Reading of Bill

EQUAL OPPORTUNITIES (FAMILY RESPONSIBILITY, SEXUALITY AND AGE) BILL

MR LAU CHIN-SHEK to move the Second Reading of: "A Bill to promote equality of opportunity in Hong Kong and to provide remedies in respect of discrimination on the grounds of family responsibility or family status, sexuality, or age, or involving harassment on the ground of sexuality."

劉千石議員致辭：主席先生，本人謹根據議事程序表所列，動議二讀《平等機會（家庭責任、性傾向及年齡）條例草案》。

一九四八年聯合國大會通過的《世界人權宣言》第一條指出："人人生而自由，在尊嚴和權利上一律平等。他們賦有理性和良心，並應以兄弟姊妹關係的精神相對待。"

今時今日，相信社會上再沒有人公開反對平等機會的觀念。我認為，平等機會的核心精神就是確信人人生而平等，彼此應以兄弟姊妹的關係相對待；而立法禁止任何形式的歧視，是對平等機會、平等權利的具體確認。正正因為如此，平等機會立法必須是全面的，而不應該只是局部性立法，在禁止某些歧視性行為之餘卻容許另一些歧視行為繼續存在。

上屆本局同事胡紅玉女士在兩年前提出一條全面的《平等機會條例草案》，亦是基於這樣的信念，爭取全面立法禁止歧視。可惜，政府的回應卻十分保守。基於本局與公眾的壓力，政府在去年制定了性別及殘疾方面的反歧視法例，但卻同時全力封殺胡紅玉女士提出的涉及其他範疇的平等機會法案。去年平等機會法案遭否決後，支持平等機會的同事已經提出我們將會在今屆立法局捲土重來 — 今天，我們就在本局會議上兌現我們的承諾，重新提出一整套平等機會法案。今天在本局進行首讀、二讀的三條涉及平等機會及反歧視的法案，是代表了黃錢其濂議員、陸恭蕙議員、劉慧卿議員和

我全力推動平等機會立法的決心。

由我負責的條例草案涉及家庭責任、性傾向及年齡方面歧視的部分，期望透過立法禁止有關範疇的歧視性行為，並且讓可能遭歧視的受害人獲得申訴機會，以保障平等機會得到真正落實。

對於平等機會立法，政府一向都是想盡千方百計去迴避；游說本局同事以外，政府慣用的手法就是借“諮詢”來拖延時間，甚至以市民不贊成為理由，堅拒進行某些範疇的反歧視立法。不過，我希望政府清楚明白，任何維護人權的平等機會立法目的就是要保障弱勢群體，因此，這根本不是多數人同意不同意的問題 — 只要社會上存在弱勢群體、存在歧視情況，就應該立法保障受害人權益。事實上，立法禁止歧視並不是要你一定要接受甚麼人，只是希望你不要歧視他們，使他們和你、和我一樣享有平等的權利。

我相信，一個以兄弟姊妹關係的精神互相對待的社會，才是一個真正和平、和諧的社會。希望本局同事能夠本着這個信念支持全面平等機會立法。

主席先生，本人謹此陳辭，提出條例草案二讀。謝謝。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

EQUAL OPPORTUNITIES (RACE) BILL

MRS ELIZABETH WONG to move the Second Reading of: "A Bill to promote equality of opportunity in Hong Kong and to provide remedies in respect of discrimination on the grounds of race, colour, nationality, national or ethnic origin, or involving racial harassment."

MRS ELIZABETH WONG: Mr President, I move that the Equal Opportunities (Race) Bill be read the Second time.

The purpose of this Bill is to render discrimination on the ground of race unlawful and to make provision for relevant remedies. The objective is to

eliminate, as far as it is possible, all forms of racial discrimination in Hong Kong. In doing so, the Bill also intends to give effect to a variety of international obligations applicable to Hong Kong via this piece of domestic legislation.

Many in Hong Kong maintain that race relations are not a problem in this beautiful city. If this were true, then the passage of the Bill would be no big deal for any of us, and would therefore be very appropriate. If not, then it would be all the more necessary to support this Bill so as to appreciate the true value of social integration and cohesion in Hong Kong in our effort to remove racial prejudice.

Mr President, the Bill has six parts and I shall highlight some of the key areas, *seriatim* below.

Part I sets out the objects of the Bill in detail to assist in interpretation. In particular, it provides that the definition of race includes colour, descent, ethnic, or national origin and nationality. Because the principal purpose of the Bill is to give effect to certain international instruments, the interpretation should be consistent with the standards under these international obligations.

Part II deals with discrimination on the ground of race. It includes the workplace; it covers both direct and indirect discrimination and makes discrimination unlawful in such areas as education, access to places, services, facilities, and so on. It also prohibits discrimination in the form of racial vilification.

Part III defines other unlawful acts, including victimization and certain advertisements.

Part IV provides for general exceptions to the Bill, for example, where race is a genuine occupational qualification for dramatic and artistics roles that demand racial authenticity and for services to promote the welfare of a particular race.

Part V provides for implementation and enforcement. Discriminatory acts or practices made unlawful by the Bill are civil wrongs and triable in the

District Court.

