

OFFICIAL RECORD OF PROCEEDINGS

立法局會議過程正式紀錄

Wednesday, 28 May 1997

一九九七年五月二十八日星期三

The Council met at half-past Two o'clock

下午 2 時 30 分會議開始

MEMBERS PRESENT

出席議員：

THE PRESIDENT

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

主席黃宏發議員，O.B.E., J.P.

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

李鵬飛議員，C.B.E., J.P.

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

周梁淑怡議員，O.B.E., J.P.

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

李國寶議員，O.B.E., LL.D. (CANTAB), J.P.

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

倪少傑議員，O.B.E., J.P.

THE HONOURABLE SZETO WAH

司徒華議員

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

劉皇發議員，O.B.E., J.P.

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

何承天議員，O.B.E., J.P.

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

夏佳理議員，O.B.E., J.P.

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

劉健儀議員，O.B.E., J.P.

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

梁智鴻議員，O.B.E., J.P.

THE HONOURABLE ALBERT CHAN WAI-YIP

陳偉業議員

THE HONOURABLE CHEUNG MAN-KWONG

張文光議員

THE HONOURABLE CHIM PUI-CHUNG

詹培忠議員

THE HONOURABLE FREDERICK FUNG KIN-KEE

馮檢基議員

THE HONOURABLE MICHAEL HO MUN-KA

何敏嘉議員

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

黃震遐議員，M.B.E.

THE HONOURABLE EMILY LAU WAI-HING

劉慧卿議員

THE HONOURABLE LEE WING-TAT

李永達議員

THE HONOURABLE FRED LI WAH-MING

李華明議員

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

唐英年議員，J.P.

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

黃秉槐議員，O.B.E., F.Eng., J.P.

DR THE HONOURABLE PHILIP WONG YU-HONG

黃宜弘議員

DR THE HONOURABLE YEUNG SUM

楊森議員

THE HONOURABLE HOWARD YOUNG, J.P.

楊孝華議員，J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

黃偉賢議員

THE HONOURABLE CHRISTINE LOH KUNG-WAI

陸恭蕙議員

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

田北俊議員，O.B.E., J.P.

THE HONOURABLE LEE CHEUK-YAN

李卓人議員

THE HONOURABLE CHAN KAM-LAM

陳鑑林議員

THE HONOURABLE CHAN WING-CHAN

陳榮燦議員

THE HONOURABLE CHAN YUEN-HAN

陳婉嫻議員

THE HONOURABLE ANDREW CHENG KAR-FOO

鄭家富議員

THE HONOURABLE PAUL CHENG MING-FUN

鄭明訓議員

THE HONOURABLE CHENG YIU-TONG

鄭耀棠議員

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

張炳良議員

THE HONOURABLE CHEUNG HON-CHUNG

張漢忠議員

THE HONOURABLE CHOY KAN-PUI, J.P.

蔡根培議員，J.P.

THE HONOURABLE DAVID CHU YU-LIN

朱幼麟議員

THE HONOURABLE ALBERT HO CHUN-YAN

何俊仁議員

THE HONOURABLE IP KWOK-HIM

葉國謙議員

THE HONOURABLE LAU CHIN-SHEK

劉千石議員

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

劉漢銓議員，J.P.

DR THE HONOURABLE LAW CHEUNG-KWOK

羅祥國議員

THE HONOURABLE LAW CHI-KWONG

羅致光議員

THE HONOURABLE LEE KAI-MING

李啟明議員

THE HONOURABLE LEUNG YIU-CHUNG

梁耀忠議員

THE HONOURABLE BRUCE LIU SING-LEE

廖成利議員

THE HONOURABLE LO SUK-CHING

羅叔清議員

THE HONOURABLE MOK YING-FAN

莫應帆議員

THE HONOURABLE MARGARET NG

吳靄儀議員

THE HONOURABLE NGAN KAM-CHUEN

顏錦全議員

THE HONOURABLE SIN CHUNG-KAI

單仲偕議員

THE HONOURABLE TSANG KIN-SHING

曾健成議員

DR THE HONOURABLE JOHN TSE WING-LING

謝永齡議員

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

黃錢其濂議員，C.B.E., I.S.O., J.P.

THE HONOURABLE LAWRENCE YUM SIN-LING

任善寧議員

MEMBERS ABSENT

缺席議員：

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

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

THE HONOURABLE JAMES TO KUN-SUN
涂謹申議員

PUBLIC OFFICERS ATTENDING
出席公職人員：

THE HONOURABLE MRS ANSON CHAN, C.B.E., J.P.
CHIEF SECRETARY
行政局議員布政司陳方安生女士，C.B.E., J.P.

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

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

MR CHAU TAK-HAY, C.B.E., J.P.
SECRETARY FOR BROADCASTING, CULTURE AND SPORT
文康廣播司周德熙先生，C.B.E., J.P.

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

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

房屋司黃星華先生，O.B.E., J.P.

MRS KATHERINE FOK LO SHIU-CHING, O.B.E., J.P.

SECRETARY FOR HEALTH AND WELFARE

生福利司霍羅兆貞女士，O.B.E., J.P.

MR RAFAEL HUI SI-YAN, J.P.

SECRETARY FOR FINANCIAL SERVICES

財經事務司許仕仁先生，J.P.

MR PETER LAI HING-LING, J.P.

SECRETARY FOR SECURITY

保安司黎慶寧先生，J.P.

