OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 24 April 1996

The Council met at half-past Two o'clock

MEMBERS PRESENT

THE PRESIDENT
THE HONOURABLE ANDREW WONG WANG-FAT, O.B.E., J.P.

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

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

THE HONOURABLE SZETO WAH

THE HONOURABLE LAU WONG-FAT, O.B.E., J.P.

THE HONOURABLE EDWARD HO SING-TIN, O.B.E., J.P.

THE HONOURABLE RONALD JOSEPH ARCULLI, O.B.E., J.P.

THE HONOURABLE MRS MIRIAM LAU KIN-YEE, O.B.E., J.P.

DR THE HONOURABLE EDWARD LEONG CHE-HUNG, O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE
THE HONOURABLE MICHAEL HO MUN-KA

DR THE HONOURABLE HUANG CHEN-YA, M.B.E.

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, J.P.

THE HONOURABLE FRED LI WAH-MING

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

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

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

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

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE AMBROSE LAU HON-CHUEN, J.P.

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

DR THE HONOURABLE JOHN TSE WING-LING

THE HONOURABLE MRS ELIZABETH WONG CHIEN CHI-LIEN, C.B.E., I.S.O., J.P.

THE HONOURABLE LAWRENCE YUM SIN-LING

MEMBERS ABSENT

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

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

THE HONOURABLE NGAI SHIU-KIT, O.B.E., J.P.

THE HONOURABLE JAMES TO KUN-SUN

DR THE HONOURABLE YEUNG SUM

PUBLIC OFFICERS ATTENDING

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.
CHIEF SECRETARY

MR GORDON SIU KWING-CHUE, J.P.
FINANCIAL SECRETARY

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

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

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.
SECRETARY FOR HEALTH AND WELFARE

MR RAFAEL HUI SI-YAN, J.P.
SECRETARY FOR FINANCIAL SERVICES

MR JOSEPH WONG WING-PING, J.P.
SECRETARY FOR EDUCATION AND MANPOWER

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

MISS DENISE YUE CHUNG-YEE, J.P.
SECRETARY FOR TRADE AND INDUSTRY

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

MR ALAN LAI NIN, J.P.
SECRETARY FOR THE TREASURY

MR LEO KWAN WING-WAH, J.P.
SECRETARY FOR ECONOMIC SERVICES

MRS STELLA HUNG KWOK WAI-CHING, J.P.
SECRETARY FOR HOME AFFAIRS

CLERKS IN ATTENDANCE

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

MISS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

PAPERS

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

Subject	
Subsidiary Legislation	*L.N. No.*
Official Languages (Alteration of Text) (Supplementary Medical Professions Ordinance) Order 1996	154/96
Official Languages (Authentic Chinese Text) (Enforcement of Rights (Extension of Time) Ordinance) Order	(C) 29/96
Official Languages (Authentic Chinese Text) (Supplementary Medical Professions Ordinance) Order	(C) 30/96
Commissioner for Administrative Complaints Ordinance (Amendment of Schedule 1) Order 1996	155/96
Schedule of Routes (Citybus Limited) Order 1996	156/96
Medical Registration (Amendment) Ordinance 1995 (87 of 1995) (Commencement) Notice 1996	158/96
Official Languages (Authentic Chinese Text) (Port Control (Cargo Working Areas) Ordinance) Order	(C) 31/96
Official Languages (Authentic Chinese Text) (Protected Places (Safety) Ordinance) Order	(C) 32/96
Official Languages (Authentic Chinese Text) (Disposal of Uncollected Goods Ordinance) Order	(C) 33/96

Official Languages (Authentic Chinese Text) (Protection of Non-Government Certificates of Origin Ordinance) Order ..... (C) 34/96

Official Languages (Authentic Chinese Text) (Limitation Ordinance) Order ..... (C) 35/96

Stamp Duty (Jobbing Business) (Options Market Makers) Regulation 159/96

Residential Care Homes (Elderly Persons) (Amendment) Regulation 1996 ..... 160/96

Adoption (Amendment) Rules 1996 ..... 161/96

Sessional Papers 1995-96

No. 74 — Report of changes to the approved Estimates of Expenditure approved during the third quarter of 1995-96
Public Finance Ordinance : Section 8

No. 75 — Mass Transit Railway Corporation
Annual Report 1995

No. 76 — Kowloon-Canton Railway Corporation
Annual Report 1995

No. 77 — Report of the Broadcasting Authority
September 1994 - August 1995

No. 78 — Report of the Director of Audit on the results of value for money audits
March 1996 - Director of Audit's Report No. 26

ADDRESSES

Mass Transit Railway Corporation Annual Report 1995

FINANCIAL SECRETARY: Mr President, in accordance with section 16(4) of the Mass Transit Railway (MTR) Corporation Ordinance, I table the annual report and accounts of the Corporation for the year ended 31 December 1995.

In 1995, the MTR carried 813 million passengers, 1% more than 1994. Total revenue increased by 10% to $5,665 million, while total operating costs before depreciation increased by 13% to $2,521 million. Interest and finance charges were at $1,289 million, 2% higher than last year.

The Corporation has adopted a fare policy which offers a value-for-money service and generates sufficient funds to finance expenditure on upgrading and improving the existing system. Over the next five years, the Corporation will spend $8 billion on capital improvement projects.

The total debt outstanding at the end of 1995 was close to HK$15 billion. To finance the Airport Railway, the Corporation's borrowings are expected to increase in the next two years. The Corporation continues to enjoy respect in worldwide financial markets. Its debut, Yankee bond in the United States, was executed well and established another benchmark.

During the year, the Government injected equity totalling HK$11.7 billion for the construction of the Airport Railway. Progress on construction is satisfactory. I am pleased to note that the Corporation is confident of the Airport Railway being completed within estimate.

The Corporation's net profit for 1995 was $1,196 million compared with $1,038 million in 1994. The accumulated losses of $99 million at the end of 1995 will not be extinguished until 1996. The Corporation has not therefore declared a dividend for 1995.

Mr President, the Mass Transit Railway Corporation is obliged under the law to operate in accordance with prudent commercial principles and, accordingly, must ensure that taking one year with another, its revenue is at least

sufficient to meet its expenditure and interest payments. It is through annual fare adjustments that the Corporation generates the necessary funds to implement comprehensive maintenance and service improvement programmes. It is in fact the ability to determine its own fares that has enabled the Corporation to enjoy high credit ratings and to raise funds in local and overseas markets successfully to finance new railway projects and build for the future. Since these arrangements have worked well from 1979, when MTR services came into operation, we should treasure them, and not tamper with them.

The Corporation's annual report provides ample evidence of the MTR's very successful performance. I congratulate the Chairman and the Corporation for their achievements in the past year.

PRESIDENT: Mr LEE Wing-tat, do you have a point of Order?

MR LEE WING-TAT (in Cantonese): Mr President, I wish to seek elucidation on this issue.

PRESIDENT: Do you wish to seek elucidation? Yes, please, Mr LEE.

MR LEE WING-TAT (in Cantonese): Mr President, paragraph 7 of the document mentions that under the law, the Mass Transit Railway Corporation Limited should at least maintain an income sufficient to pay for its expenditure and interest payments. The Corporation has a net profit of $1.2 billion in the year 1995. Will the Financial Secretary inform us whether this is far beyond what is required by the law?

FINANCIAL SECRETARY (in Cantonese): Mr President, the law only requires the Corporation to conduct its business in accordance with prudent commercial principles and does not specify the level or standard at which its proceeds or profits have to be fixed.

Kowloon-Canton Railway Corporation Annual Report 1995

FINANCIAL SECRETARY: Mr President, in accordance with section 14(5) of the Kowloon-Canton Railway Corporation (KCRC) Ordinance, I table the annual report and accounts of the Corporation for the year ended 31 December 1995.

In 1995, the KCRC carried over 1.1 million passengers each day, 5% more when compared with 1994. About two thirds of the passengers travelled on the heavy rail and the remaining one third on the light rail system.

The light rail system was extended to the centre of Tin Shui Wai new town in March 1995. The extension has provided an important transport service for the 85 000 residents of the new town.

Productivity improvements have made it possible for the Corporation to keep fares at an affordable level. Over the past five years, KCRC's fares have in fact declined 13% in real terms. In 1995, the KCR and LRT met or exceeded almost all their performance pledge targets, and successfully obtained ISO certification across an extensive range of functions.

The Corporation continued to develop and expand the container freight services launched in 1994. These services link the industrial centres of China with the port of Hong Kong.

The Corporation also aimed at strengthening and improving the quality of cross-border services. At a cost of $309 million, electric locomotives and rolling stock have been ordered for a new double-deck through train service between Hong Kong and Guangzhou.

In response to the Government's invitation, the Corporation has submitted proposals to the Government for the design, construction and operation of a new railway in the northwest New Territories. This will provide domestic and international passenger services and also carry freight from China to the container ports. The system will link up with the existing heavy rail and light rail systems, as well as the Mass Transit Railway and Airport Railway to enhance the existing rail network.

The Corporation maintained a satisfactory financial position in 1995. Total revenue rose to $2,973 million, representing an increase of 11% over 1994. Net profit for the year after tax was $901 million. Taking into account the Corporation's cash flow requirements and investment needs in the year ahead, the Government has not asked for any dividends.

The Corporation will invest $5.7 billion over the next five years in service improvements, including major projects such as automatic train protection, renovation of Hung Hom Station, and noise barriers.

Mr President, under its remit, the KCRC is obliged to conduct its business in accordance with prudent commercial principles. What I have said just a few moments ago about the MTRC equally applies to the KCRC. We must maintain the existing arrangements to enable the KCRC to benefit from capital markets, particularly for the Western Corridor Railway project which is in the pipeline.

The Corporation has continued to operate very successfully over the past year. I congratulate the Chairman, its Managing Board as well as the management and staff of the Corporation for their achievements during the past year.

ORAL ANSWERS TO QUESTIONS

Shortage of Occupational Therapists and Physiotherapists

1. **MR LAW CHI-KWONG** asked (in Cantonese): *Mr President, in regard to the shortage of occupational therapists and physiotherapists in non-governmental rehabilitation institutions, will the Government inform this Council:*

(a) of the establishment, strength and vacancies in various ranks of the occupational therapist and physiotherapist grades in hospitals managed by the Hospital Authority and in the Social Welfare Department as at 31 December 1995;

(b) of the establishment, strength and vacancies in various ranks of the

occupational therapist and physiotherapist grades in non-governmental rehabilitation institutions, including early education and training centres, special child care centres and special schools as at 31 December 1995;

(c) whether consideration has been given to granting a hardship allowance to occupational therapists and physiotherapists in non-governmental rehabilitation institutions in order to make the pay package offered by these institutions more attractive, thereby easing the manpower shortage?

SECRETARY FOR HEALTH AND WELFARE: Mr President, in view of the detailed figures being asked for, I thought it would be easier for Members to refer to the tables in the written Annex to this answer which is laid before them today. The tables show the establishment, strength and vacancy of occupational therapists and physiotherapists in various sectors.

Moving now to the last part of the question, as Members may be aware, my Branch has set up a working group to address the shortage of clinical psychologists, physiotherapists and occupational therapists. The working group comprises representatives from both the government and non-governmental sectors and representatives of the relevant professional bodies in Hong Kong. The working group has completed its study of the situation regarding clinical psychologists and is now nearing completion of its study of physiotherapists.

It has become clear that we must increase the supply of these professions and take steps to facilitate their retention in the non-governmental sector. The package of proposals under consideration for physiotherapists includes the expansion of student places, a more balanced exposure between the health and welfare sectors for physiotherapy students in clinical placements, the creation of senior physiotherapist posts in non-governmental organizations, revised manning ratios, more flexible transfer arrangements for staff between the various sectors and the provision of scholarships for further training. Also under consideration is the feasibility and likely effectiveness of creating an allowance, such as an Extraneous Duties Allowance, for physiotherapists working in non-governmental organizations.

The working group is now examining all of these proposals and will soon finalize its recommendations on physiotherapists. We have begun the necessary detailed background research on occupational therapists and the working group will commence its study of this profession once the study on physiotherapists is completed. The measures needed to address problems faced by occupational therapists are likely to be similar to those we have so far drawn up for physiotherapists.

Annex

Manpower of Occupational Therapists as at 31 December 1995

Department/ Sector	*Establishment*			*Strength*			*No. of Vacancy*		
	SOT	*OTI*	*OTII*	*SOT*	*OTI*	*OTII*	*SOT*	*OTI*	*OTII*
Hospital Authority	34	137	203	33	128	180	1	9	23
Social Welfare Department (Rehab Service)	1	6	0	1	6	0	0	0	0
*Subvented NGOs (Rehab Service) #as at 30.9.1995	1	64.5	23.5	1	58.25	8	0	6.25	15.5
Total	36	207.5	226.5	35	192.25	188	1	15.25	38.5

Manpower of Physiotherapists as at 31 December 1995

Department/ Sector	*Establishment*			*Strength*			*No. of Vacancy*		
	SPT	*PTI*	*PTII*	*SPT*	*PTI*	*PTII*	*SPT*	*PTI*	*PTII*
Hospital Authority	57	246	301	55	236	287	2	10	14
Social Welfare Department	0	2	0	0	2	0	0	0	0

(Rehab Service)

Department/ Sector	*Establishment*			*Strength*			*No. of Vacancy*		
	SPT	*PTI*	*PTII*	*SPT*	*PTI*	*PTII*	*SPT*	*PTI*	*PTII*
*Subvented NGOs (Rehab Service) #as at 30.9.1995	1	60.5	23.5	0	40	1.4	1	20.5	22.1
Total	58	308.5	324.5	55	278	288.4	3	30.5	36.1

* including special schools subvented by the Education Department and rehabilitation non-governmental organizations subvented by the Social Welfare Department.

\# The Social Welfare Department can only update the strength of non-governmental organizations once every six months based on the returns submitted by individual agencies. The latest figures available are those at 30 September 1995.

Note: The decimal points in the tables reflect the fractions of posts to which the non-governmental organizations are entitled based on approved manning ratios. If an agency is not entitled to a full post, it may combine the fractions of a post for different units in that agency into a full post, or top up their subvention in order to fill a post with someone full-time or employ part-time staff.

Occupational Therapists

SOT	Senior Occupational Therapist
OTI	Occupational Therapist I
OTII	Occupational Therapist II

Physiotherapists

SPT	Senior Physiotherapist
PTI	Physiotherapist I
PTII	Physiotherapist II

MR LAW CHI-KWONG (in Cantonese): *Mr President, I am pleased to hear from the Secretary that the grant of an extra allowance would be considered. However, according to the statistics provided by the Government, the vacancy rate of Physiotherapist II (PT II) in Non-Government Organizations (NGOs) is 94%, high enough to be included in the Guinness Book of World Records, while the corresponding rate in the Hospital Authority (HA) is just 4%. In order to solve the problem, will the Government consider the possibility of requesting the HA to freeze its employment of PT II now, so that NGOs can be given priority in recruiting the manpower required?*

SECRETARY FOR HEALTH AND WELFARE: I think we should all recognize that both physiotherapists and occupational therapists are required in both the medical and the welfare sectors. To arbitrarily freeze or restrict the employment of such grades in one sector might not be in the best interests of people seeking treatment. However, recognizing the overall shortage of manpower in these two professions, we have a continuing liaison between the Hospital Authority, the Health and Welfare Branch and the welfare sector, in how to best make use of the pool of resources available in Hong Kong. There are opportunities for things such as sharing of resources, sharing of care and for the two sectors to make the best use of these very valuable professionals. I recognize that we have a shortfall in these numbers, and in the long term, the only way to increase these shortfalls is by increasing our places at the tertiary institutions.

MR MICHAEL HO (in Cantonese): *Mr President, according to the statistics provided by the Government, the vacancy rate in the HA does not look too high. However, there is often a subtle relationship between the establishment and vacancies. Will the Government inform this Council whether the HA has in fact curtailed the establishment of some grades at times of recruitment difficulties, or whether it has simply chosen not to create certain posts when developing new services, so that the vacancy problem can look less serious? Does the Government has any mechanism to monitor the above situation? What should be the exact number of staff that the HA requires now? Mr President, the Government has used the term "establishment" in its reply. However, I understand that the HA does not adopt the concept of "establishment". In this connection, will the Government inform this Council how do the figures it provides come by?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the numbers required by the Hospital Authority in respect of these professions must be decided by the Hospital Authority itself. It is certainly not for me to decide how many of each grade they should require. According to the numbers given, this is the best available information provided by the Hospital Authority in preparation for the reply to the question by the Honourable Member.

MR MICHAEL HO: *Mr President.*

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

MR MICHAEL HO (in Cantonese): *No, not answered, Mr President. My question is: Is there any system under which the Government can monitor the case in which the HA could curtail its establishment, as I have referred to just now? In addition, I understand that the HA does not adopt the concept of establishment. In this connection, will the Government explain how such figures have come by?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, the Government does not closely monitor the exact requirements of different grades of professions required by the Hospital Authority.

As far as the second part of the question is concerned, this is the best available information provided by the Hospital Authority. But if the Member wishes me to explore this further, I can certainly ask for more information from the Hospital Authority and provide him with a written reply. (Annex I)

PRESIDENT: To clarify whether or not there is the concept of establishment in the Hospital Authority?

SECRETARY FOR HEALTH AND WELFARE: Mr President, I will certainly refer that to the Hospital Authority and reply to the Member in writing.

DR JOHN TSE (in Cantonese): *Mr President, the staff concerned have chosen to work in the HA instead of NGOs mainly because the HA provides more favourable terms and benefits. Will the Government inform this Council whether it will consider the possibility of enhancing staff benefits, especially for those working in NGOs, as a means of retaining staff and preventing them from*

switching to the HA?

SECRETARY FOR HELATH AND WELFARE: Mr President, there are a number of factors which affect a person's desire to work in one or the other sector, whether it is the medical sector or the welfare sector. First of all, there is a serious overall shortfall of manpower. Secondly, in the hospital setting there is a greater pool of expertise and more supervisory posts. And thirdly, a number of professionals desire to work in the hospital setting rather than in the welfare setting. But having said that, we are looking at the possibility of making work in the welfare sector far more attractive by a number of means and, that is, through the addition of supervisory posts or through the paying of additional allowances such as Extraneous Duties Allowance, in recognition of the additional responsibilities of the people in this sector.

MR FRED LI (in Cantonese): *Mr President, I think the Secretary will also agree that as can be observed from the figures she has provided, the shortage of Occupational Therapists and Physiotherapists in NGOs is far more acute, when compared with the situation in the HA. This will affect the recipients of the relevant services, because if these people cannot receive the services required everyday, their physical condition will be affected. The situation is indeed very urgent, but the solutions mentioned by the Secretary are all for the long term. Will the Government inform us whether it has any short-term measures that can promptly tackle the recruitment difficulties confronting rehabilitation institutions? And, how is the Government going to make use of the resources of the HA to help the people in need?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, there is no immediate action that we can take to alleviate the shortage in the short term. However, what is happening is that the Government, together with NGO's are looking abroad for recruitment of the necessary professionals and we are about to start the recruitment of clinical psychologists overseas. Now if this proves to be successful and if the working party considers this also to be relevant in respect of the other two professions, such as physiotherapists and occupational therapists, we will consider launching another overseas recruitment exercise for these two professions.

As far as the shortage in the welfare sector is concerned, I have already mentioned before that there is perhaps greater scope for sharing of resources between the Hospital Authority and the welfare sector and for better collaboration in the delivery of services in the welfare sector.

Regulation of Chinese Herbal Medicine

2. **MR MICHAEL HO** asked (in Cantonese): *Mr President, it is recently some people have been admitted to hospitals for treatment of intoxication resulted from the taking of the Chinese medicine "Gwai Kou" by mistake. As the formulation of legislation to regulate Chinese herbal medicines will surely not be completed in the near future, will the Government inform this Council:*

(a) of the total number of people admitted to hospitals for treatment of intoxication as a result of taking toxic Chinese medicines by mistake in the past three years;

(b) of the number of fatalities in the cases referred to in (a) above; and

(c) whether the Government will, before the enactment of the relevant legislation, consider requiring drug manufacturers to label toxic Chinese medicines as well as adopting other administrative measures to prevent people from being intoxicated by taking such medicines by mistake?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President,

(a) From 1993 to 1995, two persons were admitted to hospitals for treatment of intoxication as a result of taking Chinese medicines by mistake. In February and March this year, nine persons were admitted to hospitals for treatment as a result of taking "Wai Ling Sin" contaminated by the toxic herb "Gwai Kou".

(b) No fatality was recorded among poisoning cases caused by

consumption of Chinese medicine in the past three years.

(c) The Preparatory Committee for the Chinese Medicine (PCCM) will publish a list of potent/toxic herbs for reference by members of the public. The Department of Health will work with the Committee to educate the public on the safe and proper use of traditional Chinese medicine.

One of the terms of reference of the PCCM is to assist the Government in the making of policies on the promotion, development and regulation of Chinese medicine. It is also tasked with the study on the import, distribution, manufacture and sale of Chinese medicine in Hong Kong. The proposal of labelling toxic herbs will be referred to the PCCM for consideration.

MR MICHAEL HO (in Cantonese): *Mr President, the reply given by the Secretary for Health and Welfare to part (c) of my question is very unclear. I am asking whether the Government has any specific administrative measures to avoid further incidents of intoxication of people as a result of taking toxic Chinese medicines by mistake, but the Secretary has simply told us that the public will be educated. Mr President, there is now something wrong with the composition of a prescription and herbs have been mixed up. Herbs in drug stores have already been mixed up when people come and buy Chinese medicines on prescription. Under such circumstances, what specific measures do the Government have to ensure that the intoxication of people will not happen again?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, most Chinese medicines sold in Hong Kong come from Mainland China. As to the recent incident in which "Gwai Kou" are mixed with other herbs, the case is that "Wai Ling Sin" has already been mixed with other herbs before being imported to Hong Kong. Therefore, it is very difficult for us in Hong Kong to find ways to ensure the affixation of correct labels to these medicines. The PCCM is very much concerned about this and the Department of Health will shortly consider holding discussions with Chinese importers and sellers in Hong Kong about how we can ensure Chinese medicines are affixed with safe labels before being imported to Hong Kong. However, it will take some time and

entails consideration in many aspects, and this cannot be done immediately.

DR LEONG CHE-HUNG (in Cantonese): *Mr President, I shall declare an interest, I am a member of the PCCM. The Secretary for Health and Welfare said in part (c) of her reply that the Government will publish a list of toxic herbs in order to educate members of the public. I think we may not be able to achieve our objectives this way, it is because most people, when they seek medical treatment, rely on the herbalists to prescribe herbal medicines and on the so-called "drug store dispensers" to get them the herbs, and the said list may not enable the desired effect to be achieved. The question is, before the Secretary for Health and Welfare formally discusses the matter with the Chinese side and confirms that the Chinese medicines are being imported to Hong Kong as labelled, will she consider prohibiting the sale of these kinds of toxic medicines and permitting the sale only when a mechanism is in place for examination?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, it is not impossible for us to implement the method proposed by Dr LEONG just now, because at present Chinese medicine is not regulated by legislation. However, in response to the recent incident, we have been making close contacts with the merchants of Chinese herbs, importers and sellers. Those in the trade have also been very cooperative and have willingly put an immediate stop to the sale of problematic Chinese herbs or Chinese herbs which have already been found to have problems, especially "Wai Ling Sin" as it may have been mixed up with the herb "Gwai Kou". We hope we can continue to liaise with people in the trade and follow up with the relevant matters. However, it is impossible for us to restrict or prohibit the sale of these herbs by legislation or administrative measures.

MR MOK YING-FAN (in Cantonese): *Mr President, I think vegetables also are not subject to regulation by the Government, but we all know that there is a government department responsible for inspecting imported vegetables at Man Kam To as vegetables may sometimes be admixed with toxin. The Secretary for Health and Welfare said in part (c) of her reply that a list of potent and toxic medicines will be published or discussions will be held with the importers on how the import of Chinese medicines can be regulated. However, what she said*

just now seems to suggest that all these are very difficult to accomplish. I would like to ask the Government, although at present the record of cases of intoxication as a result of taking toxic Chinese medicines by mistake is fairly low, will the Government work out without delay certain measures for safeguarding members of the public from buying imported Chinese herbs which have been admixed with toxic substance, for instance, by conducting inspection on imported Chinese herbs, especially toxic Chinese herbs which look like non-toxic Chinese herbs, just like what has been done in the case of intoxicated vegetables? In fact, imported herbs have already been labelled now, the question lies only in how we can make a little more effort in this respect.

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): I think the proposal of Mr MOK may require enormous resources. It is very difficult for us to inspect and ensure the safety of each and every kind of imported Chinese herbs and this cannot be done immediately as well. We can only rely on the importers and the exporting regions to attach safe labels to all the products. I know that the PCCM has started looking into the matter.

As regards how we can educate the public on the appropriate and safe use of Chinese herbs, we have to let the public know that Chinese medicines should only be dispensed after diagnosis is made by Chinese medical practitioners. However, a fairly popular practice among Hong Kong people is obtaining self-dispensed medicines without attending diagnosis by Chinese medical practitioners or medical practitioners. This is another area which requires education and greater promotion.

As to whether it is possible to inspect every batch of Chinese herbs at Man Kam To, now it is not our practice to inspect every piece of imported vegetable either. Therefore, in this respect, we can only consider the measures proposed by Members once we find there is a very serious problem. However, Members also agree that there have not been many cases of the admixture of Chinese herbs by potent herbs in these few years.

PRESIDENT: Mr MOK Ying-fan, you have raised your hand again, but I think it was an adequate answer. I will put you down for a further supplementary.

DR HUANG CHEN-YA (in Cantonese): *Mr President, in fact, toxic patent Chinese medicines can now be bought over the counter in ordinary department stores and a lot of these medicines can also be bought at drug stores; they are not necessarily dispensed on Chinese medical practitioners' prescription. Yet, under these circumstances, the Government still say that it does not intend to make labelling a must or to adopt other measures, and that it has to wait for proposals to be made by the PCCM. When will the relevant proposals be made? When will legislation be enacted after proposals are made? If results are not going to be seen in the near future, does the Government really want to wait until serious consequences as referred to by the Secretary for Health and Welfare have arisen, like massives fatalities, before adopting measures to restrict the sale of toxic Chinese medicines? Why is it not possible for the Government to enact legislation to regulate toxic Chinese medicines now?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): The regulation of Chinese medicines, especially those which are toxic or potent, is the main task of the PCCM. Within a short period of time, say in June or July, a list will be published for reference in the near future. We also intend to make reference to the labelling and regulatory measures adopted by Mainland China. We will soon strengthen our work in educating people and in reminding them of the appropriate use of Chinese medicines. Chinese medicines are rather popular among Hong Kong people. Hong Kong people like to obtain treatment from Chinese herbalists and take Chinese medicines. We should also take a look at the number of people admitted to hospitals for treatment of intoxication for the past — two in the period from 1993 to 1995 and nine in 1996, and nobody ever died of intoxication by Chinese medicines, hence, the situation is not too serious.

DR HUANG CHEN-YA (in Cantonese): *Mr President, my question has not been answered, that is, when will the PCCM make proposals concerning labelling or legislation? And, after proposals are made, will the relevant bills be tabled in the Legislative Council ? I hope the Government can give us a reply.*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, I cannot put forward a specific schedule at this stage, but I know the PCCM has been very urgently studying the issue. Two specialist teams under the PCCM

are also studying the regulation of Chinese medicines and Chinese herbalists. Once reports are made or any news is heard within a short period of time, we hope to, and will surely give, the Panel on Health Services of the Legislative Council a report without delay.

MR HOWARD YOUNG (in Cantonese): *Mr President, does the Government know if the Chinese medicine "Gwai Kou" has any inherent curative effect, is it one of the medicines which have already been deemed by the Government as dangerous Chinese medicines, or is it one of the medicines intended to be incorporated into the list of potent and toxic Chinese medicines referred to in part (c) of the main reply?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, "Gwai Kou" is a potent Chinese herbal medicine and it has specific curative effects. Many Chinese herbalists in Hong Kong prescribe medicines comprising this herb. If the prescription is appropriately given and appropriately consumed, it is safe enough.

DR LEONG CHE-HUNG: *Mr President, in the first paragraph of the Secretary's reply, she said that very few people in Hong Kong have been intoxicated with Chinese herbs. I wonder if the Secretary is aware of the fact that in late 1989, the Health Panel of this Council actually requested the Administration to make a pro-active study of the number of cases from public hospital in which people developed harmful effects as a result of taking Chinese herbs. I wonder whether there is any result from this study or this survey and if so, what is the result of the survey so that Members of this Council and perhaps the Preparatory Committee for Chinese Medicine could base their further analysis on this meaningful data?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): I do not have such information on hand, but I will give Members a written reply. (Annex II)

MR MOK YING-FAN (in Cantonese): *Mr President, thank you for letting me raise another question. The Secretary for Health and Welfare has just said that*

the use of Chinese medicines is very popular in Hong Kong. We have to be even more careful now that we know the use of Chinese medicines is very popular. I am not requesting the inspection of all imported Chinese medicines when I raised the question a while ago, I am only requesting the inspection of those toxic Chinese medicines such as "Gwai Kou" and "Wai Ling Sin" which look very similar to certain non-toxic Chinese medicines. The random inspection of such imported Chinese medicines will not require great resources. Can the Government inform this Council whether this can be done?

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, I will pass on the suggestion just made by Mr MOK to the Department of Health.

MR LAW CHI-KWONG (in Cantonese): *Mr President, when the Secretary for Health and Welfare replied to the question raised by Dr LEONG just now, she said that importers should be self-disciplined and stop selling the Chinese medicines concerned after incidents happened. The Secretary said when replying to the question raised by Mr MOK that too much work might be involved in conducting random inspection of imported Chinese medicines and it might not be possible for random inspection to be made. Has the Government ever considered encouraging importers to conduct import inspection?*

SECRETARY FOR HEALTH AND WELFARE (in Cantonese): Mr President, the comments made just now may be a good suggestion, and we will follow up the matter.

Appointments to Committees, Boards and Advisory Committees

3. **MR YUM SIN-LING** asked (in Cantonese): *Will the Government inform this Council:*

(a) whether there are any criteria laid down for making recommendations to the Governor for the appointment of persons to various "committees", "boards" and "advisory committees" as unofficial members, and what are the procedures for making recommendations and what is the selection process;

(b) whether consideration will be given to requiring that grass-roots representatives (such as District Board Members) be recommended for appointment so that the views of people at the grass-roots level can be reflected in such committees/boards; and

(c) how the authority concerned assesses the performance of appointed members; and whether the term of office of any appointed member has been terminated on account of poor performance in the past three years; if so, what is the number?

SECRETARY FOR HOME AFFAIRS: Mr President, in making appointments to advisory boards and committees, and other bodies, the Government seeks to secure the services of the best available persons to meet the requirements of the bodies concerned. The expertise, experience, integrity and commitment to public service of prospective appointees are carefully considered. Due regard is also given to the need to ensure a good balance of members in the body concerned. To achieve a reasonable turnover of membership, the Government, as a general rule, tries to avoid re-appointing someone who has already served on the same committee for six years. In addition, to ensure a reasonable workload, the Government normally does not appoint one person to sit on more than six committees at any one time. These are, however, general guidelines which may not be followed rigidly as some committees may find it necessary to retain the services of members who possess particular expertise and would provide continuity in the work of the committee concerned.

Recommendations to the Governor for appointments to advisory boards and committees, and other bodies are made by the relevant Policy Secretaries or Heads of Departments. Prospective candidates are selected in the light of the general criteria outlined above. In some cases, the individuals selected are already known to the concerned Branches and Departments. In others, they are nominated by professional bodies or other organizations in accordance with the relevant legislative provisions. Where appropriate, suggestions are also sought from the Home Affairs Branch and Home Affairs Department, in view of their close contacts with people from a wide cross-section of the community.

In recommending appointments, the Government gives due consideration

to the experience and background of people at the district level, including members of local groups such as district boards. I can assure the Honourable Member that this practice will continue.

Policy Secretaries and Heads of Departments are responsible for the assessment of performance of members of the boards and committees under their purview. In general, the performance of individual members is assessed against their contributions to discussions, their commitment to public service and the functions of the particular committees. It is not usual for us to terminate appointments prematurely. There is no record of any member of advisory boards and committees and other bodies whose term of service was terminated early on account of poor performance in the past three years. Any member who does not perform satisfactorily would normally not be recommended for re-appointment.

MR YUM SIN-LING (in Cantonese): *Could the Government provide this Council with information explaining the reasons for appointing the persons concerned, every time after the announcement by the Governor of list of appointed members ?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, recommendation to the Governor on each appointment would normally be made in accordance with the selection criteria I have just mentioned. The information papers concerned normally contain personal particulars as well as the Government's internal discussions. It is therefore inappropriate to disclose them to outsiders.

MR BRUCE LIU (in Cantonese): *Mr President, the main reply mentioned that due regard would be given to the need to ensure a good balance of members in the body concerned. Does the good balance also apply to the individual background or political background of the members, so as to avoid the so-called politicization problem which Mr Dominic WONG, the Secretary for Housing, has always been worrying about? If such kind of consideration does exist, why did it not mention that frankly in its reply this time?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, when we consider appointments to the various committees, major consideration would be given to the functions, responsibilities as well as the scope of work of the committees concerned. Consideration would certainly be given to the need to appoint professionals with experience, to their credibility and personal integrity. Political background, however, is not an important factor for consideration.

MR LEUNG YIU-CHUNG (in Cantonese): *Mr President, the third paragraph of the Government's main reply mentioned that it would give due consideration to the experience and background of people in the locality (I suppose this may be a matter of translation, may be it should have been "people at district level", since the original English term is "at district level"), including those of members of local groups such as District Boards. I would like to ask the Government, how many District Board members have been appointed to the committees, advisory committees and boards mentioned above so far? If such information is not available at the moment, the Government could provide it to us in the form of a written reply. In addition, could the Government consider.....*

PRESIDENT: One supplementary at a time please, Mr LEUNG. Is your second supplementary related to the first supplementary?

MR LEUNG YIU-CHUNG (in Cantonese): *Would the Government inform this Council of the number of District Board members who are currently being thus appointed?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I do not have at hand the data which cover only District Boards. As for people at the district level, that is, comprising members of District Boards, District Committees, Rural Committees, as well as District Fight Crime Committees, 82 of them are being appointed in 1995.

MR WONG WAI-YIN (in Cantonese): *Mr President, in the last paragraph of his main reply, the Secretary for Home Affairs mentioned that the performance of*

individual members is assessed on their contributions to discussions, their commitment to public service and so on. However, my experience tells me that some such members who have been appointed to a committee for several years had never said anything during discussions but could still be reappointed. Could the Government inform this Council whether frequent donations to sponsor district level activities have met the criteria for commitment to public service referred to by the Secretary?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I am not sure whether there are members who have never made any contribution in the discussions of an individual committee, and I think it is very difficult for us to find out the actual fact now. As for the district level donations made by certain members, I think that should also be counted as a kind of contribution to district level services or to the society. After all, donations can certainly enable more activities to be conducted, and I think the society could also be benefited.

MR FRED LI (in Cantonese): *Mr President, according to my knowledge, some committees and advisory committees do have members who have political background while some committees do not. Would the Government inform this Council what kind of criteria it adopts to determine which of those committees need members with political background and which do not? How are such criteria determined?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, my reply is very simple, which is, the partisan background or political inclination of an individual is not a crucial factor when we are considering the appointment of that individual to a certain committee.

MR CHOY KAN-PUI (in Cantonese): *Mr President, for the past three years, on an average, less than 30 elected District Board members are being appointed to the committees each year. Could the Government inform this Council whether it has recommended these elected members to the Governor, or whether it is the Governor who does not want to appoint representatives for public opinion at district level?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I believe that when considering appointments, the most important point is whether the individual's personal background and expertise could cater for the needs of the committee concerned. As for the allegations that no elected members are being appointed to the committees, I think this is an incorrect representation, because we would not deliberately refrain from considering elected members.

MR LEE WING-TAT (in Cantonese): *Mr President, the compositions of advisory committees as well as statutory bodies have all along been criticized for lacking a good balance of members, and that the Government would only appoint people whose opinions are largely in line with the Government's. In the first paragraph of its main reply, the Government mentioned that due regard would be given to the need to ensure a good balance, but it did not tell us how such balance could be achieved, nor did it explain to the public what could be regarded as a good balance. Would the Secretary inform this Council how could the public be convinced that a good balance has been achieved? Does it mean that the Government expect us to figure it out ourselves? Or the Government has in fact achieved a balance which is beyond our comprehension? Would the Secretary expound on the term "balance"?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, we have, throughout the territority, some 300 committees, and I believe we all agree that they play different roles and have different scopes of work. Hence, when we are making appointments to these committees, the most important point we have in mind is the need to ensure that the committees could function efficiently. We would consider the candidates in the light of the operational needs of the committees concerned. "Balance" is the direction taken in this aspect. We would consider whether there is any need to appoint candidates with expertise, experience or other social background, or people at district level. We hope that we could strike a balance when making appointments, just as what the Honourable LEE Wing-tat has said, so that opinions from different sources could be represented in the committees.

PRESIDENT: Mr LEE, I think you have made your point.

MISS CHAN YUEN-HAN (in Cantonese): *Mr President, I would like to raise a question which has been asked by a colleague but has not yet been addressed by the Government, which is, when making appointments, what are the percentages taken up by professionals, personnel of the trade and grassroot representatives respectively? Is there any guiding principle? If so, what are the relevant percentages?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, I have mentioned earlier that we have in Hong Kong over 300 committees of different natures. Just for the term "professional", different people may have a variety of views and defined it differently; the same also applies to the definition for the term "people of district level". As such, it would be very difficult for us to define those terms or to determine data deliberately.

DR ANTHONY CHEUNG (in Cantonese): *Mr President, could the acting Secretary for Home Affairs inform this Council clearly whether an advisory committee member whose ideas are always contrary to those of the Government's policy branches and departments or to the mainstream opinion of the committee concerned would be regarded as making an unsatisfactory performance and would not be recommended for reappointment?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, those people would not be excluded from appointment on such accounts. Hong Kong is a liberal society, I think we all agree to that, and it is our hope that people from all walks of life could express their opinions.

MISS EMILY LAU (in Cantonese): *Mr President, the Government pointed out in its main reply that, as far as possible, it would not appoint one person to sit on more than six committees at any one time. Mr President, this is really terrifying. To me, the workload arising from six committees would be extremely heavy. Could the Government inform this Council how much time does it expect the appointed members to spend on committee work generally? How many people have been appointed to more than six committees? How many members have an annual attendance rate of less than 50%?*

PRESIDENT: Miss LAU, are you seeking an answer to the first supplementary or the second supplementary?

MISS EMILY LAU: *Sorry.*

PRESIDENT: Your second supplementary was on the attendance rate.

MISS EMILY LAU (in Cantonese): *Mr President, perhaps you would not give me the permission to ask, but all my questions are related to the workload of a person being appointed to several committees. How much time is one expected to spend if he is to serve on six committees? How many members always fail to attend? If a lot of members fail to attend the meetings, it has proven that the appointments are futile, and they are merely superficial gestures. Mr President, please rule if the Government needs to reply.*

PRESIDENT: Are your seeking an answer to a supplementary only on the attendance rate of all those members who have been appointed to six committees? Or else, these will be two supplementaries.

MISS EMILY LAU (in Cantonese): *No, Mr President.*

PRESIDENT: Would you like to rephrase your supplementary?

MISS EMILY LAU (in Cantonese): *If you do not let me ask my second supplementary, I will leave it until the next opportunity arises. Mr President, in fact I want to ask them all. However, if you said I could ask about the attendance rate of those members who have been appointed to six committees, I will ask this first. Thank you, Mr President. Could the Government inform this Council of the attendance rate of those members who have been appointed to six committees?*

SECRETARY FOR HOME AFFAIRS (in Cantonese): With regard to the Honourable Miss Emily LAU's first supplementary, I would like to clarify, in first instance, whether being appointed to serve on six committees would be too excessive. In our opinion, the answer is "no". As most of the committees are of different nature, the workload undertaken by some might be heavier while some others will be lighter, it all depends on the kind of work the committee concerned is dealing with. In the light of the experience we have accumulated over the years, six is a reasonable number for the number of committees to serve on. On the other hand, as I have mentioned in my main reply, this is not a rigid rule. If we find that the workload for certain members who have been appointed to three committees is too heavy already, we will not consider appointing him to six committees.

MISS EMILY LAU (in Cantonese): *Mr President, she has not answered my supplementary.*

PRESIDENT: I think the Secretary was attempting to answer your question and not the rephrased question. She was attempting to answer both supplementaries.

MISS EMILY LAU (in Cantonese): *Mr President, I am afraid this is not the case. I asked her for some data, but she only replied that the workload should not be too heavy. I asked her how many members have been appointed to more than six committees and how much time would such members have to spend, but she did not answer any of them.*

PRESIDENT: Secretary, would you supply the figures in a written reply?

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, with regard to the number of members who have been appointed to more than six committees, I will supply the figures in a written reply. (Annex III)

PRESIDENT: That was the first supplementary. The second supplementary was on the attendance rate of all members.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr President, with regard to the attendance rate of all members, I am afraid we have to devote quite a lot of time to research work before any such information could be obtained. I do not have such data available, I am afraid we have to consult the different policy branches and departments, and since we have over 300 committees, I do not know if it is worthwhile to spend so much resources in doing so. Nevertheless, if the Honourable Member requires those data, we will try our best to collect them. (Annex IV)

Traffic Accidents Caused by Container Vehicles

4. **MR ALBERT CHAN** asked (in Cantonese): *Mr President, with regard to the recent spate of traffic accidents involving the overturning of container vehicles which have resulted in injuries and deaths, will the Government inform this Council:*

(a) of the number of such accidents, as well as the number of people who were injured or killed in these accidents, in the past three years; and; in addition,

(b) whether consideration will be given to introducing legislation requiring that the trailer of container vehicles be subject to inspection annually as in the case of the tractor of such vehicles, in order to ensure that the trailer's braking system is in good working order?

SECRETARY FOR TRANSPORT: Mr President, over the past three years there have been an average of 21 accidents per annum in which container vehicles overturned. Details are given in the annex to my reply.

To put this in perspective, it should be noted that there are over 13 300

licensed container trucks and 21 000 trailers. Nevertheless, we cannot afford to be complacent and the Honourable CHAN Wai-yip is quite right in raising the question of inspections and control.

Under section 78 of the Road Traffic Ordinance, the Commissioner for Transport has powers to require the examination of all classes of motor vehicles before they are licensed. All tractors are now subject to annual inspections. As for trailers, only those over 10 years old have to pass an examination before relicensing. This is not satisfactory and, to enhance roadworthiness of trailers, the Administration plans to introduce annual inspections as soon as the necessary facilities and staff can be provided. Such inspections will include a functional check of the braking system.

Annex

Traffic Accidents Involving
Overturning Container Vehicles
in the Past Three Years

	1993	*1994*	*1995*
Accident	21	20	23
Casualties			
Fatal	3	1	0
Serious	6	7	7
Slight	27	16	21
Total	36	24	28

MR ALBERT CHAN (in Cantonese): *Mr President, I applaud the Government's recognition of the problem and its deliberations on tackling measures. However, it still worries me as to when the inspection scheme concerned could be implemented. Will the Government inform this Council of the time when annual inspections of trailers can be expected to be put in practice? And, in this interim, in view of the fact that mechanical defects of trailers may be*

a result of inadequate inspection, what can the Government do to prevent the occurrence of more accidents?

SECRETARY FOR TRANSPORT: Mr President, one of the difficulties in arranging for the early inspection of trailers is the difficulty in finding sites. This is because of the length and the manoeuvrability of articulated vehicles, that is, both the trailers and the tractors. We need sites with good access which would not cause disruption to other traffic. We have searched for several sites; one in Yuen Long was recently rejected by the district representatives and other sites have also run into problems. Despite these setbacks, the Transport Department is trying to seek a successful outcome. But I fear it will be at least nine months to a year before we can actually implement the annual inspection scheme.

When it comes to the actual inspection of vehicles, there are many items which will have to be very carefully checked. These include items such as road-wheel tyres, trailer-couplings, the driving and seating controls, the brake-controls, the chassis frame and so forth. But I assure the Honourable Member that we will do our utmost to bring this into operation as soon as possible.

MRS MIRIAM LAU (in Cantonese): *Mr President, it is mentioned in the principal reply that over the past three years, there have been a total of 64 accidents in which lorries and container vehicles overturned. Will the Secretary for Transport inform this Council of the number of accidents which were caused by defective brake-controls of trailers? Will he also inform this Council of the number of cases involving defective brake-controls of tractors? And, were the rest of the accidents the result of human negligence?*

SECRETARY FOR TRANSPORT: Mr President, I am afraid I do not have the exact and precise details that the Honourable Member has asked for. I think, obviously, when trailers are involved in accidents, they are of course attached to the tractors and it is sometimes difficult to pinpoint the precise cause. To provide the detailed answers that the Honourable Member wants would require a great deal of research. Bearing in mind that in total, over three years, there have

only been 64 such accidents, I do not, with respect, think it is productive to analyze these causes. But obviously, the police do jot down the causes and if there are specific problems which need to be addressed, they are referred to the Commissioner for Transport.

PRESIDENT: Mrs LAU, are you claiming that your question has not been answered?

MRS MIRIAM LAU (in Cantonese): *No, not answered, because the Secretary said that he was unable to provide any answers to my question. Can I, with your permission, ask my question again, perhaps in such a way that would enable me to get the answer I want more easily? Will the Secretary for Transport inform this Council of the number of accidents resulting from defective brake-controls, whether related to tractors or trailers? I believe that the Secretary for Transport would have the statistics on this.*

SECRETARY FOR TRASNPORT: I shall provide the answer to the Honourable Member in writing. (Annex V)

PRESIDENT: That is if the police have those records.

SECRETARY FOR TRASNPORT: Yes.

MR CHEUNG HON-CHUNG (in Cantonese): *Mr President, accidents in which container vehicles overturn would often bring traffic to a complete standstill. Under the existing arrangements, the Government will hire heavy duty cranes to deal with the situation. Will the Government inform this Council whether it has any plans to purchase heavy duty cranes for the purpose of clearing the scenes where accidents involving overturned container vehicles have occurred?*

PRESIDENT: I am afraid this is outside the scope of the original question.

MR CHOY KAN-PUI (in Cantonese): *Mr President, with respect to the accidents involving overturned container vehicles over the past three years, will the Government inform this Council how many of such accidents bore direct relationship with the drivers, such as problems arising from their want of skills and experience?*

PRESIDENT: I am afraid this is also outside the scope of the original question.

MR WONG WAI-YIN (in Cantonese): *Mr President, according to people in the trade, some accidents involving overturned container vehicles have occurred because the drivers concerned have failed to connect the trailer-couplings for the sake of convenience, causing the vehicles to overturn when their containers were swayed at road bends. I want to ask .....*

PRESIDENT: Your question is also outside the scope of the original question.

MR WONG WAI-YIN (in Cantonese): *Mr President, ...*

PRESIDENT: The original question was if there would be inspection of trailers and tractors.

Road Safety of Heavy Container Trucks

5. **MR ALBERT CHAN** asked (in Cantonese): *Mr President, recently, a traffic accident involving the overturning of a container truck occurred at the*

Route Twisk interchange. The accident has aroused concern over the safe driving of container trucks and road safety in various traffic accident blackspots. In this connection, will the Government inform this Council:

(a) what are the main causes of accidents involving container trucks, and whether corresponding remedial measures will be adopted;

(b) whether consideration will be given to drawing up a set of guidelines on "the use of the road by heavy container trucks" so as to guide drivers on how to drive safely; and

(c) whether consideration will be given to improving road safety in various traffic accident blackspots, such as a review of the design of road surface and the installation of "Reduce Speed" signs at an appropriate distance before such blackspots?