Part VI sets out miscellaneous matters and provides for rules of liability. It removes an anomaly by amending the Hong Kong Bill of Rights Ordinance to make it applicable to all legislation, not merely to legislation invoked by the Government or public authorities.

Mr President, we know from historical facts that when a society is sensitive to the needs of all groups in its midst, including those of minority groups, the result is social harmony.

Hong Kong is an open, progressive and dynamic society where people of different race, colour and creed live in peace and harmony. Yet, here and there, you might see example of unfortunate racial prejudice which tarnishes Hong Kong's image.

Many countries around the world have all encompassing anti-discrimination laws.

I believe that full participation in all spheres of activities by the people of Hong Kong, of whatever race, is the true meaning of Hong Kong people governing Hong Kong. Those who love Hong Kong are not necessarily only those of ethnic Chinese origin.

Equal treatment of all groups of people in society will establish the effectiveness of a cohesive society.

Thus, the recognition and enjoyment, by all peoples, on an equal footing, of human rights include fundamental freedoms in the political, economic, social, cultural and any other field of public file. These rights must be promoted and protected.

Equal opportunities for all will enrich our society with diversity. We should be able to share our cultural uniqueness through offering equal opportunities for all as we progress into the next century.

History tells us that prejudices of any kind can become potentially destructive and divisive. So, in race relations, let us race towards the sun.

Mr President, this Bill is, in fact, no stranger to this Council. In 1994, then legislator, the Honourable Ms Anna WU, attempted to introduce a similar Bill which revisits this Council today. I commend this Bill to this Council.

Thank you, Mr President.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

MASS TRANSIT RAILWAY CORPORATION (AMENDMENT) BILL 1996

MR SIN CHUNG-KAI to move the Second Reading of: "A Bill to amend the Mass Transit Railway Corporation Ordinance and its subsidiary legislation."

單仲偕議員致辭：主席先生，本人動議二讀《1996年地下鐵路公司（修訂）條例草案》。

地下鐵路公司是政府全資擁有的商業性機構，它是根據一九七五年《地下鐵路公司條例》成立的公共法團，而《地下鐵路公司條例》第6(2)(f)條授權了地下鐵路公司可自行釐訂地鐵的票價。因此，現時只要地鐵公司的董事局決定了加價的幅度後，只須知會行政局便可實施，這是本港其他私營公共交通工具均沒有的收費自主權。

條例草案的目的，就是希望建立一個監管地鐵公司調整票價的機制，讓作為民選架構的立法局能夠審議影響民生的地鐵票價。當條例草案通過實施後，地鐵公司在提高票價時，便必須以附屬法例的形式獲立法局通過，始可實施。

目前，政府對私營的公共交通工具均採取不同的監管模式，但對於地鐵和九鐵這兩間規模龐大，兼且是公營的運輸機構反而採取了完全放任的政策，實在有欠公平。根據現行的法例，四間專利巴士公司在調整收費時必須

獲得行政局的批准；而專利渡輪公司、電車公司及的士的加價申請，在獲得行政局通過後，還須以附屬法例形式提交立法局省覽，而立法局可根據《釋義及通則條例》（第1章）規定，在有需要時可藉通過決議案對行政局的決定作出修訂。因此，讓立法局有權監管地鐵的票價，只不過是貫徹政府目前對公共交通工具加價的監管政策。

隨着鐵路網絡不斷的擴展，地鐵已成為了本港市區主要的交通命脈，市民對它的依賴也越來越大。為了保障社會大眾的利益，確保地鐵公司收取合理和市民可接受的票價，其加價應該受到立法局的監管。

一直以來，地鐵公司都表示加價緊隨通脹是最合理的做法。但本人提出這項議案，卻認為公用事業的加價應該是靈活且有彈性的，除了要兼顧到公司本身的營運及財政狀況外，還須考慮到當時社會的經濟狀況及市民的負擔能力。但過去的經驗告訴我們，地鐵公司縱使在賺取豐厚盈利的情況下，仍堅持年年加價，根本就沒有從市民的角度去考慮加價的幅度。雖然地鐵加價常常遭受到議員和市民反對和批評，但鑑於地鐵的加價完全不受監管，市民只有無奈地接受。更令人氣憤的，就是地鐵公司取巧地聲稱平均加幅跟隨通脹，但實際上卻大幅度提高了車費的做法。就以今年加價為例，地鐵公司將長途車費加幅大大提高，最高增幅達13.6%，而將短途車費加幅調低，因此而造成平均加幅6.9%的效果。但事實上，有77%的乘客是付上加幅達7%至13.6%間的車費。由此可見，地鐵公司擁有收費自主權，市民的利益就會被忽視。

代表市民去履行監察公用事業機構，立法局實在責無旁貸。條例草案通過後，並不表示地鐵的加價一定會遭立法局反對或阻止。如果地鐵公司提出充分而合理的加價理據，立法局議員絕對不會無理地否決它的加價申請。條例草案的目的只是令日後地鐵加價能夠受到立法局和市民的監管，進一步保障市民的利益。

主席先生，我衷心希望本局的同事支持這條例草案。

本人謹此陳辭，動議條例草案二讀。謝謝。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

KOWLOON-CANTON RAILWAY CORPORATION (AMENDMENT) BILL 1996

MR SIN CHUNG-KAI to move the Second Reading of: "A Bill to amend the Kowloon-Canton Railway Corporation Ordinance and its subsidiary legislation."