MR BOWEN LEUNG PO-WING, J.P.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

規劃環境地政司梁寶榮先生，J.P.

MISS DENISE YUE CHUNG-YEE, J.P.

SECRETARY FOR TRADE AND INDUSTRY

工商司俞宗怡女士，J.P.

THE HONOURABLE LAM WOON-KWONG, J.P.

SECRETARY FOR THE CIVIL SERVICE

公務員事務司林煥光先生，J.P.

MR STEPHEN IP SHU-KWAN, J.P.

SECRETARY FOR ECONOMIC SERVICES

經濟司葉澍堃先生，J.P.

MRS STELLA HUNG KOWK WAI-CHING, C.B.E., J.P.

SECRETARY FOR HOME AFFAIRS

政務司孔郭惠清女士，J.P.

CLERKS IN ATTENDANCE

列席秘書：

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

秘書長馮載祥先生

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

副秘書長羅錦生先生

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY GENERAL

助理秘書長林鄭寶玲女士

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

助理秘書長陳欽茂先生

PAPERS

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

Subject

Subsidiary Legislation	<i>L.N. No.</i>
Child Care Centres (Amendment) Regulation 1997.....	272/97
Fugitive Offenders (Indonesia) Order	273/97
Fugitive Offenders (Drugs) Order	274/97
Prison (Amendment) Rules 1997.....	275/97
Plant Varieties Protection Regulation.....	279/97
Banking Ordinance (Declaration Under Section 2(14)(d)) Notice	280/97
Occupational Safety and Health Ordinance (39 of 1997) (Commencement) Notice 1997.....	281/97
Enduring Powers of Attorney (Registration) Rules.....	282/97
Supreme Court Fees (Amendment) Rules 1997	283/97
Rules of the Supreme Court (Amendment) (No. 2) Rules 1997.....	284/97

文件

下列文件乃根據《會議常規》第 14 條第(2)款的規定而正式提交：

項 目

附屬法例	法律公告編號
《1997 年幼兒中心（修訂）規例》	272/97
《逃犯（印度尼西亞）令》	273/97
《逃犯（藥物）令》	274/97
《1997 年監獄（修訂）規則》	275/97
《植物品種保護規例》	279/97
《銀行業條例（根據第 2(14)(d)條作出的宣布） 公告》	280/97
《職業安全及健康條例（1997 年第 39 號）1997 年 （生效日期）公告》	281/97
《持久授權書（註冊）規則》	282/97
《1997 年最高法院費用（修訂）規則》	283/97
《1997 年最高法院規則（修訂）(第 2 號)規則》 ...	284/97

Sessional Papers 1996-97

- No. 100 - Report by the Commissioner of Correctional Services on the Administration of the Prisoners' Welfare Fund for the year ended 31 March 1996
- No. 101 - Regional Council
Revised Estimates of Expenditure 1996-97

No. 102 - Urban Council

Schedule of revisions to the 1996-97 Estimates approved by the Urban Council during the fourth quarter of the 1996/97 financial year

一九九六至九七年度會期內提交的文件

- 第 100 號 — 懲教署署長就犯人福利基金截至
一九九六年三月三十一日為止
一年內的管理情況所提交的報告
- 第 101 號 — 區域市政局
一九九六至九七年度修訂開支預算（譯名）
- 第 102 號 — 市政局一九九六至九七財政年度
第四季由市政局通過的
一九九六至九七年度財政預算修訂表（譯名）

ANNOUNCEMENT**宣布**

主席：本局現開始今天會議。各位議員，在上次會議本局辯論司徒華議員動議之議案時，本席表示會於今天會議宣布陳偉業議員在本局發言時用“卑劣的手法”一詞是否適當。本席其後翻看錄影帶，陳議員當日確是說及民協用“卑劣的手法”，處理有關“國殤之柱”申請擺放之事件。《現代漢語詞典》把“卑劣”一詞解作“卑鄙惡劣”，此用語是侮辱性之言詞。若在本局用之來指議員的道德操守，應被視為不合議會用詞。

其後本席與陳議員會面，獲陳議員澄清，當時他並非是論及民協立法局議員之道德操守，而是指處理申請擺放“國殤之柱”的手法。因此，本席認為可以接受陳議員當時之用詞。但本席必須強調，用“卑劣”一詞本身含有侮辱性，因此即使並非指本局任何議員之個人道德操守，亦應避免在本局使用。倘將來有人再用“卑劣”一詞冠以手段手法，本席會要求他澄清，他並非指本局議員之道德操守，並為所引起之誤會致歉。

至於用“卑劣”一詞直指議員，本席將視之為不合議會用詞，並會命令有關之議員收回並作出道歉。

ORAL ANSWERS TO QUESTIONS**議員質詢的口頭答覆****Tuberculosis****肺結核病**

1. 何敏嘉議員問：就近日接連出現很多從事服務行業人士患上肺結核病，政府可否告知本局，本港患肺結核的人數是否比西歐國家和亞洲發達地區為高；若然，原因為何，及政府有何具體計劃使本港患肺結核病人數目降低至西歐國家的水平？

衛生福利司答：主席，香港現時的肺結核病平均發病率大約為十萬分之一百；根據世界衛生組織公布的數字，在一九九四年，在亞洲，菲律賓的平均發病率約為十萬分之二百七十，泰國約為十萬分之八十，日本約為十萬分之三十五，新加坡約為十萬分之六十；西歐方面，英國和意大利的平均發病率為十萬分之十，法國及德國約為十萬分之十五。