SECRETARY FOR TRANSPORT: Mr President, the results of police investigations have indicated that the main causes of accidents involving container trucks are: driving too closely to the vehicle in front, careless lane changing, loss of control of the vehicle, and defective brakes.

The first three causes relate directly to driving behaviour. Container truck drivers have been reminded periodically of the dangers of tailgating and careless lane changing through their associations and at seminars. There have also been publicity campaigns and APIs on television. These will be repeated in the coming months.

As an experiment to further alert drivers, a trial road marking scheme will be shortly introduced on a section of Tolo Highway near Taipo in July 1996. Distinctive chevron markings, spaced apart, will be painted on the carriageway to help drivers judge what would be a safe and correct distance from the vehicle in front.

As I have indicated in my reply to the previous question, both trucks and trailers are subject to licensing checks to ascertain their roadworthiness.

As regards guidelines, the Road Users' Code provides advice on safety for

all road users, including goods vehicle drivers. The Code is currently being revised and updated. Separate advisory booklets for goods vehicle drivers will be produced. In addition, advice on keeping a safe distance from the vehicle in front will be highlighted in future editions of the Road Safety Quarterly which is published by the Transport Department.

Blackspots are defined as those where there have been six or more accidents involving pedestrians or nine or more accidents involving passengers in a vehicle during a 12-month period.

Blackspots are monitored closely by the Administration in an attempt to reduce the number of accidents. The remedial measures taken include the provision of better signage, roadmarkings, more police spot checks as well as improving the layout of the roads and the laying of anti-skid road surfacing.

MISS CHAN YUEN-HAN (in Cantonese): *Mr President, I would like to thank the Secretary for Transport for his detailed explanation on the latest measures taken by the Government. However, in view of the heavy container truck traffic across the border and the fact that the loading standard adopted in Hong Kong is different from that in mainland China, I am still very much concerned if this is one of the main causes of accidents involving container trucks.*

SECRETARY FOR TRANSPORT: Mr President, what I can say is, for those drivers who come from the other side of the border, to qualify to drive in Hong Kong, obviously they must have proper driving licences and to that extent we must be satisfied that they are qualified. In our dealings with the Container Associations and in our discussions with the drivers themselves, through the Transport Department, they will be reminded of the point made by the Honourable Member. We shall take this up in our further publicity campaigns.

PRESIDENT: Miss CHAN, are you claiming that your question has not been answered? You have to point out which part has not been answered.

MISS CHAN YUEN-HAN (in Cantonese): *Yes, Mr President. The question I have just asked is whether the different loading standards adopted by China and Hong Kong contributed as one of the main causes for traffic accidents? I hope the Secretary could answer this.*

SECRETARY FOR TRANSPORT: I am afraid, Mr President, I cannot give a definite answer, but I shall certainly ask the police to check and if in fact, for example, the cause of cabbing the trailer and the tractor is a cause, then obviously we will follow up this and take necessary action.

MR CHENG YIU-TONG (in Cantonese): *Mr President, according to the views reflected by people in the trade, the recent accidents might involve those drivers who come from China and who are holding driving licences issued in Hong Kong. Will the Government consider reviewing the driving test for drivers from China, with a view to ensuring that they are familiar with Hong Kong's road situations and modes of driving after they have got the licences?*

SECRETARY FOR TRANSPORT: Mr President, I am not sure whether the comment by the Honourable Member is in fact accurate. As I said in my reply to an earlier supplementary, those drivers from China must meet our own driving standards.

MR CHAN WING-CHAN (in Cantonese): *Mr President, it is learnt that some Chinese truck drivers are holding Hong Kong driving licences. Could the Secretary inform this Council of the number of such drivers and the number of accidents occurring in Hong Kong which involved them?*

SECRETARY FOR TRANSPORT: Mr President, all drivers in Hong Kong must possess the necessary driving licences which are recognized. Given the vast number of licensed drivers, it is not possible to identify those who come from China.

MR CHEUNG HON-CHUNG (in Cantonese): *Mr President, will the Secretary inform us whether overloading of container trucks is a serious problem in Hong Kong; and how many traffic accidents are caused by overloading?*

SECRETARY FOR TRANSPORT: Mr President, overloading is indeed a problem and in reply to a question in this Council in January, I provided some figures. As far as the causes of accidents are concerned, this is not one of the main causes, it is a supplementary cause. As I have tried to illustrate, the total number of accidents which involve container trucks, although they are a cause for concern, is small. In terms of traffic accidents in Hong Kong, the total number of which amounts to nearly 20 000 a year, it is not a great number.

We are taking specific measures against overloading. We are going to require construction sites, for example, to have weighing-scales and we will step up enforcement. Last year, we also introduced higher penalties — fixed penalties for overloading — and the police will continue to enforce this.

MR WONG WAI-YIN (in Cantonese): *Mr President, my question is on the causes of accidents and I believe it is related to the main question. Some people in the trade told me that both the container and the truck have to be connected to a trailer coupling, but some drivers omitted doing so for the sake of convenience and as a result, overturning of the trucks occurred. Could the Secretary tell us, of the container truck overturning accidents which occurred in the past three years, how many were caused by the failure to engage the trailer coupling; and how will the Government prevent such situation from occurring?*

SECRETARY FOR TRANSPORT: Mr President, I obviously cannot provide specific statistics on the different types of accidents or their causes; I do not have my computer with me. But I shall try and obtain the information and provide it to the Honourable Member. (Annex VI)

MRS MIRIAM LAU (in Cantonese): *Mr President, will the Secretary inform*

this Council whether the Government will consider further controlling or reducing the maximum speed limit for heavy vehicles at some identified traffic blackspots so as to minimize the number of accidents?

SECRETARY FOR TRANSPORT: Mr President, where it is proven that in fact the speed limit is inappropriate, of course we will consider adjusting the speed limit at blackspots. If I can, as an example, refer to the recent accident outside the Shing Mun Tunnel along Cheung Pei Shan Road, in March this year. We have looked into the site. Because space allows us, we will try to provide what is known as an escape lane for the container trucks which lose their brakes. This is common in other parts of the world. So we are taking such measures.

Also, in this particular case, the 50 kph speed limit will be extended to a 100 m stretch. These are measures which will be taken where it is possible to do so, site conditions permitting.

PRESIDENT: Last supplementary. If Mr CHOY Kan-pui wishes to ask his original supplementary to the previous question, he may ask it as a supplementary to this question.

MR CHOY KAN-PUI (in Cantonese): *Mr President, out of the accidents involving the overturning of container trucks which occurred in the past three years, could the Government inform this Council of the number of cases which were directly related to the expertise of drivers, such as their skill and experience?*

SECRETARY FOR TRANSPORT: Mr President, I have indicated in my main reply that the primary causes of accidents, not only for container trucks but also for other types of motors, is normally because of driver behaviour and these are: changing lanes, speeding — tailgating and careless driving. But I am unable to indicate the specific numbers of accidents which have been caused by the non-observance of traffic regulations by drivers.

WRITTEN ANSWERS TO QUESTIONS

Financial Support for Voluntary Agencies

6. **MR DAVID CHU** asked: *It was mentioned in the Progress Report on Individual Undertakings in the Governor's 1992 policy address that a sum of $2.3 billion had been injected into the Lotteries Fund to meet the recurrent expenditure on various social welfare and rehabilitation services up to 1996-97. In this connection, will the Administration inform this Council what arrangements have been made to ensure that the voluntary agencies responsible for providing such services will receive adequate financial support so that they can continue to provide such services in the long run?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, to provide a secure source of funding to assist in implementing the significant expansion of social welfare and rehabilitation services announced in the Governor's address to the Legislative Council on 7 October 1992, the Finance Committee of the Legislative Council approved on 6 November 1992 an injection of $2.3 billion into the Lotteries Fund. This amount is principally being used to pay for the recurrent cost of services required to meet the key targets for the period from 1993-94 to 1996-97. This arrangement will come to an end in 1997-98. As I assured this Council on 29 March and 2 November 1995, the General Revenue Account will be able to absorb from that year onwards all the recurrent expenditure being met from the Lotteries Fund in 1996-97. Under this arrangement, non-governmental organizations providing services with recurrent subventions from the Lotteries Fund at that time will receive funds from the Government to continue such services beyond 1996-97.

Consultation Paper on the Review of Industrial Safety in Hong Kong

7. **MR TSANG KIN-SHING** asked (in Chinese): *With regard to the Consultation Paper on the Review of Industrial Safety in Hong Kong published in July last year, will the Government inform this Council:*

(a) what measures will be taken by the Administration to enhance the functions and the role of the Occupational Safety and Health Council ("the Council") in the coming year, so as to implement the recommendations set out in the Consultation Paper; and

(b) whether an estimate of the expenses required for enhancing the functions and the role of the Council as recommended in the Consultation Paper has been made by the Council and the Government; if so, what are the specific items of expenditure and plans; if not, why not?

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

(a) As envisaged in the Consultation Paper on the Review of Industrial Safety in Hong Kong published in July 1995, the Occupational Safety and Health Council (OSHC) is to undertake a leading role in the provision and co-ordination of safety training and the promotion of a safety culture in Hong Kong. The Government is working closely with the Council to map out the programme of activities and budgetary requirements of the Council over the next few years so as to enable the Council to take forward its important task of promoting safety at work in Hong Kong beyond 2000.

The OSHC's expanded programme of activities will cover the following areas:

- Taking over all general safety training responsibility from the Labour Department.

- Assuming overall co-ordination in the provision of safety training in the construction industry by various parties, such as developers and contractors.

- Educating small companies to raise their safety awareness.

- Providing impetus to award good safety practices at construction sites.

- Spearheading research efforts on training and education.

(b) In response to the Government's invitation to take up greater responsibilities on promoting and publicizing occupational safety

among employers, employees and the public at large, the OSHC has submitted an Estimate of Income and Expenditure for 1996-97 which provides for an expanded programme towards achieving these goals. The Government has approved the Council's Estimates for 1996-97 at an expenditure of $47,553 million, which represents an increase of some 55.8% over the revised expenditure for 1995-96. The approved Estimates provide for significant increase in expenditure in the following main areas:

	Approved Expenditure
Publicity activities	$11,600,000
Training/Research/Consultancy on Safety and Health	$19,600,000
Publication, advisory committees and conference/seminars on safety and health	$3,080,000
Information and library services on safety and health	$700,000

Non-departmental Quarters and Private Tenancy Allowance

8. **MR ANDREW CHENG** asked (in Chinese): *It is reported that a large number of non-departmental quarters (NDQs) are left vacant, but on the other hand the Government grants a private tenancy allowance (PTA) to civil servants for renting private residential flats, which incurs expenses amounting to millions of dollars a year. In this connection, will the Government inform this Council:*

(a) of the total amount of PTA granted to civil servants in each of the past three years:

(b) how are NDQs left vacant by civil servants leaving the service dealt with;

(c) of the current total number of vacant NDQs;

(d) of the respective numbers of civil servants living in NDQs and those in receipt of PTA, as well as the ratio between the two sectors; and

(e) why the Government continues to grant PTA to civil servants while a considerable number of NDQs are left vacant?

SECRETARY FOR THE CIVIL SERVICES (in Chinese): Mr President, in October 1990 the Private Tenancy Allowance (PTA) scheme and Non-Departmental Quarters (NDQ) were withdrawn as housing benefits for new recruits and replaced by the Home Finance Scheme and a revamped Home Purchase Scheme, which are payable for a maximum of 120 months. This was done to promote home ownership amongst civil servants and to reduce government long term housing costs. Since then, demand for NDQ and the PTA has fallen as officers who are entitled to receive NDQ have left the service or opted to take up the HFS. The demand for NDQ will continue to fall; in due course we expect the NDQ and PTA to be phased out completely.

In recognition of the effect of the policy change, Government undertook a programme to dispose of surplus NDQ by deleasing leased units and the sale of sites. So far this has resulted in a reduction in the number of NDQ from 3 135 in October 1990 to 1 926 in March 1996. In parallel, the number of PTA recipients has also fallen substantially, from 2 428 in October 1990 to 778 in March 1996.

Government recently set up a Working Group to review the progress of the disposal programme, and to assess the demand for NDQ in future with a view to modifying the programme as necessary. The Working Group has already decided on a number of measures to revamp the programme, including the leasing out vacant quarters and the sale of individual units as interim steps to make better use of the surplus units before sites can be sold or converted to other uses.

Turning to the specific questions:

Expenditure on PTA in the last three years

Expenditure on PTA was $190 million in 1993-94, $222 million in 1994-95 and $225 million in 1995-96.

Allocation of Vacant Quarters

There are two categories of quarters: non-departmental quarters and departmental quarters. The former are provided to civil servants who are eligible for them because of their conditions of service and are an entitlement for those who are eligible. The latter are provided to civil servants for operational reasons mostly in the disciplined services and are not an entitlement. They are managed by the relevant Head of Department. In answering this question I will limit my remarks to vacancies in the NDQ.

The Quartering Office in Civil Service Branch is responsible for the management of NDQ. All units vacated by civil servants are advertized for reallocation to other eligible civil servants by the Quarters Allocation Committee. Those units that are not allocated and become surplus to requirement will be designated for sale, leasing to the public or conversion to Government/Institution Community use, as appropriate.

NDQ Available for Allocation

130 NDQ units are listed in the current Quarters Allocation Circular as available for allocation to eligible civil servants.

Ratio of Non-departmental Quarters Occupants to Private Tenancy Allowance Recipients

At present, a total of 1 737 civil servants occupy NDQ. Some 778 officers receive the PTA. The ratio is about one civil servant receiving PTA to just over two civil servants occupying quarters.

Payment of Allowances to those Eligible for Quarters.

Officers employed prior to 1 October 1990 retain their entitlement to the PTA as long as they do not join the HFS or the HPS. The PTA is payable once an officer reaches point 34 on the Master Pay Scale. Government is obliged to

honour its contractual obligations to those officers who wish to take up this form of housing benefit.

NDQ are only allocated to civil servants who are eligible for them, that is officers employed before 1 October 1990 become eligible for NDQ once they reach point 45 on the Master Pay Scale. There are a number of officers who have chosen to take the PTA rather than move in to NDQ, even though they are eligible to do so. In January 1996, all those concerned were informed that Government will exercise its right not to pay the PTA. They have been given seven months notice to move out of the property rented using the PTA. They may choose to move into NDQ or to take up the HFA. Payment of the private tenancy allowance to those concerned will cease after the notice period. Already, some 34 officers have given up the PTA as a result.

We do not consider it appropriate nor cost effective to permit officers who are not eligible for NDQ, to occupy NDQ. It would of course be totally contrary to our policy. Rather, as indicated earlier, we intend to dispose of all surplus units by way of leasing out, conversion to other uses and sale. But we also continue to honour our contractual obligations to these officers below MPS 45 who remain eligible for PTA.

British Beef and Canned Beef Products

9. **MR HENRY TANG** asked (in Chinese): *Despite the Government's ban on the import of British beef, British dairy and canned beef products are not covered by the ban. In this connection, will the Government inform this Council:*

(a) how the public can ascertain that the non-British made canned beef products or other products for human and animal consumption with a beef constituent are not produced from British cattle;

(b) whether the Government has any information on medical and chemical studies which show that the virus of mad cow disease can survive and incubate in canned food;

(c) given that the authority concerned will not recall British beef already brought in by restaurants, how it can prevent such

restaurants from serving food made from British beef; and

(d) whether, given the current practice that no food product can be banned from sale unless it has been proved to have adverse effect on public health, consideration will be given to amending the existing legislation so that it can better meet the actual needs of the community?

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, the World Health Organization (WHO) has advised that there is no evidence of a link between Bovine Spongiform Encephalopathy (BSE) and its human equivalent, Creutzfeldt-Jakob Disease (CJD). No connection has been established between consumption of British beef and CJD. The ban by the European Commission (EC) on the export of British beef on 27 March — and Hong Kong's suspension of imports of British beef the following day — were taken to avoid market confusion and to restore public confidence in beef from other countries, rather than on public health grounds.

While there is no way to tell from reading the label on non-British made products whether or not they contain British beef, a number of safeguards have been in effect since 1989. In that year, the United Kingdom Government prohibited Specified Bovine Offal (SBO) for human consumption or for export. (SBO is that part of cows most likely to contain BSE if the animal is infected.) In August 1995, the sale and use of SBO for animal feedingstuffs was also prohibited. Since the EC's total ban in March 1996, no British beef has been exported for use in other countries' products for human or animal consumption.

Currently available information indicates that the causative agent for BSE may not be destroyed during the canning process, but it also shows that the latter can render the agent unable to multiply.

Restaurants have been advised to furnish information to their customers on the origin of the beef they serve.

Section 54(1) of the Public Health and Municipal Services Ordinance (Cap. 132) makes it an offence for any person to sell or prepare for sale any food

intended, but is unfit, for human consumption. Such provision is considered to be fair and practicable for the purpose of protecting public health. This provision will be kept under review.

Government Sale of Basic Law Copies

10. **MR ERIC LI** asked (in Chinese): *Will the Government inform this Council whether copies of the Basic Law of the Hong Kong Special Administrative Region will be put on sale at the Government Publications Centres; if not, why not?*

SECRETARY FOR HOME AFFAIRS (in Chinese): Mr President, in response to the enquiry, we confirm that action is in hand to make available copies of the Basic Law of the Hong Kong Special Administrative Region at the Government Publications Centre. These will be provided to members of the public free of charge to facilitate the widest circulation of this important document in the community.

Code of Industrial Safety for Toys and Plastics Industries

11. **MR LAU CHIN-SHEK** asked (in Chinese): *It is learnt that the application for an allocation of $1 million for the compilation of a code of industrial safety pertaining to the toys and plastics industries, which has been submitted to the Industry Department jointly by the Hong Kong Toys Council and the Hong Kong Plastics Manufacturers Association Limited, is still under consideration. In this regard, will the Government inform this Council:*

(a) whether the application could be made available for examination by this Council and the public;

(b) of the criteria adopted by the Industry Department for determining whether funds would be allocated; and

(c) whether other bodies may apply for similar funding?

SECRETARY FOR TRADE AND INDUSTRY (in Chinese): Mr President, the application from the Hong Kong Toys Council and the Hong Kong Plastics Manufacturers Association Limited was for a sum of $0.568 million (not $1 million) from the Industrial Support Fund (ISF) to compile a plastics factory safety and health guide. The application was approved in February 1996.

Regarding question (a), applications to the ISF are not normally made available for examination by the Legislative Council or the public. The applications or project proposals themselves may contain information which the applicants wish to keep confidential, and the assessment procedure is designed to respect this confidentiality. On the other hand, there is nothing to stop an applicant making public its application any time it wishes to do so. With regard to those applications selected for funding, the applicants are required, upon completion of the projects, to disseminate the results and deliverables to relevant parties and/or the public. These results and deliverables can be made available for examination by this Council and the public.

Regarding question (b), the principal criteria adopted for determining whether funds should be allocated include:

(a) the benefits that the proposed project will bring to the industrial sector of Hong Kong;

(b) whether there is a demonstrated need for the proposed project;

(c) the technical and project management capability of the applicant;

(d) whether the proposed project's schedule of implementation is well-planned and the duration reasonable;

(e) whether the proposed budget is reasonable and realistic;

(f) whether the proposed project should be more appropriately funded by other sources such as the University Grants Committee or the Applied Research and Development Scheme;

(g) whether there is or likely to be a duplication of the work currently carried out by industry-support organizations; and

(h) if recurrent expenditure is required (for example, manpower and other administrative expenses), whether the proposed project has potential of becoming self-sufficient after a certain period of time.

Regarding question (c), all industry-support bodies, trade and industry associations, higher education institutions, professional bodies and research institutes are eligible to apply to the ISF. In exceptional circumstances, applications from locally incorporated companies may also be considered if the applicants can demonstrate that their projects will bring benefits to the manufacturing industry that go beyond the interests of individual enterprises.

Pirated Compact Discs

12. **DR DAVID LI** asked: *In a report to the United States Congress on trade barriers, the Office of the United States Trade Representative stated that the United States music industry estimated that 20% of the recorded music sold in Hong Kong was pirated. Will the Government inform this Council how it plans to strengthen its law-enforcement efforts to crack down on hawkers and retailers as well as the criminal syndicates that supply pirated compact discs in the territory?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, the Government is totally and firmly committed to the protection of intellectual property rights (IPR) in Hong Kong. In this context, the Government has been pursuing a number of initiatives to strengthen the effectiveness of its enforcement measures against copyright piracy. They include:

(a) increasing the staffing resources in the Intellectual Property Investigation Bureau of the Hong Kong Customs by 40%, from 117 in 1994-95 to 164 in 1996-97, in order to strengthen intelligence gathering, border surveillance and interceptions. Intensified enforcement action against the various blackspots selling pirated copyright products has been taken by the Customs in recent months and will continue. A hotline to receive IPR infringement-related information has been set up in the Customs since March this year;

(b) a pro-active enforcement approach in the form of intelligence gathering and investigation work relating to alleged triad and organized criminal involvement in local and cross-border copyright piracy activities. The Customs and the police have been closely co-operating with each other on this front, resulting in a number of successful raids on storage premises for pirated CD-ROMs;

(c) providing new legislative tools to more effectively combat copyright piracy. The statutory maximum penalties against copyright piracy were substantially increased last May. New copyright piracy offence provisions are expected to be passed today in the Intellectual Property (World Trade Organization Amendments) Bill 1995 to help tackle masterminds of cross-border piracy activities. New customs border measures will soon be put in place to facilitate copyright owners to take civil infringement action against pirates; and

(d) forging closer co-operation between the Hong Kong Customs and the relevant counterpart authorities in China. Good progress has been made in the past month with the IPR-related enforcement agencies in the Guangdong Province and the Shenzhen Special Economic Zone on a number of initiatives, including setting up of specific contact points, exchange of information and intelligence, organization of seminars and visits, and where appropriate, the possibility of mounting joint anti-piracy operations.

Fraud in Sale of Properties

13. MR FRED LI asked (in Chinese): *The police has recently revealed that there has been a significant rise in the number of fraud cases involving the selling of properties by culprits claiming to be property owners. In this connection, will the Government inform this Council:*

(a) whether any loopholes have been identified in:

(i) the existing legislation governing the assignment of properties,

(ii) the legal procedures relating to property transactions,

(iii) the procedures for obtaining and altering particulars on property ownership (such as the registration of business and property ownership) filed with the Government which culprits can take advantage of;

(b) whether it will conduct an overall review on the procedures governing the assignment of property and draw up a code of practice to prevent the occurrence of such cases; if not, why not, and

(c) whether there are any specific measures to combat such crime so as to safeguard the rights of property owners?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Chinese): Mr President,

(a) Since early 1996, the police (Commercial Crime Bureau) have identified 14 property transaction cases involving impersonation of the owner of a property. In some cases, a fake owner accepted a deposit from purchasers but did not complete the property transaction because he was unable to produce the original title deeds. In other cases, the fake owner was paid the whole of the purchase price before the purchaser discovered that the assignment was not made by the genuine owner. All the incidents happened before any documents were registered with the Land Registry.

Identification of the vendor or mortgagor of a property is the responsibility of the vendor's solicitors. The vendor or mortgagor should produce the original title deeds to their solicitors for processing the transaction. To prevent crime and protect the interest of the property owner and purchaser, the solicitor and the bank dealing with the transaction should exercise vigilance in examining the ID cards and documents presented by the vendor before proceeding or releasing the original title deeds of the mortgaged property to the vendor. Without the original title deeds, the purchaser would not pay for the property.

(i), (ii) We are not aware of any loopholes in the existing legislation and legal procedures which make it easy for a person to impersonate a property owner or conduct a fraud regarding the assignment of properties. It should be noted that conveyancing procedures are designed by solicitors and the Law Society for the purpose of protecting their clients. Nevertheless, we would consider in consultation with the Law Society and other bodies concerned whether there is a need to review the current legislation.

(iii) Like Land Registries elsewhere, the Land Registry in Hong Kong maintains a land register which is available for public inspection. Adequate safeguards are provided in the current procedures for inspecting and altering particulars of the land register. Updating of the register is performed by well-trained registration teams under a secured Computerized Land Registration System. The particulars in the register are checked to ensure that they are exactly the same as those set out in the memorials certified to be correct by solicitors.

(b) Please see (a) above.

(c) On 1 April 1996, a press conference was held by the police to warn the public about property fraud cases. The public was warned that they should take extreme care in supplying photocopies of their identity cards, rate receipts, mortgage repayment schedules, and so on, to people who claimed to be interested in purchasing or renting their properties. At the same time, a report containing details of the recent cases was sent to the Hong Kong Law Society and the Hong Kong Association of Banks (HKAB) to enable them to alert their members. Arrangements are in hand to organize training sessions for these organizations and institutions on how to identify fake identity documents. The HKAB has also issued guidelines to its members on 12 April 1996 on precautionary measures to minimize the chance of perpetuation of such frauds.

Local and Expatriate Terms for University Teaching Staff

14. **DR LAW CHEUNG-KWOK** asked (in Chinese): *Can the Government inform this Council whether the University Grants Committee is aware of:*

(a) the difference between "local terms" and "expatriate terms" adopted by each of the universities in the appointment of teaching staff;

(b) the respective numbers of teaching staff who are currently appointed on "expatriate terms" in the universities; and

(c) the respective policies adopted by the universities in regard to the abolition of "expatriate terms" in the employment of teaching staff?

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

(a) The six universities and Lingnan College funded by the University Grants Committee (UGC) enjoy autonomy in respect of the terms of employment for their staff, provided that they are comparable to and not better than those offered to staff of similar rank in the civil service. The UGC is aware of the differences between local and overseas terms adopted by the institutions. These differences are mainly in terms of the staff's eligibility for passage and baggage allowances, housing benefits and overseas education allowance.

(b) The numbers of teaching staff employed by the seven UGC-funded institutions on overseas terms as at 31 December 1995 are shown in Annex A.

(c) According to the UGC, the Hong Kong Baptist University (HKBU), Hong Kong Polytechnic University (PolyU), Lingnan College (LC) and the Chinese University of Hong Kong (CUHK) have already adopted common terms of service since 1995 for newly appointed staff and for staff whose contracts were renewed after the effective date of the adoption of the new terms of service. As regards the

City University of Hong Kong (CityU), Hong Kong University of Science and Technology (HKUST) and the University of Hong Kong (HKU), they continue to adopt both local and overseas terms for new recruits at present. However, in November 1995 the CityU Council approved that new offers of appointment should be made mainly on local terms, with offers of overseas terms being made only in exceptional circumstances. CityU is also in the process of drafting a common set of terms with a view to removing the distinction between its local and overseas terms of service. HKUST and HKU are currently reviewing their terms of service for local and overseas staff with a view to working out a common set of terms of service.

Annex A

Number of Teaching Staff
on Overseas Terms in the UGC-funded Institutions

Institution	*No. of teaching staff on overseas terms*
CityU	135
HKBU	71
LC	34
CUHK	241
PolyU	145
HKUST	251
HKU	386
Total	1 263

Source: UGC Secretariat

Government Land Grant to Non-governmental Organizations

15. **DR JOHN TSE** asked (in Chinese): *Regarding the grant of land by the Government to non-governmental organizations for charity and welfare purposes, will the Government inform this Council:*

(a) whether it has set any criteria for the granting of land for such purposes;

(b) how many organizations have been granted land through such means and what is the total area of land granted to these organizations;

(c) how does the Government monitor the actual use of the land granted to ensure that the land use specified in the application is observed;

(d) whether the sale of such land requires the approval of the Government; if so, what criteria are adopted by the Government for approving such land sale applications; and

(e) of the number of such land sale cases and the value involved in the past three years, and whether the Government has monitored the use of the proceeds from such land sales to ensure that they are used for charity and welfare purposes?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Chinese): Mr President,

(a) In brief, an application for the granting of land for charity and welfare purposes will require the applicant to:

(i) have the support of the Director of Social Welfare;

(ii) provide proof of the prospective grantee's financial capability to develop the site and operate and manage the proposed service; and

(iii) satisfy the Director of Lands that the site is put to its optimum use.

The availability of a suitable site for the purpose is also an important

criterion.

In general, the Director of Social Welfare would grant support to an application subject to the following provisions:

(i) the nature of the project must be welfare-related;

(ii) there is a demand for the proposed service in the area;

(iii) the applicant has the required financial capability to develop and operate the project (including capital costs and recurrent costs); and

(iv) the applicant has the relevant experience and capability in running the proposed service.

(b) since 1985, 25 organizations have been granted land for charity and welfare purposes, involving 30 land grants and a total area of about 12.89 hectares. No statistics were kept on land grants of this nature made before 1985;

(c) the land lease document of each of such land grant stipulates, among other things, the use of the land in question, which is the same as that stated in the original application. If the land is used for a different purpose or ceases to be used or there is a diminution in the use of the site, the Government has the right to re-enter the land;

(d) we do not allow the sale of land in this category, but it is possible for a grantee to apply for redevelopment of his site should the site be under-utilized. Each case has to be considered on its own merits and requires the specific approval of the Governor in Council; and

(e) as explained in (d) above, land in this category is not allowed to be sold. The information asked for by the Honourable Member is therefore not available.

British Naturalization

16. **MISS EMILY LAU** asked: *In view of the large number of people who have applied for naturalization last month, will the Administration inform this Council:*

(a) of the number of applications for naturalization received in each of the past three years as well as in the first three months of this year;

(b) how long the applicants have to wait for a decision on their applications given that there are only 433 days left before the transfer of sovereignty;

(c) whether the successful applicants will be given adequate time to apply for and be issued with the British National (Overseas) passports; and

(d) how many applications have been rejected in the past three years and whether the applicants have been notified of the reasons for the rejection; if not, why not?

SECRETARY FOR SECURITY: Mr President,

(a) The number of applications for naturalization/registration as British Dependent Territories Citizens in the past three years and in the first three months of this year is as follows:

Year	*No. of applications*
1993	17 391
1994	17 803
1995	34 580
1996	217 603

(b) The Hong Kong Immigration Department aims to complete processing of all outstanding naturalization/registration applications by the end of September 1996.

(c) Article 4(5) of the Hong Kong (British Nationality) Order 1986, as amended by the Hong Kong (British Nationality) (Amendment) Order 1993, allows a successful applicant to apply for a British National (Overseas) passports within three months after the date he has obtained a naturalization/registration certificate.

(d) The number of applications rejected in the past three years and in the first three months of this year is as follows:

Year	*No. of applications*
1993	147
1994	282
1995	451
1996 (Jan-Mar)	348

In line with the practice in the United Kingdom and in accordance with section 44(2) of the British Nationality Act 1981, the reasons for rejection of such applications are not disclosed.

Debts of Correctional Services Department Staff

17. **MR WONG WAI-YIN** asked (in Chinese): *Will the Government inform this Council:*

(a) whether the Correctional Services Department management has any knowledge of the amount of debts owed by the staff of the Department in the past three years and the reasons for their staff incurring such debts; and

(b) what mechanism does the Correctional Services Department management have to prevent the work of their staff from being affected as a result of incurring debts?

SECRETARY FOR SECURITY (in Chinese): Mr President,

(a) Of the 7 184 staff in the Department, 13 are currently known to be in debt. Their total debt now is about $1,830,000. The reasons for incurring these debts vary for example borrowing for personal reasons, bad investments or gambling. We do not have statistics for the past three years.

(b) Staff Welfare Officers are available to provide advice and counselling to indebted staff, who are encouraged to seek such advice. If a staff member is known to be in debt, his superior officer will interview him, and he will be assisted to formulate a plan on how to settle his debts. The management will continue to monitor these cases very closely, in order to provide further advice and guidance.

Processing of Estate Duty Cases

18. **MR ERIC LI** asked: *Will the Government inform this Council:*

(a) of the total number of deceased persons registered in the territory, as well as the number of cases where the estate of the deceased is subject to estate duty, in each of the past five years (that is, from 1991-92 to 1995-96);

(b) of the number of cases referred to in (a) above which were outstanding as at 31 March in each of the five years in question, together with a breakdown by age of the deceased and estimated total amount of estate involved;

(c) what are the reasons for those cases which have not been settled within two years from the date of filing the application; and

(d) what measures have been adopted by the Inland Revenue Department to settle estate duty cases expeditiously so as to avoid

causing undue hardship to the families of the deceased?

SECRETARY FOR THE TREASURY: Mr President,

(a) The total number of deceased persons registered and the number of cases where the estate of the deceased is subject to estate duty in each of the past five years, that is, from 1991-92 to 1995-96 are as follows:

(i) Number of deaths registered:

For year ended 31 March				
1992	*1993*	*1994*	*1995*	*1996*
30 258	30 085	30 054	30 493	25 060 (up to 31.1.96)

(ii) Number of estate duty cases filed:

	For year ended 31 March				
	1992	*1993*	*1994*	*1995*	*1996*
No. of dutiable cases	365	429	468	408	217
No. of non-dutiable cases	10 289	10 633	10 926	11 169	11 460
Total number of affidavits/ statements in lieu of affidavits filed	10 654	11 062	11 394	11 577	11 677

(b) The number of cases outstanding as at 31 March for each year in the past five years with age analysis and the estimated amount of duty involved:

	For year ended 31 March				
	1992	*1993*	*1994*	*1995*	*1996*
Dutiable cases	693	770	728	649	517
Non-dutiable cases	1 004	1 125	836	1 051	980
Total	1 697	1 895	1 564	1 700	1 497

	For year ended 31 March				
	1992	*1993*	*1994*	*1995*	*1996*
Estimated amount of duty involved*	$400m	$500m	$700m	$700m	$750m
Estimated amount of estate involved (dutiable cases only)	$7,400m	$9,300m	$13,000m	$13,000m	13,900m

* These amounts are rolled-over from year to year. About two-thirds of the amounts represent the additional duty collectable on assets which were either undisclosed or were declared below market values.

The Inland Revenue Department does not keep statistics on the age of the deceased in the outstanding cases or the estimated amount of estate involved in non-dutiable cases.

(c) The main reasons for those cases which have not been settled within two years from the date of filing the application are:

(i) pending outcome of litigation (in most cases between executors and beneficiaries);

(ii) disputes on valuation of landed properties and shares in private companies;

(iii) valuation of a deceased's interest in a complicated predeceased's estate;

(iv) in-depth inquiry into potential tax avoidance schemes;

(v) slow response to enquiries from executors and third parties;

(vi) tracing of a deceased's life-time gifts;

(vii) tracing of undisclosed assets; or

(viii) disputes between beneficiaries of the estate.

(d) It has always been the Inland Revenue Department's policy to settle estate duty cases as expeditiously as possible. In fact, the Estate Duty Office's current performance pledge is to finalize 98% of the exempt and simple cases (not involving landed properties, private company shares and interest in business) within six weeks from the receipt of the application; 80% of the other exempt and simple cases within six months; and 75% of the complicated or dutiable cases within two years. The senior management of the Department and its Users' Committee regularly review actual performance as compared to pledged targets. The actual performance achieved for the past two years is shown in Annex.

Where a deceased's dependants have difficulties in meeting his funeral expenses or providing for their own maintenance, the Commissioner of Inland Revenue may authorize banks to release money from the deceased's bank accounts to relieve the hardship.

Where a case cannot be finalized within a reasonable time because of the need to trace life-time gifts and so on, the executor or the administrator can apply for the issue of provisional estate duty clearance papers upon production of a satisfactory guarantee (that is, bank guarantee, equitable mortgage, deposit of quoted shares, transfer of bank account balances as payment on account). The executor or the administrator can then proceed with the application for the grant to administer the estate. For duty payable on the leasehold properties held solely by the deceased, the executor may opt to settle by instalments.

Annex

Processing of Estate Duty Affidavits

	Apr 94 to Mar 95		*Apr 95 to Mar 96*	
	Target (Cumulative)	*Output*	*Target (Cumulative)*	*Output*
EXEMPT AND SIMPLE cases not invoiving landed properties, private shares or business interests				
Performance evaluation		*Achieved*		*Achieved*
Assessments or certificates issued within				
first 6 weeks	98%	99.6%	98%	99.7%
next 10 weeks	100%	100.0%	100%	100.0%
Number of cases processed		6 295		6 383

EXEMPT AND SIMPLE cases involving landed properties, private shares or business interests

	Apr 94 to Mar 95		*Apr 95 to Mar 96*	
	Target (Cumulative)	*Output*	*Target (Cumulative)*	*Output*
Performance evaluation		*Achieved*		*Achieved*
Assessments or certificates issued within:				
first 6 months	80%	97.0%	80%	92.86%
next 12 months	100%	100.0%	100%	99.56%
Number of cases processed		3 600		4 459

DUTABLE or COMPLICATED Cases

		Acceptable		*Acceptable*
Performance evaluation				
Assessments or certificates issued within				
1 year	25%	62.8%	50%	61.15%
2 years	70%	87.3%	75%	84.43%
3 years	90%	93.5%	90%	91.28%
4 years	95%	96.4%	95%	95.08%
5 years	100%	97.9%	100%	96.38%
Number of cases processed		1 316		919

Liberalization of Local Fixed Telephone Networks

19. **DR LAW CHEUNG-Kwok** asked (in Chinese): *Will the Government inform this Council of:*

(a) the business development of the three newly-licensed operators since the liberalization of local fixed telephone networks in July last year; and

(b) the specific policies which have been implemented, as well as those which are under planning, on the promotion of fair competition among operators of local fixed telephone networks?

SECRETARY FOR ECONOMIC SERVICES (in Chinese): Mr President,

(a) The three new Fixed Telecommunication Network Services (FTNS) operators have installed and commissioned their main exchanges and have commenced offering services to the public. All three are now providing an "IDD access" service to the international telephone services of Hong Kong Telecom International. They are actively rolling out their networks. On 2 April 1996 they jointly entered into an agreement with the Mass Transit Railway Corporation to install optical fibre cables for their trunk networks. They are also working jointly with Hong Kong Telephone Company Limited, the dominant operator, to install cabling within new infrastructure projects and to provision new telephone exchange facilities in reclaimed areas and the new airport. As it takes time for the new operators to roll out their networks, the number of directly-connected customers for the three operators is still small. In the mean time, the new operators are building a customer base through the "IDD access" services, personal numbering and calling card services.

(b) The policy to promote fair competition among FTNS operators has been enshrined in the amended Telecommunication Ordinance and the FTNS Licences issued to the four operators. Examples of specific measures implemented include: taking over of control of the telephone numbering plan by the Telecommunications Authority (TA) in 1993 to enforce an equitable numbering policy; enforcement of number portability (that is the ability for customers to retain their existing telephone numbers when changing telephone operators); requirement of operators to maintain separate accounts for different services rendered to monitor cross-subsidization between services; issue of guidelines by the TA to property owners, developers and managers on non-discriminatory access to the common parts of private buildings by operators; and guidelines on interconnection between networks. The FTNS Licences contain conditions to prohibit anti-competitive behaviour and abuse of dominant position, and require operators to share "bottleneck" facilities. Also, the tariffs of Hong Kong Telephone Company Limited, the dominant operator, are subject to the regulation by the TA.

The Government will continue to monitor the market and enforce the Telecommunication Ordinance and the FTNS licence conditions. We are reviewing the Telecommunication Ordinance and intend to introduce a draft amendment bill into the Legislative Council later in the year. Some of the amendments serve to consolidate the provisions dealing with the development of fair competition in the FTNS market.

Use of natural Gas as Bus Fuel

20. **MR WONG WAI-YIN** asked (in Chinese): *Will the Government inform this Council:*

(a) whether it is currently undertaking a research project on the use of natural gas to replace diesel oil as bus fuel; if so, what is the progress of the project;

(b) what are the technical difficulties involved in requiring local franchised buses to switch to the use of natural gas, and whether it

is feasible to put this into effect; and

(c) whether, the Government has consulted the public transport trade in the course of the research; if not, why not?

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Chinese): Mr President,

(a) An inter-departmental working group has recently been set up to co-ordinate efforts in studying the potential use of alternative fuel vehicles, including gas and electric vehicles. Some private companies have also undertaken exploratory studies on the technical feasibility of introducing gas as a motor fuel in Hong Kong. We have been involved in the initial discussions but no firm proposal has been received to date.

(b) A number of issues must be fully examined before gas can be used on local franchised buses. These include availability and reliability of gas supply, storage and distribution arrangements, refuelling facilities, availability of suitable gas buses which meet local transportation needs, infrastructure and support for the installation and maintenance of gas systems, as well as risk and safety factors.

(c) We are still considering the infrastructure and technical aspects of using gas as a motor fuel in Hong Kong. We are not yet in a position to consult the public transport trade.

BILLS

First Reading of Bills

PLANT VARIETIES PROTECTION BILL

MERCHANT SHIPPING (SAFETY) (AMENDMENT) BILL 1996

IMMIGRATION (AMENDMENT) BILL 1996

CONSUMER GOODS SAFETY (AMENDMENT) (NO. 2) BILL 1996

TOYS AND CHILDREN'S PRODUCTS SAFETY (AMENDMENT) (NO. 2) BILL 1996

STAMP DUTY (AMENDMENT) (NO. 2) 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 Bills

PLANT VARIETIES PROTECTION BILL

THE SECRETARY FOR ECONOMIC SERVICES to move the Second Reading of: "A Bill to provide for the protection of plant varieties."

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, I move that the Plant Varieties Protection Bill be read the Second time.

The World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights requires that every signatory — including Hong Kong — must provide for the protection of rights to plant varieties. The purpose of the Bill is to give effect to that obligation.

The Bill proposes that the Director of Agriculture and Fisheries be appointed as the Registrar of Plant Variety Rights and that he be able to consider applications for registration of such rights.

The Bill states the criteria to be satisfied before a plant variety can be considered for protection and defines the party entitled to protection and the period and scope of the protection afforded. Broadly speaking, it will be necessary for an applicant to show that the plant variety that he wishes to register is a new and distinct variety. In general, once rights to a plant variety have been granted, the grantee will be able to control propagation and commercial exploitation of that variety for 20 years. Such protection will be available to both local and overseas breeders of plants.

Unauthorized commercial exploitation of plant varieties will be deterred through provision made in the Bill for offences relating to false declaration, false representation and misuse of the name of a protected plant variety. In each case, the proposed maximum penalty upon conviction is a fine of $100,000.

The successful breeding and development of marketable new varieties of, for example, vegetables and ornamented plants requires substantial investment and the prospect of a reasonable commercial return. The proposals in the Bill will protect the intellectual property of companies and individuals currently breeding plants and vegetables in Hong Kong, and those of overseas breeders who wish to market new plant varieties in Hong Kong. This will be to the benefit of both the economy and consumers. I therefore commend the Bill to this 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).

MERCHANT SHIPPING (SAFETY) (AMENDMENT) BILL 1996

THE SECRETARY FOR ECONOMIC SERVICES to move the Second Reading of: "A Bill to amend the Merchant Shipping (Safety) Ordinance."

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr President, I move that the Merchant Shipping (Safety) (Amendment) Bill 1996 be read the Second time.

The safety of merchant ships is regulated by international conventions made under the auspices of the International Maritime Organizations, the IMO. The provision of IMO conventions are accepted worldwide as the international standards to which the shipping industry must conform. Hong Kong is obliged to implement the standards provided under IMO conventions which have been extended to Hong Kong. Safety standard are at present given effect by regulations made under the Merchant Shipping (Safety) Ordinance. Most of the matters regulated are highly technical in nature and are subject to frequent amendments. Our present procedures by which legislative backing is given to these amendments adds to the workload of the Executive Council as well as the Law Drafting Division of the Attorney General's Chambers. It is, nonetheless,

vital for Hong Kong to implement our international obligations in a timely manner. Failure to do so would adversely reflect on the credibility of Hong Kong within the international shipping community.

In order to alleviate the workload of the Executive Council so that it can focus on major policy issues, and to provide a more expeditious means for giving effect to the provisions of international conventions, the Bill provides: first for the transfer of most of the regulation-making powers from the Governor in Council to the Secretary for Economic Services; and, secondly, that the provisions of international conventions applicable to Hong Kong may be given effect by setting them out in regulations or schedules, together with any necessary modifications and adaptations as may be required for the circumstances of Hong Kong.

We also need to amend the Merchant Shipping Ordinance to make it clear that fees in respect of survey services provided under the Merchant Shipping (Safety) Ordinance are prescribed in regulations made under the former.

Before the enactment of the Merchant Shipping (Safety) Ordinance, marine safety was regulated by the Merchant Shipping Ordinance. When the Merchant Shipping (Safety) Ordinance came into effect in 1981 to consolidate the local legislation relating to marine safety, certain provisions about survey services and requirements under the Merchant Shipping Ordinance were transferred to the former. Fees for survey services however continue to be charged under the Merchant Shipping (Fees) Regulation, which is the subsidiary legislation of the Merchant Shipping Ordinance. We intend this to continue, but believe it would be appropriate for there to be explicit reference to this arrangement in the main Ordinance. The amendment Bill makes a minor amendment to the Merchant Shipping Ordinance to achieve this.

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).

IMMIGRATION (AMENDMENT) BILL 1996

THE SECRETARY FOR SECURITY to move the Second Reading of: "A Bill to amend the Immigration Ordinance."

SECRETARY FOR SECURITY: Mr President, I move the Second Reading of the Immigration (Amendment) Bill 1996.

The purpose of the Bill is to prevent certain Vietnamese migrants from seeking release from detention in the wake of a recent Privy Council judgement.

Since 16 June 1988, Vietnamese migrants arriving in the territory who request to stay are detained pending determination as to whether they are refugees and, if they are determined to be non-refugees, pending removal to Vietnam. They are encouraged to return to Vietnam through the United Nations High Commissioner for Refugees' (UNHCR) voluntary repatriation programme. Otherwise, they are subject to the orderly repatriation programme run by the Hong Kong Government. Clearance by the Vietnamese authorities is required before a Vietnamese migrant can be repatriated. This applied to both the voluntary and the orderly return programmes.

In 1994, the UNHCR brought to our attention that a number of voluntary repatriation applicants had been awaiting clearance for return for some time. We examined these cases and concluded that there were 124 migrants who, because of their individual circumstances, had little prospect of being returned in the immediate future and thus their further detention might be unlawful. They were accordingly released on recognizance in November 1994.

Between early 1995 and March 1996, a *habeas corpus* action involving four Vietnamese migrants was considered successively by the High Court, the Court of Appeal and the Privy Council. These Vietnamese migrants argued that the Vietnamese authorities had a policy of not taking back non-nationals, that they were non-nationals and, thus, if they applied to return they would be rejected; consequently, the purpose of their detention was therefore spent and they could no longer be lawfully detained. The Privy Council accepted these arguments in respect of three of the appellants. As for the fourth one, although neither the High Court nor the Court of Appeal found him to be a non-national, the Privy Council believed that given the time that he has been awaiting clearance, he would not be accepted for return and should also be released.

Consequent to the Privy Council judgement we have, after careful consideration, released 254 Vietnamese migrants to date who, in our judgement, fall within the terms of the Privy Council judgement and could thus no longer be lawfully detained.

The issue of "non-nationals" was raised with the Vietnamese Government during the visit of Foreign and Commonwealth Affairs Office Minister Mr Jeremy HANLEY to Hanoi on 9 April. The Vietnamese authorities agreed to study this problem again. We have also sought clarification on whether Taiwan would accept those released migrants who claimed to have Taiwanese papers, and a response is awaited.

Although we have already released all the migrants who came to our knowledge to date as failing within the terms of the Privy Council judgement, we are obliged to continue to release any new cases brought to our attention which fall under those terms. There is thus a risk of further releases.