單仲偕議員致辭：主席先生，本人動議二讀《1996年九廣鐵路公司（修訂）條例草案》。

九廣鐵路公司與地下鐵路公司同樣是政府全資擁有的商業性機構，它是根據一九八二年《九廣鐵路公司條例》成立的公共法團，而《九廣鐵路公司條例》第4(2)(e)條授權了九廣鐵路公司可自行釐定九鐵、輕鐵以及新界西北部輕鐵服務區內巴士的票價。因此，現時只要九鐵公司的董事局決定了加價的幅度後，只須知會行政局便可實施。

條例草案的目的，就是希望建立一個監管九鐵公司調整票價的機制，讓作為民選架構的立法局能夠審議影響民生的九鐵、輕鐵及接駁輕鐵的巴士票價。當條例草案通過實施後，九鐵公司在提高票價時，便必須以附屬法例的形式獲立法局通過，始可實施。

鑑於此條例草案的情況與《1996年地下鐵路公司（修訂）條例草案》相類似，因此，本人不打算重複有關的理據。為了貫徹政府目前對公共交通工具加價的監管政策，保障市民的利益，確保九鐵公司收取合理和市民可接受的票價，我衷心希望本局的同事也支持這條例草案。

主席先生，本人謹此陳辭，動議條例草案二讀。謝謝。

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

SEX AND DISABILITY DISCRIMINATION (MISCELLANEOUS PROVISIONS) BILL 1996

MISS CHRISTINE LOH to move the Second Reading of: "A Bill to make further and better provision for the elimination of discrimination on the grounds of sex, disability, marital status and pregnancy; of sexual harassment; and of harassment and vilification of persons with a disability or their associates."

MISS CHRISTINE LOH: Mr President, I move the Second Reading of the Sex and Disability Discrimination (Miscellaneous Provisions) Bill 1996.

This Bill is one of three Member's Bills introduced today on the subject of equal opportunities. Taken together, these three Bills revive the legislative project that was launched in 1994 by former legislator, Ms Anna WU's Equal Opportunities Bill. Our project is to give the community comprehensive and effective legislation against unfair discrimination.

The Sex and Disability Discrimination (Miscellaneous Provisions) Bill makes important improvements to the existing Sex Discrimination Ordinance, and makes several parallel amendments to the Disability Discrimination Ordinance.

Almost all the amendments contained in the Bill were recommended last year by the Bills Committee that met weekly for many months to study those two Ordinances before they were enacted. Many of the amendments also implement suggestions made by the United Kingdom Equal Opportunities Commission, on the basis of more than a decade of experience with closely similar laws.

The Bill's amendments help victims of sex and disability discrimination, and also promotes equal opportunities generally.

The Ordinance, as it stands, is badly flawed. Its flaws reflect the ulterior purpose for which it was originally put forward by the Administration: not to combat discrimination, but to control and contain pressure to legislate against

discrimination.

So far, the Ordinance has effectively served that ulterior purpose. It helped the Administration defeat Ms Anna WU's Bill last year, and it has provided a handsome screen for government inertia and delay ever since. It has now been the phantom Ordinance for more than a year, on the lawbooks but without any legal effect in the community. When the Administration finally brings it into effect — whenever that may be — it will force victims of discrimination to negotiate a minefield of exceptions and limitations to their rights. Of many examples, I will mention only the Ordinance's wholly arbitrary $150,000 cap on damage awards for employment discrimination.

Now is the time to take this important Ordinance away from the Administration and make it serve the community as it should. This Bill will do so, and I recommend it to Members.

Question on the motion on the Second Reading of the Bill proposed.

Debate on the motion adjourned and Bill referred to the House Committee pursuant to Standing Order 42(3A).

Resumption of Second Reading Debate on Bill

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Resumption of debate on Second Reading which was moved on 13 March 1996

何承天議員致辭：我多謝各位支持到底，令這條條例草案有機會二讀。我並不是預備發言的。謝謝。

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.

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Clauses 1 to 5 and 7 to 12 were agreed to.

Clause 6

委員何承天議員致辭：主席先生，我動議修正第6條，修正案內容一如發送各位議員的文件所載。

Proposed amendment

Clause 6

That clause 6 be amended, by deleting "On" and substituting "At".

Question on the amendment proposed, put and agreed to.

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

Council then resumed.

Third Reading of Bill

MR EDWARD HO reported that the

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

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

Bill read the Third time and passed.

END OF SESSION

PRESIDENT: Before I adjourn the Council, I wish Members well during the summer recess. The new Session will start on 2 October 1996 to which date I now adjourn this Council.

Adjourned accordingly at twenty-seven minutes past Three o'clock on 11 July 1996.