在比較以上的發病率時，我們必須留意，各地呈報傳染病的制度不同，而且，肺結核病的發病率會受各種因素影響，包括人口密度、人口老化程度及居住環境等。

事實上，香港現時的肺結核病發病率與六十年代比較，已從十萬分之三百六十下降至十萬分之一百，下降幅度超過 70%；在同期，西歐國家如英國的發病率亦從約十萬分之四十下降至約十萬分之十，下降幅度約 70%。

政府會繼續從預防、治療及公眾教育三方面，採取一系列的措施，對抗肺結核病：

在預防方面，現時差不多所有初生嬰兒都獲接種卡介苗，並在小學階段時獲重新接種。在發現個案時，衛生署會第一時間跟進，使病患者及早接受治療，並替那些跟病患者有緊密接觸的人士進行檢查，防止疾病蔓延。

在治療方面，衛生署有 17 間免費的胸肺診所，為病人服務。醫院管理局轄下的醫院亦設有 5 個胸肺專科單位，為較嚴重的肺結核病人提供住院治療。自七十年代起，我們已率先進行“全監督治療”，由醫護人員監督病人服用療程，協助病患者早日痊癒。這種治療方法獲得世界衛生組織確認和推薦。

此外，政府會繼續積極加強肺結核病的公眾教育，與專業團體合作舉辦展覽、講座及各種活動，推廣防癆知識，向市民介紹胸肺科服務，並鼓勵有病徵的市民及早接受檢查。當然，我們亦會繼續推廣健康的生活模式，鼓勵市民要有均衡飲食、充足休息，以及適量的運動，因為這些都能加強身體對疾病的抵抗能力。

我們會全力以赴，積極推行上述措施，對抗肺結核病，盡力減低本港肺結核病個案，把發病率降至西歐及美國先進國家水平。

何敏嘉議員問：主席，從衛生福利司的答覆，我們可以看到本港的肺結核發病率較西歐高出十倍。我的原質詢是問有何具體計劃，將本港的肺結核病病例降低至西歐的水平，但政府的答覆只提到現正採取的措施。如果我們現時已採取措施，但發病率還是較別的國家高出十倍的話，政府可否告知本局，還可採取甚麼具體措施，令肺結核的發病率下降？

衛生福利司答：主席，我們現時所採取的預防措施及治療方法，都是世界衛生組織和其他先進國家所採取的一般做法，也是被確認為最好的做法。我們當然可以在這方面做得更多更好，但我們的一般方針，特別是“全監督治療”，是香港較為先進的做法，由七十年代已經開始推行。大家一定要明白到，發病率是一定會有的，沒有可能降低至零。不過，我們也明白到仍有很多工夫要做，而我們的發病率的確高於西歐國家。這是我們香港的環境所造成，例如人口的高密度和人口的老化，都是其中一些因素。

主席：何敏嘉議員，答覆是否未能完全回答你的質詢？

何敏嘉議員問：主席，衛生福利司未回答我的質詢。我的質詢是還可採取甚麼措施，以加強這方面的工作。剛才衛生福利司回答時說仍有很多工夫要做，而我正是問那些是甚麼工夫？

衛生福利司答：我們需要加強的工作是，例如我們以往比較少關注推廣健康的生活模式，加強本港人口對疾病的抵抗能力，我們日後會加強這方面的工作，最重要是令本港人口本身有充足的抵抗能力。

主席：尚有 5 位議員打算提出補充質詢，本席將以此為限。

楊孝華議員問：主席，剛才衛生福利司引用了世界衛生組織和一些鄰近及先進國家的數據與香港作比較，我相信這樣對香港制訂政策及調撥資源會有好處。請問衛生福利司可否告知本局，以這些權威的數字與香港的情況作比較，是否香港政府內部經常存在的制度；還是只是因為立法局議員提出質詢才有這些資料？如果是經常有這制度的話，請問對於其他一些較常見的主要疾病，是否也有同樣機制作出比較？

衛生福利司答：主席，關於發病率和一般衛生指標，我們會採用與其他國家作比較的數字。不過，我在主要答覆也很清楚提到，我們不應單靠這種比較，因為每個地方的申報制度會有不同。大家必須明白到，香港的申報制度較為全面，因為大部分資料都是從公營機構處得來。我們也會利用其他方法跟進衛生指標，而不單止靠與其他國家作比較。

黃震遐議員問：主席，政府可否告知本局，有否清楚分析近年來肺結核病人有甚麼風險因素，例如是否老年人、新移民或那些居住環境特別差、營養特別差的獨身人士較易得病？如果有這些數字的話，請問可否告知本局，令我們知道政府可以採取一些較為準確和針對性的預防措施？

衛生福利司答：從我們的紀錄得知，65 歲以上人口的發病率比例十分高，而 19 歲以下人口的發病率則很低。也許我向大家提供一些數字作為參考。65 歲以上人口的發病率佔了大約三成，而 19 歲以下人口則大概是 5%。我們沒有證據顯示新移民較本地居民有更高風險的發病率。

梁智鴻議員問：主席，從衛生福利科的答覆，我們看到六十年代的發病率是 10 萬人中有 360 個，而現在則是 10 萬人中有 100 個，這是與 37 年前的數字比較。請問政府有否最近數年的比較數字呢？換句話說，我們可否看到最近數年肺結核菌的趨勢是增加還是減少，抑或是平穩？如果是平穩的話，我們能否取得一些進展？如果是增加的話，政府是否掌握了增加的原因？