Against the background that the Vietnamese authorities had to deal with over a hundred thousand cases from Asia and from Europe for repatriation, we do not believe that the hitherto apparently lengthy period for obtaining a response from the Vietnamese authorities should in general be treated as evidence of refusal or rejection by them. We thus propose in the Bill that where a request has been made to the Vietnamese Government for the repatriation of a Vietnamese migrant, the court shall not find that the purpose of his detention has failed, or become spent, until the request has been rejected by the Vietnamese Government, or unless the court finds that, in all the circumstances, the Vietnamese migrant has been detained for an unreasonable period. We also propose an additional, minor amendment which seeks to put beyond doubt the power to enable the released migrants to enter into recognizance.

We believe that the longer the relevant provisions of the Immigration Ordinance remain unamended, the greater the risk of having to make further releases. This in turn could lead to an erosion of our detention policy and will not be welcomed by the community; it will also increase our difficulties should the Vietnamese authorities later clear them for return, and we then have to search for and redetain them pending removal.

Since we have made known our intention to legislate in this regard, there have been some unfounded criticisms, mainly centred on whether we are seeking to legislate for indefinite or arbitrary detention. I should like to reiterate a few key points here. First, the need to detain Vietnamese migrants, even for long periods of time, is recognized by the courts as essential in order to maintain effective immigration control. Secondly, this detention policy is, of course, subject to the supervisory jurisdiction of the courts, and we are not seeking to change this. In particular, we are not seeking to legislate to bar a Court from ordering the release of a Vietnamese migrant on the grounds that his period of detention is too long. Thirdly, we are only seeking to ensure that in deciding claims by Vietnamese migrants that they are non-nationals, the court may not assume that they will not be accepted back unless the Vietnamese authorities have rejected them. Fourthly, there are over 7 000 Vietnamese migrants in Hong Kong whose clearance is not yet obtained, and there is a real risk that fraudulently obtained documents may be produced by them to seek release from detention. In the Administration's view, this is a potential loophole which should be closed as quickly as possible.

In short, Mr President, the Bill does not seek to provide for arbitrary or indefinite detention, nor does it set a precedent for such; in our view, it is consistent with the International Covenant on Civil and Political Rights as applied to Hong Kong. It does not offend against the spirit of common law. It should not be read across to other kinds of detention, as section 13(D) of the Immigration Ordinance relates solely to Vietnamese illegal entrants and is there to deal with the massive influx of Vietnamese migrants that has occurred in the past. Once the Vietnamese migrant problem is completely resolved, that section of the law will have served its purpose and may then be repealed.

I would also like to make it clear that the introduction of this Bill in no way indicates disrespect to the Privy Council. The role of the Judiciary is to decide what the current law is, and to apply it to the facts of the case before it. But it is incumbent on the executive and the legislature to decide what law is best for the community. If we decide that the law should be changed, we are merely fulfilling our roles as policy-makers and as legislators. This is standard procedure in democratic societies subscribing to the basic concept of separation of powers, whether those societies be Hong Kong, the United Kingdom or any other common law jurisdiction. I trust Honourable Members will consider the

Bill on its merits without fear of acting improperly towards the Judiciary.

Finally, the Administration urges Honourable Members to deal with the Bill expeditiously. We will be working closely together with the subcommittee established to examine this Bill; indeed the subcommittee has already begun its work this morning. I hope it will come to a conclusion speedily.

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).

CONSUMER GOODS SAFETY (AMENDMENT) (NO. 2) BILL 1996

THE SECRETARY FOR TRADE AND INDUSTRY to move the Second Reading of: "A Bill to amend the Consumer Goods Safety Ordinance."

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I move that the Consumer Goods Safety (Amendment) (No. 2) Bill 1996 be read the Second time.

The purpose of the Bill is to enhance consumer protection by requiring all consumer goods covered by the Consumer Goods Safety Ordinance to have all safety markings or labels provided in both English and Chinese, that is, the bilingual safety labelling requirement. It seeks to do so by empowering the Secretary for Trade and Industry to establish safety standards or safety specifications which she believes will materially enhance the safety of consumer goods. The proposed bilingual safety labelling requirement may then be established by regulation made by the Secretary for Trade and Industry under the new provision. It will be enforced by the Commissioner of Customs and Excise.

The Bill is proposed in response to requests from the community for the imposition of mandatory product labelling requirement in Chinese for all consumer goods, regardless of what the original language of the labelling is.

Having carefully considered the requests, we agree that safety labelling in Chinese, which is a language widely understood by the community, is of paramount importance to ensure consumer safety. We also see the need to ensure that the English-speaking-only community in Hong Kong understands the safety labelling on consumer goods. We therefore proposed that all safety markings or labels on consumer goods covered by the Consumer Goods Safety Ordinance must be expressed in both English and Chinese.

The bilingual safety labelling requirement will be confined to markings or labels relating to warning or caution phrases concerned with the safe keeping, use, consumption or disposal of the consumer goods. Such markings or labels should be legible and placed in a conspicuous position on the consumer goods, the packaging or a document enclosed in the package, as the case may require. By doing so, the proposed requirement will achieve the objective of enhancing consumer safety while at the same time avoid imposing an undue burden on manufacturers, importers or suppliers.

Upon enactment of the Bill, I will table the Consumer Goods Safety Regulation in the Council for Members' approval by the negative procedure. Members may wish to note that a similar regulation on the introduction of requirement for bilingual safety labelling for toys and children's products covered by the Toys and Children's Products Safety Ordinance will also be made. To give the industry and trade sufficient time to adjust, there will be a grace period of 12 months before the Regulations come into operation.

Mr President, I move that debate on this motion be adjourned.

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).

TOYS AND CHILDREN'S PRODUCTS SAFETY (AMENDMENT) (NO. 2) BILL 1996

THE SECRETARY FOR TRADE AND INDUSTRY to move the Second Reading of: "A Bill to amend the Toys and Children's Products Safety Ordinance."

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I move that the Toys and Children's Products Safety (Amendment) (No. 2) Bill 1996 be read the Second time.

The Bill provides for the adoption of safety standards other than the British Standards Institution (BSI) standards for children's products under the Toys and Children's Products Safety Ordinance. The Bill is made in response to requests from the trade and industrial organizations that multiple safety standards should be adopted for children's products because adoption of the BSI standards alone is considered too restrictive and would limit consumers' choice.

At present, the Toys and Children's Products Safety Ordinance only permits the adoption of the BSI safety standards for children's products. This is because when the Ordinance was enacted, the BSI standards were considered to be the most comprehensive in product range and safety aspects.

We have no objection in principle to the proposed adoption of multiple safety standards other than the BSI standards for children's products, provided that the alternative standards are equivalent in their safety requirements to the existing BSI standards already adopted in the Ordinance. Preliminary examination by the Government Chemist on a number of non-BSI safety standards applicable to children's products, including those suggested by the trade and industrial organizations, reveals that some of them are suitable for adoption as alternative standards. Clause 3 of the Bill seeks to empower the Secretary for Trade and Industry to adopt alternative safety standards other than the BSI ones for children's products. Clause 4 empowers the Secretary for Trade and Industry to amend the Schedule. This includes the addition of alternative safety standards and updating of existing standards. In order to ensure that the level of safety requirement will not be compromised when alternative standards are adopted, the Secretary for Trade and Industry must be satisfied that any new standards intended to be adopted are equivalent to the existing BSI standards already adopted for that particular children's product in terms of safety requirements.

The proposed adoption of multiple safety standards of children's products will encourage competition in the Hong Kong market and hence increase consumers' choice.

Mr President, I move that debate on this motion be adjourned.

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).

STAMP DUTY (AMENDMENT) (NO. 2) BILL 1996

THE SECRETARY FOR THE TREASURY to move the Second Reading of: "A Bill to amend the Stamp Duty Ordinance."

SECRETARY FOR THE TREASURY (in Cantonese): Mr President, I move that the Stamp Duty (Amendment) (No. 2) Bill 1996 be read the Second time.

The Bill covers two main proposals. First, to make the measure of charging stamp duty on agreements for sale of residential property permanent. And second, to charge a full cost recovery fee in respect of the voluntary adjudication service.

Let me first deal with the stamp duty measure on sale of residential property. I will begin by setting out the background relating to the measure. As Members may recall, the measure first came into effect in January 1992 as one of a series of actions which aimed to curb speculation on residential property. The measure is temporary in nature and has to be extended from time to time. Its validity was first extended by this Council in December 1993 for two years until the end of 1995. In December last year, I moved a resolution in this Council, which Members approved, to extend the measure for a further two years until the end of 1997. In moving the resolution, I also made known that we intended to introduce an amendment to the Stamp Duty Ordinance within this session to make the measure permanent. The Bill before Members today seeks to implement this proposal. Now let me explain why the measure should be made permanent.

First, the measure has proved to be effective in helping to curb speculation on residential property. The property market has now stabilized and speculation has moderated. Making the measure permanent would provide a continuous

disincentive to speculators, which is necessary notwithstanding changes in the market situation. This also demonstrates our long term commitment to tackle the problem of speculation in the residential property market.

Secondly, the measure is equitable since it ensures that stamp duty would be charged on all residential property transactions, including intermediate ones. It also enables us to charge profits tax on profits gained from what essentially are trading transactions. From the taxation point of view, the measure should be made permanent.

Thirdly, I must also stress that whilst achieving the aim of tackling speculation and enhancing fairness in the taxation system, the measure does not affect genuine home buyers at all. They only have to pay stamp duty slightly earlier.

There are thus strong justifications for the measure to be made permanent. We cannot anticipate circumstances which would warrant the withdrawal of the measure at any time, whether on a long term or temporary basis. We therefore propose to amend the Stamp Duty Ordinance to make the measure permanent.

I am aware that some Members are concerned about the burden of stamp duty on home buyers. We have examined this matter and consider it appropriate and practical to review the stamp duty rate structure periodically in order to relieve the burden of home buyers. As Members may recall, we reduced stamp duty in 1994 to benefit buyers of flats with value up to $3 million. In this year's Budget, we also propose to further reduce the stamp duty on property transactions to benefit buyers of flats with value up to $3.5 million. This will help those buying at the lower to middle end of the market, including those who purchase Home Ownership flats or Sandwich Class Housing Scheme properties.

Now, let me turn to the second main proposal in the Bill. Adjudication is a process whereby the Collector of Stamp Duty gives an opinion on whether a certain document is chargeable to stamp duty and assesses the amount of stamp duty, if any, chargeable on the instrument. There are two categories of adjudication: Mandatory adjudication is conducted on certain types of instruments for revenue protection purposes while voluntary adjudication is one which is requested by an applicant of his own volition. At present, a nominal fee is charged by the Inland Revenue Department on an adjudication service,

regardless of whether it is a mandatory or voluntary one.

The Director of Audit completed an audit review of the adjudication services in early 1995 and recommended that the adjudication fee should be charged on a full cost recovery basis. Having reviewed the matter, we concluded that a distinction should be drawn between mandatory and voluntary adjudication, and that mandatory adjudication, which is conducted primarily for revenue protection purposes, should be provided free of charge while a full cost fee should be charged only for the provision of voluntary adjudication service. Our approach was endorsed by the Public Accounts Committee. We therefore propose to amend the Ordinance to implement this limited charging proposal.

The opportunity is also taken in this amendment exercise to transfer from the Governor in Council powers in the Ordinance which do not involve major policy considerations to the Secretary for the Treasury in order to lessen the burden of the Governor in Council. Any such exercise of power would still of course be subject to the scrutiny of this Council in the usual manner.

Mr President, with these remarks, I commend the Bill 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 Bills

MEDICAL REGISTRATION (AMENDMENT) (NO. 2) BILL 1995

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

MR EDWARD HO: Mr President, the Medical Registration (Amendment) (No. 2) Bill 1995 was introduced into the Legislative Council on 8 November 1995. The purposes of the Bill are to expand the Medical Council and to revise its committee structure, to provide for the establishment of a Specialist Register and to streamline the procedure for transacting businesses of the Medical Council.

A Bills Committee, of which I am the Chairman, was set up to study the Bill. The Bills Committee has received submissions from seven interested organizations and individuals and has met deputations from five of the organizations as well as the Chairman of the Medical Council. It has held seven meetings with the Administration to discuss the various provisions of the Bill.

I will briefly describe the main issues considered by the Bills Committee.

The first issue relates to the composition of the Medical Council.

Members consider it essential to have lay members participating in the work of the Medical Council, particularly in the areas concerning the interests of the public, such as the Preliminary Investigation Committee's investigations into complaints against medical practitioners and the disciplinary inquiries.

Under clause 3(1)(e), it is proposed to increase the number of lay members in the Medical Council from one to two. Members see the need to further increase the number so that there will be sufficient lay members to monitor the work of the Council. After discussion, a majority of Members agree to increase the number of lay members to four. This is agreed by the Administration and the Secretary for Health and Welfare will move an amendment to effect the change.

The Bills Committee's proposal to increase the number of lay members to four will mean a total of 14 appointed members, which outnumbers the 12 elected members. In order to maintain the balance between appointed and elected members, Members and the Administration agreed to increase the membership to 28, with 14 elected members and 14 appointed members including the four lay members.

The second issue relates to inclusion in the Specialist Register which is a major issue of concern to the Hong Kong Academy of Medicine, the Hong Kong Medical Association and the North American Medical Association.

The proposed new section 20K spells out the requirement for inclusion in the Specialist Register. Following discussion with the Hong Kong Academy of Medicine after the introduction of the (No. 1) Bill in the last Legislative Council Session, the Medical Council has proposed changes to allow an applicant who is

not a Fellow of the Hong Kong Academy of Medicine but who satisfies the Education and Accreditation Committee that he is of good character and has achieved the necessary professional standards and continuing medical education requirements to be included in the Specialist Register.

The Hong Kong Academy of Medicine considers that the Medical Council should approve such an application under exceptional circumstances only and this should be reflected in the Bill. It argues that the absence of the phrase "under exceptional circumstances" in the (No. 2) Bill would cause misunderstanding that either the Hong Kong Academy of Medicine or the Medical Council could assess specialist qualifications and suggests that phrase which was included in the (No.1) Bill should be reinstated in the present Bill. The Hong Kong Medical Association holds the same view. On the other hand, the North American Medical Association supports the new section because it provides an alternative route for specialists trained in North America to become listed as specialists in Hong Kong without taking remedial training in Hong Kong as required of them for Fellowship of the Hong Kong Academy of Medicine.

The Medical Council is of the view that basically, specialists who are qualified for inclusion in the Specialist Register should be a member of the Hong Kong Academy of Medicine as it is the statutory body to provide specialist training and to assess and accredit specialist qualifications. However, there may be circumstances under which a specialist, who does not wish to join the Hong Kong Academy of Medicine but is professionally qualified for inclusion in the Specialist Register, may wish to practise as a specialist in Hong Kong. The Medical Council would consult the Hong Kong Academy of Medicine regarding the qualifications of the specialist before making its decision.

The Administration further explains that the new section 20K(5) is added to provide a redress channel for those who are not Fellows of the Hong Kong Academy of Medicine but who wish to apply for inclusion in the Specialist Register. It points out that under Article 18 of the Hong Kong Bill of Rights Ordinance, people in Hong Kong are guaranteed freedom of association which also means that no one should be forced to become a member of any association. If a specialist does not want to join the Hong Kong Academy of Medicine, the Administration should not force him to do so by imposing Fellowship as a definite requirement for inclusion in the Specialist Register.

Some Members are worried that if medical practitioners are allowed to apply first to the Medical Council for inclusion in the Specialist Register under the proposed new section 20K(5), no one would apply under the new section 20K(3) which requires Fellowship and recommendation of the Hong Kong Academy of Medicine.

After further discussion with the Bills Committee and following consultation with the Medical Council and the Hong Kong Academy of Medicine, the Administration has worked out a new proposal in which an applicant for inclusion in the Specialist Register shall approach the Registrar who will have the following three options:

(a) If the applicant is a Fellow of the Hong Kong Academy of Medicine, the Registrar will submit the application to the Education and Accreditation Committee directly;

(b) If the applicant is not a Fellow of the Hong Kong Academy of Medicine but has obtained from it a certification that he has achieved a professional standard and has satisfied continuing medical education requirements comparable to those of its Fellowship, the Registrar will submit the application to the Education and Accreditation Committee directly, or

(c) If the applicant is not a Fellow of the Hong Kong Academy of Medicine and has not obtained any certification from the Hong Kong Academy of Medicine, the Registrar will submit the application to the Hong Kong Academy of Medicine for certification. If the Hong Kong Academy of Medicine certifies that the applicant has not achieved a professional standard or has not completed postgraduate medical training and satisfied continuing medical educational requirements comparable to those recommended by the Hong Kong Academy of Medicine for the relevant speciality, the Registrar shall reject the application, stating the reason for rejection.

If the application is rejected by the Registrar, the applicant may appeal to the Education and Accreditation Committee.

The Bills Committee supports the proposal. The Secretary for Health and Welfare will move an amendment to the clause at the Committee stage.

The composition of the various committees to be established under the Medical Council has also been carefully examined by Members.

Members note that under the new section 20S, the Preliminary Investigation Committee comprises a chairman, a deputy chairman, four medical practitioners and one of the lay members of the Medical Council and that quorum of a Preliminary Investigation Committee meeting is three, including the chairman or deputy chairman, or both.

Since it is the task of the Preliminary Investigation Committee to look into evidence produced by the complainants and the medical practitioners concerned and to make recommendations to the Medical Council for the holding of disciplinary inquiries, Members agree that lay representation in Preliminary Investigation Committee meetings is essential and therefore the quorum should include at least one lay member subject to the majority being registered medical practitioners. The Administration agrees and will move an amendment to that effect.

Members have also deliberated on the need for inclusion of lay members in the Health Committee. They note that the Medical Council strongly opposes the formal inclusion of lay members in the Health Committee which is an internal review committee conducted by the medical profession to ascertain whether a particular medical practitioner is medically fit to continue his practice.

The Administration has pointed out that under the proposed new section 20U(1)(f), the Medical Council shall appoint to the Health Committee, *inter alia*, "1 to 3 persons, not being members of the Council, whom the Council considers appropriate" and therefore it will have the discretion to appoint lay persons if considered appropriate.

Some Members wish to include lay members in the Health Committee, preferably lay members of the Medical Council who would be in a better position

than ordinary lay persons to handle the sensitive nature of cases involved and to make an objective judgement, and to spot irregularities, if any.

Other Members have doubts as to whether a lay member would be able to function effectively in the Health Committee. They observe that without the necessary professional knowledge, it would be difficult for the lay member to spot irregularities, if any, and to challenge the professional judgement of other members.

Members have divided views on this issue and no consensus has been reached.

In this connection, I would like to mention that the Honourable LAW Chi-kwong, a Member of the Bills Committee, will move an amendment at the Committee stage to include one of the four lay members of the Medical Council in the Health Committee.

The Bills Committee has also scrutinized the composition of the meeting of the Council held for the purpose of an inquiry under section 21.

The new subsection (1) stipulates that at any meeting of the Council held for the purpose of an inquiry under section 21, either five members of the Council or not less than three members of the Council and two assessors from the panel appointed under subsection (2) shall be a quorum. Members consider that there should be at least one lay member attending each disciplinary inquiry. After discussion, the Administration has agreed to amend the new section 21B(1) to the effect that at least one of the five persons forming the quorum shall be a lay member, subject to the majority being registered medical practitioners.

As regards the panel of assessors to be appointed under the new subsection (2), Members note that the panel serves as a pool of reserves to supplement members of the Medical Council for the purpose of conducting an inquiry under section 21 and that its composition is modelled on that of the Medical Council.

In considering the composition of the Preliminary Investigation Committee, Members have noted that under clause 26(3), a new section 21(4A) is added to provide that a member of the Preliminary Investigation Committee who is also a member of the Council shall not attend the subsequent disciplinary inquiry, if there is one. In order to ensure that there will be lay member's participation in

such inquiries, Members consider that the number of lay member on the panel of assessors should be increased so that they can take turns to attend disciplinary inquiries, if required. Some Members also observe that lay persons serving on the panel could become suitable candidates for appointment to the Medical Council in future after they have acquired sufficient experience on the panel.

After discussion, Members and the Administration agree that the number of lay members on the panel of assessors should be increased from two to four.

The Administration has proposed to add a new clause 39A. Section 5 of the Medical Registration (Amendment) Ordinance (No. 87 of 1995) added a new section 7A to the Medical Registration Ordinance to state the eligibility criteria for taking the Licensing Examination.

Members note that since the introduction of the Licentiate Examination in 1977-78, the Medical Council has an internal guideline under which overseas medical graduates must have undertaken a period of internship before taking the Examination as the Medical Council considers that internship is part and parcel of the medical training programme.

To provide legislative support for this practice, the Administration has proposed a new clause 39A to amend section 5 of the Medical Registration (Amendment) Ordinance to state that for the purpose of subsection 1(b)(i), the five-year full-time medical training shall include a period of internship as approved by the Council. Members support the proposed provision.

The various amendments to be moved by the Secretary for Health and Welfare at the Committee stage are supported by the Bills Committee.

Mr President, with these remarks, I commend the Medical Registration (Amendment) (No. 2) Bill to Honourable Members.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, with regards to the contents of the Medical Registration (Amendment) (No. 2) Bill 1995, I think there are two questionable points. The first point is related to the composition of the Medical Council. Although the Bill proposes to increase the number of lay members to four, the number is still on the lower side when compared with the number of members who are medical practitioners; thus, the increased number is still not big enough to adequately reflect the views of the public. The

second point is related to the Health Committee, which is concerned with the assessment of the mental condition of physicians. The composition of the Committee is especially unreasonable because it does not even include any lay member, meaning that there is no way for views outside the profession to be reflected to the Committee.

Because of these two points, I am not at all convinced of the effectiveness of the Bill, nor will I support it. It is especially worth noting that the functions of this Medical Council include, among other things, the handling of issues concerning doctors' professional ethics, ranging from the sale of banned drugs and cheating of consultation fees, to immoral acts against patients. If no lay members were included to express their views or take part in the arbitration process, leaving only professionals to arbitrate, I am sure biases will result. The council set up for the practitioners of any particular profession must be fair and open and be able to foster increasing public confidence in it before it can gain social acceptance.

We all know that, nowadays, the people of Hong Kong have become increasingly aware of democracy and human rights, and they are demanding greater transparency from the Government. Regrettably, the Medical Council, in refusing to increase the number of its lay members, has failed to align with public opinions. Let me reiterate that I hope to see more lay members joining the Medical Council in future, and that I hope lay members can be introduced to the Health Committee. My remarks are very simple, chiefly because I have already expressed my views at the Bills Committee. At that time, I have also mentioned that only four lay members in the Medical Council as currently proposed were still insufficient. I hereby reiterate my stand that I do not subscribe to the composition of the Medical Council and its Health Committee, and my remarks are focused mainly on these two points.

Thank you, Mr President.

MRS ELIZABETH WONG: Mr President, I welcome this Bill which I support. This Bill has been very carefully studied and scrutinized by the Bills Committee under the able chairmanship of the Honourable Edward HO. But I would like to make two simple points. First is on the dangers of protectionism, and secondly, on membership.

As regards the first point, Hong Kong has achieved a present excellent position by the legacy of a high standard through international recognition. To pursue this recognition, I think we should not be drawing in our horns or withdraw from the wisdom of our international involvement. To do so, we will pay dearly in future years and we will decimate the network of traditional goodwill that we enjoy today. We shall be penny wise today and pound foolish tomorrow. The underpinnings of Hong Kong's achievement today will then be corroded for as long as we are seen to adopt either a patronizing attitude or protectionistic manner towards what should really be a question of pursuit of technical knowledge. Without knowledge, our rice bowls will be broken. We who are legislators today should not be asleep at our wheel but must keep a vigilant watch that the process of registration under the Bill, which will be an Ordinance, will be kept to be as fair and transparent as possible.

As regards the second point on membership, I have received representation from many sources and the representations have made it clear that lay membership will be very relevant to the application of medical skill. The application of medical skill must necessarily involved patients and consumers. The rights of patients are best protected by the presence of some lay members on the Council itself and on its subcommittees or committees without arbitrary or artificial distinction between different committees. This is a necessary presence and does not, in my opinion, either undermine the dignity or the authority of the excellent professionals involved in the Medical Council.

Thank you, Mr President.

MR LAW CHI-KWONG (in Cantonese): Mr President, the Democratic Party is in support of the Medical Registration (Amendment) (No. 2) Bill 1995 on the whole. However, besides the amendment that I am going to move later, there are still some areas short of perfection in the Bill which should be taken into consideration when further amendments are to be proposed in the future. Two of them are as follows: Firstly, the composition of the Medical Council under the current legislation gives us a strong impression of "sharing a pie". For instance, The Chinese University of Hong Kong, the University of Hong Kong, the Hospital Authority and Hong Kong Academy of Medicine are alloted two seats each. As a result, the size of the Medical Council is doubled under the Amendment Bill. It is therefore not surprising that a group of private practitioners maintains that it is representative enough and should be alloted one or two seats.

Basically, as a layman of the profession, I should not have said too much, however, as a social worker, I have been devoting much efforts to enhance the development of my profession with the hope that members of my profession will join hands instead of upholding a "sectarian" mentality, each striving hard to mark a higher "vantage point" than the others. Likewise, I also hope that the medical practitioners will stand united on this front and work for the development of their profession, instead of jockeying for position or scrambling for a share of the pie. Meanwhile, the Bills Committee has already reached a consensus at an early stage that lay persons should occupy 20% of the membership of the Medical Council, it was therefore recommended that the number of lay members should be increased from two, the original proposed number, to four. Unfortunately, in the later stages, membership of the Council kept increasing and eventually reached 28. As a result, the proportion of lay members has dropped to 14%. This is regrettable. Of course, we can again request for the increase of the number of lay members to six, and six lay members out of a total of 30 would still be 20%. However, should such an amendment be made, the doctors will then request for an addition of two seats. If the case were allowed to go on like this, the size of the Medical Council would be incessantly on the increase, a phenomenon which is due to the "sharing of a pie" which I referred to earlier. I hope people in the profession will discuss this problem in the next review and adjust the proportion of lay members to our target of 20%.

Thank you, Mr President.

MR IP KWOK-HIM (in Cantonese): Mr President, from the standpoint of protecting patients' interests, the Democratic Alliance for the Betterment of Hong Kong (DAB) is of the opinion that the proportion of lay members in the Medical Council should be increased in order to ensure that there are lay members attending its formal meetings and its committee meetings, for while this will enhance the public credibility of the Medical Council, the Medical Council will also be able to deal with complaints in a fairer and more equitable manner. Meanwhile, from the standpoint of protecting the interests of non-Commonwealth doctors, the DAB is of the opinion that at present, the interests of the practitioners of traditional Chinese medicine have not been taken seriously or properly reflected. Hence, the Administration should enthusiastically consider allowing non-Commonwealth doctors and doctors who graduated from medical schools in mainland China to join the membership of the

Medical Council. In the meantime, it should expedite the progress in establishing the Traditional Chinese Medicine Development Committee to attain the ultimate goal of setting up a medical council for the practitioners of traditional Chinese medicine. Besides, the further extension of the superiority hitherto enjoyed by western medical practitioners should be properly addressed in order to ensure that the interests of patients could be fully safeguarded.

Mr President, the DAB is in support of the Amendment Bill.

DR LEONG CHE-HUNG: May I begin by putting it on record the appreciation of the medical profession to the chairman and members of the Bills Committee who have worked so hard to understand the intricacy of this Bill in relation to the registration of the medical profession. I must place on record too our appreciation of the Government in finally presenting this second half of the Bill and for agreeing to move certain amendments. Yes, the Government has procrastinated for quite a few years. Yes, there were times when I almost had to resort to moving a Member's Bill. But I presume it is better late than never.

Mr President, with the passage of this Bill, hopefully today, and together with the Medical Registration (Amendment) Bill 1995 passed last July, though never perfect, the following areas will be achieved both for the benefit of the public and the medical profession which I represent.

Strengthening professional autonomy

As a start, Mr President, the Bill calls for professional autonomy. Autonomy for the profession to determine standards on which registration to practise will depend, not by the Government nor by the state. This is fundamental to all professions and this is why the nine professional groups fought so hard to have this enshrined in the Basic Law during the days of the drafting exercise.

Mr President, the registration and controlling body for the medical profession lies in the Medical Council. Hitherto, even up to today, this Council is completely appointed by the Governor. In short, the current Council is

answerable only to the Government, not to the profession. This defies the core of professional autonomy. Ironically, if you look at the other professions, other than the Councils of the four health-related professions, they are all elected by the respective professions and accountable to the professions.

The Medical Registration (Amendment) (No. 2) Bill seeks to alter the size and the composition of the Medical Council and with its passage, 50% of its members will be elected by the profession and answerable to the profession. This though inadequate must be said to be a big step forward. But I still fail to understand why the Government refuses to grant full membership of the Medical Council to the profession whilst there is already precedence for the lawyers, the barristers, the accountants, the architects, and the engineers, and so on. With the passage of this Bill, I hope the other health care professions will look at their Councils, "Nursing Board" for example, and move towards achieving some degree, if not all, of professional control.

Mr President, the Honourable LAW Chi-kwong has queried why would the increase in lay members of two should be met with a similar increase in two elected members from the medical profession. The reason, Mr President, is basically very simple. The list of doctors from the two universities, for example, the Hospital Authority, the Department of Health and, obviously, the two lay members, are appointees of the Government. In short, they still represent the Government although they may well be doctors. On the other hand, those elected by the profession will be representing the profession, accountable to the profession. In short, to maintain the same degree or at least some degree of professional autonomy, a similar increase in elected number is necessary to allow at least a 50% of their members to be accountable to the profession. In this stage, Mr President, if all of us are concerned and looking forward for democratic process to represent the people, I hope that the Democratic Party would understand that with at least 50% elected, we would be able to represent the people, not the Government.

Mr President, Members of this Council may have received recommendations from different medical bodies to have these 50% elected seats designated by law to certain sectors of the medical profession. This will not do and this I will not condone. For such move not only will sectorize the profession, instead of unifying them, but by allotting the seats to different bodies

by law, it goes against the basic concept of professional autonomy which must be our fundamental core value.

More lay members for professional bodies

With the change in size and composition of the Medical Council comes also the increase in participation of lay members. The current quota of one lay member will be increased to four. The profession welcomes the participation of lay members in the Council especially during the different stages of disciplinary inquiries. For we believe that justice must not only be done but seen to be done. Furthermore, any disciplinary activities of the profession should not be done within a black box constituted by the professionals alone.

Incidentally, I would like to remind the Honourable Mrs Elizabeth WONG that the original Bill introduced by the Government consists only of two members and this Bill was devised many years ago when she herself was Secretary for Health and Welfare.

Ironically, whilst members of the public are all out to push for lay representatives in the Medical Council, none have today been forthcoming to demand lay representatives in other non-health care related professional councils which in most cases are entirely constituted by professional people. I always fail to understand these double standards and wonder how the public acquired these double standards.

Role of the academy in specialist register

The Bill before us, Mr President, calls for the setting up of a Specialist Register. This is long overdue. Without being boastful, Hong Kong's medical standards are in the world's forefront. Furthermore, our population demand not just medical care but quality care and specialist care. A Specialist Register is therefore needed so that the public would know who to go to in case of special needs. Yet this must be backed up with ways and means of training doctors to this level, with ways and means to vet their standards, and with ways and means to ensure that they catch up with the improvement of standards on a day-to-day basis. It was with this in mind that an Academy of Medicine was set up three years ago by law. The timing is therefore right now that the Academy is

running at full scale, and we should be moving into specialist registration and recognition.

It therefore comes as a surprise that the Administration in its first draft of the Bill indicated that a doctor could register as a specialist even though he/she has no relationship whatsoever with the Academy. Hiding behind the Bill of Rights arguing that you cannot force any person to join any organization, the value and the role of the Academy is gently tuck out of the way. Fortunately, at the end of the day, the Administration is willing to concede that every applicant for Specialist Register must have their standards and training judged and certified by the Academy. The Medical Council would also act as an appeal body should the applicant fail to pass the assessment of the Academy. This, though inadequate, is a big step forward. However, I would still like to place on record my personal reservation and that of the profession.

There are of course those within my own profession, who have received training in systems different from those determined by the Academy, had raised objection and have even brought in the pressure of politics to bear on the Bills Committee. I condemn all these of course. For whilst we should be as flexible as possible in determining our training criteria, we are here to establish a system for Hong Kong. It is a Hong Kong system we are after, not an American, not a Japanese, not a United Kingdom system. Furthermore, political pressure should never be allowed to override professional autonomy. This is against all democratic principles and that any democratic institution should condemn.

Fitness to practise

Finally, Mr President, the Bill calls for further enlargement of functions of the Medical Council, in particular, the setting up of a Health Committee. A doctor if determined by his peers to be suffering, or otherwise, from certain health (mental or physical) problems that would interfere with his practice, this Committee will be charged with the task to analyse the situation and to recommend and advise changes in his/her practice even up to termination of his/her practice on health reason.

It may be timely for me to stress that this Health Committee is not a

disciplinary body. It does not act when a doctor has committed a misconduct in his/her own practice.

Mr President, as I mentioned at the very beginning, this amendment Bill, hopefully with the amended provisions passed last July, are still far from perfect. The medical profession will be looking at areas which perhaps will need further improvement to better the profession and to protect the public, and suggest amendment in the course of time.

With those remarks, Mr President, I support the Bill, the amendments to be moved by the Government, but would reject the amendment by the Honourable LAW Chi-kwong. Thank you.

MR MOK YING-FAN (in Cantonese): Mr President, on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADP), I speak from the point of view of consumers. Just now, many of our colleagues have expressed extensive views which are concurrent, therefore I shall not repeat them. My view mainly concerns the composition of the Medical Council, that is, the proportion of lay membership and the ratio between professionals and lay members in the Preliminary Investigation Committee and the Education and Accreditation Committee. We Chinese have a very figurative saying that: "Genuine gold fears not the test of the furnace fire." I think should professional medical practitioners want to project to the public their image of being fair, impartial and deserving of public credibility, they would have to allow an appropriate proportion of lay members to join the Medical Council. At present, there are only four lay members within a membership of 28. So, will the decision-making ability of the Medical Council really be affected by the addition of two lay members?

The fact is that it will not. Also, this proportion is still far less than that in its British counterpart. We all know that juries of the court do not consist entirely of professional lawyers or people in the legal field, and the system has been time-honoured. Now, the Medical Council only has to make the first step forward, but even this move is so conservative. I think this is far too distant from the demands of our society nowadays, the urge for democracy and the accountability to members of the public. Therefore, the ADP finds the

proportion of lay members as specified in the Medical Registration (Amendment) (No. 2) Bill unacceptable and has reservations about it. Of course, having efforts made is always better than making no efforts at all. Under the present circumstances, we can only accept this Bill reluctantly. However, we will also support the proportion of lay members in the Health Committee as proposed by the Honourable LAW Chi-kwong.

Thank you, Mr President.

MR MICHAEL HO (in Cantonese): Mr President, I will be glad if the Medical Registration (Amendment) (No. 2) Bill were passed, and I am very glad to see that the Bill introduces to the Medical Council a mechanism whereby 50% of the members are directly elected, whereby the proportion of lay membership is increased, and the addition of a Specialist Register. I am also glad to see that the amendment to be moved later by the Honourable LAW Chi-kwong seeks to include lay members to the Health Committee. All in all, this is a step forward, yet this step should advance further in the future. It is very much my hope that this Medical Council, with 50% of its members being returned by election, could be more independent and less submissive to the Government influence. It is certainly my very hope that a bill relating to the Nursing Board of Hong Kong will soon be submitted to the Legislative Council, with a similar proposed amendment, which is to introduce directly elected members to the Board.

As to the lay membership of the Medical Council, I still find it not satisfactory because only four seats would be taken up by lay persons even after the amendment to the bill today. I concur with the view of the Hong Kong Patients' Rights Association that despite the fact that lay members constitute only one third of the composition of the Medical Council, it could, in fact, still further enhance the credibility of the Medical Council. There was quite a diversity of views expressed in the Bills Committee, but we feel that it would not be worthwhile to argue on the number of lay members during the Committee's meetings. However, it is my very hope that these four lay members could bring forth a new look for the new Medical Council, so that they could be better accepted by their professional counterparts within the Medical Council while members of the public could see how these lay members contribute to the better operation of the new Medical Council.

Referring to the query raised by Dr the Honourable LEONG Che-hung just

now as to whether there have been double standards when he mentioned that we had demanded for a further increase in lay participation in the Medical Council, Mr President, as a matter of fact, not many bills concerning the various professional boards have been submitted to the Legislative Council in the past few years. I believe that if the Secretary for Health and Welfare could submit to this Council next year a bill to amend the Nurses Registration Ordinance, that bill should have been treated in the same manner. I do not think the colleagues of this Council will apply double standards.

As for the Health Committee, I support the amendment moved by Mr LAW Chi-kwong. It is my opinion that if this Committee were to have a lay membership, it would become more impartial and could at the same time convince people that it is more impartial. Mr President, I will speak again when this Council resolves itself into Committee, and I will speak, in particular, on the proposed amendments in this respect.

Thank you, Mr President.

SECRETARY FOR HEALTH AND WELFARE: Mr President, I should like to thank the chairman and members of the Bills Committee for their careful scrutiny of the provisions in the Bill. The Bill, if passed by this Council, will lead to four major changes.

First, the Medical Council will have an expanded membership to broaden its representation and to help the sharing out of the increasing workload. The addition of 14 members to the Council will bring the total number of members to 28. Of the 28, 14 will be elected, seven to be elected from all registered medical practitioners on the General Register, and the remaining seven to be elected by the Council members of the Hong Kong Medical Association. The introduction of elected members into the Medical Council will encourage greater involvement of the profession in its own affairs.

Secondly, the provisions regarding the introduction of a Specialist Register pave the way for the formal registration and control of medical specialists.

Thirdly, apart from the existing Licentiate Committee and the Preliminary Investigation Committee, three more statutory committees, namely, the Health Committee, the Education and Accreditation Committee and the Ethics

Committee will be established to look after other important aspects of the Council's work.

Lastly, the Medical Council and its Health Committee will be able to prohibit the disclosure of information relating to an inquiry by the Council or a hearing by the Health Committee if it is in the interests of the complainant, defendant or witness. In addition, for the protection of the public, the Medical Council's Disciplinary Order will take effect on publication in the Gazette.

With these remarks, Mr President, I commend the Bill to Members.

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

Bill read the Second time.

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

LEVERAGED FOREIGN EXCHANGE TRADING (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 13 March 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).

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 13 March 1996

MR CHIM PUI-CHUNG (in Cantonese): Mr President, the Securities and Futures Commission (SFC) has introduced a year ago legislation to control the leveraged foreign exchange trading. As shown in the information, Hong Kong used to be a free society and the Government, in particular, has remarked with complacency that Hong Kong shall remain as a financial centre. We have to appreciate that the transition from non-existence to existence and from something small to something big are signs of social progress. However, if by way of the word "monitor", a policy could reduce something from big to small and then into nothingness, then such a policy would have completely contradicted the fundamental policy of the Hong Kong Government, which is the policy of active non-intervention. Such a policy is, in fact, actively stifling certain trades.

I certainly support the Government in taking appropriate steps as regards monitoring measures, but I would also like to question whether such measures are normal and fair enough. According to information, only 37 leveraged foreign exchange trading companies have been approved by the SFC over the past year or so, of which more than five have already closed down of their own accord, and some have even returned their licences to the SFC. Under such circumstances, there is evidence that the SFC should review whether or not such a practice complies with the most basic interests of the people of Hong Kong.

On the other hand, the SFC has introduced a new product, the rolling forex, into the Hong Kong Futures Exchange and allowed the SFC to initiate the promotion of this product in the housing estates. I would like the Secretary for Financial Services to tell the Hong Kong people, in no uncertain terms, whether this is a lawful type of product or not. Is the Government intending to stifle the leveraged foreign exchange trading and substituting it with another type of product? How lawful is this type of product and what protection does it offer? Mr President, I can clearly state that I am not involved in any such kind of business, nor do I have any contact with it. The Government certainly owes small investors an understanding of the issue.

Secondly, Mr President, the relevant bill has mentioned the appointment of "fit and proper persons", and I personally have no objection to it. It is because, as a public body, the SFC has the right to appoint fit and proper persons to assess the qualifications of any person applying for a licence, directorship, or even permission to become a substantial shareholder. This is essential. However, I

would very much like to have a list stating clearly the criteria which the fit and proper persons should possess. The SFC can even require that such a person be a university graduate, handsome and so on. Whatever the requirements are, they must have to be listed out clearly for the sake of definition. The right of construction should not be left to those in authority because they are sometimes vitally interrelated with the well-being of the economy or the finances of Hong Kong as a whole. The reason is that there are still many foreigners in the SFC (I am not discriminating against the foreigners, nor am I biased against them), once when the countries which they are representing are competing with Hong Kong, their behaviour would inevitably induce suspicion.

As such, I very much hope that the Secretary for Financial Services could explain clearly what the term "fit and proper persons" means. If he cannot do so, I still hope that he could exercise his authority and require the SFC to draw up a list, so that all those concerned would know whether they can meet the requirements, or even what would amount to a contravention of the Ordinance, so that compliance with the provisions could be made; or to put it in coarser terms, so that they can "die a complacent death". If not, applicants would have no idea why they were rejected. I should think that the Secretary for Financial Services is exercising his authority over the SFC on behalf of the Financial Secretary and the Governor; but he often says that his powers are not too sufficient. I very much hope that in relation to this matter, he would say he has the power to do so, otherwise, it would be too irresponsible of him to put up any excuse again.

Mr President, thirdly, a reform is imminent. Supposing some leveraged foreign exchange trading companies which have been rejected or their substantial shareholders who are not fit and proper persons exercise their powers to take over other licensed leveraged foreign exchange trading companies and the offer substantial shareholdings of those companies to persons who are not fit and proper. I very much hope that the Secretary for Financial Services can explain what is meant by "substantial". Does substantial mean more than 50%; or 10%, or 90%? To me, whatever the percentage is, the most important thing is to have it put on written form so that the position can be clear enough. Although the right of interpretation rests with the SFC, I very much hope that we would not have any ambiguity in the law which could lead to any irrationality. I am fully convinced that it would not be a big problem to define "substantial" in terms of a percentage.

Mr President, morally, I certainly would give support to this Bill, because

as everyone knows, since the leveraged foreign exchange trading came into existence, a dispute has occurred in which both parties have to pay a great deal of legal charges. Therefore, if remedies were made where inadequacies are noticed, that certainly shows that the Government is adapting absolutely well to a modern society by making adjustments and behaving responsibly towards the public. I hope that all Government departments and monitoring authorities would not rigidly stick to the conventions. If there is a mistake, they should face up to it and accept the reality that the society portrays. That is the culture of modern politics and, also the culture of monitoring.

Mr President, although I support this Bill, I very much hope that the Secretary for Financial Services could later give a clear statement in response to the three issues that I have just raised. I would also express support of the Bill on behalf of our trade and those of the community who are concerned about this issue. It is very unfortunate that may colleagues of this Council are unfamiliar with this Bill and so they have conducted very little discussion on it. However, the representation of many people are very dubious indeed.

Mr President, these are my remarks.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Mr President, I would like to respond briefly to the speech made by the Honourable CHIM Pui-chung.

Firstly, regarding the supervision over leveraged foreign exchange trading, we only came up with such a policy direction in the light of the actual circumstances at the time in question. It was mainly because many investors felt that there was inadequate protection and some investors even lodged complaints. The main purpose for the setting up of a monitoring mechanism is, of course, not to phase out the trade, but to establish a better monitoring framework for the trade so that investors can have full confidence, thereby enabling the trade to continue to develop.

The Securities and Futures Commission (SFC) has recently consulted representatives of the trade as to how to continue developing the business of the trade. Consultation papers and questionnaires have also been distributed. After collecting the opinions, the SFC will conduct a review to see if there are other means that can facilitate the trade to develop its business in a normal

manner.

The second and the third points raised by Mr CHIM relate to the definitions of a fit and proper person and of substantial shareholdings. As to the definition of a fit and proper person, the SFC has all along a set of guidelines governing the operation of securities and futures tradings. This set of guidelines is also applicable to the present situation. Therefore, there is no need to list out all the criteria again. In this regard, the paper elaborating on the definition of a "fit and proper person" is also available from the office of the Legislative Council Secretariat.

As to the definition of substantial shareholdings, we will remind the SFC in no uncertain terms that when enforcing the law in future, it should set out clear guidelines in advance so that people interested in the trade will know what is acceptable and what is not.

With regard to the product of rolling forex introduced by the Hong Kong Futures Exchange Limited (FC), as mentioned by Mr CHIM, the Government holds that the two products are complementary to each other. They have different functions, objectives and investors. It is within the responsibility of the FC to promote the trading of rolling forex, and this has not much conflict with the business of leveraged foreign exchange trading companies. Undeniably, in the past 12 months, some companies have ceased operation or returned their licences to the SFC. But this was mainly because of the changes in the market, not because there is any problem with supervision. In this regard, I hope that Members will not neglect the issues of the market and the preference of investors.

The above remarks are my response to the opinion expressed Mr CHIM.

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).

REHABILITATION OF OFFENDERS (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 2 November 1995

MISS MARGARET NG: Mr President, a Bills Committee was formed to study the Rehabilitation of Offenders (Amendment) Bill 1995. The Bills Committee, chaired by the Honourable Mrs Selina CHOW, has held five meetings, including four with the Administration.

The Bills Committee is in support of the Bill. I would like to highlight the major issues considered by the Bills Committee.

Exclusion of vocational drivers from the "immediately spent conviction" scheme

The Bill provides that, in general, payments under the fixed penalty scheme and other road traffic convictions are to be spent immediately without the waiting period of three years. However, vocational drivers are excluded from the "immediately spent conviction" scheme, for the purpose of employment or continued employment in their profession, so that employers, in particular transport operators, or those making employment decisions on their behalf can take into consideration the traffic conviction records of applicants.

Members are concerned that the proposal may be prejudicial to vocational drivers. They note that this is not the proposal of the Fight Crime Committee, but that of the Transport Branch and Transport Department. The Administration explains that the main reason for the proposal is that some of the minor road traffic convictions are to be spent immediately, for example, driving in excess of speed limit by more than 45 km/h, failing to comply with traffic signals, and so on, may reflect on a person's driving behaviour which may jeopardize the safety of other road users. After detailed study of the offences in the fixed penalty scheme and the operation of the "immediately spent conviction" scheme, Members of the Bills Committee are convinced that exclusion of

vocational drivers from the scheme is justified.

Views from the insurance industry

On consulting the insurance industry after the introduction of the Bill, the Administration proposes that:

(a) a person (including an employed or self-employed vocational driver) will have to disclose payment(s) under the fixed penalty scheme to insurers for the purpose of assessing and pricing a risk in respect of vehicle insurance unless the three-year waiting period had elapsed; and

(b) the rehabilitation scheme should not be applicable to insurance intermediaries registered under the Insurance Companies Ordinance (Cap. 41). This is in line with section 4(1)(e) of the Rehabilitation of Offenders Ordinance (Cap. 297) which excludes authorized insurers from the rehabilitation scheme.

Members support the proposed amendment.

Prescribed offices

The Schedule to the Rehabilitation of Offenders Ordinance provides a list of Prescribed Offices which are excluded from the rehabilitation scheme. The Bill proposes to add to the Schedule "any office" of the following organizations:

- Independent Commission Against Corruption
- Hong Kong Monetary Authority
- Office of the Commissioner of Insurance
- Securities and Futures Commission

Members are dissatisfied with this provision because it is not within the spirit of the Bill which is to liberalize the rehabilitation system. In particular,

the proposal to exclude "any office" in these organizations from the scheme is too stringent because it may include minor and clerical staff. Moreover, it does not tally with the existing items in the Schedule which only cover officers of a certain level in certain departments or disciplined services. The four organizations argue that their officers have regular access to confidential and sensitive information; therefore requiring a higher level of integrity. Members consider that the responsibility of the "offices", rather than regular access to sensitive documents, should be the criterion of inclusion in the Schedule.