衛生福利司答：在最近這三、四年，每年大約有 6 300 至 6 500 宗個案，並沒有特別的增加或減少。其中一個原因是我們的人口結構起了變化，近這 10 年人口逐漸老化，而老人佔了發病率的大多數。

謝永齡議員問：主席，衛生福利司提到在預防方面，差不多所有初生嬰兒都獲接種卡介苗。“差不多”，即不是 100%。據我所知，現時政府的目標只是 98%至 99%。請問何時才會調撥更多資源，令 100%的香港初生嬰兒都可獲接種卡介苗？又請問會以甚麼特別方式，令新移民也可獲接種卡介苗？

衛生福利司答：主席，我們的免疫計劃是自願性質，而不是強迫性質，但我們得到很多母親的支持和合作，在母嬰健康院方面，已經有 90%以上的嬰兒獲免疫注射。現時的情況不是因為我們的資源不足，我們的資源事實上非常足夠，任何人士的嬰兒都可到母嬰健康院接受免疫注射。至於學校方面，我們也有派衛生署同事到各間學校提醒家長如果他們的子女未接受免疫注射，可帶他們到母嬰健康院接受注射。對於新移民，我們會透過接觸學校和服務新移民的機構，提醒他們如果有需要的話，可接受免疫注射。事實上，不單止是預防肺結核，其實他們也可在母嬰健康院接受其他免疫注射。在這方面，我們得到的反應也相當滿意。

羅致光議員問：主席，衛生福利司提到人口老化問題，她剛才回答黃震遐議員的質詢時也提到發病的有 30% 是老人。既然大部分嬰兒都獲接種卡介苗，政府有否具體方法減低老人患病的機會？每年有六千多人發病，其中有三、四百人死亡，我相信這數字實在令人非常不滿意。

衛生福利司答：主席，也許我剛才說得不太清楚，不是每個患者都會死亡，我提到的是發病的數字，不是死亡。現時香港的醫療水平相當進步，即使發病，死亡率也很低。也許我們還記着“粵語殘片”年代，一旦染上肺癆就會死亡。事實上，香港的醫療制度和藥物已很先進，可以治療這種疾病。因此，死亡的機會很低，但 65 歲以上人口的發病率的確很高，事實上，75 歲以上人口的發病率還更高。

羅致光議員問：主席，我的質詢是問有何具體方法減低老人因染上這病而死亡的機會。剛才我提到的統計數字，即全港每年有三、四百人因肺結核病死亡，是政府統計處提供的資料。

衛生福利司答：主席，如果市民染上這病，一定要盡快到診所接受治療。如果情況嚴重，可以到醫院接受進一步醫治。老人染上這病，同樣可以獲得治療，最重要是他們要按照醫護人員的指導治理他們的身體，這是可以做得到的。

Prosecutions against Smokers in No Smoking Areas

檢控在指定禁止吸煙區內吸煙人士

2. 任善寧議員問：現時有關法例指定某些區域類別為禁止吸煙區，並對違反規定的人士定出罰則。政府可否告知本局：

- (a) 在過去 3 年，有多少人因為在指定禁止吸煙區內吸煙而遭檢控；當中有多少人被判罰最高罰款額 5,000 元；
- (b) 目前，哪個政府部門負責檢控違例吸煙人士，該部門是否有專責人員負責檢控工作；

(c) 指定禁止吸煙區的管理人若沒有執行禁煙規例，是否會負上刑事責任；及

(d) 市民有何途徑舉報吸煙人士在指定禁止吸煙區內吸煙？

衛生福利司答：主席，香港法例所指定的禁止吸煙區，現時包括公共交通工具、電影院、劇院、音樂廳、遊戲機中心及公共升降機。在此等禁止吸煙區吸煙而遭受檢控的人數，在一九九四年有 2 648 人，一九九五年有 1 809 人，一九九六年有 1 784 人。因為缺乏統計資料，上述數字並不包括在地下鐵路、九廣鐵路和輕便鐵路以外的陸上交通工具違例吸煙的檢控個案。在罰款方面，據我們所知，無人曾被判最高的 5,000 元罰款額。

禁止吸煙區的執法工作，主要由這些場所的管理人負責執行。條例授權這些管理人阻止人們在這些場所吸煙。如果違例人士拒絕停止吸煙，管理人有權要求該等人士提供姓名、地址和出示身分證明文件，以便將資料交由有關政府部門處理。在有需要時，可要求警方協助。

兩個市政總署的檢控組負責檢控在電影院、劇院和音樂廳違例吸煙的人士；海事處的檢控組負責檢控在渡輪吸煙的人士；有關在地下鐵路、九廣鐵路和輕便鐵路的吸煙檢控工作，則由這些公司負責安排；其餘的由警方負責。

法例只將在禁止吸煙區吸煙定為違例事項，並授權該等場所的管理人執行法例。有關的管理人不會因不執法而負上刑事責任。

如果公眾人士發現有人在法定禁止吸煙區吸煙，他們可向場所管理人投訴，由管理人採取行動。當然，這些投訴必須即時提出，否則，管理人便沒有證據足以採取任何行動。市民也可以提醒吸煙人士該等場所已禁止吸煙。如果這些場所內不時有違例情況，市民亦可將平日觀察所得告知場所管理人，促使管理人加倍注意執法工作。

為了令更多公眾場所得以設立法定禁止吸煙區，我們已向立法局提交《1997 年吸煙（公眾衛生）（修訂）（第 2 號）條例草案》，建議授權予食肆、銀行、超級市場及商場的管理人，讓他們可以在他們管轄的場所內設立法定禁止吸煙區，以保障非吸煙人士免受“二手煙”的影響。執法工作

將由這些場所管理人負責。由於是他們自願設立法定非吸煙區，相信他們一定會採取積極的態度執法。

任善寧議員問：主席，主要答覆第五段提到，有關場所管理人無須負上責任，因此，市民除了將違例情況如答覆所說告知場所管理人外，還可以向哪個政府部門舉報違例情況？

衛生福利司答：我在主要答覆已提到，如果市民遇到這種情況，需要作出投訴的話，他們應該向場所管理人投訴。

任善寧議員問：對不起，我問的正是如果將違例情況告知場所管理人後，由於他們不用負上責任，因而沒有採取任何有效措施時，市民還可以向哪個政府部門舉報？

衛生福利司答：我們會不時收到市民或機構的來信，投訴某些情況。因此，我歡迎他們寫信給我，讓我可以作出跟進。

梁智鴻議員問：主席，從政府的主要答覆可知檢控在非吸煙區吸煙的人士只是冰山一角，而在罰款方面，也沒有一個違例人士被罰最高的 5,000 元罰款額，所以不能起任何阻嚇作用。當然，政府表示有新的條例草案，建議增加非吸煙區，但這並不代表可以更有效執法。請問政府有何方法，能真正起阻嚇作用，令吸煙人士不可以在非吸煙區內吸煙？

衛生福利司答：主席，檢控違例人士，只是我們執法的其中一個方法。我們覺得更有效的長遠方法是公眾教育，我們看到最近數年已經收到一定的效果。很多機構都是自願、自動守法；也有很多人士在經過口頭勸諭後停止吸煙。因此，不一定需要作出檢控，才可以阻止吸煙人士影響其他不吸煙的人。

蔡根培議員問：主席，政府可否告知我們，目前負責檢控工作的人員有多少；編制及分布情況為何？

衛生福利司答：負責執行法例及檢控工作的人員分布在多個政府部門和機構，有關的檢控組也負責其他工作，所以不能清楚地分開由哪些人負責有關《吸煙（公眾衛生）條例》的檢控工作。海事處有本身的檢控組；地鐵公司、輕鐵公司及九廣鐵路也有本身的檢控組，兩個市政局同樣有本身的檢控組，所以不可以分開數字，說哪些人負責該條例的檢控工作。

Litigation Proceedings Arising from Localization Policy

公務員本地化政策引起的法律訴訟

3. **MRS ELIZABETH WONG** asked: *Mr President, the Hong Kong Government's localization policy has given rise to legal disputes between the Government and the Association of Expatriate Civil Servants (AECS) of Hong Kong. The result of the proceedings in both the High Court and the Court of Appeal was that many fundamental aspects of the localization policy as applied to overseas officers and former overseas officers who are permanent residents of Hong Kong were held to be unlawful. Will the Government inform this Council:*

- (a) *what proposals, if any, are being discussed with the AECS to obviate the possibility of further litigation proceedings; and*
- (b) *if there are such proposals, whether the proposals are aimed at full compliance with the declarations made by the High Court and the Court of Appeal; if not, why not?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, let me clarify from the outset that the Courts have not overturned the fundamentals of our localization policy. As the Court of Appeal has stated in its judgement, and I quote, "there is no suggestion that localization is in itself unlawful".

The judgement by the High Court and the Court of Appeal on the judicial review sought by the Association of Expatriate Civil Servants (AECS) is directed primarily at certain arrangements, introduced since July 1993, for overseas

agreement officers who are permanent residents of Hong Kong to transfer to local agreement terms, and the restriction on these officers to apply for transfer to local permanent and pensionable terms.

The Administration will give effect to the Courts' judgement. In this connection, we have put forward a package of proposals to the Staff Side of the Senior Civil Service Council in February 1997. The Panel on Public Service of this Council have been briefed on the details of these proposals. To highlight, we have offered to redress the tangible loss of demoted officers by re-imbursing them the salaries and increments to which they would have been entitled had they not been demoted. We have proposed to remove two restrictions: the promotion restriction on overseas agreement officers who have transferred to local agreement terms; and the restriction on those who have transferred to local agreement terms to further apply for transfer to local permanent and pensionable terms. We have also proposed criteria for officers serving on local agreement terms to transfer to permanent and pensionable terms.

Let me stress again that these proposals are meant to give effect to the Courts' judgement, in a manner that is reasonable, practical to implement, and realistic in resource requirements.

I should also add that these proposals concern both former overseas agreement officers who have transferred to local agreement terms and serving local agreement officers. We are therefore discussing these proposals with the Staff Side of the Senior Civil Service Council of which the AECS is a constituent member. The discussion is continuing and we hope to have the Staff Side support for these proposals so that they can be implemented as soon as possible.

Thank you.