In the light of Members' concern and after re-examination of their proposals, the four organizations agree to revise the proposals as follows:

For the Independent Commission Against Corruption

Any office of the Independent Commission Against Corruption grade staff or in the Operations Department.

For the Hong Kong Monetary Authority

Any office occupied by executive, professional, managerial, technical and secretarial staff.

For the Office of the Commissioner of Insurance

Any office in the Insurance Officer (including Commissioner and Assistant Commissioners) and secretarial grade.

For the Securities and Futures Commission

Any office occupied by executive staff (including Executive Directors) and secretarial staff.

The revised proposals are acceptable to the Bills Committee.

Certificate of No Criminal Conviction (CNCC)

Members strongly feel that the refusal to issue a Certificate of No Criminal

Conviction (CNCC) to an applicant with a spent conviction is entirely contrary to the spirit of rehabilitation of offenders. Convictions should be "once spent, always spent". Noting that this is an old issue, they wished to take the opportunity to amend the Bill requiring the issue of a CNCC to an applicant with a spent conviction. However, the Bills Committee was advised that such an amendment is outside the scope of the Bill.

In view of the fact that the issue of a CNCC is not within the ambit of the Bill and in order not to defer the passage of the Bill, it is decided that this issue should be followed up by the relevant Legislative Council Panels; that is, the Administration of Justice and Legal Services Panel and the Security Panel.

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

MR LAW CHI-KWONG (in Cantonese): Mr President, on behalf of the Democratic Party, I support the spirit of the Bill. As the saying goes: there is no greater virtue than learning from mistakes and making amendments afterwards. To a penitent person, retaining a conviction record against him is like branding a mark on his forehead, which would be an indelible sign. To erase conviction records for persons who have committed only minor offences would be a good thing to do. However, perhaps because I am a social worker, I cannot help feeling that the amendment on this occasion can be further improved in many aspects for the benefit of many more penitent persons.

One of the reasons why I joined the Bills Committee on this Bill is that I wish to help those with spent convictions and those who have, as commonly known, "been cleared of their records", in obtaining their Certificates of No Criminal Conviction (CNCC). Unfortunately, the Legal Adviser of the Legislative Council has advised us that this issue is outside the scope of the Bill. The Democratic Party is not satisfied with the Government's reply because this would mean that amendments this time would not improve the condition of the persons mentioned. On behalf of the Democratic Party, I hereby urge the Government once again to improve the arrangement for the issue of CNCCs so that penitent persons or those who have "been cleared of their records "can be issued with CNCCs.

On behalf of the Democratic Party, I support all amendments put forward today under the Bill.

Thank you, Mr President.

SECRETARY FOR SECURITY: Mr President, I should like to thank the Chairman, the Honourable Mrs Selina CHOW, and other Members of the Bills Committee for their thorough and careful study of the Rehabilitation of Offenders (Amendment) Bill 1995. I would also like to thank the Honourable Miss Margaret NG for her speech supporting the Bill. All the Committee stage amendments which I am going to move have been discussed and agreed by the Bills Committee.

This Bill, which was introduced into this Council in November last year, seeks to expand the scope of the rehabilitation scheme under the Rehabilitation of Offenders Ordinance, so that more people who have committed minor offences can benefit. The current scheme provides that where a person, on a first conviction, is not sentenced to imprisonment or a fine exceeding $5,000, the conviction can be "spent" after three years so long as the offender has no further conviction. The person concerned is permitted to say nothing about his spent conviction in his business and social dealings, such as in application for jobs, hire purchase and the like. Moreover, the person cannot lawfully be refused employment or admission to a profession on account of his spent conviction.

We propose in the Bill to expand the current rehabilitation scheme by raising the sentence limit, so as to cover any first-time offender who is sentenced to a fine not exceeding $10,000 or imprisonment not exceeding three months. We also propose that persons who have been convicted of minor triad-related offences, but have subsequently renounced their triad membership under the Triad Renunciation Scheme, should be covered by the rehabilitation scheme if they meet the requisite criteria.

In the course of examining the Bill, the Bills Committee has expressed concerned about the effect of a spent conviction on a prospective emigrant. I should in this context wish to point out that the Rehabilitation of Offenders Ordinance does not have extraterritorial effect, and cannot seek to override any law of a foreign country which requires applicants for emigration to disclose all criminal convictions. Within Hong Kong, an applicant's failure to disclose a

spent conviction would be lawful, but whether or not he would be protected in the foreign country concerned would depend on the law of that country.

At present, prospective emigrants are required by the immigration authorities of the major emigration destinations to produce Certificates of No Criminal Conviction (CNCC) issued by the police. In making an application for a CNCC, the applicant is required to authorize the police to disclose any criminal conviction recorded against him to the relevant consulate and immigration authority. If the applicant has a spent conviction, the police will issue him with a refusal letter, which contains details of the conviction, and is stamped with a chop stating clearly that the conviction is considered to be spent in Hong Kong by virtue of section 2(1) of the Rehabilitation of Offenders Ordinance. It is then up to the applicant to decide whether he wants to present it to the consulate. The issue by the police of refusal letters to applicants with spent convictions has been held by the courts to be consistent with the provisions of the Rehabilitation of Offenders Ordinance.

We have been advised by the consulates of major emigration destinations that a spent conviction is not necessarily a bar to emigration. Convictions of minor offences alone will not normally render a person ineligible for a visa, and convictions currently regarded in Hong Kong as spent are rarely considered sufficiently serious to cause rejection of an emigration application. However, if an emigration applicant fails to declare a spent conviction, and this fact comes to the consulate's attention, his application may be rejected. If the person concerned has already emigrated, it could result in his eventual deportation back to his original place of residence. Depending on the nature of the undeclared conviction, such refusal or deportation could have been avoided had the conviction been declared at the time of application. Seen in this light, the current police practice actually helps to protect the interests of emigration applicants. In response to the Bills Committee's request, we explained our position on the issue of CNCCs to the Administration of Justice and Legal Service Panel and the Security Panel at their joint-Panel meeting held this Monday.

I would now like to turn to the major amendments which I will move at the Committee stage. Clause 5 of the Bill proposes, among other things, the exclusion of certain proceedings under the Banking Ordinance and the Insurance Companies Ordinance from the rehabilitation scheme. Having consulted the insurance industry, we propose to move amendments to this clause, so as to

expand the exclusion to cover proceedings under the Insurance Companies Ordinance in assessing a person's suitability to become, or continue to be, an appointed insurance agent or an authorized insurance broker, or continue to be, an appointed insurance agent or an authorized insurance broker. This proposal is made in the interests of the insuring public. Owing to the complicated nature of the insurance business, a potential policy holder relies heavily on the professional advice of the agent or broker, who may be handling substantial sums of clients' monies. To avoid any fraud or misappropriation of funds, it is necessary to ensure that an agent or a broker is a fit and proper person.

The proposed section 2(1B) under clause 3 of the Bill allows payments under the fixed penalty scheme to be spent immediately without the three-year waiting period. In the case of vocational drivers, we propose that, for the better protection of public safety, their payments under the fixed penalty scheme should only be spent after a period of three years, so as to enable transport operators to take into account such payments in determining applications for employment. However, professions currently excluded from the rehabilitation scheme under section 4 of the Ordinance, and those proposed to be excluded under clause 5 of the Bill, cannot benefit from this "immediately spent" arrangement. We consider this arrangement unreasonable. While the public has the right to expect the highest standard of probity from these professions (such as barristers, solicitors and accountants), we do not necessarily think that the public would expect them to drive better. I therefore propose to move amendments to clause 5, so that except for vocational drivers who have to wait three years, other professions excluded from the rehabilitation scheme can have their payments under the fixed penalty scheme spent immediately.

In the course of its deliberation, the Bills Committee recognized that traffic conviction records were not only important for assessing a person's suitability for employment as a vocational driver, they were also important factors in assessing and pricing a risk in respect of vehicle insurance policies. I will, therefore, move an amendment to clause 5(e) by adding a new subsection (6), so that an insurer, or a person acting on his behalf, can take into account fixed penalty payment in the previous three years when assessing and pricing a risk in respect of vehicle insurance. The amendments proposed would mean that while payments or orders to pay in respect of minor traffic offences are regarded as spent immediately for most purposes, they are not considered spent in the

assessment of a risk in respect of vehicle insurance or a person's suitability as a vocational driver, unless a period of three years has elapsed.

Another area on which the Bills Committee expressed concern was the list of prescribed offences under clause 8(c), which are excluded from the rehabilitation scheme. As drafted, these include any posts in the Independent Commission Against Corruption, the Hong Kong Monetary Authority, the Office of the Commissioner of Insurance and the Securities and Futures Commission. The Bills Committee considered that minor staff, such as cleaners and office assistants in these four organizations should not be excluded from the rehabilitation scheme. We agree with the Bills Committee' view, and I will move an amendment to clause 8(c) so that minor staff, and staff who do not have frequent access to sensitive information in these four organizations, are not excluded from the rehabilitation scheme. This is in line with the objective of the Bill to enable more people to benefit from the rehabilitation scheme, while at the same time ensures that public expectation of high probity in certain positions of trust will not be put at risk.

Mr President, with these remarks, I recommend the Bill to Honourable Members.

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

Bill read the Second time.

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

INTELLECTUAL PROPERTY (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1995

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

MR AMBROSE LAU: Mr President, a Bills Committee, chaired by me, was formed to study the Intellectual Property (World Trade Organization Amendments) Bill 1995. The Bills Committee and its technical subcommittee

have held eight meetings with the Administration. Views from six deputations and 17 written submissions have been considered.

The Bills Committee is in support of the Bill, subject to the proposed Committee stage amendments to be moved by the Secretary for Trade and Industry. I would like to highlight the major issues considered by the Bills Committee in its scrutiny of the Bill.

The minimalist approach

Members of the Bills Committee note that the Bill is intended to serve as an interim measure to enable Hong Kong to fulfil its obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. Separate comprehensive bills on trade marks, patents, copyright and registered designs for modernization or localization purposes will be introduced later in the current 1995-96 Session.

Having regard to TRIPS Article 1 which provides that World Trade Organization (WTO) members are free to determine the appropriate method of implementation within their own legal system and practice, the existing intellectual property regime in Hong Kong, the interim nature of the present legislative exercise and the urgency in compliance with the TRIPS requirement, the Administration has taken a minimalist approach in drafting the Bill. The Bills Committee supports this approach.

Public consultation

Given the wide implications of the Bill on the industry and the general public, Members were concerned that no public consultation had been conducted on the Bill before its introduction.

To address Members' concern on public consultation, the Administration held a seminar in November 1995 for interested organizations; and the views collected together with the Administration's responses were forwarded to the Bills Committee for consideration. All participants (41 representatives from 20

organizations) at the seminar expressed support in principle for the Bill to implement TRIPS.

Major issues

In addition to the above general issues, there are five major issues of the Bill considered by the Bills Committee. They are: new copyright piracy offence, parallel import, rental right for film, definition of a trade mark and expanded right of trademark owners to sue for infringement.

New copyright piracy offence

There is general support to the policy intention to provide additional legislative tools to combat copyright piracy more effectively, particularly in tackling organized syndicates masterminding copyright piracy activities. This will enable Hong Kong to fulfill its obligations under TRIPS Articles 61 to "tackle wilful piracy on a commercial scale".

Reservations have been expressed by the Bills Committee and some organizations, especially the legal profession, on the wide scope of application of this new offence and that the proposed offence cannot cater for the territorial nature of copyright. The Administration agrees to amend the proposed section 5A of the Copyright Ordinance in a manner that would limit the scope of the section to illegal manufacture and importation, which are offences under section 21 of the United Kingdom Copyright Act 1956 and are the primary acts involved in copyright piracy. The legislative objective of the proposed amendment is to make a specific offence to target those who make preparations for or who aid, abet, procure or counsel the importation into Hong Kong of infringing copies. The proposal is able to achieve the policy objective to combat cross-border copyright infringement more effectively whilst at the same time addressing the concerns raised by various parties.

Treatment of parallel imports under customs border measures

Clause 9 of the Bill provides for a set of customs border measures to enable copyright owners, as well as their exclusive licensees, to apply for court order to detain suspected imports of infringing copyright products, including pirated products and parallel imports. The customs border measures are additional channels to facilitate trade mark and copyright owners in taking civil

actions.

The Bills Committee and the legal profession have expressed concern that such border measure provisions can be abused without adequate safeguards. Given the various views expressed on this issue, including the view that it may not be a strict requirement for WTO members under the TRIPS Agreement to provide customs border measures to cover infringing parallel imports, and in order not to delay the enactment of the Bill, the Administration proposes to defer the issue of the treatment of parallel imports under customs border measures for further consideration until the proposed new Copyright Bill is introduced. It is therefore proposed to amend clause 9 to exclude parallel imports from the customs border measure provisions in this interim exercise.

In view of some Members' concern to ensure that all parallel imports from both contracting parties to copyright conventions and the dependent territories of the United Kingdom would be excluded from the customs border measures, the proposed amendment makes it clear that the definition of "infringing copy" excludes parallel imports from countries, territories or areas to which the 1956 Copyright Act extends or applies.

Rental right

Given the various views expressed on the issue of rental right for films, including the question of whether WTO members are required under Article 11 of the TRIPS Agreement to provide for rental right for films, and in order not to delay the enactment of the Bill, the Administration proposes to defer the issue of rental right for films for further consideration until the proposed new Copyright Bill is introduced. Clause 10 is to be amended to this effect in this interim exercise. The Bills Committee accepts this proposal.

There were suggestions to add certain conditions to clause 10 for the rental right provisions for computer programs and sound recording to bring the provisions more in line with the TRIPS requirement and prevent computer software piracy under the disguise of rental.

The Administration has accordingly proposed to redraft the definition of rental in relation to computer programmes and sound recordings to the effect that rental right will not apply if the computer programme or the sound recording is not the essential object of the rental. In the light of the comments received, provisions are also proposed to clarify the meaning of "essential object of rental".

Definition of trade mark

There are divergent views as to whether Article 15(1) of the TRIPS Agreement requires WTO members to provide for the registration of signs which are not visually perceptible, such as sounds and smells in their trade marks legislation. Concern has been expressed that the definition in the Bill is based on the European Community Directive and is too wide and goes beyond the strict requirement of Article 15(1) of TRIPS.

After careful examination of the public responses on this issue, the Administration put forward two options for Members' consideration. The first option, which is the option preferred by the Administration, is to retain clause 18 as drafted. It is based on a liberal interpretation of Article 15(1) which the Administration considers is necessary to ensure that Hong Kong is in compliance with the minimum TRIPS requirements. The alternative option is to closely adopt the wording contained in Article 15 of the TRIPS Agreement. Members generally accept the alternative option which is in line with the minimalist approach.

Expanded infringement rights for trade mark owners

To address the concerns of the Law Society, the Administration proposes to add to clause 21 the words "or services associated with such goods" after the words "goods of the same description". These additional words, and the similar addition to clause 22, derived from section 20 of the Trade Marks Ordinance, would make clear that a proprietor of a trade mark would have the right to prevent a person from using similar marks for associated goods/services in cases where the use would result in the likelihood of confusion. However, the Bar Association disagrees with the Administration's revised clauses 21 and 22 which are considered to extend the rights given by registration in a manner not required by Article 16 of the TRIPS Agreement and change the law fundamentally by allowing infringement of a trade mark for goods by services mark use.

Member consider that the crux of the issue is whether a wider approach proposed by the Law Society or a narrower approach proposed by the Bar Association meets the minimum requirement of Article 16 of the TRIPS

Agreement. In this connection, a narrower interpretation of Article 16 is considered consistent with the minimalist approach. No amendments are therefore proposed to these clauses.

Closing remarks

In closing, I would like to thank Members of the Bills Committee for their contribution and representatives of the Administration for their co-operation in the study of the Bill. Without their strenuous efforts, the scrutiny of this technical and controversial Bill would have taken a longer time to complete.

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

MR JAMES TIEN: Mr President, the purpose of this Bill is to make the laws in relation to intellectual property rights in Hong Kong to meet the requirement of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization (WTO) agreement as soon as possible. For Hong Kong, being categorized as a developing country member, although in theory only needs to comply the obligations by 1 January 2000, an early commencement of legislation procedure is desirable to show our endeavour to implement the TRIPS agreement. This Bill is only an interim measure. What the Administration needs to do is to inspect each of the legislation related to intellectual property rights, and make necessary amendment to bring them in line with what TRIPS required.

We have to differentiate two kinds of changes here, the first one being mandatory, and the second optional. Given our short-term objective in this stage is to bring our laws in line with what TRIPS required in this exercise, we should not commit ourselves to any amendment which goes beyond TRIPS requirement. In this connection, the business community and the Liberal Party agreed in the Bills Committee to adopt the minimalist approach in scrutinizing the Bill. We should, therefore, pick out the optional changes and leave other issues to the relevant Bills, such as the Copyright Bill, which is to be introduced to this Council later. In the absence of a deadline, we hope that we can spend enough time to consult the public and debate these controversial issues in future Bills Committee meetings.

Mr President, five major issues were identified and considered in the Bills Committee, namely, new copyright piracy offence, parallel imports, rental right for films, definition of a trade mark and expanded infringement rights for trade mark owners.

First of all, we support the effort made by the Administration to provide additional legislative tools to combat copyright piracy more effectively. As a measure to strength protection of copyright licensees against piracy, we can hardly give a single reason not to support the Administration. We have received a number of complaints from copyright licensees of computer software, as well as audio and video software in the past who advocated their concerns on increasing the punishment of copyright pirates and strengthening enforcement by the Customs and Excise Department. Together with the increase of the establishment of the Customs and Excise Department, we hope the new amendments will facilitate the prosecution by the Legal Department and effectively discourage copyright piracy.

In view of the comments received by various organizations concerned, and given the time constraint of enacting the Bill as soon as possible, we support the suggestion to defer the more controversial issues, namely, the parallel imports and rental right of films, to the coming Copyright Bill to be submitted to this Council later.

Concerning the definition of trade mark, we support a liberal interpretation of Article 15(1) of TRIPS as proposed by the Administration.

As for the infringement rights for trade mark owners, we support the narrower interpretation of Article 16 of TRIPS as suggested by the Bar Association.

Mr President, as a conclusion, we support the adoption of the minimalist approach to this Bill of not going beyond what WTO required, and leave other issues to later legislation concerned.

Thank you.

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I am most grateful to the Bills Committee for its careful and efficient examination of the Intellectual Property (World Trade Organization Amendments) Bill 1995 under the chairmanship of the Honourable Ambrose LAU.

The objective of the Bill is to render the intellectual property regime in Hong Kong compatible with the standards and requirements in the Agreement on Trade-Related Aspects of Intellectual Property Rights, or the TRIPS Agreement in short. This Agreement is one of the multilateral agreements under the World Trade Organization(WTO). Hong Kong, as a full member of the WTO, is obliged to comply with the Agreement.

I am gratified that members of the Bills Committee have fully supported the Administration's initiative to implement Hong Kong's obligations under the multilateral TRIPS Agreement as soon as possible. The pragmatic and co-operative approach adopted by Members in examining the Bill has made it possible for the passage of the Bill today, some three and a half years ahead of the deadline for Hong Kong to implement its TRIPS obligations. The enactment of the Bill will help Hong Kong to demonstrate to other WTO members our firm commitment to a high level of intellectual property protection. It will also enhance Hong Kong's image as a responsible trading partner in the multilateral trading system, and as an international trading and services centre in the world.

During the Bills Committee's deliberations, interested parties and the legal profession have commented on various technical aspects of the Bill as well as expressed concerns on a number of issues. These issues primarily stem from the divergent interpretations of certain articles in the TRIPS Agreement and the different views over the consistency of certain clauses in the Bill with the existing legal framework in Hong Kong. After careful consideration of all the views expressed and the written submissions received, the Administration has agreed to modify a number of proposals in the Bill. The Administration has also agreed that some issues would need to be reconsidered in the context of the ongoing comprehensive law reforms on copyright and trade marks. I hope to be in a position to introduce a Bill on copyright and one on trade marks later this year upon the completion of the law reform exercises and taking into account views expressed by the public, professional and interest groups.

At the Committee stage later in this sitting, I will move a number of amendments to the Bill to reflect the agreements reached in the Bills Committee. I will also move other technical and minor amendments. All these amendments have been set out in the paper circulated in my name to Members earlier. There are just four major amendments that I wish to highlight.

The first one is concerned with the scope of the new copyright piracy offence. In clause 5 of the Bill, we originally proposed a new offence to fulfill the TRIPS obligation of combating wilful copyright piracy on a commercial scale more effectively. We received general support of this policy objective, but the legal profession expressed concerns over the scope and the application of the new offence as originally drafted.

To address these concerns, the Committee stage amendment to clause 5 seeks to replace the original offence provision with a new clause. The new clause adequately addresses the concerns of the legal profession while achieving the policy objective of tackling wilful piracy on a commercial scale more effectively. It makes clear the criminal acts, done outside Hong Kong, which are actionable. Such acts relate primarily to the manufacture of pirated copyright products outside Hong Kong for export to Hong Kong. The new clause also makes aiding, abetting, procuring or counselling of such acts an offence. I believe this new legislative tool will greatly enhance the Customs' capability in tackling cross-border piracy activities and the masterminds of copyright piracy syndicates, thereby protecting the legitimate interests of copyright owners and overseas investors in Hong Kong.

The second major amendment relates to the treatment of parallel imports under customs border measures. The Administration originally proposed to provide new customs border measures to strengthen border controls in order to help prevent the importation of infringing copyright products into Hong Kong, and to facilitate copyright holders including exclusive licensees to initiate civil actions against pirated copyright products and parallel imports.

The distinction between pirated copyright products and parallel imports is that the former generally refers to those copyright products manufactured without the copyright owners' authorization, while the latter generally refers to those

goods which are lawfully manufactured outside Hong Kong with the authorization of the copyright owners there, but their importation into Hong Kong is illegal under the existing copyright regime. The motion picture industry and the video rental business have expressed differing views on whether the new customs border measures should be applicable to parallel imports. They have also raised the broader issue of whether the existing criminal restriction against parallel imports should be maintained.

Having considered the various views on the interpretation of the requirement in the TRIPS Agreement and having assessed the importance of early enactment of the customs border measure provisions to enhance border control against pirated goods, the Administration has agreed to exclude parallel imports from the ambit of the new customs border measure provisions. The corresponding Committee stage amendment will achieve this by amending the definition of "infringing copy" in clause 9 of the Bill.

Members may wish to note that the Administration has advised the Bills Committee that it is not our intention to change the existing law relating to parallel imports in the present exercise. The Administration has undertaken to consider the broader issue of whether to maintain any restriction against parallel imports in the context of the comprehensive law reform on copyright. I can assure Members that before putting forward any legislative proposals relating to parallel imports, the Administration will examine carefully the views of interested parties and the public. We will seek to strike a fair balance between the various interests, including intellectual property protection, consumer welfare, free trade and competition.

Mr President, I would now like to turn to the third major amendment which is related to rental right for films. The Administration originally proposed in clause 10 of the Bill new rental right for computer programmes, sound recordings and films. During the Bills Committee's deliberations, divergent views have been expressed by the motion picture industry and the video rental business as to whether the new rental right is a requirement under the TRIPS Agreement and whether it would be in the consumers' interests to provide for rental right for films. Having considered the views expressed, the Administration has agreed to exclude films from the rental right provisions in the present exercise and clarify the meaning of "rental" for sound recordings and computer programmes so as to tie in with the language used in the TRIPS

Agreement. The issue of rental right for films will be reconsidered in the context of the comprehensive law reform on copyright.

The last major amendment is concerned with the definition of trade mark for the purpose of registration. The proposed new definition of trade mark in clause 18 of the Bill has been criticized as being too wide because the word "sign" used in the definition of "trade mark" could be widely interpreted to include any sound and smell. There have been concerns that such a piecemeal revision of the definition of trade mark might have undesirable implications on other areas of the existing trade marks law.

The Administration has explained to the Bills Committee the rationale for the proposal in clause 18 of the Bill, that is, to place it beyond any doubt that the new definition of "trade marks" would be fully compatible with the requirements of the TRIPS Agreement. Indeed, there have been similar legislative amendments in other common law jurisdictions to allow sounds and smells to be registerable as trade marks. Nevertheless, in view of the need for an early enactment of the Bill and the opportunity to reconsider the drafting of the definition of "trade mark" in the ongoing comprehensive "trade marks" law reform, we have agreed to revise the proposed definition of trade mark as set out in the Committee stage amendment to clause 18 to follow more closely the language used in the TRIPS Agreement.

Under the revised definition, any sign that is visually perceptible and capable of being represented graphically may be registerable as a "trade mark". The question of whether a sound or smell might still be registerable as a "trade mark" would be something to be decided by the Registrar of Trade Marks. The Registrar's decision is subject to appeal in court. The definition of "trade mark" would be considered again as part of the comprehensive review of the Trade Marks Ordinance.

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

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

Bill read the Second time.

Bill committed to a Committee of the whole Council pursuant to Standing Order

43(1).

NOISE CONTROL (AMENDMENT) BILL 1995

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

MRS MIRIAM LAU: Mr President, as this Bill is closely related to the Road Traffic Amendment (No. 2) Bill 1995, the House Committee sets up one Bills Committee to study both Bills. I therefore seek your indulgence, Mr President, to speak on both Bills at the same time.

As Chairman of the Bills Committee which studies these two Bills, I would like to report briefly on our deliberations to facilitate the Council's decision.

The two Bills have been introduced to impose stringent noise emission standards on vehicles when they apply for first registration so as to help reduce noise pollution in Hong Kong. When the Bills Committee studied the Bills, we also considered the environmental and economic implications of the proposed legislative amendments. We note that the noise emission standards adopted in the proposal are those standards currently adopted in Europe and in Japan, which have been regarded as the most stringent standards in the world. The Bills Committee is therefore satisfied that the proposed legislation would bring about some reduction in the overall traffic noise in a few years' time when the existing fleet is gradually replaced by vehicles which are able to meet the proposed legislation's stringent noise emission standards. As the proposal only targets at vehicles upon their first registration, it will not affect the existing vehicle fleet in Hong Kong.

However, while supporting the objectives of the Bills, the Bills Committee is concerned about the absence of an effective mechanism to monitor the noise performance of vehicles after registration as well, since vehicles can be modified after first registration. In this regard, the Bills Committee was informed that modifications to vehicles require the approval of the Commissioner for Transport and modified vehicles should undergo noise tests to ensure that they meet the

required standards. Modifications made without approval are criminal offences and road blocks are set up from time to time to check illegal modification of vehicles. Vehicles are also required to go through performance tests upon reaching six years after manufacture. The Administration has also agreed to convey the Bills Committee's concern to relevant government departments and to provide the Bills Committee with statistics on enforcement actions against illegal vehicle modifications. The Bills Committee therefore agreed to recommend that the Second Reading debate of both Bills be resumed at this sitting.

To tie in with the legislative timetable, the Administration has proposed two Committee stage amendments to postpone the effective date of the Bills from the original date of 31 March 1996 to a day appointed by the Secretary for Planning, Environment and Lands by notice in the Gazette. The Noise Control (Motor Vehicles) Regulation to effect the proposed control scheme is expected to take effect two months thereafter so as to allow importers sufficient preparation time for compliance with the Regulation. The Bills Committee agrees to support these amendments.

With these remarks, Mr President, and subject to the Committee stage amendments to be moved by the Administration, the Bills Committee recommends to this Council that both the Noise Control (Amendment) Bill 1995 and the Road Traffic (Amendment) (No. 2) Bill 1995 be supported.

THE PRESIDENT'S DEPUTY, DR LEONG CHE-HUNG, took the Chair.

DR JOHN TSE (in Cantonese): Mr Deputy, the Democratic Party supports the Government's proposal to step up the control of pollution caused by traffic noises.

The Democratic Party agrees that the Government should control pollution caused by traffic noises by way of first registration in order to avoid a substantial increase in financial and manpower resources. The Democratic Party, however, still has the following recommendations to make: The Bill seeks to control the noise level of newly imported vehicles only. However, after these vehicles have been imported and running for some time, the wear and tear on their engines will

cause the noise emission level of these aging vehicles to rise. Although the authorities concerned has indicated that vehicles are required to undergo a performance test six years after manufacture, the Democratic party doubted whether the Government will have sufficient manpower to implement these noise control measures.

Although the Bill seeks to control the overall traffic noises, there is still insufficient protection accorded to some people. Take bus drivers as an example, the level of traffic noise they are exposed to often exceeds that stipulated by the Ordinance. What deserves even more attention is that the sense of hearing of these drivers has been affected as the drivers have to put up with the noises emitted from the bus engines for prolonged period. Therefore, the Democratic Party urges the Government to enact legislation without delay to protect these people.

Mr Deputy, with these remarks, I support the Bill.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy, I am grateful to Mrs Miriam LAU, the chairman of the Bills Committee to study the Noise Control (Amendment) Bill 1995 and the Road Traffic (Amendment) (No. 2) Bill 1995, and other members of the Committee for supporting the Bills.

The Noise Control (Amendment) Bill is part of a legislative package which aims to control vehicle engine noise by requiring newly registered vehicles to meet specified noise emission standards. Adoption of noise standard will prevent vehicles with inferior noise performance from being imported into Hong Kong. The gradual phasing out of vehicles not meeting the standards will help keep noise levels down despite future increases in traffic volume.

When the Bills Committee considered the proposed controls, Members raised some concerns about the noise standards to be adopted and their enforcement.

Members have rightly suggested that we need very stringent noise emission standards to alleviate the problem of traffic noise, given that road traffic in Hong Kong is among the busiest in the world and that a lot of our major roads are very close to noise sensitive residential developments. We share this view wholeheartedly. Hence, we propose to adopt the European and Japanese

standards, which are the most stringent standards in the world. It is also our intention to upgrade them in line with future international trend and technological advancement.

We expect that the implementation of the noise emission standards will bring about a reduction in the overall traffic noise in a few years' time when the existing fleet is gradually replaced by vehicles which are able to meet the stringent noise emission standards. Meanwhile, we would continue to address the problem of traffic noise through careful planning of roads and noise sensitive developments, and implementation of noise mitigation measures such as noise enclosures, noise barriers and quiet road resurfacing programmes.

On enforcement, the proposed standards will be integrated into the "Motor Vehicle Type Approval" process which currently covers roadworthiness and exhaust emission requirements for new vehicles. Only those which meet the specified noise standards or other standards which are at least as stringent as the specified standards will be approved for first registration. Imported used vehicles not covered by the Type Approval process will be required to be individually tested at competent testing centres to ascertain that they meet the specified standards. Vehicles which are designed to the required standards should be able to sustain its noise performance throughout its useful life.

In closing, Mr Deputy, I would like to draw Members' attention to the implementation timetable of the proposed controls. The Bill is originally scheduled to commence on 31 March 1996. However, because of the need to give time to the Bills Committee to be formed to consider the Bill, we now have to defer its effective date and I shall move the necessary amendments at the Committee stage.

After enactment of the Bill, we shall table the Noise Control (Motor Vehicles) Regulation before this Council. In order to give sufficient time for vehicle suppliers to comply with the new standards and for the public to understand the new requirements, we intend to implement the standards two months after the Regulation is approved by this Council, which will be around August this year.

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).

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1995

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

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy, I have explained, in the course of the resumption of the Second Reading debate of the Noise Control (Amendment) Bill 1995, our proposal to alleviate traffic noise by imposing the most stringent international noise emission standards on vehicles at the first registration stage. The Road Traffic (Amendment) Bill enables the Commissioner for Transport to refuse first registration of vehicles which do not meet the specified noise emission standards. I urge Members to support this Bill, which provides the enforcement mechanism for the proposed controls.

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).

TOWN PLANNING (AMENDMENT) BILL 1995

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

MR ALBERT CHAN (in Cantonese): Mr Deputy, the Town Planning (Amendment) Bill 1995 was laid on the table of the Legislative Council on 15 November 1995. The Bill seeks to:

(a) empower the Town Planning Board to appoint committees from among its members to hear objections raised under section 6 of the Ordinance;

(b) state clearly that "public officer" does not include a judge so that the Governor may appoint a judge to the Appeal Board panel;

(c) provide for the appointment of more than one Deputy Chairman of the Appeal Board panel so that additional Appeal Boards may sit simultaneously to reduce the backlog of outstanding planning appeals;

(d) validate the decisions of the Appeal Boards made when a member of the Appeal Board was a judge; and

(e) clarify the nature of a continuing offence under section 23(6).

A Bills Committee, of which I am the Chairman, was set up on 17 November 1995 to study the Bill. The Bills Committee has received 10 submissions from interested organizations and individuals and has met deputations from four organizations.

After examining in detail the major issues in the six meetings held with the Administration, the Bills Committee have agreed on three amendments to the Bill.

The first amendment relates to clause 2. In order to speed up the work of the Town Planning Board in hearing objections and to clear its existing backlog, this clause seeks to empower the Town Planning Board to appoint committees from among its members to hear objections raised under section 6 of the Ordinance and to decide whether the plan in question should be amended to meet

the objections. Such committee shall consist of not less than five members with at least three of whom are not public officers and the quorum for a committee is the Chairman or Deputy Chairman plus two members.

Members have noted from the submissions received by the Bills Committee that there are concerns over the composition and operational procedures of the committees.

They also note that the present objection and hearing procedures have been criticized as unfair because the hearing of objections to draft plans is conducted by the same body, that is, the Town Planning Board, which prepares the plans. We consider that if members of the Town Planning Board are appointed to objection hearing committees, the problem of unfairness would remain unsolved even though efficiency in hearing objections might be improved. Members therefore consider that if possible, amendments should be introduced to address the problem that the Town Planning Board is judging its own cause.

However, the Administration considers that such a proposal requires thorough and in-depth deliberations and therefore should be considered in the comprehensive review of the Ordinance which is being conducted by the Administration.

Although most Members have indicated that they would support the proposals as an interim measure to clear the backlog subject to an undertaking by the Administration that it will introduce the major Town Planning (Amendment) Bill before July 1996 and that the Bill will cover major issues of concern such as the composition and operational procedures of the objection hearing committee, the Administration has provided neither such an undertaking nor an alternative undertaking that if the major Bill does not include the subject of objection hearing arrangements, the Administration will not raise objection to Members proposing amendments to the relevant provisions on the grounds that they are beyond the scope of the Bill.

In view of the Administration's failure to provide the requested undertaking, the Bills Committee does not support the provisions of clause 2. Members consider that by maintaining the *status quo*, the Administration will have a more pressing need to review the objection hearing arrangements and to introduce appropriate amendments to rectify the defects of the present system.

I will therefore move an amendment at the Committee Stage to delete clause 2.

The second amendment concerns clause 3. In order to clear any doubts on the validity of the appointment of a judge as the Chairman of the Appeal Board, clause 3(a) seeks to clarify that "public officer" does not include a judge. This is in line with a High Court ruling on 27 November 1995.

Some Members share the view that Justices of Appeal should not be appointed as Chairmen or Deputy Chairmen of the Appeal Board because it might cause embarrassment if a High Court Judge were asked to quash the Appeal Board's decision which was made by a Justice of Appeal sitting as Chairman/Deputy Chairman of the Appeal Board. Other Members prefer not to appoint judges to the Appeal Board because town planning is concerned with executive and not judicial matters.

After discussion, the Bills Committee has agreed unanimously that in future, only judges from the High Court or below should be appointed and a Committee stage amendment should be introduced to this effect. On review, the Administration has accepted the Bills Committee's proposal and will move an amendment at the Committee stage to effect the change.

The third amendment concerns clause 5. Members have strong reservations about the provisions of this clause which seeks to validate the decisions of the Appeal Board made when a member of the Appeal Board was a judge, except when the appellant has questioned the validity of the judge's appointment to the Appeal Board and applied for judicial review to quash the decision on or before 31 October 1995. They share the view that it is unjustified to introduce the proposed new clause which deprives the public's right to judicial review.

As regards the consequences of deleting the validation clause, the Attorney General's Chambers has advised that the underlying purpose of the clause is to provide a measure of certainty to the status of past decisions of the Appeal Board insofar as the position of the chairman or other member as a judge is concerned. Clause 5 follows as a supplement to the clarification in clause 3 that the term "public officer" does not include a judge and has the effect of precluding challenges to the validity of decisions of the Appeal Board based on that ground alone. If the clause were to be removed, the past decisions of the Appeal Board will not be protected against such challenges.

Members note that under the Supreme Court Rules, the time limit for a judicial review is normally three months from the date when the grounds for the application first arose. They also note that under the *"de facto"* doctrine, the acts of an officer may be held to be valid in law even though his own appointment is invalid. However, the doctrine would not apply to decisions taken after the appointment was called into question.

In the current context, the validity of the appointment of the Chairman of the Appeal Board was called into question in May 1995 on the basis that as a Justice of Appeal, he was a public officer for the purpose of section 17A(2). Because of the doctrine, it is unlikely that a court would uphold a challenge on that basis to decisions taken by the Appeal Board before May 1995.

After considering the legal advice on the matter, Members unanimously agree that the validation clause should be deleted. Having taken Members' views into account and reviewed the current situation, the Administration has agreed to move a Committee stage amendment to delete the clause.

Mr President, with these remarks, I commend the Town Planning (Amendment) Bill 1995 and the three amendments as agreed by the Bills Committee to Honourable Members.

Thank you, Mr Deputy.

MR ALBERT HO (in Cantonese): Mr Deputy, on behalf of the Democratic Party, I support the passage of the Town Planning (Amendment) Bill 1995 subject to the Committee stage amendment. The main reasons for our supporting the Bill have been incorporated in the speech made by the Chairman of the Bills Committee, the Honourable Albert CHAN. Therefore, I would not repeat them again. Yet I would like to take this opportunity to vent our dissatisfaction over the way which the Government has been handling the Bill, including the Government's attitude in tabling the Bill and which it adopted during the deliberation period.

First, the main purpose of this Bill is to define the construction of "public officer" in the Ordinance which does not include a judge. If this were passed, the status of the Justice of Appeal presently sitting on the Appeal Board can no

longer be challenged. The Bill was gazetted on 3 November 1995 when two proceedings, both concerned with the interpretation of "public officer" in the Town Planning Ordinance, were in progress. One of them has just been completed but still pending judgement by the judge. Apparently, the introduction of the Bill at that time was to resolve litigation problems that might arise in future. However, was it timely then for the introduction of the Bill?

Mr Deputy, as far as I remember, several proceedings on the legal construction of "public officer" have been instituted before, and at least three of the proceedings involved Legislative Council elections. However, the Government has never introduced any bill to explain the denoted meaning of "public officer" in the context of different ordinances. But when it comes to the case involving the Town Planning Ordinance, the Government introduced a bill prior to completion of the proceedings. This will, indeed, cause widespread discontent. First, if the amendment to the Ordinance were passed, will it deprive the rights of some litigants who were taking part in the proceedings? Just as some people who expressed their views to the Bills Committee said, is the Government trying to influence or interfere with judicial proceedings by legislative means? If this were done in the course of legal proceedings, will it be analogical to someone removing the goal all of a sudden during a soccer match when a player in front of the goal is poised for a kick, just as what a plaintiff in a litigation has described? I feel the introduction of the Amendment Bill at this time is very questionable.

Just now the Chairman of the Bills Committee said the Amendment Bill will contain a certain saving clause. These provisions are, superficially, introduced to ensure that those who are already vested with certain rights will not be deprived of those rights and, of course, superficially, those who are conducting proceedings are also included. Nevertheless, the saving clause contains three prerequisites. In deliberating the Bill, it is regrettably found that the litigants do not fulfill the three prerequisites and, as a result, their interests are not protected by these so-called saving clauses. Mr Deputy, if the Amendment Bill can easily deprive a plaintiff of his right to file a litigation, such a saving clause is undoubtedly existing only in form but lacking in substance. This is grossly unreasonable.

Mr Deputy, there is even a validation clause in the Bill which provides that the decision of the Appeal Board should not be affected by judicial reviews irrespective of the definition and construction of "public officer". This

validation clause carries a retrospective effect so that those who intend to apply for a judicial review in future will be stripped of their rights to do so. Mr Deputy, if the Government can deprive the right of a litigant to a judicial review, are we setting another very unusual precedent in legislation? The Government admitted then that even if the Amendment Bill were not passed, in which case a host of judicial reviews will continue to proceed in future and will even invalidated the legality of the composition of the Appeal Board, then not too many cases will be affected. In that case, why did the Government so casually introduce such a bill which carries a retrospective effect and will deprive the public of their rights to judicial redress?

Fortunately, Mr Deputy, during the course of deliberation of the Bills Committee, the Government listened to and accepted the opinions of the Committee and proposed amendments accordingly. Yet, it is the hope of the Democratic Party that in introducing Bills in future, the Government must fully consider two important principles: first, vested rights should be respected and should not be taken away easily; second, except under very exceptional circumstances, provisions carrying a retrospective effect and affecting the right of the public to judicial proceedings should not be introduced indiscriminately.

Mr Deputy, we are also dissatisfied with the arrangement concerning the objection hearing committee. Just now Mr Albert CHAN mentioned that members of the Bills Committee agreed at that time that, as an interim measure, this part of the Bill be approved. But we asked the Government to undertake to conduct a review in this regard in future, for after listening to the opinions of many people within the industry, we felt that the existing arrangement was problematic and run counter to the principle of justice. The Government told us repeatedly that it needed time to think, that it would carry out a comprehensive review on the Town Planning Ordinance later and would table a comprehensive Amendment Bill to this Council in this session as planned. What we did at that time was only making a reasonable demand to the effect that the Government should guarantee that the review would cover the operation of the objection hearing committees. We did not ask the Government to assure us that the review would bear fruit. All we asked for was the Government's pledge to conduct a review. If the review conducted by the Government decided that no changes should be made, please let us voice our opinions and let us make amendments, and the Government should not raise objection saying that this has gone beyond the scope of the Ordinance and, therefore, no discussion could be allowed. What we asked for is such a simple guarantee, but even this has given

rise to squabbles which have to be handled in two meetings. Finally, the Government said it was not willing to give any guarantee, but hoped we could approve of the arrangement as an interim measure. Many Members in the Bills Committee at that time held the view that if this so-called interim measure were approved even under such circumstances, it would eventually become a permanent measure. That being the case, Members might be left with no means to force the Government to carry out a review again. What is more, they might not even have the means to make appropriate amendments. Under such circumstances, we regret that we can only support the amendments proposed by Mr Albert CHAN to ban such a change, that is, empower the Town Planning Board to appoint committees from among its members to hear objections.

Mr Deputy, at present, there is indeed a considerable backlog of objection cases and the Town Planning Board will hardly be able to finish hearing all of them in two or three years' time. I remember I have represented some people whose premises were being affected as a result of the execution of the relevant plans by the Government, but they still have not got the chance to have their cases heard even after all their premises have been torn down. It was no longer meaningful when I represented them in the hearings and they were not interested to come either. This is extremely unfair and will possibly give rise to judicial reviews and complaints. So, under such circumstances, I think the Government should really explain why it is impossible to give such a simple pledge; and secondly, does the Government really have no intention at all to review the operation of the objection hearing committees? I very much hope that the Government will clearly explain its stance when it makes a reply later on.

Let me reiterate that we support the couple of amendments to be moved today and the Bill as amended.

Thank you, Mr Deputy.

MR NGAN KAM-CHUEN (in Cantonese): Mr Deputy, the Democratic Alliance for the Betterment of Hong Kong (DAB) basically supports this Bill, but we cannot help expressing some of our dissatisfaction over the process. On the other hand, though, we would like to show our appreciation to the Government for some amendments it made during the process.

As far as the crux of the relevant matter is concerned, firstly, the Bill proposes to state clearly that "public officer" does not include a judge. In other

words, a Justice of Appeal can be appointed as Chairman, Deputy Chairman or member of the Appeal Board. But if a person applies for judicial review of the decision of the Appeal Board, it is highly probable that a judge of a lower rank will review the decision of a higher ranking judge (such as a Justice of Appeal). In addition, it seems to be unfair for a judge of comparable ranking to review the decision made by an Appeal Board. While the DAB does not object to the appointment of judges to the Appeal Board panel, it objects to the appointment of Justices of Appeal as Chairmen, Deputy Chairmen or members of the panel. It is noted that the Government has accepted the advice and views of Members from different sides and agreed to move Committee stage amendments to this effect.

Secondly, the Bill proposes that the Town Planning Board be empowered to appoint an "objection hearing committee" from among its members to hear objections. The DAB is of the opinion that the setting up of such committees by the Administration on the ground of enhancing efficiency indicates its failure to address the Board's problem of lacking in neutrality. The irregularity is that the Town Planning Board, according to legislation, is responsible for preparing draft plans and considering applications for planning approval. But at the same time, it is also responsible for hearing objections to its decisions. This dual capacity issue has been discussed in detail in the comprehensive review of the Town Planning Ordinance in 1991, but the Bill has failed to address this issue in a positive manner.

Thirdly, the added clause 17D seeks to validate decisions of the Appeal Boards when a member of the Appeal Board was a judge, except when the appellant has questioned the validity of the judge's appointment to the Appeal Board and applied for judicial review to quash the decision on or before 31 October 1995. Regarding the effective date of the Ordinance, a lot of opinions (including those of the Hong Kong Institute of Planners) object to assigning this date as a deadline; and the setting of an enforcement date, which is earlier than the date of enactment, before the passing of the legislation is also being called into question. A more reasonable approach should be taking the formal date of enactment as the commencement date of the legislation.

Fourthly, the existing Bill is obviously intended for validating the decision made by someone when he was Chairman of an Appeal Board for the purpose of

plugging the legal loophole. It is obvious that an approach of "acting in the light of circumstances" as such cannot fully rectify the present shortcomings of the Town Planning Ordinance. Although the Administration agreed to implement the direction recommended by the comprehensive review of the Town Planning Ordinance in 1991, it has adopted a piecemeal approach in separately solving its problems. The fact that the Town Planning Board is empowered to appoint the so-called objection hearing committee from among its members illustrates the passive attitude of the Administration.

All in all, I would like to reiterate the DAB's suggestion in relation to the policy.

We can accept clause 2 in that we will not object to the appointment of judges as members of the Appeal Board, but we object to the appointment of a Justice of Appeal as Chairman, Deputy Chairman or member of the Appeal Board panel.

Secondly, we object to pre-setting 31 October 1995 as the commencement date of the Amendment Bill as stated under clauses 4 and 5. The formal commencement date should be the date on which the legislation is enacted.

Thirdly, we can conditionally support the authority to set up the "objection hearing committee" as stated in subclause (1). But the Administration have to put forth specific measures to make improvements to the problem of dual capacity of the Town Planning Board and agree to conduct a comprehensive review of the Town Planning Ordinance as soon as possible. Authorization to avoid discussions on issues involving principle on the ground of "beating tardiness with speed "cannot be acceptable to the DAB.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Deputy, I am grateful to members of the Bills Committee and in particular, the Honourable Albert CHAN, for their effort in studying the Town Planning (Amendment) Bill 1995. The Bills Committee has nevertheless raised a number of concerns on the Bill and I would like to take this opportunity to respond to them.

Clause 2

The comments made by some Members of the Bills Committee regarding the hearing of objections to draft amended town plans may, I am afraid, reflect a fundamental misunderstanding of the town planning procedure. Under the Town Planning Ordinance, the plan-making function of the Town Planning Board is to prepare and publish draft town plans or draft amended town plans for public inspection and comments. The Town Planning Board is not, I repeat not, the plan approval authority. The power to approve town plans rests with the Governor in Council. The publication of draft town plans or draft amended town plans by the Town Planning Board functions very much like a public consultation exercise in this regard. Similar to other public consultation exercise, it is thus fair and reasonable that the body consulting the public should consider objections or comments to its proposals. This is indeed the spirit behind the existing Town Planning Ordinance which requires the Town Planning Board to consider objections to draft town plans. The Ordinance also goes one step further to enable the public to appear before the Town Planning Board to discuss their objections to draft town plans with the Board, thus providing more transparency and public access to the town planning system. When all the hearings are completed, the Town Planning Board is required to submit the draft town plans together with any unresolved objections and a schedule of the amendments proposed by the Board to meet the objections, to the Governor in Council for a decision. The Governor in Council may then approve the draft town plan, refuse to approve it or refer it back to the Town Planning Board for further consideration and amendments.