MRS ELIZABETH WONG: *Mr President, I do not really understand the Secretary's reply, in particular the second last paragraph. So, may I ask the Secretary to clarify his second last paragraph in which he says "Let me stress again that these proposals are meant to give effect to the Courts' judgment in a manner that is reasonable, practical to implement, and realistic in resource terms."*

So, my question is whether the Secretary considers that the implementation of the law is negotiable, subject to the practicalities of the day and the resources of the time; if so, whether he considers that this is a dangerous precedent which undermines the rule of law? Because the issue here is not a question of

主席：黃錢其濂議員，請你提出你的質詢。

MRS ELIZABETH WONG: *Does he consider that the practical side of implementation undermines the legality itself?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, the meaning, I think, in my second last paragraph of my answer is self-explanatory. We of course have to implement the judgment of the Courts, but there are interpretations of that judgment which in our view are not totally reasonable, and that is why we have put in the sentence as it stands.

MRS ELIZABETH WONG: *The question I did ask was whether these proposals are aimed at full compliance with the declarations made by the High Court and the Court of Appeal, and I do not think the Secretary has answered that. Mr President, my follow-up is, has the Secretary experienced any difficulty in his discussions with the Staff Side; if so, what are the difficulties and how does he propose to overcome them, to obviate the necessity of further being taken to court?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, we are still in discussion with the Staff Side so I do not want to pre-judge the outcome of that. Suffice it for me to say that at this stage we are still trying, trying very hard, to come to an agreement with the Staff Side on the package to implement the Court of Appeal's judgment. I think we have, on numerous occasions or through discussions, narrowed the gap somewhat and we are still working towards a solution that is agreeable to all.

MRS ELIZABETH WONG: *Can the Secretary advise this Council whether he has considered the possibility of the use of an independent arbitration or enquiry*

— *a proposal of part of the mechanism suggested in 1968 which would expedite the solution to the problem and enable an early agreement to be reached? And if not, why not?*

SECRETARY FOR THE CIVIL SERVICE: Mr President, we have not considered such a need because we do not think there is such a need.

Rehousing Urban Squatters

安置市區寮屋居民

4. **MR DAVID CHU** asked: *Mr President, Governor pledged in 1992 to rehouse all urban squatters on government land by 1996. As there are still urban squatters around and in view of the outbreak of fire in a squatter area in Diamond Hill last month, will the Government inform this Council of:*

- (a) the reasons for the authorities concerned not being able to rehouse all the urban squatters on government land by the above target date;*
- (b) the date at which the remaining urban squatters on government land and private land are expected to be rehoused; and*
- (c) the measures which will be taken by the authorities concerned to safeguard the safety of urban squatters before they are rehoused?*

Thank you.

SECRETARY FOR HOUSING: Mr President, the Government's pledge to offer rehousing to all urban squatters residing on government land by March 1996 was successfully completed on time. Over 33 000 squatters have been offered rehousing, and over 32 000 of these have already been rehoused.

As regards part (b) of the question, we will continue to encourage eligible urban squatters residing on government land to accept our rehousing offers. For squatters residing on urban mixed lots, such as those in the Diamond Hill squatter area, the Government's pledge did not cover them. Under existing policy, they will not be evacuated and the land resumed unless there is a specific public

requirement for the land involved, such as development for a public purpose, or unless the land is susceptible to geotechnical risk. In other words, the Government does not have a plan at present to clear the squatters on these mixed lots.

I would like to point out that we have proposed in the *Long Term Housing Strategy Review Consultative Document* that the Housing Authority should consider the feasibility of clearing all squatters on urban mixed lots, having regard to the availability of rehousing resources. This proposal, together with others in the *Consultative Document*, is now the subject of public consultation until the end of this month.

As regards part (c) of the question, the Housing Department has installed facilities in all urban squatter areas for fire fighting purposes, including fire hydrants and fire breaks. The Department will continue to remind squatters to take fire prevention measures through the distribution of pamphlets, and meetings with residents and local organizations.

廖成利議員問：主席，據了解，規劃署有一個專責小組正在研究、策劃發展這些混合地段的土地，可惜研究至今仍未落實任何發展計劃，原因是還未能指定一個公眾用途，所以直到現在尚未清拆這些混合地段上的寮屋，使香港這個國際大都會直到今天，在市區市中心的地段仍然存在很多這類寮屋。政府可否公開作出承諾：將市區的寮屋（混合地段）問題放在更優先處理的次序，盡快決定和落實一個發展計劃，在一段合理的時間內，例如大約在3年至5年內，盡快全部清拆市區混合地段上的寮屋，以避免5年後這些市區的寮屋仍然給特首候選人作為建立形象、拉票、親民的工具？

房屋司答：主席，正如我在開始時提到，在當局提出的《長遠房屋策略評議諮詢文件》裏，我們在檢討過程中，已經考慮過是否需要清拆這些在混合土地上的寮屋，我們的確曾提出一個建議，請房屋委員會作出考慮。其實，在我們提出這項諮詢建議時，當然，我們有進行這項工作的意願，但現階段我們並不可能作出承諾。然而我深信諮詢期完結後，經過房委會研究資源問題之後，我相信我們可以提出一個可行計劃。

蔡根培議員問：主席，關於尚待清拆的寮屋區，政府是否已定出具體的清拆時間表；若有的話，詳情是怎樣？

房屋司答：主席，關於市區混合地段上的寮屋，剛才我已解釋過。但至於香港其他地區的寮屋，例如新界的寮屋，政府仍未有一個特別的計劃。將來如要清拆的話，則要看看有否需要作指定用途或發展計劃，或有時候受到土力問題所影響才有清拆計劃，不然的話，便不會進行清拆。