The Town Planning Ordinance however requires the Board itself to hear the objections, and there is no provision for delegation of this duty. The large number of objections in recent years has created a considerable backlog of cases to be heard. In order to complete the hearings expeditiously, the intention of the Bill is therefore to enable the Board to set up committees from its members and delegate the hearings of objections to them. When necessary, several hearings can be carried out concurrently to further expedite the procedure. Any unwithdrawn objections will still have to be presented to the Governor in Council for a decision. The intention is similar to a body which is consulting the public in setting up working groups to consider public comments. There is no question of the Town Planning Board judging its own cause.

The suggestion by some members of the Bills Committee that the objection hearing committee should be an independent body from the Town Planning

Board goes against the intention of the Bill. The Administration's views to such a proposal, which is shared by the Town Planning Board, is that it will not assist the Board in hearing the outstanding objections quickly. Moreover, as I explained earlier, the Governor in Council is the plan approval authority. The consequences of having a body outside the Board to hear objections, its relationship with the Board and the Governor in Council and its operation in the context of the Town Planning Ordinance, let alone the likely financial implications, do not appear to have been thought through. The spirit of the extant legislation is to allow the Board to complete its "consultation" process through the consideration and hearing of objections, which are views of the public on its plans, before submitting the plans to the approving authority. The Bills Committee has been advised that these important issues require detailed and careful consideration, and should not be rushed through in the form of a Committee stage amendment to the Bill.

In the event, the Bills Committee decided to move a Committee stage amendment to delete clause 2. The consequence of the deletion is that the proposed means to quicken up hearing the backlog of objections cannot be implemented and, hence, draft town plans cannot be submitted to the Governor in Council expeditiously for decisions, resulting in possible delays to development or redevelopment. We are disappointed at this outcome but would respect the decision of the Bills Committee.

Clause 3(a)

The Bills Committee supports it which clarifies that a judge may be appointed to the Town Planning Appeal Board. The Bills Committee also unanimously agrees that if in future a judge is appointed to chair the Appeal Board, he or she should come from the High Court or below. The Bills Committee considers that if the Appeal Board is chaired by a senior judge such as a Justice of Appeal, it would create difficulties for the Judiciary if Appeal Board decisions are challenged in the courts, because the senior judge's decision, albeit in a non-judicial capacity, would be seen to be reviewed by a junior judge acting judicially. This situation could give rise to criticism that justice may not be done. We accept the Bills Committee's view and I will move an amendment to clause 3(a) at the Committee stage to reflect the Bills Committee's proposal.

Clause 5

Clause 5 of the Bill seeks to validate the decisions made by the Town Planning Appeal Board when a member was a judge, except when the appellant has questioned the validity of the judge's appointment to the Appeal Board and applied for judicial review to quash the decision on or before 31 October 1995 which was the date of the Executive Council meeting before publication of the Bill. This ensures that proceedings currently before the court will not be interfered with while providing a measure of certainty to the status of past decisions of the Appeal Board.

The Bills Committee however maintains that it is not fair to impose a time limit on the right of interested parties to seek a judicial remedy against a Town Planning Appeal Board decision and has decided not to support the clause.

The Administration has reviewed the need for the clause in the light of the Bills Committee's decision, and the consequences if the clause is deleted. Since the validity of the appointment of the Chairman of the Town Planning Appeal Board was first called into question in May 1995, it is unlikely that a court would uphold a challenge to decisions taken by the Appeal Board before that time because the "*de facto*" doctrine would apply to such decisions. Under the doctrine, the acts of an official may be held to be valid even though his appointment is invalid. Once the flaw in the appointment became known the official would cease to have the benefit of the doctrine. The May 1995 challenge was dismissed by the High Court in November 1995. An appeal was lodged by the applicant but was abandoned a few days before the hearing date. While two other similar challenges were filed in December 1995 and January 1996, the Administration has concluded that we could live without clause 5 for the time being and has agreed to move a Committee stage amendment to delete it.

Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

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).

BETTING DUTY (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 29 November 1995

MR HOWARD YOUNG: Mr President, a Bills Committee, chaired by me, was formed on 15 December 1995 to study the Betting Duty (Amendment) Bill 1995. The Bills Committee has held three meetings, including two with the Administration.

During the scrutiny of the Bill, Members have expressed concern on three main areas.

The first concern is about the social impact of the introduction of the Quinella Place Bet (QPB).

The Administration maintains the view that the social impact of the introduction of the QPB will be insignificant. Its analysis is that the estimated betting turnover ($6,660 million per season) amounts to about 9% of the total betting turnover ($72,277 million) for the 1994-95 racing season. The introduction of the QPB will sustain punters' interest in local horse racing. It is unlikely to induce non-punters to start betting. According to the statistics from the police, there have been increases in illegal bookmaking over the past years.

Mr President, members of the Bills Committee have divided views on this issue. Some members are concerned about the social impact of the introduction of another new form of bet. The QPB, being theoretically easier to win, will attract more gamblers and/or heavier bets; thus encourage gambling. Other members opine that this is merely an enhancement of the existing product. The majority of members support the introduction of QPB.

Another area of concern of the Bills Committee is on the authorization for

"overseas bet".

"Overseas bet" is defined to mean "a bet of any form accepted at a venue outside Hong Kong authorized by the Club on any totalizator or pari-mutuel authorized by this Ordinance". The policy intention is, according to the Administration, to recognize the fact that the Club is an independent organization which should be given authority to authorize the acceptance of bets at venues outside Hong Kong.

Members suggest that the Bill should be amended to provide that an agreement between the Club and its overseas partner for setting up an overseas betting venue should be subject to the approval of the Secretary for Home Affairs. The Administration has advised that it has no policy objection to this suggestion. On behalf of the Bills Committee, I shall be moving an amendment to the Bill to this effect.

The third concern is about the possibility of money laundering.

Some members opine that overseas bets may provide an avenue for international movement of money; hence opportunities for money laundering. The Administration's considered view is that the inherent risk of losing the bet may be a disincentive to the launderer. The proposals in the Bill will have marginal significance as far as money laundering is concerned.

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

MR WONG WAI-YIN (in Cantonese): Thank you, Mr President. I state, on behalf of the Democratic Party, our stand regarding this Betting Duty (Amendment) Bill 1995. The Ordinance, in the first place, mainly seeks to, introduce the Quinella Place Bet (QPB). The Government stresses that the introduction of the QPB would not encourage indulgence in gambling in Hong Kong. However, both in government papers and at meetings with the Bills Committee, the Government stressed in particular that the new bet was to be introduced with a view to sustaining punters' interest in local horse racing.

First of all, I wish to emphasize the stand of the Democratic Party is that we will not support any policy promoted by the Government in the encouragement of gambling. Just as what the Government stressed, this new

bet is introduced in the hope that it would sustain punters' interest, we cannot help asking why the Government has to rack its brains to introduce a variety of new betting pools to sustain Hong Kong punters' interest in local horse racing? As a matter of fact, we have not found any evidence from the annual report of the Royal Hong Kong Jockey Club (RHKJC) that the public's interest in local horse racing is waning. Every year, the betting turnover enjoys an increase of more than 10%. In 1991, the betting turnover was $47.264 billion; in 1992, it was $55.62 billion; in 1993, $60.143 billion and in 1994, $66.388 billion; and last year, in 1995, it was $72.277 billion. We can see that the betting turnover has been on the increase. Very obviously, local punters have maintained very keen interest in local horse racing. So why then should the Government still keep on conceiving new bets to intensify their inclination to bet?

As the chairman of the Bills Committee has just said, this new QPB are likely to be easy "wins", and people who know nothing about horse racing may even know how to place the bets. Moreover, since they are likely to be easy "wins", presumably some members of the public would be induced to try their luck, which in effect would foster indulgence in gambling in Hong Kong. Just as the Government has said, if this new QPB were introduced, an increase in turnover of $6.66 billion could be achieved in each horse racing season, which is not a small sum. When we look back at situations in the past when the Government introduced some new betting pools, for example in 1988, when the betting turnover of the old pool, the Quartet, had been on the decline, the Government was then of the view that this pool had lost its attraction, probably because illegal bookmaking had provided some new forms of betting which had attracted punters to place their bets with illegal bookmakers. For this reason, the Government scrapped the Quartet and introduced the Double Tierce (DT) in 1989. In 1988, the betting turnover for Quartet was only $16 million. But in 1989, when the new DT betting was introduced, just the turnover for DT was already $1.838 billion. We can see that the Government tackles illegal gambling by replacing time-worn and unattractive betting pools with new ones. But what we can see is that the betting turnovers of six exotic betting pools and four ordinary pools have been on the rise, and that there was no sign that the turnovers of the six exotic betting pools are markedly decreasing; also, we cannot make out that the Government's proposal to establish the QPB is to tackle illegal bookmaking, because the Government is also unable to say which one of the exotic betting pool is not attractive enough and is in need of a new replacement. Therefore, the Democratic Party is of the view that the Government does not have sufficient grounds to justify the introduction of the new QPB, and the

Democratic party will not support the introduction of the new bet.

Mr President, the second major amendment to the Bill is the proposal that overseas bets on Hong Kong races should be accepted. Both the relevant documents and what the Government told us during our meetings stressed that the introduction of overseas bets would not foster indulgence in gambling in Hong Kong. During the Committee stage, Members from the Democratic Party had not raised strong objections on this point. But when we brought back the issue for discussion within the Democratic Party, other Legislative Council Members within the Party expressed strong views. While they are of the opinion that accepting overseas bets would not foster indulgence in gambling in Hong Kong, it would to a certain extent encourage gambling overseas. As the saying goes "Do not do unto others what you would not do to yourself". Since the Democratic Party has no wish to foster indulgence in gambling in Hong Kong, it should not encourage people overseas to engage more intensely in gambling. Hence, after much detailed and in-depth discussions, the Party's parliamentary group decided not to support the proposal to accept overseas betting.

Mr President, no matter whether it is introduction of QPB or the proposal to accept overseas betting on local races, the Government has time and again stressed that these changes and amendments would bring in more betting duty to Hong Kong, and help to increase funds allocated to charitable organizations, hence enabling our local charities and welfare facilities to thrive even more vigorously. However, in doing so, it would cause members of the public, especially young people, to have the misconception that gambling means doing a philanthropic act, and the more money they spend on betting, the more they participate in charitable acts. I think young people should not be led into such a misconception. In fact, from reports made on the newspaper or by other mass media, we know that many tragedies are brought about by people's obsession with gambling. We do not wish to see so many tragedies taking place in Hong Kong. Therefore, the Democratic Party will not support this Bill.

Mr President, finally, I want to spell out the stand of the Democratic Party in clear terms. We will not support this Bill during the Second Reading and will vote against it. But should it be carried during the Second Reading, the Democratic Party will support the amendment to be moved by the Honourable Howard YOUNG at the Committee stage, as we hope that a monitoring mechanism will be in place when overseas bets are introduced, and that the RHKJC must obtain the approval of the Secretary for Home Affairs before introducing overseas bets. We support the amendment to this Bill because we

hope that even if the Democratic Party ultimately fails to negative this Bill, we can still bring this Bill to a more complete condition and to provide better protection for local punters. For if the RHKJC were vested with full powers to set up overseas betting centres, we have no idea whatsoever about the location it would choose, or whether it would set up betting centres in countries where "collection of black money" is popular; the relevant decision would also have an impact on the local betting pools and local punters. In the face of this impending impact on Hong Kong people, the Government should not stand aloof. Therefore, the Democratic Party will support the amendment. However, at the wake of its support of the amendment, the Democratic Party will still reaffirm, during the Third Reading, its steadfast opposition to fostering indulgence in gambling. Thus, the Democratic Party will still oppose this Bill by that time.

Thank you, Mr President.

MR RONALD ARCULLI: Mr President, firstly I would like to remind colleagues of my position as a Steward of the Royal Hong Kong Jockey Club, and secondly, I would like to say a few words in support of the two amendments covered by the Bill.

As regards the proposal to introduce a new bet called the Quinella Place, this is not the first time, as Members have heard, that a new bet is proposed. Indeed, this has happened in the past. Apart from this, I am sure that the Jockey Club appreciates the responsibility it carries as the sole operator of horse racing in Hong Kong. This responsibility includes the eradication of illegal gambling on horses here, and that would entail the introduction of new product, if I could put it that way, from time to time so as to maintain punters' interest in horse racing in Hong Kong.

Mr President, we know that many overseas gambling establishments go through a lot of trouble and a lot of expenses to actually attract the gambling dollar from Hong Kong. You get free trips offered to overseas destinations, all expenses paid, first-class travel, and so on, and all that. So, I think to maintain punters' interest in horse racing in Hong Kong is not, in fact, in my respectful view, asking too much.

The other proposal is to allow the Jockey Club to enter into arrangements, subject to the approval of the Secretary for Home Affairs, with horse racing clubs or authorities overseas to enable them to accept bets on horse racing here. This has happened from time to time in respect of specific races. That has happened in the past. However, the proposal is in fact for the Club, subject to the approval of the Secretary for Home Affairs, to enter into arrangements. And in my view, if accepted by this Council and if it is done by the Club, this will go some ways towards enhancing the high standard of horse racing in Hong Kong, which high standard is held in quite high regard overseas.

Mr President, I hope that colleagues will bear in mind the numerous benefits and enormous good that horse racing in Hong Kong has brought to the community as a whole, and I would ask them to support the Bill for that reason.

Mr WONG Wai-yin for the Democratic Party has indicated that the Democratic Party will not support either of these proposals. I am not surprised, but disappointed, particularly when the matter was first brought up at the Bills Committee level, the introduction of the approval by the Secretary for Home Affairs was done as a result of an agreement between myself and the Honourable James TO on the clear understanding that the Democratic Party would support that particular aspect of the Bill. But, as I say, they are entitled to their views and I think Mr WONG has given the reasons for not supporting it, although with respect I do not agree that allowing that to happen will create either double standards or would encourage our young ones to in fact gamble on horses in Hong Kong.

In many racing jurisdictions in the world, Mr President, babies, young people, are allowed onto race courses. We in Hong Kong respect the wish of the community and the concerns of the community, and we therefore have an age limit from which you cannot, in fact, enter the race courses or indeed any of the off-course betting centres run by the Jockey Club. So I believe, Mr President, that the activities of the Club and the responsibility carried by the Club in terms of ensuring that horse racing is carried out at a high standard, that the undesirable elements are kept out, that the undesirable features of horse racing is kept out, of racing in Hong Kong, enables the community as a whole to actually enjoy the occasional punt, if I could put it that way, at the two facilities provided by the Club.

Mr President, with those words, I urge Members to support the Bill and

indeed the amendments.

SECRETARY FOR HOME AFFAIRS: Mr President, I am grateful to the Honourable Howard YOUNG and his colleagues on the Bills Committee to Study the Betting Duty (Amendment) Bill for their wise counsel and the time they have spent in examining the Bill.

The Bill has two main objectives. First, it introduces a QPB and defines the rate of betting duty on that bet. The QPB requires a punter to select two horses to finish in any order in the first three places to be eligible for a dividend.

During the deliberations of the Bills Committee, some members expressed concern that the introduction of this bet might encourage gambling and therefore would have social impact on our community. I would like to take this opportunity to explain that the QPB bet is essentially an extension of the existing Quinella and Place bets and it serves to sustain punters' interest in horse racing. It should not have the effect of inducing non-punters to start betting and that its social impact would be minimal.

The following figure will support this observation. The estimated annual betting turnover of this bet only amounts to about 9% of the total betting turnover of the 1994-95 racing season. The introduction of this bet will not have any significant impact.

The other main objective of the Bill is to impose betting duty on overseas bets on Hong Kong races into the Hong Kong pools at half of the prevailing rates. The other half would be allocated to the respective overseas governments, subject to the Royal Hong Kong Jockey Club's negotiations and finalization of the details with them. This proposal will not affect Hong Kong, apart from the fact that Hong Kong will benefit from an increase in betting duty and an increase in the funds available for allocation from the Royal Hong Kong Jockey Club to local charities.

I understand that the Honourable Howard YOUNG will move a Committee stage amendment to the effect that agreements between the Royal Hong Kong Jockey Club and its overseas partners on setting up overseas betting venues

should be subject to the approval of the Secretary for Home Affairs. I confirm that the Government has no policy objection to this Committee stage amendment. I take the opportunity to inform this Council that the Royal Hong Kong Jockey Club has also confirmed its agreement to it.

Once again, I thank members of the Bills Committee for their dedicated efforts in scrutinizing the Bill. I also thank the Law Draftsman's valuable assistance and advice.

Mr President, I recommend the Betting Duty (Amendment) Bill to Honourable Members.

Question on Second Reading of the Bill put.

Voice votes taken.

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

Mr Howard YOUNG and Mr TSANG Kin-shing claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are called upon to vote on the question that the Betting Duty (Amendment) Bill 1995 be read the Second time.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Frederick FUNG, Miss Emily LAU, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, 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, Miss Margaret NG, Mr NGAN Kam-chuen, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted against the motion.

Mr LEUNG Yiu-chung abstained.

THE PRESIDENT announced that there were 33 votes in favour of the motion and 16 votes against it. He therefore declared that the motion was carried.

Bill read the Second time.

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

LAW AMENDMENT AND REFORM (CONSOLIDATION) (AMENDMENT) BILL 1995

Resumption of debate on Second Reading which was moved on 10 January 1996

MRS MIRIAM LAU: Mr President, the object of the Law Amendment and

Reform (Consolidation) (Amendment) Bill 1995 is to relax the rule of public policy known as "the forfeiture rule" under which a person who unlawfully kills another is precluded from acquiring a benefit in consequence of the killing. The Bill seeks to empower the court to modify the effect of the forfeiture rule where the justice of the case requires it. This discretion will not apply to cases of murder.

The Bills Committee formed to study the Bill met the Administration on 12 March 1996. During the meeting, Members of the Bills Committee deliberated the policy aspects, scrutinized the clauses and sought clarification from the Administration on the Bill.

The Bills Committee noted that the Bill was modelled on the United Kingdom Forfeiture Act 1982 with adaptations to Hong Kong's circumstances and that it was to implement the Law Reform Commission's recommendation that Hong Kong should enact legislation similar to that of the United Kingdom. The Bills Committee realized that Hong Kong would differ from other jurisdictions such as the United Kingdom, Australia, Canada and the United States.

The Bills Committee also noted that the new section 25B(7) of the Bill would cover transitional arrangements and application of the Bill and the proposed relief from the forfeiture rule would apply to any interest in property which had not been distributed prior to the enforcement date of the Bill. The new section 25B(3) stipulated the time limit of 90 days for seeking the order from the court and expressly stated that, in case of appeal, the time limit of 90 days began on the day on which the appeal was determined or withdrawn, or in any other case, the period for an appeal expired.

During the course of deliberation, it came to the attention of the Bills Committee that beneficial interests in property under joint tenancy seemed to have been omitted, under the types of interests in property mentioned in the new section 25B(4). The Administration confirmed that the United Kingdom Forfeiture Act actually makes specific reference to such types of property. The Bills Committee therefore agreed with the Administration that a Committee stage amendment should be made to insert a subclause to the new section 25B(4) in order to make it consistent with the provisions of the United Kingdom Act.

Mr President, with these remarks and subject to the Committee stage amendments, I recommend the Bill to Members.

SECRETARY FOR HOME AFFAIRS: Mr President, I would like to thank the Bills Committee chaired by the Honourable Mrs Miriam LAU which studied the Law Amendment and Reform (Consolidation) (Amendment) Bill 1995 for its work in scrutinizing the Bill.

The Bill is the last substantive change to Hong Kong's law of inheritance in the package of reforms proposed by the Law Reform Commission. It relates to the so-called "forfeiture rule". This is a legal rule of public policy that prohibits a person who has unlawfully killed another from gaining any beneficial interest as a result. The problem with the forfeiture rule is that it applies strictly even where a person who has unlawfully killed another is not morally blameworthy or there are mitigating circumstances that justify its relaxation.

The Bill addresses this deficiency by empowering the court to relax, or waive, the forfeiture rule in cases other than murder where justice demands this. Giving the court this discretionary power to modify the effect of the forfeiture rule will bring Hong Kong into line with other common law jurisdictions.

At the Committee stage, I will move one amendment, as agreed to by the Bills Committee, to extend the scope of beneficial interests covered by the Bill to include nominations, such as those of beneficiaries under insurance policies.

With these remarks, Mr President, I commend the Law Amendment and Reform (Consolidation) (Amendment) Bill 1995 to the Council.

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

Bill read the Second time.

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

Committee Stage of Bills

Council went into Committee.

MEDICAL REGISTRATION (AMENDMENT) (NO. 2) BILL 1995

Clauses 1, 2, 4, 5, 7, 8, 10 to 17, 19, 20, 22, 23, 25, 28 to 35, 37, 39 and 42 to 47 were agreed to.

Clauses 3, 6, 9, 18, 21, 26, 27, 36, 38, 40 and 41

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members.

Clause 3(1), 3(3) and 3(6)

The purpose of amending clauses 3(1), 3(3) and 3(6) is to provide for the introduction of 14 elected members and the addition of three lay members (making a total of four lay members) to the Medical Council.

Clause 3(7) and 3(8)

The amended clauses 3(7) and 3(8) provide that the member's office of membership of the Medical Council would be declared vacant if he is the subject of any order made by the Council.

Clauses 6(1), 6 and 6(2)

It is necessary to amend clause 6(1), 6 and 6(2) to provide for the quorum of meetings and the transaction of business of the Medical Council and its Committees.

Clause 9

The amended clause 9 provides that an applicant's name would not be included into the General Register if he is not of good character.

Clause 18

By amending clause 18, committees and subcommittees of the Medical

Council would be subject to provisions in Schedule 2 of the Bill.

Clause 21(2)(b)

The amendment to clause 21(2)(b) is necessary to maintain the impartiality of the chairman of the review subcommittee.

Clause 26(1)(a)

The amendment to clause 26(1)(a) is necessary as the Health Committee may conduct a hearing into any case or matter concerning the health or physical or mental fitness to practise of a registered medical practitioner.

Clause 27 - section 21A(1)

The proposed addition to section 21A(1) under clause 27 provides a clearer explanation on the meaning of "fitness to practise."

Clause 27 - section 21B

By amending section 21B under clause 27, the quorum of any disciplinary inquiry of the Medical Council should include at least one lay member, subject to the majority being registered medical practitioners. Also, the number of lay persons in the panel of assessors would be increased from two to four.

Clause 36(1) and 36(2)

The purpose of amending clause 36(1) and 36(2) is to transfer certain powers to make regulations concerning registration and disciplinary/election matters to the Secretary for Health and Welfare and the Medical Council respectively.

Clause 38

The amended clause 38 provides for the arrangements for the appointment of members to the committees and subcommittees of the Medical Council.

Clause 40

The amendment to clause 40 is a consequential amendment to our proposed amendment to clause 9.

Clause 41

The amended clause 41 empowers the Medical Council to determine the format of the certificate of experience for the purpose of registration.

Mr Chairman, I beg to move.

Proposed amendments

Clause 3

That clause 3(1) be amended —

(a) in paragraph (e), by deleting "2" and substituting "4".

(b) in paragraph (f), by deleting the proposed paragraphs (i) and (j) and substituting -

"(i) 7 registered medical practitioners who are members of the Hong Kong Medical Association and nominated in accordance with the regulations or procedures of the Association relating to the filling of offices under this paragraph and elected by the Council members of the Association in accordance with those regulations or procedures;

(j) 7 registered medical practitioners registered in Part I of the General Register and ordinarily resident in Hong Kong elected by all registered medical practitioners registered in Parts I and III of the General Register pursuant to an election held under the Election Regulation.".

That clause 3(3) be amended, in the proposed subsection (3A), by deleting "12" and substituting "14".

That clause 3(6) be amended —

(a) by deleting the proposed subsection (5A) and substituting -

"(5A) Where, before the expiry of the office of a member holding office under subsection (2)(i), the member resigns or his office becomes vacant, the Hong Kong Medical Association shall, as soon as possible, conduct an election to elect a person qualified under subsection (2)(i) to fill that vacancy, and the member elected to fill the vacancy shall hold office from the date of election until the expiry of the original term of office of the person whom he succeeds.".

(b) in the proposed subsection (5C) -

(i) by deleting "6" and substituting "7";

(ii) in paragraph (a), by deleting "2" and substituting "3".

(c) in the proposed subsection (5D) -

(i) by deleting "6" and substituting "7";

(ii) in paragraph (a), by deleting "2" and substituting "3".

That clause 3(7) be amended, by adding —

"(aa) in paragraph (b), by adding "or 21A" after "21";".

That clause 3(8) be amended, in the proposed subsection (6A)(b), by adding "or 21A" after "21".

Clause 6

That clause 6(1) be amended, by adding after "under section 21," —

"in an appeal hearing under section 20F, 200 or 20W, or in an election petition under the Election Regulation as defined in section 3,".

That clause 6 be amended, by adding —

"(1A) The following is added -

"(2A) In a meeting of the Council to hear an appeal under section 20F, 200 or 20W or an election petition under the Election Regulation as defined in section 3, 5 members shall be a quorum.".".

That clause 6(2) be amended, by deleting "The Council" and substituting —

"Except for an inquiry under section 21, for an appeal hearing under section 20F, 200 or 20W and for an election petition under the Election Regulation as defined in section 3, the Council".

Clause 9

That clause 9 be amended —

(a) by renumbering it as clause 9(1).
(b) by adding -

"(2) Section 14(4) is amended -

(a) in paragraph (b), by repealing the comma at the end and substituting "; or";

(b) by adding -

"(c) is not of good character,".".

Clause 18

That clause 18 be amended, in the proposed section 20BA —

(a) by deleting subsection (3);

(b) in subsections (5) and (11), by adding "or 21A" after "21";

(c) by adding -

"(9A) The relevant provisions of Schedule 2 have effect with respect to a committee or a sub-committee established under this section.".

Clause 21

That clause 21(2)(b) be amended, in the proposed paragraph (a), by deleting "who is a registered medical practitioner but".

Clause 26

That clause 26(1)(a) be amended, by adding ", the Health Committee" before "or the".

Clause 27

That clause 27 be amended —

(a) in the proposed section 21A(1), by adding "physically or mentally" after "health,".

(b) in the proposed section 21B -

(i) in subsection (1), by adding before "shall be a quorum" -

"at least one of whom shall be a lay member but subject to the majority being registered medical practitioners,";

(ii) in subsection (2)(f), by deleting "2" and substituting "4".

Clause 36

That clause 36(1) be amended, by deleting "(fa)" and substituting "(f) (fa), (fb)".

That clause 36(2) be amended —

(a) by deleting the proposed subsection (3)(c) and (d) and substituting -

"(c) the minimum periods of employment mentioned in section 9;

(d) the period of assessment for the purposes of section 10A;".

(b) by deleting the proposed subsection (3)(g).

(c) in the proposed subsection (4)(a) -

(i) in subparagraph (i), by deleting "section 20F" and substituting "this Ordinance";

(ii) in subparagraph (ii), by deleting "section 20G" and substituting "this Ordinance";

(iii) by adding -

"(iia) the receipt of complaints or information

touching any matter that may be inquired into by the Council;";

(iv) by adding -

"(via) the procedure to be followed in relation to inquiries held by the Council;";

(v) in subparagraph (vii), by adding after "Health Committee" -

"and references of cases to and by the Health Committee".

(d) by deleting the proposed subsection (4)(b) and substituting -

"(b) procedure and other matters in relation to an election or appointment to an office of the Council under section 3(2)(j) including the qualifications of candidates, electors and subscribers for a nomination paper, the particulars of any system of voting and counting, the determination of election results and questioning of the results;

(c) certificates, forms or other documents required for the purposes of this Ordinance, including the payment of a fee for their issue.".

(e) in the proposed subsection (6) -

(i) by deleting "(2),";

(ii) by deleting paragraph (a) and substituting -

"(a) require documents for the purposes of this Ordinance to be submitted and to be in such form as may be prescribed and require matters or documents for those purposes to be supported by statutory declarations or

such other declarations as specified or approved by the Council;".

Clause 38

That clause 38 be amended, in the proposed Schedule 2 —

(a) in the proposed section 2(1),

(i) by adding ", 20S(1)(g)" after "20P";

(ii) by deleting everything after "shall hold office for" and substituting -

"12 months. A member of a committee established under this Ordinance is eligible for re-election or reappointment, depending on the nature of his membership of the committee.";

(b) in the proposed section 2, by adding -

"(3) Notwithstanding his term of appointment, a member of a committee or sub-committee may at any time resign by giving notice in writing to the Chairman or, as the case may be, the chairman of the committee which appointed the sub-committee.

(4) If during the period of his office a member of a committee who is not a member of the Council becomes a member of the Council, he ceases to be a member of the committee.";

(c) by adding -

"2A. **Temporary members**

Where for any reason a person elected or appointed to a committee or appointed to a sub-committee is or will be unable temporarily to perform his functions as such member, another person qualifying for election or appointment to that committee or sub-committee (depending on the nature of the membership of the person who is or will be temporarily unable to perform his functions) may be appointed by the Chairman or by the chairman of the committee, as may be appropriate, to be temporarily a member of the committee or sub-committee.

2B. **Outgoing member to continue transacting business**

If -

(a) at the time the notice of resignation under section 2(3) is given; or

(b) at the time the membership or temporary membership of a committee or sub-committee of a person terminates otherwise than by resignation,

the committee or sub-committee, as may be appropriate, is considering any complaint or information, conducting any hearing or conducting any review, as may be applicable, the person so resigning or the person whose membership is so terminating (unless he is re-elected or reappointed) shall, if so requested by the Council or the committee which appointed the sub-committee, continue to be a member of the committee or sub-committee for the purpose of completing the performance of that function in respect of that complaint, information, hearing or review, as the case may be, and for no other purpose.".

Clause 40

That clause 40 be amended, by deleting paragraph (a).

Clause 41

That clause 41 be amended —

(a) by renumbering it as clause 41(1).

(b) by adding -

"(2) Section 7(2) is amended by adding -

"(c) by repealing "as may be prescribed" where it last appears and substituting "as may be specified by the Council".".

Question on the amendments proposed.

MRS ELIZABETH WONG: I would like to take this opportunity to respond to Dr LEONG Che-hung's remarks earlier on. Dr LEONG Che-hung earlier mentioned my name in his speech. I am enormously flattered by his reference to me when I was the Secretary for Health and Welfare. He reminded me that some years ago, I supported two laymen on the Council. Today, if I were the Secretary for Health and Welfare, I would have supported seven and would have indeed recommended seven, but I will reluctantly accept four as on the Order Paper.

The reason for my doing so is not because I have changed my mind, but because I have been properly educated since I have left the Government. As we grow older, we are also wiser, and as a representative of the people, I am educated better now than before by my constituents.

Having said that, I support the amendments proposed by the Secretary rather reluctantly. Thank you.

Question on the amendments put and agreed to.

Question on clauses 3, 6, 9, 18, 21, 26, 27, 36, 38, 40 and 41, as amended, proposed, put and agreed to.

Clause 24

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that clause 24 be amended as set out under my name in the paper circulated to Members.

Clause 24 - section 20K

The amended section 20K under clause 24 provides for an appeal channel for an applicant whose application for inclusion into the Specialist Register has been rejected by the Registrar.

Clause 24 - section 20M(b)

The proposed addition of the word "to" before "such" in section 20M(b) under clause 24 is a technical amendment.

Clause 24 - section 20S

By amending section 20S under clause 24, one of the four lay members of the Council would take turns to attend the meetings of the Preliminary Investigation Committee.

Clause 24 - section 20T

It is necessary to amend section 20T under clause 24 as the chairman and deputy chairman of the Preliminary Investigation Committee should act in accordance with procedures as stipulated in the regulations.

Clause 24 - section 20V

Amendments to section 20V under clause 24 provide a clearer description of the functions of the Health Committee.

Mr Chairman, I beg to move.

Proposed amendment

Clause 24

That clause 24 be amended —

(a) in the proposed section 20K -

(i) in subsection (1), by deleting "to be";

(ii) by deleting subsections (2) to (5) and substituting -

"(2) Where the Registrar is satisfied that an applicant -

(a) has been -

(i) awarded a Fellowship of the Academy of Medicine; and

(ii) certified by the Academy of Medicine that he has completed the post-graduate medical training and has satisfied the continuing medical education requirements for the relevant specialty; or

(b) has been certified by the Academy of Medicine that he has achieved a professional

standard comparable to that recognized by the Academy for the award of its fellowship and has completed the postgraduate medical training and satisfied continuing medical education requirements comparable to those recommended by the Academy of Medicine, for the relevant specialty,

the Registrar shall refer the application to the Education and Accreditation Committee for its consideration.

(3) Where an applicant does not satisfy the requirements in subsection (2), the Registrar shall refer the matter to the Academy of Medicine for its certification as to whether the applicant has achieved a professional standard comparable to that recognized by the Academy for the award of its fellowship and has completed postgraduate medical training and has satisfied continuing medical education requirements comparable to those recommended by the Academy of Medicine, for the relevant specialty.

(4) If on a referral by the Registrar under subsection (3), the Academy of Medicine certifies that the applicant has not achieved that standard or has not completed that training and satisfied those requirements, the Registrar shall reject the applicant's application, stating the reason for rejection.

(5) If an application is rejected by the

Registrar, the applicant may appeal to the Education and Accreditation Committee for its consideration of the appeal.

(5A) On a referral by the Registrar under subsection (2), the Education and Accreditation Committee shall, if it is also satisfied that the applicant is of good character, recommend to the Council that his name be included in the Specialist Register.

(5B) On an appeal under subsection (5), the Education and Accreditation Committee shall, if it is satisfied that the applicant -

(a) has achieved a professional standard comparable to that recognized by the Academy for the award of its fellowship and has completed postgraduate medical training and satisfied continuing medical education requirements comparable to those recommended by the Academy of Medicine, for the relevant specialty; and

(b) is of good character, recommend to the Council that his name be included in the Specialist Register, otherwise the Committee shall recommend to the Council that his application for inclusion of name in the Specialist Register be rejected.";

(iii) in subsection (6), by deleting "(3), (4) or (5)" and substituting "(5A) or (5B)".

(b) in the proposed section 20M(b), by adding "to" before "such".

(c) in the proposed section 20S -

(i) by deleting subsection (1)(g) and substituting

"(g) 1 of the 4 lay members of the Council.

(ii) in subsection (2), by adding after "3," -

"at least one of whom shall be a lay member, subject to the majority being registered medical practitioners,";

(iii) by adding -

"(4) Notwithstanding subsection (3), if both the chairman and the deputy chairman declare their interest in respect of a particular case which is to be decided at a meeting, neither of them may preside at the meeting and the members present (including the chairman and deputy chairman) shall elect another member to preside at the meeting.

(5) A member of the Preliminary Investigation Committee appointed under subsection (1)(g) shall hold office for such period not exceeding 3 months as the Council may specify in his letter of appointment. Other members of the Preliminary Investigation Committee shall hold office for 12 months.".

(d) in the proposed section 20T -

(i) in subsection (1)(c), by deleting "subject to subsection (3),";

(ii) by deleting subsection (3).

(e) in the proposed section 20V -

(i) in subsection (1)(a), by adding "physical or mental" after "health or";

(ii) in subsection (1)(c), by adding after "12 months" -

", and that such an order for removal be suspended subject to such conditions as recommended by the Health Committee, where appropriate".

Question on the amendment proposed, put and agreed to.

MR LAW CHI-KWONG (in Cantonese): Mr President, I move that clause 24 of the Bill be further amended as set out under my name in the paper circulated to members. Mr President, I move this amendment, very much hoping that my colleagues in this Council will listen to my views and support my amendment.

The amendment I move on behalf of the Democratic Party aims to introduce legal provisions for the inclusion of lay members in the Health Committee. We understand that the Medical Council is strongly opposed to the formal inclusion of lay members in the Health Committee; the Council is of the view that the Health Committee is like an internal review committee of the medical profession, with the objective of determining whether or not a medical practitioner is medically fit to continue his/her practice.

Nevertheless, I sincerely hope that the Medical Council can reconsider its view mentioned just now because by the same token, the Council may as well reject the participation of any lay members in all matters concerning the entire profession by claiming that it regards unprofessional conduct as a matter for internal review and the entire registration system as an internal affair. This viewpoint is inconsistent with the principle of holding the professions accountable to the public and of keeping them under public supervision. Accountability to and supervision by the public is precisely the reason for including lay members in the Licentiate Committee and the Ethics Committee. Although not medical practitioners themselves, lay members can still play a monitoring role.

It is my hope that friends in the Medical Council would not regard this amendment moved by the Democratic Party as a challenge to the medical profession, nor should they think that we want to impair the dignified image of medical practitioners. On the contrary, we respect the medical profession very much, and we hope to increase the credibility and transparency of the Medical Council through the amendment in the legislation as now proposed. It is the conviction of the Democratic Party that self-discipline of the professions is a pledge for quality service to members of the public; and, the participation of laymen will show to the public precisely how the work of self-discipline is being put into practice. A responsible professional council should welcome the supervision by and participation of laymen. That is why the Democratic Party hopes that this kind of spirit can be enshrined in the whole Bill. The inclusion of lay members in the Health Committee will enable the public to respect the professionalism of medical practitioners even more.

I hope colleagues of the Legislative Council will vote for the amendment. Thank you, Mr President.

Proposed amendment

Clause 24

That clause 24 be amended, in the proposed section 20U —

(i) in subsection (1), by adding -

"(g) 1 of the 4 lay members of the Council.";

(ii) in subsection (3), by adding after "chairman" -

", at least one of whom shall be a lay member, subject to the majority being registered medical practitioners".

MR EDWARD HO: Mr Chairman, extensive discussions took place during the Bills Committee stage amongst Members as to whether it should be made mandatory that a lay member or members should be included in the Health Committee of the Medical Council.

I think it should be made clear that we are now not talking about the accountability or transparency of the Council itself. I think Members have been

satisfied when lay members have now been added to the Council. But I think it should be clear that the function of the Health Committee is to enable a medical practitioner to be examined as to whether he or she is medically fit to continue his or her practice as a medical practitioner.

I understand Mr LAW's amendment seeks to make it mandatory for a lay member or lay members to be appointed to the Health Committee and I understand its purpose is to increase the transparency and accountability of the Health Committee.

First of all, there is nothing in the Bill that would exclude lay members being included in the Health Committee, but I fail to see how a lay person in the Health Committee can contribute to judging whether an applicant or a practitioner is medically fit. That judgement must be made, and can only be made by qualified medical practitioners.

In practice, the proposed amendment would merely be window dressing and lack real meaning, and for that reason the Liberal Party would not support Mr LAW's amendment. We think that the medical profession is fully capable of regulating itself in this matter.

MR MICHAEL HO (in Cantonese): Mr President, I just want to respond to two points. The first point is the current arrangement under the law. It is true that according to current arrangement under the law, selected persons from a group can be appointed to the Health Committee, from this, different combinations may emerge; that is, there may be lay persons appointed to the Committee, or there may not be. Both cases are possible. But I would like hereby to remind Members that at the Bills Committee meeting on 6 February, the Medical Council voiced very strong opposition to this amendment and stressed that it would affect the dignity of medical practitioners. I find it hard to agree to this point. Actually, this amendment has nothing to do with the dignity of medical practitioners and does not denote any disrespect for medical practitioners from the public. Given such an attitude, will lay persons have any chance when they select Health Committee members, of being appointed to the Committee? Of course not, because the Medical Council simply cannot accept the idea of appointing lay persons to the Health Committee.

The Honourable Edward HO has just questioned what contributions could

lay members make to the Committee. Of course, before determining whether or not a medical practitioner is fit to continue his practice, he should first be examined by an expert who will then provide some evidence. Members of the Health Committee, be they medical doctors or lay persons, must make use of the evidence given by the medical expert as a basis of determining whether the medical practitioner in question is fit to continue his practice. In fact, such a case should not be limited only to the profession of western medicine. For professional bodies such as lawyers, nurses and so on, if a particular practitioner is to be assessed on his fitness to continue his practice, he has to be examined by a medical expert who will then provide evidence. If the relevant committee is the management committee of lawyers or nurses, decision-making members are in fact not medical doctors, they would have to listen to the expert's opinion before making a decision. Therefore, lay members of the Health Committee of the Medical Council are not there to examine the physical condition of the medical practitioners, but to listen to expert opinion.

I want to mention another thing, that is, there may exist the worry of possible infringement of privacy. Actually, as far as privacy is concerned, the fact that there are, or there are not, any lay members in the Health Committee will not make any difference. We have to understand that if a medical doctor needs to be interviewed by the Committee, he has to meet the whole Committee, not just some members separately. No matter who the members attend the meeting will be, the medical doctor in question will still be interviewed by people who are members of the Committee; and be they medical practitioners or lay members, all members of the Committee must observe confidentiality. Hence, I stress that should lay members be introduced to the Health Committee, they will not be incapable of making contributions, neither will they bring about cases in which privacy or dignity could be affected. Thank you, Mr President.

DR LEONG CHE-HUNG: Thank you, Mr Chairman. First of all, may I thank the Honourable Edward HO for making those remarks, which I entirely endorse. There are four points, or rather five points, which I would like to make before I give, perhaps, Members some views on the whole issue.

Firstly, we are talking about membership of a Health Committee, not

membership of the Medical Council. The Health Committee is a subcommittee of the Medical Council which this Legislative Council has already decided that it has responsibility and it is a recognizable institution.

Secondly, this Health Committee is not, and I stress not, a disciplinary body. In other words, the person, the doctor appearing before this Health Committee is not somebody who has already committed a possible professional misconduct. It is entirely a person who, for whatever reasons being viewed by his peers or otherwise, that he might have a health problem which may interfere with his practice. So I could just stress again this is not a disciplinary body.

Thirdly, to the current Bill, the Medical Council is already entrusted with a power to choose members. Amongst them could be lay members or professional members, and lay members could come from the Medical Council itself or from outside the Medical Council. There is this degree of flexibility. Now, what my friend, the Honourable Law Chi-kwong wants is to ensure that there are lay members in the Health Committee specified by law. In other words, to remove the flexibility that this body, the Medical Council, considered by law has its power.

In response to what Mr Michael HO said in relation to, for example, a lawyer who could well be sick and whether he should be allowed to practise or not, yes, a doctor will especially be called to analyse him or her. But the doctor can only go all the way to say what is wrong physically or mentally with that particular lawyer, engineer, architect or otherwise. But there is no way that a doctor can say he is not suitable to practice law, engineering or otherwise. It is up to that professional body, and that professional body alone, to say whether that particular person is, in that physical state, mental state, proper to practise that particular profession.

Mr Chairman, with your permission, let me bring Members through two scenarios. Firstly is something that I have frequently encountered and hope Members will not have to encounter, and that is, as a doctor we are often asked and needed by our duty to explain to patients their problems. And usually in that sort of situation, their relatives are around and other health care professionals are around. Now, this is acceptable. This is perfectly acceptable to the patient

and to the relatives. But should there be an outsider, say the patient fro the next bed or relatives of patient from next bed were to eavesdrop, now, this is not acceptable and a lot of hell would be raised by the patients or his relatives on that basis. The reason is very simple. It is on the ground of integrity and confidentiality.

Let me take Members through another scenario, and this time it is a doctor who is noticed by his peers to be unhealthy, either physically or mentally. He has committed no misconduct, and I stress that, and he is asked to face the Health Committee. He has now to face the embarrassment of interrogation not only by his own peers but, if Mr LAW's amendment is through, then he also has to face the embarrassment of a lay person who has no knowledge whatsoever of health problems. How would he feel? To the medical profession, this is obviously unacceptable as it really erodes into the dignity of that particular person who has not at that point in time committed any offence whatsoever.

Mr Chairman, in these days when we all value human rights, value the power, value privacy and confidentiality, why should we apply double standards? A standard for doctors and a standard for everybody else? Now, I fail to understand this. Further, Mr Chairman, and I must reiterate, that section 20U already gives the flexibility to the Medical Council to appoint other members who are not within the medical profession, are from the four lay members of the Medical Council, and secondly, from other members who are not even members of the Medical Council. And I would like to read to Members section 20U which actually said: "1 to 3 persons not being members of the Council when the Council considers appropriate can be appointed to this Health Committee."

When we have already recognized, Mr Chairman, the establishment of the Council, and we have already given this Council the trust, should we not leave the details to this Council in making its appointment to the Health Committee, which is a subcommittee of this Council, or should we really move a law to control a professional body?

Mr Chairman, I would strongly go against this amendment as moved by the Honourable LAW Chi-kwong, and I represent my profession's views and my constituents' view and hope Members will vote against it too.

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, the

Honourable LAW Chi-kwong's proposed amendments to section 20U under clause 24 have in fact been thoroughly considered by the Bills Committee.

Unfortunately, the Bills Committee did not reach a consensus on this issue. The Health Committee is tasked to conduct a hearing into matters concerning the health or physical or mental fitness to practise of any registered medical practitioner. It serves as an internal review committee to ascertain whether a medical practitioner is medically fit to continue his practice, but it does not investigate whether he has committed any malpractice or misconduct. Medical practitioners are in the best position to determine one's health condition, especially whether he is physically or mentally fit to practise.

I wish to stress that the Bill already provides for the presence of lay members in the Health Committee. Under section 20U(1)(a) and (b), a chairman and two other members of the Health Committee shall be elected by the Council from among its members. Four out of 28 members of the Council are proposed to be lay members. In addition, under section 20U(1)(f), the Council can appoint to the Health Committee one to three persons who are not members of the Council.

With these remarks, Mr Chairman, I object to the proposed amendment.

MR LAW CHI-KWONG (in Cantonese): Thank you, Mr President. I just want to respond briefly to some of the comments that have just been made. I hope that we would not regard the lay members joining the Health Committee as outsiders, they have also taken part to assist the medical profession to enhance its accountability to the public. Dr the Honourable LEONG Che-hung stressed time and again the significance of flexibility, that is, flexibility in regard to the appointment of lay members. In fact, I feel that his arguments are rather contradictory. On the one hand, he strongly objected to the appointment of lay members to the Committee; on the other, he stressed that there would be flexibility and lay members would be appointed. This is really contradictory and it gives the feeling that it is only a kind of coaxing. I hope that when considering this problem, Members would take into account the point that if medical practitioners do not want to include lay members in the Committee while we think that they should, then there is no such flexibility in the first place because they have clearly indicated that lay members will not be appointed. As

to whether lay members can really contribute to the work of the Committee, let me cite a very simple example, namely, the so-called professional negligence referred to just now. Surely, this matter cannot be tackled by lay members alone; professional input from experts in the field must be relied on if we were to judge whether professional negligence has been committed. In other words, the opinions of both lay members and professionals are required. The same also applies to the work of the Health Committee. Matters relating to health conditions of course require the judgement of medical practitioners and experts, but to determine whether the continued practice of a medical practitioners is in the interests of the public will require the involvement of lay members in the decision-making process.

Mr President, I hope that Members can support this amendment. Thank you.

Question on the amendment put.

Voice vote taken.

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

Mr LAW Chi-kwong and Mr Michael HO claimed a division.

CHAIRMAN: The Committee shall proceed to a division.