主席：本席相信質詢是問政府土地上的市區寮屋有否清拆計劃。

房屋司答：主席，關於政府土地上的市區寮屋，其實我在主要答覆中已回答了，政府已經承諾並如期履行承諾，即剛才主要答覆的第一段，我們已經向 33 000 名這些寮屋居民提出配屋建議，其中 32 000 名已經接受了，餘下的 1 000 名因為不願意搬遷，所以沒有搬離寮屋。謝謝主席。

馮檢基議員問：主席，我也想追問剛才那項質詢，因為根據九二年政府的承諾，是在一九九六年三月前清拆所有政府土地上的市區寮屋，立法局房屋事務委員會和房屋科已辯論過，把九九年三月底前清拆改為九六年三月底遏止清拆，現在再改為只是向市民提出配屋，其實只是字眼不斷變改。根據最初的承諾，是必須把它們清拆的，即使剩下 1 000 人左右也應該清拆，究竟何時會完成清拆政府土地上的所有寮屋，即使只剩下一人，也得清拆，何時進行清拆？還是不清拆呢？

房屋司答：主席，政府的承諾是向當時的寮屋居民，提供公營的房屋安置他們。直到目前，政府根本已經履行了，不過有一部分、小數的居民不接受政府的建議。我可以對大家說，本局的議員也有提議不應強迫他們離開。在這方面，政府並沒有使用武力迫遷，但如居民不接受政府的房屋編配，在這種情況下，我認為政府也感到無可奈何。謝謝主席。

李永達議員問：主席，在清拆市區寮屋方面，已清拆了多個寮屋區。據我了解，每一個要清拆的市區寮屋區裏，都有不同程度的私人土地，即每一個清拆區也有“混合地”這問題。我想問房屋司，為甚麼在其他的清拆區，即使官地、私地混合也全部清拆，而在鑽石山那裏，當然私地比較多，當局基於甚麼原則來說鑽石山不包括在承諾裏？我的質詢是過往不斷進行清拆的寮屋區內，是否也有私人土地包括在內？

房屋司答：主席，以我所知，政府清拆政府土地上的寮屋，並不包括這種私人土地上的寮屋。

李永達議員問：主席，房屋司可否給予我們書面的資料。已經完成清拆的市區寮屋區是否確實沒有包括任何私人土地？因為據我從房屋事務委員會所得的資料，我了解有部分寮屋區是包括私人土地的。

房屋司答：主席，我可以書面答覆。（附件）

Life Span of Public Rental Housing Flats

出租公屋單位的樓齡

5. 馮檢基議員問：政府是否知悉：

- (a) 過去 5 年，每年所拆卸的出租公屋單位數目為何；
- (b) 過去 5 年，每年本港出租公屋單位的淨增加量（新建出租公屋單位數目減去拆卸的出租公屋單位數目）為何；及
- (c) 在過去 5 年清拆的出租公屋單位的最長、最短及平均樓齡為何？

房屋司答：主席，在過去 5 年，每年清拆和新落成的租住公屋單位數目，連同相應的淨增加數目，載列於附件。

至於質詢(c)部分，過去 5 年所清拆的租住公屋單位中，最長的樓齡是 39 年，最短的樓齡則是 19 年，平均樓齡是 28 年。

附件

清拆和新建的租住公屋單位數目

年度	(a) 清拆單位數目	(b) 建成單位數目	(b)-(a) 淨增加數目
一九九二至九三	21 599	22 852	1 253
一九九三至九四	17 099	20 274	3 175
一九九四至九五	7 434	24 440	17 006
一九九五至九六	16 418	14 828	(1 590)
一九九六至九七	14 535	15 917	1 382

() 表示減少數目

馮檢基議員問：主席，根據業內人士估計，樓宇的樓齡通常為 40 年。可是，過去 5 年我們所拆卸的房屋的平均樓齡卻是 28 年。請問房屋司，怎樣保證房屋委員會所興建的樓宇可以追上市場樓宇的樓齡，即 40 年？

房屋司答：主席，我認為有關樓齡方面，並不是只簡單看樓宇何時拆卸，便代表樓宇是否耐用。香港市區很多樓宇都很新，但仍會被拆卸。房屋委員會和房屋協會清拆租住公屋時，最主要的考慮是這些樓宇單位本身是否有獨立設備。早期興建的一些樓宇的確沒有獨立設備，例如洗手間並不是設在單位之內，因此，計劃進行重建時，這些樓宇會獲得優先處理。此外，一些樓宇可能會出現其他問題，又或毗連的一幢需要拆卸，所以便順帶一起拆卸來作重建。因此，樓宇樓齡較短便被拆卸，並不代表質素不好。

馮檢基議員問：主席，房屋司並沒有回答我的質詢。我問房屋司如何向市民保證，日後房屋委員會興建的樓宇的樓齡可維持大約 40 年，這是市場上

一般樓宇的樓齡。他在回答時並沒有提及這方面的問題。

房屋司答：主席，有關樓齡方面，房屋委員會近年所興建的樓宇的樓齡其實已經可說相當長，據我所知，樓齡達到 50 年也沒有問題。過往所建的樓宇是因我剛才所說的理由才會被提早拆卸。