CHAIRMAN: I would like to remind Members that they are called upon to vote on the question that the amendment moved by Mr LAW Chi-kwong be made to clause 24 of the Medical Registration (Amendment) (No. 2) Bill.
CHAIRMAN: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

CHAIRMAN: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

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 Fred LI, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, 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, 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 for the amendment.

Mr Allen LEE, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, Mr James TIEN and Miss Margaret NG voted against the amendment.

THE CHAIRMAN announced that there were 34 votes in favour of the amendment and 12 votes against it. He therefore declared that the amendment was carried.

New clause 39A Section added

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

SECRETARY FOR HEALTH AND WELFARE: Mr Chairman, I move that the new clause 39A as set out in the paper circulated to Members be read the Second time.

Clause 39A arises from section 5 of the Medical Registration (Amendment) Ordinance 1995, which provides that an applicant is eligible to take the

Licensing Examination if he has satisfactorily completed not less than five years' full time medical training. As internship forms one part of the medical training, we therefore propose the addition of a new clause to clarify the position.

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 HEALTH AND WELFARE: Mr Chairman, I move that new clause 39A be added to the Bill.

Proposed addition

New clause 39A

That the Bill be amended, by adding —

"**39A. Section added**

Section 5 is amended -

(a) by renumbering the proposed section 7A as section 7A(1);

(b) by adding -

"(2) For the purpose of subsection (1)(b)(i), the 5 years full time medical training shall include a period of internship as approved by the Council.".

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

LEVERAGED FOREIGN EXCHANGE TRADING (AMENDMENT) BILL 1996

Clauses 1 to 7 were agreed to.

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1996

Clauses 1, 3, 4 and 5 were agreed to.

Clause 2

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Mr Chairman, I move that clause 2(2) be amended as set out in the paper circulated to Members.

This minor amendment is made upon the proposal put forward by the Legal Service Division of the Legislative Council Secretariat and it is to have the Chinese translation of "agency of the Government" amended from "政府的代理人" to "政府的代理機關" in order to reflect better the meaning of the English text.

Mr Chairman, I beg to move.

Proposed amendment

Clause 2

That clause 2(2) be amended, in the definition of "法團", in paragraph (a), by deleting "的代理人" and substituting "代理機構".

Question on the amendment proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

REHABILITATION OF OFFENDERS (AMENDMENT) BILL 1995

Clauses 1, 2, 6 and 7 were agreed to.

Clauses 3, 4, 5 and 8

SECRETARY FOR SECURITY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Honourable Members.

The reasons for the main amendments have been explained in my earlier speech on resumption of the Second Reading debate. Other amendments are textual and technical in nature. All of them are supported by the Bills Committee.

Mr Chairman, I beg to move.

Proposed amendments

Clause 3

That clause 3(b) be amended, in the proposed subsection (1A) —

(a) in paragraph (c) by deleting "and" at the end;

(b) in paragraph (d) -

(i) by deleting "a triad society" and substituting "the triad society concerned";

(ii) by deleting the comma at the end and substituting "; and";

(c) by adding -

"(e) he was provided such information, including his fingerprints, as may be required by the Commissioner of Police to enable his conviction record to be verified

and for this purpose, a police officer may take or record the individual's fingerprints and the fingerprints so taken or recorded shall be destroyed or delivered to the individual as soon as reasonably practicable after his conviction record has been verified.".

That clause 3(j) be amended, by deleting the proposed subsection (6A) and substituting —

"(7) For the purpose of subsection (1B)(a), (b) and (c) and section 3, a payment or an order to pay shall include -

(a) the offence or contravention which was the subject of that payment or order to pay;

(b) the conduct or circumstances constituting that offence or contravention; and

(c) anything relating to that payment or order to pay which, if disclosed, would tend to show that the individual committed, was charged with, was prosecuted for, was convicted of or was sentenced for the offence or contravention which was the subject of the payment or order to pay.".

Clause 4

That clause 4(b) be amended, in the proposed subsection (3) by deleting "a criminal" and substituting "any criminal".

Clause 5

That clause 5(a) be amended, by deleting subparagraph (ii) and substituting —

"(ii) in paragraph (e) -

(A) it subparagraph (i), by repealing "or" at the end;

(B) in subparagraph (ii) by adding ", 66, 67, 69, 70, 75 and 76" after "35";

(C) by adding -

"(iii) relating to a person's suitability to become or continue to be a director or controllor of an authorized insurer;

(iv) relating to a person's suitability to become or continue to be an insurance broker authorized by the Insurance Authority under section 69 of that Ordinance, or to be a member of a body of insurance brokers approved by the Insurance Authority under section 70 of that Ordinance;

(v) relating to the approval of a body of insurance brokers, including the assessment of whether the persons who manage or supervise the body of insurance brokers are fit and proper persons to do so, by the Insurance Authority under section 70 of that Ordinance; or

(vi) relating to the appointment, registration and de-registration of an insurance agent for the purposes of Part X of that Ordinance;";".

That clause 5 be amended, by adding —

"(aa) in subsections (1) and (2) by repealing "Section 2" and substituting "Section 2(1) and (1A)";".

That clause 5(c) be amended, by deleting "subsections (2)(c) and (3)(a)" and substituting "subsection (2)(c)".

That clause 5 be amended, by adding —

"(ca) in subsection (2)(d) by adding after "(Cap. 41)" -

", or to be an authorized insurance broker, or a person who manages or supervises an approved body of insurance brokers or an appointed insurance agent for the purposes of section 2(1) and Part X of that Ordinance";".

That clause 5(d) be amended —

(a) in the proposed paragraph (g) by deleting the full stop and substituting "; or".

(b) by adding -

"(h) to become or continue to be a director or controller of an authorized insurer under the Insurance Companies Ordinance (Cap. 41).".

That clause 5 be amended, by adding —

"(da) by repealing subsection (3) and substituting -

"(3) Section 2(1) and (1A) shall not apply to any dismissal or exclusion of an individual from practising as a barrister, solicitor or accountant or from any prescribed office.";".

That clause 5(e) be amended —

(a) be deleting the proposed subsection (4) and substituting -

"(4) Section 2(1B) shall not apply to any question asked by or on behalf of any employer or any individual who intends to employ a vocational driver, or any obligation to disclose information, regarding the suitability of another person for employment or continued employment as a

vocational driver, unless a period of 3 years has elapsed from the date of payment or order to pay (whichever is the earlier) which is referred to in section 2(1B).".

(b) in the proposed subsection (5) -

(i) by deleting "解除" and substituting "排除";

(ii) by adding "or order to pay (whichever is the earlier)" after "payment".

(c) By adding -

"(6) Section 2(1B) shall not apply to any question asked by or on behalf of an insurer for the purpose of assessing and pricing a risk in respect of vehicle insurance, unless a period of 3 years has elapsed from the date of payment or order to pay (whichever is the earlier) which is referred to in section 2(1B).

(7) Section 2 shall not apply to any action taken for the purposes of safeguarding the security of Hong Kong.".

Clause 8

That clause 8 be amended, by deleting paragraph (c) and substituting —

"(c) by adding -

"10. Any office of the Directorate staff, the Commission Against Corruption Officer grade staff or in the Operations Department of the Independent Commission Against Corruption.

11. Any office occupied by the executive, professional, managerial, technical or secretarial staff of the Hong Kong Monetary Authority.

12. Any office of the insurance officer grade staff

(including the Commissioner or Assistant Commissioner) or the secretarial staff of the Office of the Commissioner of Insurance.

PART 2
OTHER OFFICES

1. Any office occupied by the executive staff (including the Executive Directors) or the secretarial staff of the Securities and Futures Commission.".".

Question on the amendments proposed, put and agreed to.

Question on clauses 3, 4, 5 and 8, as amended, proposed, put and agreed to.

Heading before New clause 9	Consequential Amendments Road Traffic Ordinance
New clause 9	Proof of matters relating to previous convictions

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

SECRETARY FOR SECURITY: Mr Chairman, I move that the Heading before new clause 9 and new clause 9 as set out in the paper circularized to Honourable Members be read the Second time.

In my speech at the resumption of the Second Reading debate, I have explained the reasons for the proposed amendments in relation to the fixed penalty scheme. The effect of those amendments is that, while payments or orders to pay under the fixed penalty scheme are regarded as spent immediately for most purposes, they are not considered spent in the assessment of a vehicle insurance or of a person's suitability as a vocational driver, unless a period of three years has elapsed.

Under section 75 of the Road Traffic Ordinance, an individual can obtain a

record of all his previous traffic convictions from the police upon payment of the prescribed fee. With the amendments proposed earlier, a payment under the fixed penalty scheme may or may not be considered spent depending on the circumstances. For instance, for general purposes such a payment is spent immediately and will not be specified in the record. However, for the purpose of an application for a job as a vocational driver, or buying a vehicle insurance, such a payment will be specified in the record unless a period of three years has elapsed. To enable the police to give an accurate record of previous traffic convictions for different purposes, I propose to add a new clause 9 to the Bill to make a consequential amendment to section 75 of the Road Traffic Ordinance, so that applicants for traffic conviction records have to pay the prescribed fee, and complete an application form to specify the purposes for which the records are to be used. It also makes it clear that the Commissioner of Police may reveal, at the request of an applicant, in a record issued under section 75 of the Road Traffic Ordinance all "spent" convictions, "spent" payments and "spent" orders to pay in respect of the applicant, notwithstanding the provisions of the Rehabilitation of Offenders 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 SECURITY: Mr Chairman, I move that the Heading before new clause 9 and new clause 9 be added to the Bill.

Proposed addition

New clause 9

That the Bill be amended, by adding —

"Consequential Amendments

Road Traffic Ordinance

9. Proof of matters relating to previous

convictions

Section 75 of the Road Traffic Ordinance (Cap. 374) is amended -

(a) in subsection (5) -

(i) by repealing "on payment of the prescribed fee" and substituting ", on payment of the prescribed fee and receipt of the completed application form for a record or certificate under this section,";

(ii) by adding "or payments or orders to pay under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)" after "Ordinance" where it first appears;

(b) by adding -

"(5B) For the avoidance of doubt, a record issued under subsection (5) may, at the written request of the applicant, reveal all convictions under this Ordinance or payments or orders to pay under the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240), notwithstanding the provisions of the Rehabilitation of Offenders Ordinance (Cap. 297).".".

Question on the addition of the Heading before new clause 9 and new clause 9 proposed, put and agreed to.

INTELLECTUAL PROPERTY (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1995

Clauses 1, 2, 3, 4, 7, 8, 12 to 16 and 19 to 26 were agreed to.

Clauses 5, 6, 9, 10, 11, 17 and 18

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members. The reasons for the amendments have already been explained during the resumption of the Second Reading debate. All the amendments have been agreed to by the Bills Committee.

Mr Chairman, I beg to move.

Proposed amendments

Clause 5

That clause 5 be amended, by deleting the proposed section 5A and substituting —

"**5A. Making infringing copies outside Hong Kong, etc.**

(1) Any person who makes outside Hong Kong, for export to Hong Kong otherwise than for his private and domestic use, any article that he knows would, if it were made in Hong Kong, constitute an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance shall be guilty of an offence.

(2) Any person who makes outside Hong Kong a plate, knowing that it is to be used or is intended to be used in Hong Kong for making an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance shall be guilty of an offence.

(3) Any person who makes outside Hong Kong or exports from Hong Kong a plate, knowing that -

(a) the plate is to be used or is intended to be used outside Hong Kong for making an article for export to Hong Kong; and

(b) the article mentioned in paragraph (a) would, if it were

made in Hong Kong, constitute an infringing copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance,

shall be guilty of an offence.

(4) Any person who, in Hong Kong or elsewhere, aids, abets, counsels or procures the commission by another person of an offence under subsection (1), (2) or (3) commits that offence as a principal.

(5) The offences under subsections (1), (2) and (3) are without prejudice to the offences under section 21 of the Act.

(6) A person guilty of an offence under subsection (1), (2) or (3) shall be liable on conviction on indictment -

(a) in the case of a first conviction for that offence, to a fine of $250,000 and to imprisonment for 4 years; and

(b) in the case of a second or subsequent conviction for that offence, to a fine of $500,000 and to imprisonment for 8 years.

(7) For the purposes of this section, "infringing copy" does not include a copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance that is made in the United Kingdom or a country, territory or area to which section 5 or 16 of the Act extends or applies, by or with the consent of the person who, at the time and in the place where it was made, owned the copyright in that work or subject matter.".

Clause 6

That clause 6 be amended, in the proposed section 7B —

(a) by deleting "in respect of which" and substituting "to which";

(b) by adding "extend or" before "apply".

Clause 9

That clause 9 be amended —

(a) in the proposed section 12 -

(i) by deleting the definition of "copyright owner";

(ii) in the definition of "detention order", by deleting "issued under section 14" and substituting "made under section 14(1)";

(iii) by deleting the definition of "infringing copy" and substituting -

""infringing copy" does not include a copy of a work or other subject matter in which copyright subsists under the Act or this Ordinance that is made in the United Kingdom or a country, territory or area to which section 5 or 16 of the Act extends or applies, by or with the consent of the person who, at the time and in the place where it was made, owned the copyright in that work or subject matter;";

(iv) by adding -

""right holder" means the owner or exclusive licensee of the copyright that subsists in a work or other subject matter under the Act or this Ordinance.".

(b) by deleting the proposed section 13(1) and substituting -

"(1) A right holder may apply to the High Court for an order under section 14(1) where he has reasonable ground for suspecting that the importation of an article that constitutes an infringing copy of the work or other subject matter in respect of which he is a right holder may take place.".

(c) in the proposed section 13(3) -

(i) by deleting "copyright owner" and substituting "right holder";

(ii) by deleting paragraph (b) and substituting -

"(b) states whether the deponent is the owner or the exclusive licensee of the copyright;

(ba) where the deponent purports to be the exclusive licensee, states the facts and exhibits such documents relied upon by the deponent to establish that he is the exclusive licensee;";

(iii) by deleting paragraph (d) and substituting -

"(d) states the grounds for the application, including the facts relied upon by the deponent as showing that the article in question is prima facie an infringing copy;".

(d) in the proposed section 14(1), by deleting "on an application made under section 13, the High Court is satisfied that there is prima facie evidence that adequately demonstrates that the article in question is an infringing copy," and substituting "on the hearing of an application made under section 13, the right holder presents adequate evidence to satisfy the High Court that the article in question is prima facie an infringing copy,".

(e) in the proposed section 14(2) -

(i) by deleting "copyright owner" and substituting "right holder";

(ii) by deleting "consignor and consignee" and substituting "consignee and the owner of the article".

(f) in the proposed sections 14(6) and 15(2), by deleting "copyright owner" and substituting "right holder".

(g) in the proposed section 15(3), by deleting "applicant" and substituting "right holder".

(h) in the proposed section 15(4) -

(i) by deleting "copyright owner" where it twice appears and substituting "right holder";

(ii) by deleting "or to vary the order" and "or vary the order in such manner".

(i) in the proposed section 15(5), by deleting everything after "the seizure or detention" and substituting -

"to -

(a) the right holder;

(b) the importer; and

(c) any other person to whom notice is required to be given by the terms of the order.".

(j) in the proposed section 15(6), by deleting "copyright owner" where it twice appears and substituting "right holder".

(k) in the proposed section 15(7), by deleting "copyright owner" and

substituting "right holder, after giving the Commissioner and each person to whom notice is required to be given under subsection (5) an opportunity to be heard".

(l) in the proposed section 15(8) and (9), by deleting "copyright owner" and substituting "right holder".

(m) by adding -

"**15A. Variation or setting aside of detention order**

(1) The Commissioner or the right holder may at any time apply to the High Court to vary the detention order.

(2) The importer or any other person affected by the detention order may at any time apply to the High Court to vary or set aside the order.

(3) A person who makes an application under subsection (1) and (2) shall give to the other parties such notice of the day fixed for the hearing of the application as a judge of the High Court may order.

(4) On the hearing of an application under subsection (1) or (2) to vary the detention order, the High Court may vary the order in such manner as it thinks fit.

(5) On the hearing of an application under subsection (2) to set aside the detention order, the High Court may set aside the order on such terms and conditions as it thinks just.

(6) For the purposes of subsection (3) -

(a) the parties to an application under subsection (1) are the Commissioner, the right holder and, if the article in question has been seized or detained pursuant to the detention order,

the importer and any other person to whom notice is required to be given under section 15(5); and

(b) the parties to an application under subsection (2) are the Commissioner, the right holder, the applicant and the importer, if the importer is not the applicant.".

(n) in the proposed section 16(1) and (2), by deleting "copyright owner" and substituting "right holder".

(o) in the proposed section 17(1) -

(i) in paragraph (a), by deleting "copyright owner" and substituting "right holder";

(ii) in paragraph (b), by deleting "copyright owner's" and substituting "right holder's".

(p) in the proposed section 17(2) -

(i) by deleting "copyright owner" where it twice appears and substituting "right holder";

(ii) by deleting "undertaking" and substituting "undertakings".

(q) in the proposed sections 17(4) and 18(1) and (2), by deleting "copyright owner" wherever it appears and substituting "right holder".

(r) by deleting the proposed section 20 and substituting -

"**20. Compensation payable to importer, etc.**

(1) Where an article is seized or detained pursuant to

a detention order and the article is released pursuant to section 15(6), the importer, the consignee or the owner of the article may, within 6 months after the date on which the order is made, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(2) Where -

(a) an article is seized or detained pursuant to a detention order;

(b) an action for infringement is brought under the Act in respect of the article within the period referred to in section 15(6), as may be extended under section 15(7); and

(c) the action is discontinued, the claim of infringement is withdrawn or the court in the infringement proceedings determines that the infringement is not proved,

the importer, the consignee or the owner of the article may, within 6 months after the date on which the action is discontinued, the claim is withdrawn or the court renders its determination, as the case may be, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(3) On an application under subsection (1) or (2), the High Court may make such order for compensation as it deems fit.".

(s) in the proposed section 29(7)(a), by deleting "judicial proceedings," and substituting "judicial proceedings or".

(t) in the proposed section 30, by deleting "in respect of infringement"

and substituting "in respect of infringements".

Clause 10

That clause 10(b) be amended, by deleting the proposed items 2A and 2B and substituting —

"2A. In section 2(5) there shall be added -

"(ee) in relation to a literary work being a computer program, renting the work;".

2B. In section 2(5)(g) for the words "paragraphs (a) to (e)" there shall be substituted the words "paragraphs (a) to (ee)".

2C. After section 2(6) there shall be inserted the following subsections -

"(7) For the purposes of paragraph (ee) of subsection (5) of this section, an arrangement, whatever its form, constitutes a rental of a literary work being a computer program if -

(a) it is in substance an arrangement under which a copy of the work is made available on terms that it will be or may be returned; and

(b) the arrangement provides for the copy to be made available -

(i) for payment in money or money's worth; or

(ii) in the course of a business, as part of services or amenities for which payment in money or money's worth is to be made.

(8) Paragraph (ee) of subsection (5) of this section does not extend to -

(a) the rental of a machine or device in which a computer program is embodied if the computer program is not able to be copied in the course of the ordinary use of the machine or device; or

(b) the rental of any other thing that embodies or includes a computer program if the computer program is not the essential object of the rental.

(9) The reference in subsection (8) of this section to a device does not include a device of a kind ordinarily used to store computer programs.".".

That clause 10(c) be amended, by deleting the proposed item 7A and substituting —

"7A. In section 12(5) there shall be added -

"(d) renting the recording.".

7B. After section 12(9) there shall be inserted the following subsections -

"(10) For the purposes of paragraph (d) of subsection (5) of this section, an arrangement, whatever its form, constitutes a rental of a sound recording if -

(a) it is in substance an arrangement under which a copy of the recording is made available on terms that it will be or may be returned; and

(b) the arrangement provides for the copy to be made available -

(i) for payment in money or money's worth; or

(ii) in the course of a business, as part of services or amenities for which payment in money or money's worth is to be made.

(11) Paragraph (d) of subsection (5) of this section does not extend to the rental of anything that embodies or includes a sound recording if the sound recording is not the essential object of the rental.".".

That clause 10 be amended, by deleting paragraph (d).

That clause 10(f) be amended —

(a) by deleting the heading to the proposed section 30A and substituting -

"Special provisions as to jurisdiction of tribunal in relation to rental of computer programs and sound recordings".

(b) in the proposed section 30B -

(i) in the heading, by deleting "**point**" and substituting "**question**";

(ii) in subsection (1), by deleting "point" and substituting

"question".

That clause 10(g) be amended —

(a) in the proposed section 41A, by deleting the heading and substituting -

"Special provisions as to rental of computer programs and sound recordings".

(b) in the proposed section 41A(1), by deleting ", sound recordings or cinematograph films" and substituting "or sound recordings".

(c) in the proposed section 41A(4), by deleting ", sound recordings or cinematograph films" and substituting "or sound recordings".

(d) in the proposed section 41B, by deleting the heading and substituting -

"Application to settle royalty or other sum payable for rental of computer programs or sound recordings".

That clause 10 be amended, by deleting paragraph (h).

That clause 10(k) be amended —

(a) in the proposed item 28, by deleting "2A, 2B, 7A, 8A, 16A, 17A, 22A and 24A" and substituting "2A and 7A".

(b) in the proposed item 29 -

(i) by deleting "7A, 8A," and substituting "2C, 7A, 7B,";

(ii) by adding "or subject matter" after "work".

Clause 11

That clause 11 be amended —

(a) by deleting the proposed section 7D(1)(b) and substituting -

"(b) anything done for Government use to the order of a public officer by the person entitled under the certificate of registration to the privileges and rights conferred by the certificate,

so far as those provisions -

(i) restrict or regulate the working of the invention or the use of any model, document or information relating to it; or

(ii) provide for the making of payments in respect of, or calculated by reference to, such working or use.".

(b) by deleting the proposed section 7E(1)(b) and substituting -

"(b) if there is an exclusive licence in force in Hong Kong in respect of the patented invention, to the exclusive licensee,

compensation for any loss resulting from his not being awarded a contract to supply the patented invention or a thing made by means of the patented invention or otherwise providing for the use of the patented invention.".

Clause 17

That clause 17 be amended —

(a) in the proposed section 30A, in the definition of "detention order" by deleting "issued under section 30C" and substituting "made under section 30C(1)".

(b) by deleting the proposed section 30B(1) and substituting -

"(1) The proprietor of a trade mark may apply to the High Court for an order under section 30C(1) where he has reasonable ground for suspecting that the importation of goods that constitute infringing goods may take place.".

(c) in the proposed section 30B(3) -

(i) in paragraph (a) by deleting "the person named therein" and substituting "the deponent";

(ii) by deleting paragraph (c) and substituting -

"(c) states the grounds for the application, including the facts relied upon by the deponent as showing that the goods in question are prima facie infringing goods;".

(d) in the proposed section 30B, by adding -

"(3A) Where the trade mark in question is registered, the affidavit of the proprietor shall exhibit a certified copy of each entry in the register that relates to the trade mark or, where it is not practicable for the deponent to obtain such a certified copy, shall state the reasons why it is not practicable to do so.".

(e) in the proposed section 30C(1), by deleting "on an application made under section 30B, the High Court is satisfied that there is prima facie evidence that adequately demonstrates that the goods in question are infringing goods" and substituting "on the hearing of an

application made under section 30B, the proprietor presents adequate evidence to satisfy the High Court that the goods in question are prima facie infringing goods".

(f) in the proposed section 30D(3), by deleting "applicant" and substituting "proprietor of the trade mark".

(g) in the proposed section 30D(4), by deleting "or to vary the order" and "or vary the order in such manner".

(h) in the proposed section 30D(5), by deleting everything after "the seizure or detention" and substituting -

"to -

(a) the proprietor of the trade mark;

(b) the importer; and

(c) any other person to whom notice is required to be given by the terms of the order.".

(i) in the proposed section 30D(7), by adding "after giving the Commissioner and each person to whom notice is required to be given under subsection (5) an opportunity to be heard," after "trade mark,".

(j) by adding -

"30DA. Variation or setting aside of detention order

(1) The Commissioner or the proprietor of the trade mark may at any time apply to the High Court to vary the detention order.

(2) The importer or any other person affected by the detention order may at any time apply to the High Court to vary or set aside the order.

(3) A person who makes an application under subsection (1) or (2) shall give to the other parties such notice of the day fixed for the hearing of the application as a judge of the High Court may order.

(4) On the hearing of an application under subsection (1) or (2) to vary a detention order, the High Court may vary the order in such manner as it thinks just.

(5) On the hearing of an application under subsection (2) to set aside a detention order, the High Court may set aside the order on such terms and conditions as it thinks just.

(6) For the purposes of subsection (3) -

(a) the parties to an application under subsection (1) are the Commissioner, the proprietor of the trade mark and, if the goods in question have been seized or detained pursuant to the detention order, the importer and any other person to whom notice is required to be given under section 30D(5); and

(b) the parties to an application under subsection (2) are the Commissioner, the proprietor of the trade mark, the applicant and the importer, if the importer is not the applicant.".

(k) by deleting the proposed section 30I and substituting -

"30I. Compensation payable to importer, etc.

(1) Where goods are seized or detained pursuant to a detention order and the goods are released pursuant to sections 30D(6), the importer, the consignee or the owner of the goods may, within 6 months after the date on which the order is made, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(2) Where -

(a) goods are seized or detained pursuant to a detention order;

(b) an action for infringement is brought under the Trade Marks Ordinance (Cap. 43) in respect of the goods within the period referred to in section 30D(6), as may be extended under section 30D(7); and

(c) the action is discontinued, the claim of infringement is withdrawn or the High Court in the infringement proceedings determines that the infringement is not proved,

the importer, the consignee or the owner of the goods may, within 6 months after the date on which the action is discontinued, the claim is withdrawn or the High Court renders its determination, as the case may be, apply to the High Court for compensation for any loss or damage suffered by him by reason of the seizure or detention.

(3) On an application under subsection (1) or (2), the High Court may make such order for compensation as it deems fit.".

Clause 18

That clause 18 be amended, by deleting the clause and substituting —

"**18. Interpretation**

Section 2(1) of the Trade Marks Ordinance (Cap. 43) is amended by repealing the definition of "mark" and substituting -

""mark" means any sign that is visually perceptible and capable of being represented graphically and may, in particular, consist of words, personal names, letters, numerals, figurative elements or combination of colours, and includes any combination of such signs;".".

Question on the amendments proposed, put and agreed to.

Question on clauses 5, 6, 9, 10, 11, 17 and 18, as amended, proposed, put and agreed to.

NOISE CONTROL (AMENDMENT) BILL 1995

Clause 1

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members.

Clause 1 of the Bill prescribes the short title and commencement of the Bill, originally scheduled for 31 March 1996. To tie in with the legislative timetable, we propose that clause 1(2) should be deleted so that the Bill will

come into operation upon publication in the Gazette. This will enable the Noise Control (Motor Vehicles) Regulation to be made immediately after enactment of the Bill.

The amendment has been discussed and agreed by the Bills Committee to study the Noise Control (Amendment) Bill 1995 and the Road Traffic (Amendment) (No. 2) Bill 1995.

Thank you, Mr Chairman.

Proposed amendment

Clause 1

That clause 1 be amended —

(a) in the heading by deleting "**and commencement**".

(b) by deleting subclause (2).

Question on the amendment proposed, put and agreed to.

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

Clause 2 was agreed to.

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1995

Clause 1

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clause 1 be amended as set out in the paper circulated to Members.

Clause 1 of the Bill prescribes the short title and commencement of the Bill, originally scheduled for 31 March 1996. To tie in with the legislative

timetable, we propose to amend clause 1(2) to the effect that the Bill will come into operation on a day to be appointed by the Secretary for Planning, Environment and Lands by notice in the Gazette. We intend to bring the Bill into effect two months after approval of the Noise Control (Motor Vehicles) Regulation by this Council, which will be around August 1996.

The amendment has been discussed and agreed by the Bills Committee to study the Road Traffic (Amendment) (No. 2) Bill 1995 and the Noise Control (Amendment) Bill 1995.

Thank you, Mr Chairman.

Proposed amendment

Clause 1

That clause 1 be amended, by deleting subclause (2) and substituting —

"(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Planning, Environment and Lands by notice in the Gazette.".

Question on the amendment proposed, put and agreed to.

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

Clauses 2 and 3 were agreed to.

TOWN PLANNING (AMENDMENT) BILL 1995

Clauses 1, 4 and 6 were agreed to.

Clause 2

CHAIRMAN: There are two proposed amendments to clause 2 of this Bill; one to be moved by the Honourable Albert CHAN and the other by the Secretary for Planning, Environment and Lands. However, the Secretary for Planning, Environment and Lands has just given instructions to the Clerk that he would withdraw his amendment to clause 2 of the Bill. Therefore the Committee needs to deal only with the Honourable Albert CHAN's amendment. I now call upon the Honourable Albert CHAN to move his amendment to clause 2.

MR ALBERT CHAN (in Cantonese): Mr President, I would like to seek elucidation regarding the order of business since you just informed this Council that the Secretary for Planning, Environment and Lands has withdrawn clause 2. However, I proposed amendment to clause 2 of the Bill for basically the same purpose as that of the Secretary in his withdrawal of clause 2. I hope you can clarify as to whether it is still necessary for me to move my amendment.

CHAIRMAN: The Secretary has a right to withdraw his proposed amendment prior to moving it. This is in accordance with Standing Order 26.

MR ALBERT CHAN (in Cantonese): I would like to know whether the Secretary for Planning, Environment and Lands has withdrawn his original amendment or clause 2? Because I am a bit confused.

7.59 pm

CHAIRMAN: Since the Secretary for Planning, Environment and Lands has given instructions to the Clerk, I have to suspend the sitting for a brief period — a very brief period, to check precisely what those instructions are.

8.05 pm

Committee then resumed.

CHAIRMAN: As I said earlier, the Secretary for Planning, Environment and Lands has withdrawn his amendment to clause 2, the effect of which would be

that there is only one amendment to be moved by Mr Albert CHAN. I am not here to advise as to how best to vote, whether in support or against Mr Albert CHAN's proposed amendment, but the effect is, if Mr Albert CHAN's amendment is negatived, then the original clause will stand intact.

MR ALBERT CHAN (in Cantonese): Mr Chairman, first of all, I apologize to all Members for the confusion just now, which occurred because I did not know until just a short while ago that the Secretary for Planning, Environment and Lands would withdraw his amendment to clause 2.

Mr Chairman, I move that clause 2 of the bill be amended as set out under my name in the paper circularized to Members. I will not repeat the reasons for the amendment, which were already advanced in my earlier speech introducing the resumption of the Second Reading debate. However, I would like to urge Members to support the proposed amendment, and I would also like to urge the Administration to promptly review the arrangements for the hearing of objections and to introduce appropriate amendments to rectify the defects of the present system as soon as possible.

Proposed amendment

Clause 2

That clause 2 be amended, by deleting the clause.

Queston on the amendment proposed.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: I would only like to say that in the resumption of the Second Reading debate, I have already given indication that the Administration will respect the decision of the Bills Committee and that is the reason why I have withdrawn my amendment.

Queston on the amendment put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

Clause 3

MR ALBERT CHAN (in Cantonese): Mr Chairman, I move that clause 3 be amended as set out in the paper circularized to Members. This is a technical amendment consequent upon the deletion of clause 2 which Members agreed to earlier.

Proposed amendment

Clause 3

That clause 3 be amended, by adding "of the Town Planning Ordinance (Cap. 131)" after "Section 17A".

Question on the amendment proposed, put and agreed to.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clause 3 be further amended as set out under my name in the paper circularized to Members. The amendment is to specify that the appointment of a judge to chair the Appeal Board should come from the High Court or below.

Thank you, Mr Chairman.

Proposed amendment

Clause 3

That clause 3 be amended, by deleting paragraph (a) and substituting —

"(a) by repealing subsection (2) and substituting -

"(2) The Governor shall not appoint -

(a) a member of the Board;

(b) a public officer;

(c) a Justice of Appeal,

to the Appeal Board panel.

(2A) For the avoidance of doubt, in subsection (2), "public officer" does not include a judge of the High Court of Justice, a recorder of the High Court of Justice, a deputy judge of the High Court of Justice or a District Judge.";".

Question on the amendment proposed, put and agreed to.

Question on clause 3, as amended, proposed, put and agreed to.

Clause 5

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that clause 5 be amended as set out under my name in the paper circularized to Members. The Administration agrees to delete clause 5 to allay the concern expressed by the Bills Committee on the fairness of imposing a time limit on the right of interested parties to seek a judicial remedy against the Town Planning Appeal Board decision. Thank you, Mr Chairman.

Proposed amendment

Clause 5

That clause 5 be amended, by deleting the clause.

Question on the amendment proposed, put and agreed to.

Question on clause 5, as amended, proposed, put and agreed to.

BETTING DUTY (AMENDMENT) BILL 1995

Clauses 1 and 3 were agreed to.

Clause 2

MR HOWARD YOUNG: Mr Chairman, I move that subclause (3) of clause 2 be amended as set out under my name in the paper circulated to Members.

As I have explained earlier, Members are of the opinion that an agreement between the Royal Hong Kong Jockey Club and its overseas partner for setting up an overseas betting venue should be subject to the approval of the Secretary for Home Affairs and propose to amend clause 2(3) of the Bill to this effect. The Administration has advised that it has no policy objection to this proposal.

Proposed amendment

Clause 2

That clause 2(3) be amended, in the proposed definition of "overseas bet" by adding "and approved by the Secretary for Home Affairs" after "authorized by the Club".

Question on the amendment proposed.

SECRETARY FOR HOME AFFAIRS: Mr Chairman, as stated in my speech during the Second Reading debate, I would just like to reiterate that the Government has no policy objection to this Committee stage amendment and that the Royal Hong Kong Jockey Club has also confirmed its agreement too.

Thank you, Mr Chairman.

Question on the amendment put.

Voice vote taken.

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

Mr Howard YOUNG claimed a division.

CHAIRMAN: The Committee shall proceed to a division.

CHAIRMAN: I would like to remind Members that they are called upon to vote on Mr Howard YOUNG's amendment to clause 2 of the Betting Duty (Amendment) Bill.

CHAIRMAN: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

CHAIRMAN: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr SZETO Wah, Mr Ronald ARCULLI, Dr LEONG Che-hung, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Eric LI, Mr Fred LI, Dr Philip WONG, Mr Howard YOUNG, Mr WONG Wai-yin, Miss Christine LOH, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, 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 for the amendment.

THE CHAIRMAN announced that there were 39 votes in favour of the amendment and none against it. He therefore declared that the amendment was carried.

Queston on clause 2, as amended, proposed, put and agreed to.

LAW AMENDMENT AND REFORM (CONSOLIDATION) (AMENDMENT) BILL 1995

Clause 1 was agreed to.

Clause 2

SECRETARY FOR HOME AFFAIRS: Mr Chairman, I move that clause 2 of the Bill be amended as set out in the paper circularized to Members.

The amendment makes express provision for nominations to be included among the interests in property in respect of which the court may relax the legal rule of public policy known as the forfeiture rule. Nominations commonly arise in the context of insurance policies. Currently, where someone unlawfully kills another and is the nominated beneficiary of the deceased's life insurance policy, he or she cannot benefit from the insurance policy even if justice demands otherwise. The effect of the amendment is to give the Court the power to modify the application of the forfeiture rule where it is just to do so in order to allow the nominated beneficiary in such a case to take the benefit of the policy concerned. The amendment was agreed to by the relevant Bills Committee.

With these remarks, Mr Chairman, I commend the amendment to the Committee.

Proposed amendment

Clause 2

That clause 2 be amended, in the proposed section 25B(4)(a), by adding —

"(ia) on the nomination of that deceased or on the failure of that deceased to make a nomination;".

Question on the amendment proposed, put and agreed to.

Question on clause 2, as amended, proposed, put and agreed to.

Council then resumed.

Third Reading of Bills

THE SECRETARY FOR HEALTH AND WELFARE reported that the

MEDICAL REGISTRATION (AMENDMENT) (NO. 2) BILL 1995

had passed through Committee with amendments. She 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.

THE SECRETARY FOR FINANCIAL SERVICES reported that the

LEVERAGED FOREIGN EXCHANGE TRADING (AMENDMENT) BILL 1996

had passed through Committee without 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.

THE SECRETARY FOR FINANCIAL SERVICES reported that the

SECURITIES AND FUTURES COMMISSION (AMENDMENT) BILL 1996

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.

THE SECRETARY FOR SECURITY reported that the

REHABILITATION OF OFFENDERS (AMENDMENT) BILL 1995

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

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

Bill read the Third time and passed.

THE SECRETARY FOR TRADE AND INDUSTRY reported that the

INTELLECTUAL PROPERTY (WORLD TRADE ORGANIZATION AMENDMENTS) BILL 1995

had passed through Committee with amendments. She 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.

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

NOISE CONTROL (AMENDMENT) BILL 1995

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.

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

ROAD TRAFFIC (AMENDMENT) (NO. 2) BILL 1995

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.

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

TOWN PLANNING (AMENDMENT) BILL 1995

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

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

Bill read the Third time and passed.

THE SECRETARY FOR HOME AFFAIRS reported that the

BETTING DUTY (AMENDMENT) BILL 1995

had passed through Committee with amendment. She moved the Third Reading of the Bill.

Question on Third Reading of the Bill proposed and put.

Voice vote taken.

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

Mr Howard YOUNG claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are called upon to vote on the motion that the Betting Duty (Amendment) Bill be read the Third time.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mrs Selina CHOW, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Frederick FUNG, Mr Eric LI, Dr Philip WONG, Mr Howard YOUNG, Miss Christine LOH, 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 LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Dr Anthony CHEUNG, Mr LAW Chi-kwong, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted against the motion.

THE PRESIDENT announced that there were 28 votes in favour of the motion and 14 votes against it. He therefore declared that the motion was carried.

Bill read the Third time and passed.

THE SECRETARY FOR HOME AFFAIRS reported that the

LAW AMENDMENT AND REFORM (CONSOLIDATION) (AMENDMENT) BILL 1995

had passed through Committee with amendment. She 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.

MEMBER'S MOTIONS

PRESIDENT: I have accepted the recommendations of the House Committee as to the time limits on the speeches for the motion debates and Members were informed by circular on 22 April. 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, if any. Other Members, including the movers of the amendments, will each have seven minutes for their speeches. Under Standing Order 27A, I am required to direct any Member speaking in excess of the specified time to discontinue his speech.

ACCESS TO EXECUTIVE COUNCIL PAPERS BY THE PUBLIC ACCOUNTS COMMITTEE

MR ERIC LI to move the following motion:

"That having regard to -

1) Government's acceptance of a paper presented by the Chairman of the Public Accounts Committee on 19 November

1986 in this Council that the Committee should make further inquiry in cases where it appears from the Director of Audit's report that in the setting of policy objectives there may have been a lack of sufficient relevant and reliable financial and other data available and that critical underlying assumptions may not have been made explicit;

2) the need in such cases for the Public Accounts Committee to have sight of documents evidencing what data were made available to Executive Council in its setting of the policy objectives in question and whether critical underlying assumptions had been made explicit in such documents; and

3) the fact that in attempting to make further inquiry into such a case arising out of the Director of Audit's Report No. 25 the Committee was refused sight of such documents by Government on the ground that they belonged to a class which Government wished to keep confidential;

this Council condemns the Administration for refusing to cooperate with the Committee in the performance of its duties by resorting to claims of class confidentiality for Executive Council documents, rather than considering the actual contents of such documents, in cases where the Public Accounts Committee is seeking to carry out its duty of further inquiry on the Director of Audit's reports."

MR ERIC LI (in Cantonese): Mr President, I believe Members of this Council on the whole know very well the background to my motion. To avoid repetition, I would only briefly reiterate the main points.

Just like submitting Report No. 26 today, the Director of Audit (DA) submitted DA Report No. 25 on 8 November 1995. The Public Accounts Committee (PAC) started gruelling work on its scrutiny. Throughout the process, the Government and the relevant persons have rendered full co-operation. The PAC noted when undertaking the Review of the Housing Benefits provided to staff by the Hospital Authority that the testimonies given by the existing and the former Government officials in public hearings were obviously at variance with the opinions given by the DA. Questions such as the

following were found:

Question (1): Both parties differed markedly in their understanding of the definition and implementation of the principles of the "cost-compatibility" policy adopted by the Executive Council.

Question (2): The Government admitted that it was difficult to accurately assess the long-term cost for the said policy. It did not deny that over-spending might occur after the policy had been implemented for a certain period of time. Both sides had different stories to tell on whether the Executive Council had obtained all financial data for analysis and whether the Government had fully briefed the Executive Council before the Executive Council made a decision to adopt the policy.

Officials who attended the public hearing had reviewed Executive Council records beforehand. They had also quoted selectively from such documents from time to time during the hearing. The DA had also scrutinized all relevant Executive Council minutes. Only the PAC, which was confronted with various testimonies, lacked these important data, although it had the responsibility of making independent judgments. The PAC promptly requested the DA to submit the scrutinized documents to verify what he said. However, the DA refused on the ground that he was not entitled to disclose Executive Council papers to the PAC. Naturally, the PAC, after seeking legal advice, was unanimously of the view that the proper channel was to advance a request to the Chief Secretary for the Chief Secretary to urge the Administration to submit to the PAC the relevant papers on the resolution, such that the PAC can make an independent, true and fair judgment.

As a result, in my capacity as chairman of the PAC, I wrote to the Chief Secretary on 12 December 1995 to advance the request, but the request was politely declined. The rationale held by the Chief Secretary was "the proceedings of the Executive Council should remain confidential" and the PAC had put forward "no overriding reason why an exception should be made in this case". After meticulous deliberation, the PAC decided to write to the Chief Secretary again on 12 January 1996, highlighting the PAC's position, which includes:

1. One of the basic constitutional functions of the PAC is to carry out

an independent evaluation of the DA's Report. It is in principle incorrect for the Government to decide for the PAC whether it is necessary to refer to the relevant documents;

2. Just like other committees, the PAC is certainly prepared to accept the Government's disagreement to disclose Executive Council papers on specific security or diplomatic grounds, that is, the classification of the "contents". However, it cannot accept the Government's refusal to co-operate with the PAC on the ground that the documents belong to a class which the Government considers should remain confidential:

3. The PAC quoted the first paragraph of the original motion moved on 19 November 1986. At that time, a set of guidelines on co-operative work was submitted to the Legislative Council after an agreement had been reached among the PAC chairman, the Government and the DA. To discharge its duties according to the guidelines, the PAC considers that further inquiries should be made in respect of the case concerning the Hospital Authority;

4. The PAC is not requesting the Executive Council to disclose papers to the public. The PAC is asking officials to make specified disclosure on good ground and in confidence. The PAC believes that the documents it requests to scrutinize are only general out-dated resolution papers, which are not politically sensitive.

The PAC's second letter was also futile. The Chief Secretary reiterated in her reply that "it is essential to uphold this long-standing principle in order to ensure that there is no inhibition in the free exchange and presentation of views in Executive Council". The Chief Secretary also wrote: "the public interest is already adequately protected by the fact that DA is allowed access to Executive Council documents." The full text of the relevant correspondence can all be found in the appendix to the report I submitted to this Council on 7 December 1996.

The Administration's decision actually put the PAC in a difficult position. The PAC had to make its judgment on conflicting opinions of the Government and the DA on the basis of limited information or even less information than that available to either party. Despite these difficulties, the report was completed

and the results submitted to this Council. The publication of the report, however, does not mean that all questions have been answered. The stance taken by the Government in handling the matter gives rise to four unresolved issues with far-reaching consequences. As chairman of the PAC, I feel I am duty-bound to look further into these issues.

(1) The Government was in breach of the agreement reached in this Council in 1986 with the PAC and the DA to abide by the guidelines. The agreement would be empty unless the Government could give this Council a detailed explanation on its stance on this matter.

(2) The power of the PAC in representing the president of the Legislative Council to independently monitor public accounts, in particular its power to scrutinize documents is so small that institutionally it has even less power than the DA (a member of the Civil Service). The Government has the right to unilaterally bar the reasonable request made by the PAC. This is against public interest, which the PAC represents and seeks to protect.

(3) We know from the reply made by the Chief Secretary to the PAC on 2 January 1996 (second last paragraph) that the Administration could break the rules in respect of the refusal to disclose documents on the ground of the "class" of the documents. If the present case is not handled as an exceptional case by the Government, then, what cases would be regarded as exceptional?

(4) Some open criticisms have boldly accused the Government of purposely holding back its decision-making process. The Government must give a satisfactory reply to these grave accusations of dereliction of duty by former officers.

The Chief Secretary's decision should be understood to be representative of the collective decision of the Executive Council, which is already a top-level body in our administrative structure. There is no more channels of appeal. With the separation of powers among the Administration, the Legislature and the Judiciary, the PAC could only try to look for a way out by judicial means or by moving laterally through this Council.

The judicial means is to invoke the Legislative Council (Powers and

Privileges) Ordinance. The Ordinance in fact is not enacted for the sole purpose of dealing with the Government. Therefore, although the PAC is entitled to summon individual officers to attend hearings, bringing with them the specified documents, the officers can only come empty-handed since the Executive Council has decided that papers should not be submitted. Then, even though the PAC still has the right to target at the relevant officers and take punitive actions on him, the effect would certainly be escalating the matter politically. However, this still cannot help the PAC understand what really happens in the decision-making process or discharge its constitutional duty of acting as an independent "fiscal monitor".

Taking this incident as a precedent, members of the PAC agreed that the duty to monitor accounts should first be performed and then I should move the motion in my name for debate to enable colleagues in this Council to join hands in finding a way out. At the same time, the Government will thus be given a chance to explain itself.

The wording of my motion has been worked out with the assistance given by the Secretariat of this Council and after the exchange of ideas between PAC staff and the Legal Adviser. It is intended to come to a unanimous conclusion with the PAC in respect of the incident. It is not meant to amplify or water down the opinions expressed in the report. Rather, it is intended to uphold the spirit of fairness and target at issue instead of people.

Up to today, besides the PAC report, I am the only Member who have spoken most on the matter. My motion gives the Government reprimand but this is only an isolated incident. The motion is not meant to undermine the dignity of the Government or the executive-led administration. Given all the powers it has, the Government should change for the better after receiving this Council's verbal reprimand. I expect a clear message would be given to the PAC after the debate on how the PAC should discharge its duties. The Government should account for the unresolved issues I mentioned to the public in order to bring the matter to a satisfactory conclusion and to give the matter an open and final adjudication.

The Chief Secretary, Mrs Anson CHAN, is going to represent Hong Kong in her visit to Beijing tomorrow. Everybody is looking forward to her visit which is crucial. I hope her mood will not be affected by today's debate. I extend my sincere wish to Mrs Anson CHAN that her trip will be happy and successful.

With these remarks and acting temporarily as a "prosecutor", I urge Members to support the motion.

Question on the motion proposed.

DR LEONG CHE-HUNG: Mr President, I rise to support the motion. I am well aware that this motion moved by the Chairman of the Public Accounts Committee (PAC) is on a general displeasure of the Administration in refusing to release Executive Council documents by resolving to claims of class confidentiality, thereby hampering the work of the Committee.

We are all aware that the saga arose as a result of the PAC's scrutiny of the Director of Audit's report on the salary package of the Hospital Authority (HA). I will, therefore, Mr President, have to seek your permission from time to time to use specific illustration of the HA to exemplify and perhaps strengthen the argument why full Executive Council papers are needed by the PAC, and that the lack of them will not only result in a less creditable report, but will also produce confusion to the public and a disservice to the hard working staff of the HA who have determined to make the system work.

It may be timely to declare my interest, Mr President, not only as a member of the HA, but more importantly, as a member of the Provisional Hospital Authority responsible for drafting of the pay package.

The gist of the report brought forward by the Director of Audit concerns the pay package of the HA staff which may well be comparable to that of the Civil Service today, yet if projected to 20 years might mean an estimated overspending of some $6.7 billion by the Government. The implication therefore was that this projection was not made aware to the Executive Council. The conclusion drawn by the PAC on the Director of Audit's report therefore was

that "there were gross inadequacies in the process of formulating the HA remuneration package by the Administration and the Executive Council as evidenced by the fact that there was lack of a clear definition of the principle of cost comparability between the civil service and the HA package ..... consideration had not been given to fully appraising the Executive Council of the long-term financial implications and the need for a review mechanism to ensure cost comparability in future ....."

Public being kept in the dark over "secret"

But is this the case? Was the Executive Council actually kept in the dark or did the Executive Council gave the green light with other reasons in mind? This will and could never come to light unless the original papers are revealed. Is it fair therefore to expect the PAC to come to any intelligent conclusion? Is it fair for the PAC to come to this allegation in the absence of a centerfold piece of the jigsaw? All these beg the question of "what was the policy decision made then which is so secretive that the public must be kept in the dark?"

Let us look at it from another angle. Let us assume that the HA did pull a fast one and have an one-up on the Administration and that the Administration was not aware, let alone alert the Executive Council, of the long-term effect that the package might bring. Surely the Administration should be wise after the event. Yet, two years down the line, through another government policy branch, the Executive Council is asked again to accept a same and similar package for clinical staff of the two medical schools. Did the Administration commit the same mistake twice, or were the Administration and the Executive Council fully aware of the situation and the decision was made with all these in mind on a long-term policy? Only a complete revelation of the Executive Council papers would show the true path. Looking at it from a sinister angle, was the Executive Council kept in the dark or did the Administration and the Executive Council act in collaboration?

The same could be said of the other storm in the teacup, viz the "double benefit" saga. Again what was in the Executive Council papers? How much did Executive Council know? How detailed was the Executive Council clearly explained to? Whilst I do not accept that there is a doubt benefit, it is even more difficult to accept that the Administration has not considered this point then

or that the Executive Council was not briefed. We all remember what the then Secretary for the Civil Service said in this very Chamber in the eyes of the public to imply that the Administration went in with her eyes open knowing the problem. Yet the PAC was asked to come to a conclusion through a guessing game. Is it fair to the PAC? Is it fair to those who worked so hard to set up the HA? Is it fair to the staff who through no fault of theirs are now told that they are paid too much?

Need to dig out the real reason behind setting up HA

Mr President, in relation to the Executive Council papers relevant to HA, I would suggest that the PAC should go further and have a look at the Executive Council papers on why the idea of an independent HA was set in the first place. Why was a consultant from Australia secured to look at the issue? Is it really a management reform of the hospital services that the Government have in mind, or is it a means of hiving off hospital services to an independent body to take away an ever increasing public demand and to shed the responsibility of health care services by giving a fixed sum to the HA to do the job?

There are rumours that the Government— having successfully turned the public to align hospital service with the HA, that is, it has successfully taken itself away from any disgruntle of hospital service, and that the maximum number of staff have been lured to move over to the HA and cannot turn back — is moving into phase II — the HA is using too much money. Since 80% of the HA budget is for staff salaries and on-cost, if there is any way to lead the public into believing that HA staff are overpaid, public pressure could be used to the advantage of the Government to curb salary increase, if not a significant cut.

Are all these facts or fantasies? Are they the truth or are they just cock and bull stories? The clue, the missing link, Mr President, must be buried in those files that are stamped "For the Executive Council's eyes only"!

Responsible government must be accountable to the public

Without exposing the detail papers, regrettably, those who worked so hard to established the HA are now facing the accusation of being irresponsible. Staff morale are put to a litmus test.

Mr President, it is not a story of executive-led versus legislature-led government; it is not a story of power struggle between the legislators and the Administration. It is about a responsible government being accountable to the public through this elected legislature.

MR ALBERT CHAN (in Cantonese): Mr President, Hong Kong is an extremely extra ordinary place, and its economic achievements are recognized the world over. Strangely enough, however, the political system of this economically successful metropolis is exceptionally feudalistic and backward.

Some of those in support of the existing system of government by the executive in Hong Kong have euphemistically referred to this system as "executive-led". In fact, it is merely an authoritarian regime which have neither the people's mandate, nor founded on public opinions. Institutionally speaking, the decision-making process and operation of the executive bodies in Hong Kong are modelled on the British system of colonial government. The system of Hong Kong is thus heavily characterized by colonialism. In terms of the overall operation of the system, the executive is monitored by the Legislative Council, a relatively more important aspect being the monitoring of public finances. In a paper presented by the Chairman of the Public Accounts Committee (PAC) on 19 November 1986 to the Legislative Council, it was stated that the Director of Audit is duty-bound to carry out value-for-money audits relating to the economy, efficiency and effectiveness with which any branch, department, agency, other public body or audited organization has discharged its function.

Under Standing Order 60A of the Legislative Council, there shall be a standing committee, to be called the Public Accounts Committee, to consider any report of the Director of Audit laid on the table of the Council which deals with examinations carried out by the Director relating to the economy, efficiency and effectiveness of audited organizations. Standing Order 60A also states that the PAC may call any public officer to give information or any explanation or to produce any records or documents which the PAC may require in the performance of their duties.

Mr President, over the years, through this independent government body, the Audit Department, we have conducted value-for-money studies on the

operation of the Government. The PAC of this Council has conducted public hearings on the contents of the Director of Audit's reports, giving audited organizations the chance to defend themselves and to express their views openly. This is a vitally important mechanism in a civilized community where the rule of law prevails, for the PAC will not conduct any hearing in the absence of the organization concerned; nor will it engage in "black-box operation" as some absolutely authoritarian states do. Mr President, I have been involved in the work of the PAC for some three years and I can say for sure that during this period of time, the PAC has performed its work in a fair, reasonable and rational manner. For many years already, the Government has been co-operative, providing the PAC with the information required. Despite the difference in views between the PAC and the Government, and despite the Government may not necessarily accept the suggestions made by the PAC, both sides have, over the years, maintained a relationship based on mutual respect.

Regarding the Director of Audit's recently released Report No. 25 on the review of the housing benefits provided by the Hospital Authority (HA) to its employees, the PAC has time and again asked the Government to produce the relevant papers presented at the meetings of the Executive Council then. However, the Government has repeatedly refused to do so. As a matter of fact, many years ago, the Government has already promised the Legislative Council that it would co-operate with the PAC by providing assistance in respect of its hearings, including the provision of relevant information and papers. This was a pledge made by the Government years back. The Government's refusal to release the papers of the Executive Council this time has obviously impaired the hitherto harmonious working relationship between the PAC and the Government. Although the Government has claimed time and again that the discussion items and operation of the Executive Council ought to be kept confidential, I am of the view that if the information concerned neither affect the security of the territory nor involve any politically sensitive issues, the release of it will not cause any repercussions to the Government. There is no reason at all for the Government to refuse providing the PAC with the Executive Council papers relating to the HA.

Mr President, I reckon that the Executive Council has discussed the benefits of HA employees as far back as six years ago, and it has been quite a long time since then, many incumbent branch secretaries may not fully understand the decisions made at that time. That being the case, the papers presented at the meetings then are crucial for the PAC to grasp the full picture of

the matter. Besides, the Director of Audit has already read these papers and drawn his own conclusions which he has made public. In view of this, it can be said that the question of confidentiality no longer exists. I really fail to see why the Government should insist on withholding such documents from the PAC.

Now, the Executive Council alleges that it has to uphold two operating principles, namely, collective responsibility and confidentiality. In regard to collective responsibility, during the Governor's Question Time on 18 April, Governor Chris PATTEN indicated before this Council that this principle would be exercised with tolerance and generosity of spirit. Since the Governor himself is willing for the sake of political interests, to approach collective responsibility with flexibility of reasons and means, why is it that our Chief Secretary has declined to produce such papers on the ground of confidentiality? This attitude of the Chief Secretary runs counter to the Governor's interpretation of the spirit of collective responsibility. This is tantamount to "allowing officials to set fire but forbidding civilians to light a lamp", and is also the best illustration of the Chief Secretary's double standard and self-contradiction.

Mr President, I really fail to understand why it is impossible for the Government to approach the principle of confidentiality also with generosity and leniency. Mr President, I really think that it is necessary for the Government to review the way it handled this case in order to safeguard statutory bodies against any interferences in the discharge of their duties. Moreover, the Government should not abuse the principle of confidentiality, lest that the public may be deprived of the right to know the truth or that the status of statutory bodies may be jeopardized.

Mr President, just now the Honourable Eric LI made reference to the Chief Secretary several times. However, he addressed the Chief Secretary as Mrs Anson CHAN. I wonder whether this has anything to do with the capacity in which the Chief Secretary is supposed to go on her trip to Beijing tomorrow. To me, the one who is going on a trip to Beijing tomorrow is still our Chief Secretary, not just Mrs Anson CHAN the person. While I have criticized our Chief Secretary just now, I would still like to wish the Chief Secretary a happy and successful trip to Beijing tomorrow. Thank you, Mr President.

MISS EMILY LAU (in Cantonese): Mr President, I speak in support of the Honourable Eric LI's motion which condemns the Administration for refusing to

hand over Executive Council papers to the Public Accounts Committee (PAC). Such an action on the part of the Government has certainly very much disappointed the entire Committee, of which I am a member. Moreover, it is also this refusal of the Government to co-operate, which has made it impossible for the Committee to fully discharge its function in acting as a watchdog over the Government's accounts, that I find extremely regrettable.

The present refusal of the Government to release these papers has resulted in tense relationship which developed between the executive and the legislature. Mr President, incidentally there is a similar case, if we read the newspapers today, we will find there are reports on a court case in which the relevant administrative authorities refused to submit papers to the court and the defendant; and but the case had to be ruled by the judge, and the Chief Secretary, though unwillingly, ultimately had no alternative but to submit the papers. Of course, we cannot draw too much analogy between the situation in this Council and that court case, but it does reflect that as far as the accessibility to papers is concerned, the relationship between the executive and the judiciary as well as that between the executive and the legislature will inevitably become tense.

The Chairman of the PAC, Mr Eric LI, has just mentioned that we have no wish to resolve the matter through judicial means by invoking the Legislative Council (Powers and Privileges) Ordinance and would thus come into another conflict with the Administration. We decided not to take this step after in-depth discussion within the PAC and with our Legal Adviser. In view of this, the Chairman of the PAC moves a motion today to condemn the Government. We hope the Government can understand that on many occasions, we have substantial grounds to request the Government to provide us with information. We also hope that the Government, after listening to our motion debate today, can adopt a more open attitude towards co-operating with the Legislative Council.

Mr President, when denying our access to the papers, the Administration claimed that Executive Council papers were the equivalent of Cabinet papers. Of course, we have obtained information from the United Kingdom and it was understood that there was no precedent for Cabinet papers being made available to the United Kingdom Public Accounts Committee. However, I believe the Government will not continue to say that if the papers were the equivalent of Cabinet papers, then no one should have access to them. Maybe the parliaments are denied access to these papers; no one in Hong Kong or the United Kingdom

has seen them, but I believe the Government will admit that even in the United Kingdom, there are cases in which the public is allowed access to Cabinet papers inside the courts during court proceedings. Hence, not matter whether they are Cabinet papers or Executive Council papers, they are not totally banned from public access. I can see that the Attorney General is shaking his head, but I have the papers in hand which perhaps I can give a copy to the Attorney General later on and let him have a look. By then, he will know that under certain circumstances, some people have indeed been given access to Cabinet papers inside the courts.

Mr President, both Mr Eric LI and Mr Albert CHAN gave details regarding the paper tabled to the Legislative Council by the then Chairman of the PAC on 19 November 1986 and I will not go into the details. But, why did the PAC attach so much weight to the paper submitted in 1986? It is because the paper set out clearly that the Government has found it acceptable to co-operate with us. In particular, it accepted that the Committee should make further inquiry and the Government should co-operate with the Committee in cases where it appeared from the Director of Audit's report that the policy objectives were unclear and in the setting of objectives, there might have been a lack of sufficient data available and that critical underlying assumptions might not have been made explicit. The Committee thus found that the circumstances of the Hospital Authority case totally meet with this requirement. We hold that it is appropriate, under these circumstances, to ask the Government for access to these papers. Regrettably, however, the Chief Secretary stated in her reply letter to us dated 2 January 1996, inter alia, that these Executive Council papers, regarded to be a class to remain confidential, cannot be released. She also told us in the letter that she could see no overriding reason why an exception should be made in this case. At that time, we were under an illusion that this could be an exceptional case. We therefore continued to write to the Chief Secretary. She gave us a reply on 1 February and she changed the tone. Mr President, instead of further mentioning anything about "exceptional case", she bluntly stated that these papers could not be handed over and papers in this class could not be released at all. Therefore, Mr President, we have a feeling that the PAC seems "to have been led on a tour around the garden" by the Government. Initially, we thought that it was possible to have an exception. As what Mr Albert CHAN and Mr Eric LI have said just now, we all believe this should be regarded as an exceptional case because these papers contained neither sensitive information nor commercial secrets. The problem may lie in the fact that, as the Chief Secretary put it, it would be futile read the papers. She therefore urged us to trust her in

that there was no need for us to read the relevant papers. However, the point is that the Director of Audit, who have read through these papers, told us that regarding the discussion over the entire Hospital Authority case, he felt that the Government had not provided the Executive Council with information to inform the Council of the longer term cost implications. However, the Chief Secretary told us that they have so provided the information. In whom should we believe? Mr President, if access to the papers were denied, shall the Members just rely on "trust"? I believe it is hard for us to do so.

Mr President, I hope that the Chief Secretary can appreciate our concern after listening to the speeches of Members. By then, she may consider changing her mind and would co-operate with the Legislative Council sincerely. We do not want to come into conflict with the Administration. We only hope that the Chief Secretary can understand this. I have been a member of the PAC since 1991 and we have all along been co-operating well with the Government. No one would like to see the situation as it stands at present. Therefore, we hope that the Chief Secretary can change her mind and allow us a chance to have access to these papers.

Mr President, I was most unhappy with the last paragraph of the reply from the Chief Secretary dated 1 February because she suggested that the best way for Members to do is to point the way forward rather than to dwell on what happened in the past. However, the duty of the PAC is to "explore and settle *post factum* accounts", and another hearing will be held on 6 May. We are always obliged to look back. Of course, we learn from the past to avoid repeating the same mistakes in the future, but if you ask us not to look back, it would be tantamount to asking us to close down altogether. I hope that the Chief Secretary can really think about this and give us a positive reply.

I so submit in support of Mr Eric LI's motion.

MR DAVID CHU: Mr President, ordinarily I support any call for more open government. I cannot in this instance because the motion is inviting us to condemn when it should be requesting the Government for more information to help us become better policy monitors.

Nearly 10 years ago, the Government assured legislators that it would yield all reliable information to let them reach a sound decision on any given issue.

So far the Administration has done that, though not to everyone's satisfaction. The Government, being a human institution, cannot resist presenting to us scenarios which fit its assumptions on what is good for the community. Everyone here does that — the selling of an idea through innocent buyers to a certain degree.

The focus of the debate today is really not about some documents, but about the co-operation and co-ordination between the executive branch and the legislature. Here our executive enjoys the right and the privilege to control access to classified information, a basic rule to which we must adhere. If confidentiality on classified information is violated on demand, it would surely hinder our executive-led Government without serving the public good.

The negative repercussions will come in four forms at least: Policy makers (1) would be constantly second-guessed; (2) would be intimidated by others looking over their shoulders; (3) would not give their frank opinions for fear of hurting their public image, and (4) sensitive information would be taken out of context and misused.

This is not to say that executive government is almighty. This Council has the inalienable right and duty to check, vet and deliberate on government work, but not to the extent that it becomes a ministerial set-up for the roles of the executive and the legislative cannot be blurred. If we delve too deeply without any hint of trust into each other's responsibility, we might disrupt the checks and balances we have put in place.

I empathize with Mr LI and share his sense of frustration with the Government's lack of total candour about extra fringe benefits for Hospital Authority staff. I cannot agree, however, with any attempt to force the Government to do anything that might compromise its executive authority. We have here an executive and a legislative system that is separate yet co-operative. This is the essence of our system's success. Legislative Council condemnation of the Government now would only harden our mutual positions, be counter-productive and also imply the need for structural change to our system.

I therefore oppose the motion's purpose and phrasing, but not its underlying principle of more voluntary transparency in the Government. Therefore, Mr President, I will vote against the motion. Thank you.

MRS ELIZABETH WONG: Mr President, I must first declare an interest. By that I mean community interest. And in the interest of the community, I think that the Government has committed three wrongs by not letting the Public Accounts Committee have sight of the relevant documents and available information pertinent to the Director of Audit's Report No. 25.

By "the three wrongs", it is meant that they have wronged: the Hospital Authority, the Auditor and the senior staff responsible for setting up the Hospital Authority. I shall explain why.

On 8 November 1995, the Director of Audit tabled his report in this Council.

This was a valuable report on results of value-for-money audits and the Government's accountability was once more put under the microscopic keen scrutiny of Legislative Council Members. And so it should!

In the report, the Director of Audit charged that the principles for the formulation of the HA remuneration package were breached. One of the sacred principles was that the cost for the setting up of the HA must be comparable to that of the Civil Service.

The Director of Audit reiterated that whilst the package was broadly comparable with that of the Civil Service at the time, over time, the encashed housing benefit which is pegged to salary will, over a period of 20 years, be in excess of their counterparts in the Civil Service, by $6.7 billion at current prices! A huge excess indeed, if the estimates were true!

So, what went wrong?

Without the evidence to support the Director of Audit's report, the competence of the Director of Audit is not put beyond doubt and the good image of the HA is irrevocably damaged by the innuendo implicit in the report that there was little "value for money" gained on the HA.

Unless the audit report is substantiated, inevitably a host of questions

needs to be legitimately asked by the community. For example: Who unleashed the Director of Audit on the Hospital Authority? Why now — five years after the setting up of the Hospital Authority? Who selects the agenda for the Director of Audit to enable him to select appropriate accounting policies and to apply them consistently? Indeed, how independent is the independent audit? What is the process of drafting the report? Who shapes the report? Is the published report materially different from the first draft? If not, why not?

Far be it from me to suggest or cherish any conspiracy theory, the community has a right to ask these questions and to know the answers; and these answers can only be provided by the Government through a revelation of relevant records. Alas, now we shall never know! All this is hidden in the dark labyrinth of power in the Government Secretariat.

Be that as it may, the Director of Audit claimed that not only was the principle breached at the time, but that the senior officials in charged of the policy collectively and deliberately concealed it from both the Executive Council and this legislature! These were serious charges indeed.

Unless these charges can be substantiated, the validity of the Director of Audit's report is seriously challenged and his credibility further undermined. He is unlikely to escape the accusation of having quoted out of context; of gross incompetence and of inadequate research in the formulation of his report.

My understanding of an audit report is that it is free from material mis-statement and that it gives a true and fair view in all material respects of the state of affairs which forms the substance of his report. As the case stands, Report No. 25 can only be qualified through non-production of available evidence.

For the Administration to hold back and to resort to claims of class confidentiality is to dodge the facts and to confuse class confidentiality with content confidentiality.

The production of papers is unlikely to undermine the power of an executive-led Government, which is hopefully still there to lead.

But it is unconscionable to frustrate the deliberations of the Public Accounts Committee by refusing to produce the relevant papers. This must be

condemned.

That notwithstanding, Mr President, I have also joined my honourable friend, Mr Eric LI, in wishing the Chief Secretary a successful visit to Beijing.

CHIEF SECRETARY: Mr President, I have to make it clear at the outset that the Administration strongly objects to the Honourable Eric LI's motion. The allegation that the Administration has refused to co-operate with the Public Accounts Committee (PAC) in the performance of its duties is simply not true. On the contrary, the Administration has always done its best to co-operate fully with the PAC and to assist it in its work, and we did so in the examination that the Committee carried out into the Director of Audit's report on the review of the housing benefits provided by the Hospital Authority to its staff.

The motion refers to the paper presented to this Council on 19 November 1986 by the then Chairman of the PAC, which set out the scope of the work of the Director of Audit in carrying out "value for money" studies. The Administration did indeed accept the proposals in this paper. But nothing in the paper suggested that the PAC should have access to Executive Council documents, as the motion implies. Whether or not this is necessary is a wholly subjective judgment, and it is wrong to suggest by juxtaposition that it was accepted, either explicitly or implicitly in 1986.

Let me remind Members of this Council of the extent of the Administration's co-operation with the PAC during its recent inquiry into the Director of Audit's report on the Hospital Authority staff's housing benefits. All officials involved, including the former Chief Secretary, the former Secretary for Health and Welfare, the former Secretary for the Civil Service, the present Secretary for the Treasury, the former Chairman of the Hospital Authority and the present Chief Executive of the Authority, attended the PAC's hearings several times to answer Members' queries. The Administration also provided the Committee with the relevant internal correspondence between the Hospital Authority and the Government. I myself gave detailed answers to the questions raised in a series of letters sent to me by the Chairman of the PAC, including full details of those parts of the relevant Executive Council memoranda and discussions which related to this issue. The record is clear. We did our best to give every assistance to the PAC in its deliberations. All relevant information

was provided to the Committee and I reject any suggestion that the Administration deliberately misled the PAC.

The Administration's position on the confidentiality of Executive Council memoranda and records is well known and I have stated it many times in my letters to the Chairman of the PAC. We believe that it is essential to uphold the long-standing principle of keeping Executive Council proceedings confidential in order to ensure that there is no inhibition in the free exchange and presentation of views in the Executive Council. It would be against the public interest to compromise this principle. This view is not unique to Hong Kong. It is in line with the practice in the United Kingdom where the courts have, as a general rule, held that Cabinet papers are as a class immune from disclosure, and where I understand there is no precedent for Cabinet papers being made available to the United Kingdom PAC. As Executive Council papers are equivalent to United Kingdom Cabinet papers, they should, by analogy, be immune from disclosure in Hong Kong. Indeed, this argument has been accepted on a number of occasions by the courts in Hong Kong. The suggestion that a claim of confidentiality for Executive Council papers should be based on the contents rather than the class of the documents concerned is clearly not in line with this principle. Furthermore, this approach would be likely to lead to endless disputes between the Government and this Council over whether the contents of particular documents were sensitive in nature. We believe that the public interest is fully protected by the fact that the Director of Audit is allowed access to Executive Council papers and can form his own independent judgment as a result of this.

The Honourable Albert CHAN has argued that the rule regarding confidentiality should be relaxed since the other cardinal rule regarding collective responsibility can be applied flexibly. I wish to clarify that whilst the rule of collective responsibility can be applied with flexibility, that in no way reduces Executive Council Members' commitment to collective responsibility. To ensure the proper functioning of the Executive Council, the confidentiality rule has to be maintained. We will continue to provide PAC with full details of the relevant part of Executive Council papers but not the paper themselves. That already reflects flexibility in the exercise of the confidentiality rule.

Let me reassure Members that the Administration fully recognizes the role of the PAC as a "watchdog" over public expenditure and that we will continue to co-operate with it fully in order to help it perform its duties efficiently and effectively. In the particular case of the Hospital Authority staff's housing

benefits, the PAC has produced its Report and the Administration will soon complete its review of the Hospital Authority remuneration package. Although the Honourable Miss Emily LAU would not agree, I have to advise that in my view, we should now point the way forward rather than dwell on what has happened in the past. I hope Honourable Members will recognize the responsible and co-operative attitude that the Administration has taken in this case, and that you will reject the motion.

Finally, Mr President, although not germane to this motion, let me thank Honourable Members for the good wishes they have extended on my forthcoming trip to Beijing. Far from my spirits being affected, I can assure Mr Eric LI that I set off in good cheer and I look forward to good progress in my discussions with Mr LU Ping.

Thank you, Mr President.

PRESIDENT: Mr Eric LI, you are now entitled to reply and you have five minutes 18 seconds out of your original 15 minutes.

MR ERIC LI (in Cantonese): Mr President, it seems that my motion today can be carried more easily if it were changed to a motion of good wishes for Mrs Anson CHAN's trip tomorrow. Nevertheless, I am still grateful to the Members who have spoken, one of them being Dr the Honourable LEONG Che-hung, who made quite a number of references to the Report. While I feel that our debate today should not focus on the Report itself, I am very glad to hear that he also agrees on the importance of Executive Council papers to the Public Accounts Committee (PAC) and that the PAC should be allowed access to them.

I want to make some clarifications here. I myself think that in the course of handling the whole issue, the PAC has never, at any time, ruled that the Hospital Authority has done anything unfair, and nothing to that effect is mentioned in the whole Report.

The Honourable Albert CHAN has argued for the case more forcefully than we have in the PAC. I fully support his appeal that the approach which the Government adopts as regards the confidentiality of Executive Council papers

should be one of greater leniency and generosity of spirit. In fact, such a spirit is consistent with what the Honourable Miss Emily LAU has said.

I have at hand an authoritative paper on British administrative law, which, I believe, can be passed the Chief Secretary in one way or another later. As clearly revealed by the paper, it is not necessarily the case that the British Cabinet will always wait until the Court has reached its ruling before releasing the papers required. Very often, the British Cabinet takes the initiative to co-operate with the Court. When it is deemed that the Court has such a need, the Cabinet will deal with the Court's request with flexibility. I very much hope that such a practice can likewise be applied to the Court and the Legislative Council in Hong Kong. Turning back to the Legislative Council, why does the British Parliament often fail to gain access to the papers it requires? The answer lies in the difference in constitutional nature between and Britain Hong Kong. The British Parliament and, more importantly, the Cabinet, are constituted by the ruling party. That being the case, the ruling party is naturally the majority party in Parliament. Consequently, the PAC of Britain knows only too well that any such motion or requests made by invoking the powers legislation will never succeed. This is not because there are any constitutional constraints that prevent the United Kingdom Parliament from acting like the Hong Kong legislature in respect of invoking the powers legislation, or in moving motions to reproach the Government. The real reason is that any chairman of the PAC can realize the total futility of such attempts in the British political context. That is why there has been no precedence so far. This has not been caused by any constitutional constraints; rather, it is its political reality which has prevented Britain from setting a precedence. This is the basic difference when compared to the situation in Hong Kong.

The Honourable Mrs Elizabeth WONG also made many references to the contents of the Report, and many of her questions, it seems should best answered by the Director of Audit. Having said that, as the chairman of the PAC, I can tell Members that my motion is directed entirely at the issue concerned, not at any person. After examining the Director of Audit's report, we have concentrated on the issue itself in the hope of amassing evidence before making any judgement. We have no prejudice at all.

I usually see eye to eye with the Honourable David CHU what he says, but today I find it a bit difficult to agree with him. What he said seems to involve many conjectures. First, he said that it is rather wrong for the Executive

Council to leave people guessing after it released its deliberations. Does he then feel that it will be right for the PAC to guess? As he is a Member of the Legislative Council, I feel that he should also look at the issue from the PAC's angle. If he attributes everything to sheer guessing, he is in fact underestimating the Executive Council, the Legislative Council, as well as the Government.

Why do I say that he is underestimating the Executive Council? Members of the legislatures in many foreign countries, and especially members of their cabinets, cannot make decisions in secret; what is more, they have to help the ruling party to defend their decisions by engaging in public debates. It is totally impossible for them to worry or fear in revealing to others know what they are thinking about. He also said he was afraid that the Legislative Council would abuse this power. Again, this is an underestimation of the PAC's capability. Our past records can show him that we have done our job very well. He has also underestimated the Government's ability. As I have said earlier today, the Government is in total control. The most we can do is to condemn it. If even condemning the Government is forbidden, I feel that Mr CHU has seriously underestimated the Government's ability.

I totally agree that the Chief Secretary has co-operated with us in many ways. We feel that there is only one area in which she has not done enough, and that is, she should not have set limits to the work of the PAC, and should not have asked for what we can do and what we should not do. I agree that, to a certain extent, the PAC has to look forward. Therefore, I will very carefully study the views expressed in today's debate and the Government's reply. If the PAC were to encounter similar cases in future, I believe that the views expressed in today's debate will be of relatively great help to us. Thank you, Mr President.

Question on the motion put.

Voice vote taken.

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

Mr Eric LI claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I would like to remind Members that they are now called upon to vote on Mr Eric LI's motion.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mrs Selina CHOW, Mr SZETO Wah, Mrs Miriam LAU, Dr LEONG Che-hung, 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 Howard YOUNG, Mr WONG Wai-yin, Mr LEE Cheuk-yan, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Dr Anthony CHEUNG, Mr Albert HO, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr NGAN Kam-chuen, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Dr Philip WONG and Mr David CHU voted against the motion.

Mr CHIM Pui-chung and Mr Paul CHENG abstained.

THE PRESIDENT announced that there were 37 votes in favour of the motion and two votes against it. He therefore declared that the motion was carried.

ASSISTANCE TO CHRONICALLY ILL PERSONS

MR MOK YING-FAN to move the following motion:

> "That this Council urges the Government to increase community support services for the chronically ill, including increasing the employment opportunities, community medical and rehabilitation services as well as resources for developing self-help groups for these patients, so as to improve their quality of life."

MR MOK YING-FAN (in Cantonese): Mr President, I have moved this debate on the assistance to chronically ill persons because on the one hand, I wish to arouse public concern for the chronically ill and to acquire an understanding of their working, financial and psychological needs, and on the other hand, I hope that the Government could consider my views and those of other Members and formulate policies as soon as possible in order to provide appropriate assistance to chronically ill persons to cater for their daily needs in the areas of finance, employment and rehabilitation.

As a matter of fact, the lack of assistance to the chronically ill has been a long-standing problem in Hong Kong. According to a conservative estimation, there are about 233 000 chronically ill persons in Hong Kong; besides, the proportion of elderly people to the total population of Hong Kong will increase from 13% in 1990 to 15.4% by the year 2000 according to the Government's estimation. In other words, the number of chronically ill persons in Hong Kong may also increase as its population ages. However, at a time when the social welfare services of Hong Kong are undergoing constant improvements, both society and the Government seem to have neglected the need to provide assistance to the chronically ill. On one hand, chronically ill persons are being discriminated against and cold-shouldered with regard to employment, housing and so on; on the other hand, they are not provided with the most basic assistance to cater for their financial, mental and psychological needs. As a result, they are plunged into plights in their daily life, only to find it embarrassing to disclose their problems to others.

First of all, I would like to talk about employment. According to a survey

conducted in December last year by the Alliance for Patients' Mutual Help Organization, the unemployment rate of chronically ill persons was as high as 55%, and among those who were employed, many of them could only secure part-time jobs; on the other hand, many of the chronically ill persons were dismissed unreasonably by their employers when they were struck by their illnesses.

To a chronically ill person, employment itself is greatly significant, be in the psychological, mental and financial aspects. From the social perspective, employment itself is a kind of right and a symbol of social participation and contribution. No one should be subject to any discrimination, isolation or deprivation of equal opportunities in employment on the ground of physical impairment or handicap.

From his financial point of view, staying in employment can relieve a chronically ill person of the financial burden imposed on him by his medical treatment, and to help him meet the large expenses in medicinal drugs and other items. For example, in the case of renal patients who have to pay the charges of weekly anti-anaemic injections, their regular jobs or income will have direct bearing on their financial burden and their health.

Let me further discuss the significance of employment to the psychological and mental state of chronically ill persons. In the traditional Chinese society, a chronically ill person who has no job is often seen as a burden to the family. As the saying goes: "A chronically ill person cannot expect constant expression of filial piety from his son." To a family which is not very well off, looking after a chronically ill family member is a particularly difficult task, and this is precisely the source of the pressure experienced by the chronically ill. If a chronically ill person loses his job because of illness and has to stay home all day, both his pride and self-confidence will be damaged. Then, when he feels that he cannot face his own family members any more, he may even resort to the road of destruction and attempt to commit suicide. Therefore, to chronically ill persons, staying in employment does not simply mean financial support; it also provides them with the spiritual support that can enable them to live on with self-confidence and dignity and to really integrate into society.

However, a comprehensive look at the present situation reveals that chronically ill persons seeking employment are subjected to misconceptions and discrimination. Apart from the numerous cases in which employers

unreasonably dismiss their employees after learning that they are suffering from certain kinds of illnesses, chronically ill persons seeking employment also face quite a lot of other difficulties. For example, the Government, many public sector organizations and major corporations will all require their prospective employees to undergo pre-service medical examinations, and even if a job offer has already been made to a chronically ill person, the employer concerned may very often revoke the offer out of discrimination once the chronic illness is uncovered. This happens even when the illness in question may not necessarily affect the execution of the duties required by the post. Discrimination as such is probably caused by employers' misconceptions and ignorance in regard to the state of the illnesses of chronically ill persons. Therefore, the Hong Kong Association for Democracy and People's Livelihood (ADPL) and I believe that the only appropriate approach is for employers to consider the illnesses suffered by chronically ill applicants in the light of the job nature concerned, and to adopt practical operational needs and the capability of applicants as the criteria for assessment.

Meanwhile, although the employees retraining schemes and the Labour Department's Selective Placement Division are currently providing assistance from two aspects to chronically ill persons seeking employment, these schemes and the services provided are marked with operational defects. First of all, the contents and nature of the courses designed under the retraining schemes often fail to give due regard to market needs and the practical circumstances of the chronically ill. The result is that even after retraining, chronically ill persons still face considerable difficulties when looking for jobs. Secondly, as far as selective placement services are concerned, despite efforts were made to provide special job-matching arrangements for the chronically ill, some chronically ill persons still cannot stay long enough in the jobs referred to them, or they may find the job nature altogether unsuitable, probably because the people responsible for job-matching cannot fully understand the state of their illnesses.

Since chronically ill persons are faced with various problems when seeking employment, but staying in employment is very important to them, the ADPL and I would like to make the following recommendations:

1. tax reduction should be offered to employers who are willing to employ chronically ill persons;

2. the scope of services provided by the existing Employaid Fund

expanded and more capital injected to help employers purchase more technical aids or simple facilities which can facilitate the employment or continued employment of chronically ill persons;

3. employment counselling and training services should be increased and improved. Training in such aspects should be compatible with market demands; job hunting and retraining referrals for the chronically ill should be preceded by thorough analyses of their capability and limitations, so as to ensure that they can be effectively placed in the appropriate jobs and training courses;

4. government departments, such as the Labour Department, should take the initiative to educate employers and managerial staff all over Hong Kong, with a view to helping them understand the needs of the chronically ill and minimize their misunderstanding about chronically ill persons; hospitals and welfare organizations should also consider the possibility of getting in touch with employers through the help of out-reaching social workers so that employers can be educated on the one hand, and be provided with counselling services to abate their misgivings about the chronically ill on the other;

5. the Government should offer preferential terms to self-help bodies to encourage them to submit tenders for Government services, thereby providing more employment opportunities for the chronically ill; and

6. finally, the Government should allocate additional resources for the purpose of setting up a fund to finance self-help and voluntary organizations in the promotion of their provision of employment services and self-employment programmes.

Now let us turn to the rehabilitation and psychological counselling problems related to the chronically ill. Apart from the considerable difficulties which they have to face financially and in terms of employment, the chronically ill are also affected by many impacts resulting from the changes and inconvenience in their health condition psychologically, mentally and emotionally as brought about by their illnesses. At present, the services provided by health care institutions are generally confined to physical assistance (namely, direct therapy). Very little attention is paid to the pressure and needs

related to the psychological and mental states of chronically ill persons as well as their quality of life. As for rehabilitation services, their scope is mainly directed towards the mentally retarded and the physically disabled; the chronically ill are often excluded and not treated as their servicing targets. As a result, many chronically ill persons have either developed a suicidal tendency or lost the courage to face the society and their future.

As a matter of fact, chronically ill persons are psychologically and emotionally disturbed, one major reason is the inadequate and incomplete understanding of their own illnesses, which is compounded by doctors' lack of enough time to explain the treatment applied and the effects involved. Another reason is the lack of family and social support, which changes their outlook on life and other sense of values. In our view, if we are to help chronically ill persons to resolve their emotional, mental and psychological problems, we must work from two aspects. First, we ask that the Government should increase the number of medical social workers. At present, the ratio of medical social workers to hospital beds is 1:90, which is extremely inadequate. Constrained by manpower shortage and inadequate resources, at present, medical social workers can handle only some urgent cases involving patients in need of financial help; they are unable to provide services such as psychological counselling. As a matter of fact, mutual assistance interlocution and sharing of feelings among patients can be of great help to their health both physiologically and psychologically. However, given the constraint imposed by shortage of professional staff, workers in health care and welfare institutions are simply unable to assume the role of active organizers to help chronically ill persons alleviate their emotional and mental pressure.

Apart from asking for an enhanced ratio of medical social workers and relevant professionals, we also ask the Government to increase its funding for self-help bodies of patients. In our society today, self-help bodies of patients are playing the rather important role of supplementing the inadequate care provided by the Government and welfare institutions to chronically ill persons. It must be borne in mind that in recent years, both our family structure and the status of women have undergone changes. In the past, a woman often played the role of care-provider of the family responsible for looking after family members who were old, weak or physically handicapped, and with an average family consisted usually of five or six members, the relationship between them was quite close. However, with the continuing prosperity of our society and the rising status of women, the two characteristics of the family mentioned just now

have changed. As a result, the old, the weak and those who are ill often fall short of family care and attention. Under these circumstances, a reasonable level of support given by self-help bodies and society will certainly serve a very significant purpose in enhancing the self-care capability of the chronically ill. At present, when most of the self-help bodies giving support to the chronically ill face a shortage of resources, it is really necessary for the Government to increase its assistance to these bodies, especially in terms of financial support.

Finally, I would like to discuss the work to be undertaken by the Government in educating the public on the chronically ill. As I have just said, employers and the public in general do not have an adequate understanding of the chronically ill, which may easily have led to misconceptions or discrimination against these people. My opinion is that the Government should actively promote community and health care education so as to encourage the public to give greater concern to the chronically ill. By enhancing the public's knowledge of the chronically ill, the Government should encourage them to accord greater care and spiritual support to these people and accept them as ordinary people, and as members of the society.

Owing to the time constraint, I would ask another member of the ADPL, the Honourable Bruce LIU, to speak for me on the financial assistance that should be given to chronically ill persons.

With these remarks, I move the motion.

Question on the motion proposed.

PRESIDENT: Mr LEE Cheuk-yan has given notice to move an amendment to this motion. Dr LEONG Che-hung has also given notice to move an amendment, not to the motion, but to Mr LEE Cheuk-yan's proposed amendment. The amendments have been printed on the Order Paper and Members have been advised by circulars issued on 19 April and 23 April respectively. I propose that the motion, the amendment, and the amendment to the amendment be debated together in a joint debate.

Council shall now debate the motion, the amendment, and the amendment to the amendment together in a joint debate. I will first call upon Mr LEE to speak and to move his amendment to the motion, and will then call upon Dr

LEONG to speak and to move his amendment to Mr LEE's proposed amendment. After the joint debate, we will first vote on Dr LEONG's amendment to Mr LEE's amendment, then on Mr LEE's amendment, whether or not amended by Dr LEONG's amendment, and last on Mr MOK's original motion or his motion as amended by the previous amendments, as the case may be. I now call upon Mr LEE to speak and to move his amendment.

MR LEE CHEUK-YAN's amendment to MR MOK YING-FAN's motion:

> "To delete "as well as" and substitute with ","; to add "as well as abolishing all itemized charges for medical services" after "patients"; and to add "relieve their financial burden and" after ", so as to"."

MR LEE CHEUK-YAN (in Cantonese): Mr President, I move that the Honourable MOK Ying-fan's motion be amended as set out under my name on the Order Paper.

The amendment that I move today is actually a protest, and is also a reminder. The proposed amendment seeks to reiterate the request made to the Government for the abolition of all itemized charges for medical services. Why do I say it is a protest? It is because as early as a year ago, this Council has already passed a motion moved by the Honourable Michael HO who requested the Government to abolish the policy of itemized charges. However, the Government only acted perfunctorily by abolishing three charging items. Therefore, I have to protest against the Government's total lack of respect for the majority view of this Council. Today, I am bringing up this case again in the hope of reminding the Government to abolish all itemized charges for medical services.

I feel that today's debate is of paramount significance because everyone will fall sick. Men are in fact very fragile. We never know when illness will befall upon us. Let us try to imagine a person who has fallen sick and has to be hospitalized. Already much tortured by his illness, he suddenly finds that the medical services he receives is chargeable item by item. When his family is equally distressed by his illness, simultaneously, they have to face the exorbitant medical charges. As far as our society is concerned, not only does it fail to offer adequate assistance to the chronically ill, but it also aggravated their financial burden. How can we bear to do that?

To put it in simpler terms, the policy of itemized charges is "taking advantage of someone's illness to share his assets." Is this actually what our medical policy is about? I believe the Secretary for Health and Welfare will repeat the same old cliche when she speaks later, that is, the provision of medical services in Hong Kong aims at "ensuring that no one should be denied adequate medical treatment through lack of means", which means that no one will be denied medical treatment as a result of poverty. This appears to be very reasonable. However, the harshness of the Government will be reflected if I were to add a footnote, which says, "No one should be denied adequate medical treatment through lack of means, but it does not rule out the possibility that someone may have to go bankrupt in exchange for adequate medical treatment." Some Members may say, "Cheuk-yan, you are being too serious. Have you been overstating the case?" I would like to take a look at the existing system together with the Honourable Members first, in particular the assistance system which the Government may comment on later.

The Samaritan Fund claims that it will help those in need, so let us look at the operation of this assistance mechanism. The criteria for applying for the assistance fund are as follows: first, the household income of the applicant shall not exceed the median monthly domestic household income; secondly, household savings shall not exceed the cost of the necessary medical appliance by more than three times. However, in calculating household savings, the standard applied is the same no matter it is a five-member, four-member or one-member family. I have worked out some calculations and found that the ceiling on household savings is even more stringent than the limit imposed for receiving Comprehensive Social Security Assistance (CSSA). This is very absurd indeed. We can therefore imagine that it will not be easy to make a successful application under this assistance mechanism.

Let me quote an example. A person wishing to install a pacemaker costing $15,000 will not be eligible for assistance if his household savings exceeds $45,000. If his savings barely exceeds $45,000, he will have to spare $15,000 from the $45,000 he has saved. So, is it not a good reflection of the story I have just now narrated that the patient is required to go bankrupt in exchange for medical services? Has the Government been "taking advantage of someone's illness to share his assets"? A person having a savings of some tens of thousands should not be regarded as having too much money. When he falls ill, not only does the Government fail to offer assistance, but it has also taken

away a significant portion of his savings from him. Hence, I hold that the existing system has imposed too heavy a burden on the chronically ill.

Another major problem lies in the fact that the Samaritan Fund only receives an allocation of $2 million a year plus the interest income. Does it mean that the Government will stop offering assistance and turn a blind eye to the chronically ill after the $2 million is exhausted and consequently, the patients who are in need may be shut out of the door?

Another point the Government has always been stressing is that the policy of itemized charges can put into practice the principle of "he who have the means pays". On casual encounter, this principle may sound reasonable, but it depends on the circumstances in which it is applied. I do not think anyone will raise objection to applying the principle on those patients who live in hotel-style hospital wards. However, if we apply the principle on the nine-year free education by requiring those who have the means to pay tuition fees, I believe the entire society will turn against it because it implies that the Government no longer provides basic education. Likewise, it is unreasonable to apply this principle of "he who has the means pays" in so far as the provision of basic medical services is concerned because medical services are basic social services. No one wants to fall ill, but those who fall ill must receive medical treatment. This is most fundamental, but itemized charges act against the spirit of treating medical treatment as basic services. Meanwhile, the public would also ask, "Why are we not eligible for basic medical services when we fall will despite the fact we have been paying tax? Why do we still have to observe the principle of "he who has the means pays?" Under a harsh waiver system as much, most "wage earners" will in fact be regarded as "those who have the means", but they will feel that it is unreasonable of the Government to extort a sum of money from them when they fall sick as they have already paid tax. In fact, after paying tax or contributing their efforts to the society, the public should have the right to reasonably expect the Government to provide them with the most basic social services.

Lastly, the charges we are talking about only involve $100 million. Basically, it represents only a very small fraction of the $18 billion in expenditure incurred by the Hospital Authority. But for the patients, it is a significant sum of money. Therefore, I hope Members can take note of the fact that the entire system as at present has imposed an extremely heavy financial

burden on the chronically ill on a long-term basis.

I hope that Members can support my amendment.

Question on Mr LEE Cheuk-yan's amendment proposed.

PRESIDENT: I now call upon Dr LEONG Che-hung to speak and to move his amendment to Mr LEE Cheuk-yan's amendment.

DR LEONG CHE-HUNG's amendment to MR LEE CHEUK-YAN's amendment:

"To delete "abolishing" and substitute with "rationalizing"; and to insert "including completely waiving such charges payable by those who have financial difficulties" after "medical services"."

DR LEONG CHE-HUNG: Mr President, I rise to move my amendment to Mr LEE's amendment as printed in the Order Paper. As Mr LEE has just mentioned and Members will recall that an almost similar motion on abolishing all itemized charges with immediate effect was moved by the Honourable Michael HO last May when similarly I also moved a comparable amendment. My amendment then was defeated by two votes, thanks to the disappearance of the three voting government officials. Today, I presume my amendment will face similar fate. Yet, I would appeal to Members to look at the argument with *raison*.

Since the debate in May 1995, the Hospital Authority has already abolished the charges for nine privately-purchased medical items. Very specific guidelines were also given to facilitate application to the enlarged Samaritan Fund. I hope the Secretary for Health and Welfare would elaborate on this and also refute the argument put forward by Mr LEE just now. So I entirely agree that this is not enough. For many of those who have chronic illnesses, they will need further assistance. Yet, to abolish all irrespective of the situation and the financial assessment, either for the rich or the poor, does not stand to reason. Through a blanket abolition of itemized charges, it implies that a completely free public medical service will be given to all, the poor and the billionaire alike. It

implies also that Hong Kong should be moving into a socialized medical service, a proven disaster in countries which have attempted to practise it. Mr President, through such a blanket abolition, more and more, even affordable patients, will be attracted into our public hospital services. The recent scenes of camp beds again in many public hospitals tell the story. It will not be long before we will return to the dark ages of long waiting list, cramped hospital wards and disgruntled staff. Furthermore, Mr President, experience has shown us and Mr LEE has just mentioned that also, that a call for total abolition is a call that the Government will not act on no matter what the voting result today may be. Let us therefore be pragmatic. I personally would like to call on the Government to further rationalize the itemized charges and to include complete waiving of such charges payable by those who have financial difficulties. For those of you who really want to support our chronically ill patients pragmatically, properly and expeditiously, you should support my amendment.

I would like to turn now to say a few words on the original motion which I fully support, in particular, community support services for the chronically ill and I will be stressing on the importance of self-help groups and the lack of commitment on the part of the Government to have these groups properly supported.

Mr President, as I have been involved in taking care of the sick and sometimes the chronically sick, I am well aware of their suffering — physically and mentally. Often times, they face discrimination socially and in seeking employment. Often times, they feel helpless as they have no way to share their feelings with anybody else.

Community support and self-help group are therefore vital because through coming together and through the concept of "同病相憐", they are able to seek solace from others with the same problem, often getting comfort from the fact that they are not alone and getting encouragement from those who have been suffering from the same problem for even longer.

Through bulk buying, for example, these self-help group patients often get cheaper rates for disposable medical appliances they frequently need. Their families too often benefit not only from comfort, but also understanding the problem of the disease much better.

Mr President, over the last decade, through the enthusiasm of the patients

and their families and with the keen support from the medical profession, more than 60 such mutual help bodies have been established, all running on donations and their own expenses. With the establishment of the Hospital Authority, many hospitals have taken an interest and the lead to link their own patients. Again these are established and run not on government or Hospital Authority's funding, but through kind donations raised by the hospitals themselves. The announcement of the Financial Secretary that some eight Patients and Carers Resources Centres will be established with some $6 million is, therefore, welcomed and a step in the right direction. Yet, there are two areas that we should not overlook.

Firstly, the Government should not lose sight of the existing patients' self-help groups and hospital patients resources centres. Ways and means must be introduced to have these well-running bodies financially supported to encourage improvement. Just because they are in function and doing well is no excuse for the Government to shirk its responsibilities.

Secondly, the details of these new eight Patients and Carers Resources Centres should be clearly worked out through consultations with the existing groups. It would be a farce if these centres so established have low utilization rate simply because they are in less accessible locations or they are not providing services in line with the needs of the chronically ill. The embarrassment of the elderly health centres which are so poorly subscribed should never be repeated.

Mr President, in the *White Paper on Rehabilitation* released less than a year ago, the Government repeated its previous consent to set up five Community Rehabilitation Network centres by 1998-99. The first such centre opened in Sheung Wan in 1994 to the jubilation of many self-help groups. Yet, both the first and second ones are still running on lottery funds, rather than regular government subvention. The fate of the others are still to be determined. In short, the whole project appears to be stalled because of the lack of financial resources, not much — only some $5 million a year that would benefit more than 50 000 patients. Will the same apply to the promised eight new patients and carers resources centres?

I do hope that the Government will look into all these angles and I would appeal to Members to support my amendment to the amendment made by Mr LEE. Thank you.

Question on Dr LEONG Che-hung's amendment to Mr LEE Cheuk-yan's amendment proposed.

DR HUANG CHEN-YA (in Cantonese): Mr President, to people who are healthy, their jobs are very important; to the chronically ill, having a job is even more important. Being employed in a job does not only help the chronically ill to sustain themselves economically, and eliminate the need for them to rely on the meagre assistance provided by social security payment; but, more importantly, employment can also maintain their dignity and self-confidence, making them feel that they still are normal members of the society. Unfortunately, however, the chronically ill have all along been comfronted with numerous difficulties in looking for employment, which, for certain, must have increased recently, given the sluggish labour market and the rising rate of unemployment over the past two years.

How can we help the chronically ill in seeking employment? Firstly, we need to help these patients to maintain their physical fitness so that the amount of time they have to skip work for treatment can be reduced. For example, in the case of renal failure, blood dialysis (commonly known as "kidney washing") is a less time-consuming treatment than abdominal dialysis, and can thus reduce the amount of time a patient has to skip work for treatment. Unfortunately, the existing blood dialysis service provided by the Government is still insufficient. Moreover, if anti-anaemic injections are provided, these patients will become less anaemic and will not be tired too easily, hence more energetic for their work. At present, under the system of itemized charges, the Hospital Authority (HA) does not provide free erythropoietic injections, and patients must pay these rather big expenses themselves. This will in fact create more hindrance for chronically ill patients who are trying to re-join the workforce.

Secondly, we should improve our transport services for the benefit of chronically ill patients going to and returning from work. The Mass Transit Railway should improve its existing services to make itself more accessible to the physically disabled. Moreover, the existing Rehabus services simply cannot cope with the transportation needs of those disabled people who have to work. We understand that the Rehabuses running scheduled routes are always "over loaded", so it is evident that chronically ill patients are in fact badly in need of this kind of transport service.

Thirdly, chronically ill patients cannot ask employers to employ them out

of sympathy. To be able to secure jobs, they must be in possession of some special skills with which they work and which are required by the market. Therefore, the Government must organize some special training courses tailored to fit their physical conditions and to help them fully develop their potentials. At present, chronically ill patients often complain that both the Vocational Training Council and the Labour Department are unable to provide adequate service in this regard. The Vocational Training Council should improve and increase its courses as well as increasing the places available to cope with the demand of the chronically ill. The Labour Department should also strengthen the development of its Selective Placement Division so that it can genuinely help chronically ill patients instead of just providing general job referrals which may not be best suited to the needs of chronically ill patients. Besides, the application procedures adopted by the Selective Placement Division of the Labour Department are too complicated, thus creating a lot of inconvenience for chronically ill patients. I think improvements also have to be made in this regard.

Fourthly, very often, employers do not want to employ chronically ill patients because they do not understand them, thinking that there are possibilities for the spread of infection or of adverse psychological or other impacts on others. As a matter of fact, we need to educate employers and allay their worries. Employers are worried that these patients are troublesome and incompetent workers because either they have to take frequent sick leave and therefore cannot devote themselves fully to their work, or, they would have movement difficulties and would get hurt easily. Consequently, employers are unwilling to employ them. While these misgivings are not entirely unfounded, many employers are able to realize the undue exaggeration involved after taking on these patients. For these reasons, the Labour Department should step up its publicity efforts and help these patients to adapt to their new jobs, in order to allay employers of their worries in this aspect.

As a matter of fact, not only does the labour market in the private sector refuse to employ the chronicall ill, but the Government has also taken on only 2.2% disabled employees among its staff populations; and if we count out people who are colour-blind, this percentage goes further down to only 1.7%. The situation is even worse for voluntary welfare organizations, in which only 1.1% of their employees are disabled. It is thus obviously necessary for the Government, voluntary organizations, the HA and other public sector organizations to set down specific targets and plans aimed at taking the lead in

employing the chronically ill. In this way, they can truly take part in the service and more people will know that the chronically ill can in fact secure employment.

We hope the Government can understand that there are many factors which have contributed to the failure of the chronically ill to secure jobs. For that reason, the Government should set up a committee to review the situation and formulate a comprehensive policy, so that these patients can also enjoy their employment and live with dignity as healthy people do.

MR CHAN KAM-LAM (in Cantonese): Mr President, often when officials of the Health and Welfare Branch and the officer in charge of the Hospital Authority (HA) face the media, Legislative Council Members or petitioners, they would stress that "no person should be prevented from obtaining adequate medical treatment through lack of means". This nicely-put undertaking is also one of the important provisions of the Hospital Authority Ordinance enacted in 1990.

However, to the 260 000-odd chronically ill patients presently in Hong Kong, all these are but plausible lies. Instead of saying "health brings wealth", it would be more appropriate to say "only wealth can bring health".

In the past few years, many public hospitals under the administration of the HA have been charging certain classes of patients with the costs of expensive medical items on the ground of insufficient funds. Most of these patients are chronically ill, mainly ranging from those with heart diseases to those with kidney diseases and arthrosis. This practice has actually contradicted the basis spirit of what has been published in the Gazette, that hospitalization should be charged at $60 per day, with check-up services, treatment, meals and operation services provided free of charge. Although Members of this Council have, time and again, expressed dissatisfaction over this, the HA has not only failed to comply with the wishes of the public, but it has also published at the end of December last year that 10 medical items would be charged, thus justifiably "legalized", so to speak, charges which have all along been unreasonable. However, charges which are lawful are not necessarily reasonable. These itemized charges range from a few hundred dollars to tens of thousands. Since the great majority of chronically ill patients who have to receive continuous treatment do not have steady income and they only live on meagre comprehensive social security assistance payments or income from part-time jobs,

so for them, these expensive medical charges are tantamount to astronomical sums.

Take the example of chronically ill patients suffering from final stage renal failure. These patients cannot take up full time jobs because they have to receive what is commonly-called the "belly-wash" treatment a few times a day. Besides, most of these patients are also anaemic due to a lacking in cytagenin and they have to receive "hematonic injections" once or twice a week. Based on the prices as at 1993, each hematonic injection costs $500 and the patients' expenditure in this respect per month would amount to $3,000. In view of their limited income, many patients have consequently given up hematonic injections, and they are forced to tolerate the various sufferings brought about by anaemia.

What is mentioned above is but the tip of the iceberg of the many cases of the chronically ill. Last year, the HA announced that the charges collected on artificial joints, replacement joints and filters for anaemia patients would be abolished, but why are different patients differently treated in hospitals? Does it mean that patients who do not belong to the three categories mentioned above, for example, patients suffering from kidney diseases, cancer and heart diseases, have to be treated at variance by the HA?

In fact, the 10 items of charges that the HA has openly demanded would only amount to about $80 million to $100 million, which is less than 0.5% of the funding of about $20 billion receivable by the HA each year. However, for such a trivial amount, the HA has contradicted itself. This makes people feel that patients may be prevented from obtaining appropriate medical treatment due to financial difficulties.

The Secretary for Health and Welfare may say that the Hong Kong Government has already set up the Samaritan Fund for patients with financial difficulties, and injected $20 million into Fund towards the end of last year while amending and relaxing the assessment guidelines of the Fund. Undoubtedly, according to the figures published by the Government, there is a tendency for a substantial increase in the number of applications for grants from the Samaritan Fund. The number of people receiving assistance in the year 1994-95 has increased by more than three times as compared with that in the year 1992-93 and the amount of money involved has also increased by about six-fold.

However, it is a known fact that the application procedures and conditions for approving grants from the Fund are not only harsh, but also extremely menacing. Applicants who may have met the requirements of median household income and the upper limit of savings they still have to make a separate application each time before they receive medical treatment. Besides being perturbed by their illnesses, chronically ill patients have to see social workers and provide proof of income every week. The pressure and mental distress they are subjected to may even exceed the torture brought about by their illnesses. This will also increase the workload of social workers to a large extent.

Mr President, the Health and Welfare Branch has originally promised to decide on a long-term solution to the funding of medical services by the end of last year. However, after publishing the 10 items of charges, the Health and Welfare Branch has made the convenient pretext that it is a temporary measure and said that a long-term policy will be formulated in six months' time. I eagerly hope that the Hong Kong Government will abolish all itemized charges to alleviate the financial burden of all patients, especially those who are chronically ill, so that no patients should really be prevented from obtaining adequate medical treatment through lack of means.

Mr President, with these remarks, I support the Honourable LEE Cheuk-yan's amendment.

MR LAW CHI-KWONG (in Cantonese): Mr President, we could perhaps describe the Government's rehabilitation policy for the chronically ill patients as "retreating from commitments" and "retreating from its words". The "retreat from commitments" can be illustrated by its attitude towards the Community Rehabilitation Network (CRN), while the "retreat from its words" can be exemplified by its stance towards self-help groups.

The Government's attitude towards CRN services has all along been disappointing. Just now Dr the Honourable LEONG Che-hung mentioned in his speech that the Government had pointed out in the *White Paper on Rehabilitation* that "the Government will consider subventing the clearing house and a total of five CRN centres by 1998-99". However, the Government is always unwilling to embrace any undertaking, and so added: "subject to the findings of the evaluation and the availability of resources." This can be said to be the consistent practice of the Government to "retreat from commitments". In

fact, the study conducted to evaluate the community rehabilitation programme has been completed and the findings reveal that not only would CRN services help the chronically ill patients to adjust to their daily living, but such services are also totally cost effective. CRN services can help reduce the number of times that the chronically ill patients have to be re-admitted into hospital as well as the number of days they have to spend there, and the medical resources thus saved exceed the amount of resources that would be spent on CRN. At the moment, the Government pledges to subvert only two CRN centres, and it will only be until 1997 then a third one will receive subvention. This is obviously short of the target of subventing five centres as set out in the White Paper. However, it is even more disappointing with the third CRN centre which was originally planned to be set up in Li Cheung Uk Estate. Throughout the planning stage, all parties concerned have made every effort to dispel the opposing pressure at district level exerted by those who discriminate against the chronically ill patients in order to fight for a smooth commissioning of the centre. Yet, when the detailed plan was ready to launch, it was found out that the Government had all along overlooked the question of resources. Subventions are at present hurriedly offered to the first two centres, but the Li Cheung Uk Estate Centre would have to wait until 1997. For those which have been standing by the Government to act against discrimination, not only have their efforts been wasted, but in return, they were also being jeered at and sneered by those who discriminate against the chronically ill patients.

In the *Green Paper on Rehabilitation* published in 1992, the Government proposed that "resources and professional involvement are required to help in the setting up of self-help organizations. The provision of "seed money" may be necessary." However, the Government "retreated from its words" in 1995 and the proposal of subventing self-help groups vanished from that White Paper. In the self-help groups, thorough sharing of experience and an exchange of information, the chronically ill patients overcome problems of similar nature such that the spirit of mutual help is fostered among the chronically ill patients while an impetus for improvement of the services may also be provided. Without subvention, especially at the initial stage of establishment, such self-help groups will very much be restricted in their development. The Government, therefore, should not shirk its responsibility in this respect.

Since Dr the Honourable HUANG Chen-ya has talked about the issue of employment just now, I am not going to repeat those points. However, I would like to stress one point, and that is, we should provide appropriate support for the

chronically ill patients with respect to their employment needs. At present, the chronically ill patients have to face a lot of difficulties and discrimination in the course of seeking employment, which not only affect their rehabilitation and livelihood, but have also wasted some of the human resources available in the society.

The Democratic Party is in full support of the amendment moved by the Honourable LEE Cheuk-yan in respect of the abolition of the policy of itemized charges. During the debate on the motion moved by the Honourable Michael HO last year, this issue had also been debated upon and was supported by the then Legislative Council. This stance is also one of the main objectives that the chronically ill patients have been fighting for over the years.

I so submit.

MR BRUCE LIU (in Cantonese): Mr Presient, on behalf of the Association for Democracy and People's Livelihood (ADPL), I have three points to add in regard to the financial assistance provided for the chronically ill patients.

At present, the chronically ill receive financial assistance mainly from two channels. Firstly, they can do so through the grants of the Samaritan Fund and secondly, through the allowance for medical items under the Comprehensive Social Security Assistance (CSSA). To the chronically ill patients, the application procedures via the above 2 channels are grossly complicated. The patients always have to go through different levels of vetting procedures before they can be granted a meagre assistance.

Insofar as the Samaritan Fund is concerned, the application procedure and the eligibility for grants have just been revised on 1 December last year. However, the revised requirements are making it even more difficult for patients to obtain assistance. It is provided by the procedures that applicants must meet the following two criteria: (1) the total monthly household income of the applicant must be less than the median household income; (2) the applicant's household savings must not exceed three times the cost of the medical item required. If the applicant's household savings were below an amount being double the cost of the medical item required, the applicant can apply for the waiving of the cost. If the applicant's household savings were more than double

but less than three times of the cost, the medical social worker and the patient will jointly work out the cost to be borne by the patient on a pro rata basis.

To the patients, these requirements and restrictions are unreasonable and outdated. Firstly, even if the household income of a family exceeds the median household income, it does not necessarily mean that this family can afford the medical expenses incurred in taking care of a family member who is chronically ill.

Secondly, the existing ceiling imposed on the household savings of the patients fails to take into proper account the number of family members and the special circumstances of each individual family. For example, a family consisting of five members with savings of $50,000 may not be better off in terms of the quality of living than a family of two having a household income of $40,000. Obviously, in setting the ceiling on household savings, the Government has not taken into consideration the relationship between the number of family members and the quality of living. The ADPL suggests that the Government should review the ceiling set and make appropriate adjustments accordingly.

Thirdly, under the existing system, a patient who requires assistance from the Fund has to submit an application in the light of his medical needs on each occasion. For example, if the patient suffers from kidney failure and requires a weekly anti-anaemia injection, that patient will have to make appointment to see the medical social worker every week to submit his or her income proof. What is involved in the entire procedure may have inhibited the patient from applying for assistance or even delay the course of treatment for the patient.

Fourthly, there is no appropriate appeal mechanism available throughout the vetting process. Once the doctor and the medical social worker have rejected the application, the patient will have no way to lodge an appeal, which is unfair to the patients.

As for CSSA, a special allowance is granted under the existing CSSA scheme, which includes a monthly grant for recurrent medical fees and an one-off grant for medical, rehabilitation and operation appliances. Yet, the application procedure for these allowances are equally complicated. Patients have to pay

for the cost first and are required to submit such documents as quotations and so on in order to apply for reimbursement. In other words, it will take a very long time for the patient who have paid for the medication or medical items out of their own pockets to receive the actual assistance. To patients who are in urgent need of financial assistance, this is indeed a time-consuming and ineffective process. The ADPL suggests that the Government should simplify the procedures involved in the application for as well as the vetting and granting of such assistance so that the chronically ill patients can be provided with timely allowances and help.

With regard to itemized charges for medical services, the ADPL supports the amendment of the Honourable LEE Cheuk-yan. From what we can see, apart from the fact that the chronically ill patients are subject to a myriad of difficulties in applying for financial assistance, the need to meet these itemized charges for medical services have aggravated the burden of patients. Although the Government has announced earlier on that charges will only be levied on 10 categories of medical items and medicine, this method of fee charging is discriminatory to certain groups of patients on the one hand; on the other, although it is claimed that a mere 10 items will be charged, the hospitals can at any time derive another 10 items from the original 10 items and levy charges on them. Moreover, as the community has always considered the charging criteria questionable, the "wallet" of the patients are rendered vulnerable indeed and there is no avenue for complaints to be lodged.

All in all, there are a host of shortcomings in the operation for the provision of assistance for the chronically ill. The complicated procedures involved have constantly made things difficult for the applicants in many ways. The ADPL calls on the Government to review afresh the eligibility for the assistance to enable those who have the need to obtain genuine assistance. We also call on the Government to abolish itemized charges for medical services immediately.

With these remarks, I support the motion of the Honourable MOK Ying-fan.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, I think the Government has never felt obliged as regards the provision of rehabilitation services and so its rehabilitation policy still remains within the concept of the

provision of relief, that is to say, rescue teams will only be sent when there is a fire. Sometimes, even when there is a fire, the Government will pretend not to see it. As long as the fire is not too fierce, it does not matter even if no rescue work were to be carried out. What makes people feel offensive is that the Government has adopted a perfunctory attitude towards some problems, and it has failed to fulfill its undertaking even though it has promised to do so. The attitude which the Government presently takes towards the chronically ill patients is one of " looking without seeing and hearing without listening".

The *White Paper on Rehabilitation* published by the Government in May last year has not listed the chronically ill as one of its target groups, so these patients were made to continue bearing heavy medical charges and encountering employment difficulties while no community services are provided to help integrate them into the community and take part in the society again.

Many of these patients have to bear with chronic life-long illnesses such as kidney diseases, cancer, diabetes, thalassemia, asthma and pneumoconiosis. Such are heavy blows to the patients and their families alike. Even though they are innocent, there is no escape for them. The Government should really be obliged to help them accept the reality and gain an understanding of their own illnesses, and to assist them psychologically so that they are assured of their own value. On the other hand, the Government should also help them integrate into society again. It is my view that the priority task at present is to establish more Community Rehabilitation Network (CRN) centres without delay. Unfortunately, at present there are only two such centres in Hong Kong and they are not directly subsidized by the Government. The 200 000-odd chronically ill patients can only heave a sign of helplessness.

In the *White Paper on Rehabilitation* published last year, it was mentioned that the Government would consider offering subventions to five CRN centres in 1998-99, but at the same time, it was indicated that everything was still "subject to the findings of the evaluation and the availability of resources". As a general practice, the Government likes to give itself some leeway. In so doing, it can make use of the unavailability of resources as an excuse for not giving assistance. From what we see, the CRN centres are still making applications for funds every year in order to survive, hence, we can anticipate to what extent the Government has committed itself to the setting up of CRN centres.

Mr President, I hope that through today's debate, the Government can come to realize that money is meant to be spent instead of being put aside for

appreciation. The massive surplus presently stored in the coffers should be used for developing a healthy and reasonable society. Subsidizing the establishment of CRN centres is definitely important and reasonable. Undoubtedly, the patient resources centres and the medical social workers in Government hospitals can provide instant assistance to patients during their hospitalization. However, these patients will soon be discharged from the hospitals and be left to face their lives afterwards. The CRN centres can provide assistance to the chronically ill who have been discharged from the hospitals, encourage them to take care of themselves and to express their opinions and needs. For instance, training can be provided to help them re-integrate into the society. It is only after giving the chronically ill proper physical and psychological assistance as well as careers counselling could the society be relieved of its burden and encourage them to make contributions. Only then can the Government say that it has fulfilled its responsibilities towards the chronically ill patients.

As for long there has been no assistance from the Government, many chronically ill can only group themselves together in support of one another. The activities of these self-help groups include visiting the chronically ill patients in hospitals, purchasing medical equipment and medicines in bulk and organizing health education seminars as well as recreational activities. These self-help groups, focusing on the different illnesses, are very helpful and effective in comforting the chronically ill and in alleviating the psychological pressure on both the patients and their families. Regrettably, however, these self-help groups are operating with difficulties because of the lack of resources. Therefore, I hope the Government can reassess the responsibilities and role of these self-help groups, give them subsidy and provide them with additional support. The most pressing needs of these self-help groups are additional premises and the necessary operating funds. Thus, to allow them to continue operation, the Government must refrain from its miserly approach, and should instead allocate funds to assist them so that they can provide services to meet the needs of the chronically ill.

According to the findings of a survey conducted by 16 self-help groups, the Government has long been turning a blind eye to the needs of the chronically ill in the areas of financial assistance, housing, community support services, transport as well as social and psychological counselling. It is undisputable that the services and subsidies given to the chronically ill have long been inadequate. It is also an urgent and realistic demand of the chronically ill to have more CRN

centres established as soon as possible. We very much hope that the Government will sincerely listen, assist and compensate the chronically ill expeditiously with remedies which were owed to them in the past. What is more, I hope that the Government can fulfill its promises immediately by helping the chronically ill to get rid of their prolonged sufferings.

MR HOWARD YOUNG (in Cantonese): Mr President, Hong Kong's public medical services have made substantial development in recent years. As a result of the Hospital Authority's improvement efforts, and the extent of in-patient care services, in particular, is praiseworthy both in terms of quality and quantity. However, in the views of the Liberal Party, the Government's medical care policy is assuming a vague position while its reforms in medical charges are over-cautiously made, consequently an unreasonable phenomena emerged. Hence, the Liberal Party agrees to the amendment made by Dr the Honourable LEONG Che-hung, which is to rationalize the itemized charges.

"No one will be prevented by a lack of means from obtaining adequate medical treatment". This is the policy which the Government openly claims that it has been consistently adopting, and this is also the base line which the Government has set for the system of charges collectable by its public medical services.

For long, the medical services system of Hong Kong has always been that those with means should resort to privately-operated services while those without would be caught by the Government's safety net.

In recent years, however, the funding for public medical services has increased tremendously and the quality of the services provided has also sharply upgraded, but the charges have not been correspondingly raised. As a result, the once cost-effective safety net has suddenly become a comfortable hammock and quickly attracts a large number of patients who can afford to switch from privately-operated medical services to the public system.

The safety net system, in its original sense, is a welfare concept whereby the basic living needs of the poor are to be provided for by the taxpayers. However, when once low-cost public medical services were to be turned into a

basic right enjoyable by the whole populace, it would easily lead to a situation in which the majority of the masses who are living above the poverty line would come to share, with justification, the resources provided for the minority living below. The most feasible solution is to assign different levels of subsidy for patients with different means, and if the base line for the safety net set down by the Government is reasonable, we believe that popular support could be won.

As consideration for reforms on a greater extent or as a rational consideration, the provision of public medical services could be divided into six major categories, namely, emergency and non-emergency cases, life-threatening and non-life-threatening cases, as well as those for the rich and the non-rich. The Government is to set different levels of subsidies for different situation combinations. For example, for life-saving emergency cases, such as treating victims of accidents, free life-saving services should be provided for the rich and the poor alike; for non-emergency but life-saving cases, of which the chronically ill, for instance, patients suffering from cancer, is one such example, we opine that heavy subsidy should continue to be provided for the poor but basic subsidy only for the rich; for non-emergency cases which bear no urgent threats to life, such as cataract, heavy subsidy should be provided for the poor but no subsidy for the rich, while priority should be given to the poor patients. Much details concerning these conceptions still need to be discussed comprehensively.

In today's debate, the Liberal Party will support the original motion. Meanwhile, we also support and agree to Dr LEONG Che-hung's amendment regarding the rationalization of charges. However, we will not support the other amendment which seeks to impose a "blanket" abolition of all charges. We hope that the Government will conduct studies and find out a long-term and feasible support policy for public medical services in the light of the issue concerning chronically ill patients.

DR JOHN TSE (in Cantonese): Mr President, the Government has for long ignored the needs of the chronically ill patients, the number of whom is rather considerable though. The number of chronically ill patients who required hospitalization in the year 1993 totalled 260 000, and take additional account of those who need long-term follow-up consultation, it is estimated that the chronically ill patients would up 10% of the total population in Hong Kong. However, the Government keeps turning a blind eye to the large number of chronically ill patients, and it has indeed fallen from insensitivity to perennial

oblivion.

As the chronically ill patients are facing special difficulties, they need special services, a mutual help network is exactly what they need. Apart from medical treatment, psychological support is also very important to both the patients and their families, which is capable even to the extent of affecting the patient's condition. Through the mutual help network, patients and families "on the same boat" could come together to share their experiences and lend support to each other. For instance, very often patients suffering from laryngocarcinoma have to undergo operations in order to control the proliferation of cancer cells, and on such occasions, they also need the support and confidence given by fellow patients in the same plight. Children suffering from thalassemia have to receive hypodermic injection for 10 hours every night, and it is a very wearisome task for their parents to take care of them. Through sharing and exchanging experiences, these parents can face up to the problem and look for a better solution together; in addition, they could also help parents whose children have just been diagnosed to have thalassemia to make adjustments in the face of such predicament. It is because medical professionals are often not as well versed as experienced parents in alleviating the pain which the children suffer. Hence, a mutual help network among the patients is indeed has its worth for existence and it should be further developed.

In fact, the social welfare policy of the Government does recognize the effectiveness of community mutual help groups. But no subsidy has ever been granted to them and patients seeking seek help from them are always discouraged by various "constraints." Is "paying lip service" a syndrome of the "oblivion" the Government is suffering from?

If the Government does want shake off its "perennial oblivion", it should take real action in formulating a mutual help groups policy for the chronically ill patients, which should include provision of subsidy for the establishment, operation and development of a community network centre, complemented with relevant services to be provided by a proper staff establishment including at least professionals like social workers, physiotherapists, nurses, psychologists and so on.

Chronically ill patients, because of their health condition, are often being discriminated against. Many employers either will not hire them or will "sack" them on discovering that they are chronically ill. Under such circumstances,

their livelihood is already a problem, let alone the daily medical expenses. Although the Disability Discrimination Ordinance, which provides protection to the chronically ill, has been passed, its enforcement remains impossible since the Equal Opportunity Commission has not yet been formed by the Government. The chronically ill patients are still being deprived of their employment opportunity. Besides, the Employment Services Division of the Labour Department has failed to provide appropriate employment counselling services as per the needs of the chronically ill patients.

Thus, a number of government departments are obliged to solve the problems which the chronically ill patients are facing. The Social Welfare Department should amend its conservative style and take specific measures to develop a mutual help network and related organiziations for the chronically ill patients. Meanwhile, the Home Affairs Branch should expedite the formation of the Equal Opportunity Commission as well as the implementation of the Disability Discrimination Ordinance; as for the Labour Department, it should improve its employment counselling services and keep in view the employment status for the chronically ill patients.

Mr President, I so submit.

MR CHAN WING-CHAN (in Cantonese): Mr President, according to the information provided by the Government, there are 260 000 chronically ill patients who need to receive long-term medical treatment. Among them are patients suffering from cancer, kidney diseases or liver diseases. A survey conducted in 1995 showed that only 28.9% of the interviewees had full-time employment, 41.6% of them had no income at all, and only 6.4% were on Comprehensive Social Security Assistance.

The chronically ill have always faced definite difficulties in seeking employment. The Employees Retraining Board has already set aside one million odd dollars to provide ad-hoc retraining schemes since last June and to provide, in conjunction with the occupational therapy units of various hospitals, psychological counselling services for the chronically ill. The Board is also considering the possibility of providing retraining schemes according to individual needs. Could such a plan really help the chronically ill? That all

depends on how the courses progress. In the face of the high unemployment rate prevailing in Hong Kong, without support from the employers, participants would find it extremely difficult to secure a job. To tackle the problem, I urge the Government to increase funding for the retraining schemes and to grant subsidy as well as tax benefits to employers who would employ the retrained employees. The Government should also take the lead in employing the chronically ill.

There are now over 800 000 old people in Hong Kong. As population becomes increasingly senescent, the number of old people continues to grow. With the prosperity of the society and advancements in medicine, the average life span is lengthened. I, therefore, would like to talk about, in today's debate, the difficulties the elderly have been facing.

All along, Hong Kong has never had a comprehensive policy in respect of the elderly. Services for the elderly are provided separately by various government departments. In the absence of any retirement protection system, most old people lose their income consequent upon their retirement. Without economic means, difficulties are bound to appear and their lives would be thrown into a plight. Although the Chinese have a tradition of advocating care and respect for the elderly, life-real limitations in Hong Kong have made many old people live alone in shabby dwelling places, such as bedspace apartments, cubicles and tenancy units in out-dated housing estates. It is not an uncommon sight for some old to continue working for meager wages just to earn enough to survive. We can often see some old people, sick and weary, picking up empty cans and carton boxes in the streets. I cannot help asking where the community's social conscience and sense of responsibility have gone. Are we to treat the elderly who have been toiling for years in this way?

Mr President, old people are prone to sickness but they often delay seeking medical treatment as they do not have sufficient knowledge about diseases; coupled with the fact they do not have enough financial means, they would find visiting a doctor very trouble-some. The health services in Hong Kong is not sufficiently provided to prevent or delay the emergence of old-age diseases. At present, even old people with chronic or long term diseases are not provided with continuous or good medical care. According to a survey conducted by a

relevant body, the elderly, on an average, have to spend half a day queuing up for Government out-patient service, while they are deterred from visiting private doctors by the high charges. Elderly needs are not sufficiently covered by Government medical services, neither are the elderly enjoying the medical services they are entitled to. Itemized charges resulting from "the user pays" principle only makes life more difficult for them, and they would even resort to reducing the number of visits or not visiting doctors at all for their minor illnesses, just like "giving up eating because of choking on an occasion". This is worrying. I am of the view that the elderly should be given preference in obtaining medical services, their financial means should be taken care of to make things more affordable and convenient for them.

On the other hand, a 1995 estimate shows that there are 4 000-odd applicants on the waiting list for hospital beds, and over 10 000 waiting for admission into care and attention centres. The two health centres for the elderly at Lam Tin and Shek Kip Mei just cannot meet the needs of 800 000 old people. However, according to the information collected, the number of visitors to the two health centres is just half of that planned. This is due to insufficient promotion and the fact that visiting these centres is both time-consuming and inconvenient for the elderly. For an annual fee, the elderly are only given superficial body checks up, and one cannot help casting doubts on the propriety of the resources being applied. As such, I urge the Government to review the operation of health centres for the elderly to make sure resources are properly utilized.

Policy in the care for the elderly has always been targeted at communities. Indeed, most old people prefer to stay in environment familiar to them. To help them stay in their communities, we need to provide various types of community supporting services such as community health nurses, community centres and so on, otherwise the elderly would only be left to continue living helplessly in their shabby homes. The Government should set up community centres in different districts.

Mr President, these are my remarks.

MR MICHAEL HO (in Cantonese): Mr President, I support the amendment moved by the Honourable LEE Cheuk-yan. I hope that after the 1995 election, Mr LEE Cheuk-yan does not need to have the fortune of having three official Members being absent before his amendment can be carried.

The Democratic Party holds that the Government should provide all the essential medical services. In view of this, we cannot accept the arrangement of itemized charges. We cannot discriminate against particular types of cases of illness and patients. It would be very unfair if patients suffering from different diseases have to pay different charges. For example, among the existing 10 items of charges, the Government said that it would have to charge patients for those medical items which are more expensive, for instance, Percutaneous Transluminal Coronary Angioplasty (PTCA). However, in comparison with the medical expenses incurred by the surgical operations done on those children injured in the Pat Sin Range hill fire and admitting them in the Intensive Care Unit for scores of days, these medical items are not too expensive and the expenses required for the two cases cannot be placed on a par. Mr President, it is our principle that if a patient is hospitalized, no matter what illness he is suffering from, the $60 maintenance fee he paid should cover all expenses. If additional charges have to be paid because the patient suffers from a certain type of disease, then this has in essence diverged from our charging principle and policy. The Democratic Party does not agree in the least to the provision of non-essential services by the Government. The orthopaedic operation of breast augmentation is a good example of such services. We do not agree to the provision of this type of services by the Government.

As for the Samaritan Fund, many Members have expressed their opinions just now. The Health Services Panel of the Legislative Council will be discussing relevant matters on 6 May and I hope that Members will be present to discuss the issue in detail. In fact, many problems related to charging are mainly related to the financing and policy of medical services. As long as the Government fails to spell out clearly the financing arrangements for medical services, we can only do what we are doing now and debate upon the medical policy component by component, instead of looking into our medical financing arrangement and charging policy in a comprehensive way. I hope that the Government can review its medical financing and charging policies without delay.

Lastly, I would like to respond to the amendment moved by Dr the Honourable LEONG Che-hung and he has touched upon the issue of "rationalization". In fact, I feel that the discussion over the issue of "rationalization" is actually futile. What is meant by "rationalization"? Just as we have discussed in the past that those who had the means should pay, and at

the end of the day, everyone was not sure what the debate was about. If our charging policy has always been that a citizen only needs to pay $60 a day if he can present his identity card on admission into the hospital, we should not make any changes to our policy before a new policy is introduced.

Mr President, I support the amendment moved by Mr LEE Cheuk-yan and oppose the amendment moved by Dr LEONG Che-hung.

PRESIDENT: I now invite Mr LEE Cheuk-yan to speak for the second time on the amendment moved by Dr LEONG only. This is in keeping with the spirit in which the House Committee recommends speaking time for Members, since after the joint debate Mr LEE will not have the opportunity to speak on Dr LEONG's amendment to his amendment.

MR LEE CHEUK-YAN (in Cantonese): I would like to respond very briefly. Firstly, as the Honourable Michael HO said earlier, after reading Dr the Honourable LEONG Che-hung's amendment and listening to his speech, I, too, fail to understand what is meant by "rationalizing". Does Dr LEONG think that the present charges are irrational and therefore wish to make them more rational? My personal view is very simple: as the policy of itemized charges is irrational at all, it cannot be rationalized.

Secondly, one point I find interesting is that Dr LEONG said if itemized charges were abolished, those who can afford will all seek medical consultation from public hospitals and that will lead to even more camp beds. I do not know whether Dr LEONG is implying that the "business" of private hospitals, that is his electors, is going downhill. But I think this is good because the abolition of itemized charges may force some private hospitals to reduce their charges. I believe this is a good news to all consumers in Hong Kong, even to consumers who can afford. As competition intensifies, the charges may really become rational, that is, the charges of private hospitals.

Finally, I think if itemized charges were to be implemented, the Government will have to break the promise it made to the public after the collection of revenue. I think those who can afford should be eligible and

entitled to use the services provided by public hospitals. They should not be prohibited from using these services just because they are affordable.

PRESIDENT: I now invite Mr MOK Ying-fan to speak on the two amendments. You have five minutes to speak on the amendments, Mr MOK.

MR MOK YING-FAN (in Cantonese): Mr President, first of all, I would like to thank the two Members who have moved amendments to my motion because they have basically kept the wording of my motion intact. Mr LEE Cheuk-yan has simply added the desirability of a blanket abolition for the policy of itemized charges, whereas Dr LEONG Che-hung has put forward the issue of "rationalization".

As regards the abolition of all itemized charges, I believe all of us can still recall that this Council held a debate on this in 1995. A motion was then passed to reject the policy of itemized charges. The Health and Welfare Branch should have implemented policies along the direction endorsed by this Council. However, as quite a number of Members have indicated clearly, not only has the Government failed to act along the line of abolishing all itemized charges, but it has also introduced several more items of charges. A contrariant approach as such on the part of the Government is not acceptable to the Hong Kong Association for Democracy and People's Livelihood. For that reason, we would support Mr LEE Cheuk-yan's amendment.

As regards Dr LEONG Che-hung's amendment, as I said, we would not support the policy of itemized charges. Nevertheless, I believe Dr LEONG would support my motion if Mr LEE Cheuk-yan had not added the abolition of the policy for itemized charges to the original motion.

SECRETARY FOR HEALTH AND WELFARE: Mr President, I am grateful to Members for offering their valuable insight and ideas on possible ways in which we can improve the quality of life for chronically ill patients. A number of points covered in this debate touch upon employment, to which my colleague,

the Secretary for Education and Manpower, will respond separately.

Let me first of all refer to medical care. Chronically ill patients are a special group requiring regular medical assessment and treatment from the private or the public sectors. In the public sector, all our general clinics operated by the Department of Health are providing these patients with a full range of preventive and curative services, referring them for specialist treatment as and when necessary. Our new Unit Medical Records System, which allows for the systematic storage and retrieval of clinical information complemented by an appointment system providing for the advance booking or follow-up consultation, has also served in many ways to enhance the continuity of care for our chronically ill patients.

In addition to investigations and medication, chronically ill patients receive health education and counselling through group health talks and video shows on a variety of different topics. Those suffering from the same illness are encouraged to form patient groups to facilitate experience-sharing and mutual support.

With the same spirit in mind, the Hospital Authority (HA) has set out in its annual plan, 1996 to 1997, a number of new initiatives to strengthen the medical care for chronically ill patients and to improve the support for community carers. These initiatives include two additional rehabilitation co-ordinating teams and four additional specialist medical teams to provide outreaching services as well as eight Patients and Carers Resource Centres to promote the concept of self-help. Additional facilities will be available in the Hospital Authority Head Office building currently under construction for use by community organizations and patients' groups.

Apart from infrastructure support, self-help groups may also apply for grants from the Health Services Research Fund or the Health Care and Promotion Fund to implement projects aimed at promoting the welfare of chronically ill patients. We believe this is the best way to achieve the greatest impact in promoting the interests of chronically ill patients.

The increased popularity of self-help groups and the rapport developed among patients will provide a very useful forum from which medical needs of chronically ill patients could be gauged in shaping our policy in the provision of medical services.

On community services, some Members have urged us to provide and improve the level and scope of supporting services for chronically ill patients. The Community Rehabilitation Network of the Hong Kong Society for Rehabilitation is a successful example to show how voluntary agencies can complement the services provided by the Government through group work, by social gatherings and educational programmes for patients and their families. The Network comprises two centres in East Kowloon and Hong Kong Island at the moment, with a third centre being planned for West Kowloon. It would be prudent for us to evaluate the effectiveness of this new service in the light of experience to assess future demand and to minimize the potential duplication with other community services before contemplating any expansion through an injection of public funds.

As part and parcel of our efforts to safeguard the interests of chronically ill patients, those who are in a position broadly equivalent to 100% loss of earning capacity due to total disablement will be eligible to receive a disability allowance of $1,125 each month, or a higher rate of $2,250 each month if in need of constant attendance. The disability allowance is a non-contributory and non-means-tested allowance, aiming to assist families caring for a disabled member. For those chronically ill patients in financial need, they will be eligible for the means-tested Comprehensive Social Security Assistance at a standard rate of up to $3,545 a month to meet basic needs such as food and clothing. In addition, special grants are paid to meet other needs such as accommodation and medical appliances. They will also receive treatment free of charge at public hospitals and clinics. Others in need may apply to the Samaritan Fund for partial or full assistance.

Several Members referred to the need to examine the procedures involved in application for grants from the Samaritan Fund. I can assure Members that we will keep the procedures under close review and propose suitable improvements where necessary.

Some Members have raised the need to provide an equal social status for chronically ill patients. This spirit is enshrined in the Disability Discrimination Ordinance which provides a comprehensive redress system in areas of life where people with a disability may face discrimination, harassment or vilification. These cover employment, education, transport, access to buildings and services, participation in professional organizations, clubs and sports. Anyone who is facing discrimination may take their complaint to the Equal Opportunities Commission or direct to the courts in the event that conciliation fails. The law

will in itself perform a public education function to complement our other efforts to educate the public to understand the needs of people with a disability and to accept them warmly into our community.

Regarding medical examinations, it is unlawful under the Disability Discrimination Ordinance to impose special information requirements on people with a disability. In other words, employers cannot ask such people for information they would not ask of people without a disability. As for information of a medical nature specifically, an employer cannot ask a prospective employee to provide such information unless it is necessary to determine if the candidate would be unable to carry out the requirements of the job concerned or would require special services or facilities to take up the job.

Medical fees and charges has often been the subject of debate in this Council, and I do not intend to rehearse all the relevant arguments except to reassure Members that we are examining carefully this complex issue in the context of our health care financing strategies. In doing so, the Government is conscious of the need to safeguard our established principle that no person should be prevented from obtaining adequate medical treatment through lack of means, to focus available resources on those in genuine need for subsidized medical care, and to ensure that the private sector can continue to play an effective role.

Before closing, however, I should clarify one point which a number of Members have mentioned, and that is the point concerning itemized charges. Members have referred to itemized charges on many occasions. These are in fact items required by patients for their different medical conditions which they have to purchase themselves. This has been the practice for quite a long time, and certainly before the HA was set up. These should not be confused with the itemized charges put forward in the public consultation document in 1993.

Those are my remarks, thank you, Mr President.

SECRETARY FOR EDUCATION AND MANPOWER (in Cantonese): Mr President, the Government has all along been concerned about the employment needs of the chronically ill patients and has done a lot of work in this respect. We shall keep up our efforts and continue to provide more employment

opportunities for the chronically ill patients.

Several Members have mentioned the selective placement services provided by the Labour Department, so I would like to give a detailed explanation. The Selective Placement Division of the Labour Department makes employment arrangements for those disabled persons, including the chronically ill patients, who can take up posts which are recruited openly. The Selective Placement Division has set up an information centre to keep and save information on jobs suitable for the chronically ill patients, so as to improve the effectiveness of its job matching and employment seeking services.

In order to help the public understand that the chronically ill patients are fit for work, the Selective Placement Division has recently compiled a Guidebook on Peer Acceptance for the Chronically Ill Patients. This guidebook provides information on various kinds of chronic illnesses and also stresses on the fact that the chronically ill patients are still fit for work, it also reminds employers of matters they need to attend to, with a view to helping the chronically ill patients to build up their confidence and to bring their potentials into full play.

Since the chronically ill patients are one of the disabled groups for which the Selective Placement Division is responsible, the promotional and educational activities organized by the Division to enhance the employment opportunities for the disabled will also take care of the employment needs of the chronically ill patients. Such educational activities include seminars organized for employers, interviews with potential employers for disabled persons, production of careers newsletters and prize presentation ceremonies organized in commendation of the disabled employees and their employers. Besides, the Division has prepared new exhibition boards which focus on the working capabilities of the chronically ill patients and will be exhibited in mobile exhibitions together with those exhibition boards which present the working capabilities of the disabled persons.

Copies of the Guidebook on Peer Acceptance for the Chronically Ill Patients which I have mentioned earlier are being distributed to various employers associations and employers. We would be pleased to offer this guidebook to Members who are concerned with this issue.

The Selective Placement Division has for along been promoting co-operation with those self-help groups which are working for the welfare and interests of the chronically ill patients, and trying to find ways and means to

increase their employment opportunities.

Some Members remarked that there were operational defects in the assistance provided by the Employees Retraining Board to the chronically ill patients in looking for jobs. I would like to clarify here that the Employees Retraining Board has been making a good performance in this respect. For example, the Employees Retraining Board has provided funding to Queen Elizabeth Hospital, which is one of the training institutions of the Board, to organize an employees retraining course specially intended for the chronically ill patients. This is a course in Chinese word processing and clerical duties. Up to date, of the 44 people who have received retraining, 28 of them have secured a job, which is mainly clerical in nature. The Employees Retraining Board is now considering extending this course to other hospitals as well. Other than the specially designed courses, the chronically ill patients could certainly take up other employees retraining courses, just like other disabled persons do, for example, they could take up courses in computer, English, Putonghua and Care Course on job-search skills.

The Government has started to conduct a comprehensive review on the employees retraining programme. We will explore the retraining needs of the chronically ill patients in this review.

Thank you, Mr President.

Question on Dr LEONG Che-hung's amendment to Mr LEE Cheuk-yan's amendment put.

Voice vote taken.

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

Dr LEONG Che-hung claimed a division.

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 Dr LEONG be made to Mr LEE Cheuk-yan's proposed amendment.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: One short of the head count. Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Allen LEE, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Howard YOUNG, Miss Christine LOH and Mr Ambrose LAU voted for the amendment.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, 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 Albert HO, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted against the amendment.

Mr YUM Sin-ling abstained.

THE PRESIDENT announced that there were 10 votes in favour of the amendment and 27 votes against it. He therefore declared that the amendment was negatived.

PRESIDENT: Now that Dr LEONG's amendment has been negatived, we will take a vote on Mr LEE Cheuk-yan's amendment.

Question on Mr LEE Cheuk-yan's amendment put.

Voice vote taken.

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

Mr Fred LI claimed a division.

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 LEE Cheuk-yan be made to Mr MOK Ying-fan's motion.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, 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 Albert HO, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mr Allen LEE, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Eric LI, Mr Howard YOUNG and

Miss Christine LOH voted against the amendment.

Mr Ambrose LAU abstained.

THE PRESIDENT announced that there were 28 votes in favour of the amendment and nine votes against it. He therefore declared that the amendment was carried.

PRESIDENT: Mr MOK Ying-fan, although your original motion has been amended by Mr LEE Cheuk-yan's amendment, you are still entitled to reply and you have three minutes 28 seconds out of your original 15 minutes.

MR MOK YING-FAN (in Cantonese): Mr President, there is a Chinese saying that says "minor ailments are a blessing". If, however, a patient becomes chronically ill, what he suffers will not be blessings but bitter and painful experience. A moment ago, both the Secretary for Health and Welfare and the Secretary for Education and Manpower said that they had done a lot for the chronically ill, thereby offering a lot of contributions to them. I do hope, however, that everything they have said today will come true item by item in the future.

I hope that the Government can pay special attention to the issue of subsidizing mutual aid organizations of the chronically ill. At present, the Government gives financial assistance in the sum of $900 to a Mutual Aid Committee (MAC), and in some cases even provides office accommodation for MACs in housing estates. I am of the view that the Government should take account of the fact that some chronically ill people, despite their own illness, are devoting their own time to help other patients. Their spirit, more than anything else, deserves Government subsidy to help them set up a mutual aid organization. I do hope that the Government can seriously consider the provision of financial assistance to these people to enable them to purchase premises for activities and to recruit suitable staff to assist them in their work.

Question on the motion as amended by Mr LEE Cheuk-yan's amendment put.

Voice vote taken.

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

Dr LEONG Che-hung and Mr MOK Ying-fan claimed a division.

PRESIDENT: Council shall proceed to a division.

PRESIDENT: I am sure that Members all know that they are now called upon to vote on the question that Mr MOK Ying-fan's motion as amended by Mr LEE Cheuk-yan's amendment be approved.

PRESIDENT: Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT: Still one short of the head count. Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, 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 Albert HO, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the motion.

Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Eric LI and Mr Howard YOUNG voted against the motion.

Miss Christine LOH abstained.

THE PRESIDENT announced that there were 29 votes in favour of the amended motion and six votes against it. He therefore declared that the amended motion was carried.

ADJOURNMENT AND NEXT SITTING

PRESIDENT: In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 1 May 1996.

Adjourned accordingly at fifteen minutes past Eleven o'clock.

Note: The short titles of the Bills/motions listed in the Hansard, with the exception of the Plant Varieties Protection Bill, Immigration (Amendment) Bill 1996, Consumer Goods Safety (Amendment) (No. 2) Bill 1996, Toys and Children's Products Safety (Amendment) (No. 2) Bill 1996, Stamp Duty (Amendment) (No. 2) Bill 1996, Securities and Futures Commission (Amendment) Bill 1996, Rehabilitation of Offenders (Amendment) Bill 1995, Noise Control (Amendment) Bill 1995, Road Traffic (Amendment) (No. 2) Bill 1995, Betting Duty (Amendment) Bill 1995 and Leveraged Foreign Exchange Trading (Amendment) Bill 1996, have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.