李永達議員問：主席，從附件的資料可見公屋出租單位的淨增長其實很小。在九五至九六年度，整體的租住單位數目更出現負增長，即不但沒有增加，反為減少了 15%。據我的計算，在過往 5 年，公屋租住單位的淨增長每年只有 4 500 個。請問房屋司，淨增長的數目這樣少，他有否信心在二零零一年可以實現服務承諾，使那些在輪候冊上的居民平均可在 5 年內獲配公屋租住單位？

房屋司答：主席，雖然這項質詢與主要質詢沒有關係，但我想告知李議員，我們不應只看淨增加的數目，因為在現有的公營租住房屋中，也有很多單位可作編配。例如一些公屋租戶購買了居屋或私人樓宇，又或因其他理由而遷出他們的單位，這些騰空了的單位在翻新後，會再編配給其他有資格的居民入住。因此，安置有需要的市民的樓宇單位數量相當大。一般來說，每年平均最少約有 18 000 個單位，加上未來數年所興建的樓宇單位數量會逐步增加，所以政府有信心在二零零一年時會有足夠單位分配給市民。

馮檢基議員問：主席，以往 5 年的建成單位數目與清拆單位數目相差不遠，剛才李永達議員也指出差額平均約為 4 000 個。請問政府有否檢討，為何過往 5 年的建屋量那麼小，又或為何與清拆數目相差不遠？如有的話，原因為何？

房屋司答：主席，主要的原因是九十年代初期，政府撥給房屋委員會的土地數量較少，所以在過去一年和未來的一、兩年，落成單位的數目也會較少。可是，隨着最近數年政府撥給房屋委員會的土地增加，所以隨後數年

的樓宇建築量定會相應增加。

WRITTEN ANSWERS TO QUESTIONS

議員質詢的書面答覆

Floating Class System

浮動班制

6. 羅祥國議員問：鑑於現時有些中學仍採用浮動班制，政府可否告知本局：

- (a) 現時有多少中學仍採用浮動班制；及
- (b) 政府有否計劃全面取消浮動班制；若有，詳情為何（包括估計要增建多少所新校及估計涉及多少公帑）？

教育統籌司答：主席，

- (a) 現時本港共有 316 間政府及資助中學仍須開辦浮動班。
- (b) 政府政策是取消中一至中五的浮動班，預計可在二零零零年完成。為此政府需要增建 7 間中學，建築費接近 4.4 億元，同時透過“學校改善計劃”為有需要的中學增加約 200 間課室，建築費接近 2.3 億元。在全面取消中一至中五的浮動班後，政府便會檢討中六及中七的情況。

Fixed Telecommunication Network Service Operators

固定電訊網絡服務商

7. 劉健儀議員問：政府於一九九五年發出固定電訊網絡服務牌照，藉以引入競爭。就此，政府可否告知本局：

- (a) 3間新的固定電訊網絡商獲發牌至今，是否完全符合《電訊條例》中所列的發牌條件；若否，有哪些條件仍未符合；
- (b) 有關當局如何監管該 3 間固定電訊網絡商，確保其遵守有關發牌條件；及
- (c) 該 3 間固定電訊網絡商在與有關當局商討發牌條件時曾承諾對興建交換機樓及其他基礎設施作出投資，現時該等設施的建設進度如何？

經濟司答：主席，3間新的本地固定電訊網絡商完全符合有關的發牌條件。

電訊管理局（“該局”）負責監管固定電訊網絡商有否遵守發牌條件。在有需要時，該局有權介入，調停固定電訊網絡商之間因聯網系統、共用設施及與遵守發牌條件有關的其他事宜而產生的爭議。用戶或固定電訊網絡商提出關於未遵守發牌條件的任何投訴，該局都會積極處理，並採取所需行動。3間固定電訊網絡商均在該局存有履約保證金，如固定網絡商未能遵守具體發牌條件，有關款額可予沒收。

根據所發出牌照的規定，該 3 間固定電訊網絡商須按牌照上列明的日期，完成指定的投資項目。這些項目包括每個持牌人須注入 5 億元資金於持牌公司。在一九九六年年尾須完成的指定投資項目包括完成敷設港島及九龍半島的光纖中樞網絡、建立所需的電話機樓及為指定數目的樓宇提供服務。該局證實，該 3 間固定電訊網絡商已圓滿地如期完成一九九六年年尾的項目。

在未來 1 年，他們須完成更多關於把網絡擴展至商業和住宅用戶的項目。為完成這些項目，新網絡商現正在地下鐵路隧道敷設額外光纖電纜。他們亦在香港電話有限公司（“香港電話公司”）的電話機樓裝置設備，連接香港電話公司的地區性迴路。至於新建的樓宇，新固定電訊網絡商及香港電話公司現與發展商互相協調，以便提供樓宇電話幹綫。

Local Software Development Technology

本港的軟件發展技術

8. 田北俊議員問：香港生產力促進局近期一項調查顯示，本港出入口行業對應用軟件的需求不斷增加，所需軟件亦日趨複雜。就此，政府可否告知本

局：

- (a) 過去 3 年，香港生產力促進局有否在軟件的開發、技術轉移、技術支援和技術人員培訓各方面，對出入口行業提供協助；若有，詳情為何；及
- (b) 長遠而言，香港生產力促進局有何計劃確保本港的軟件發展技術可與本港的出入口行業和貿易發展互相配合？

工商司答：主席，過去 3 年，香港生產力促進局在軟件開發及推廣應用軟件方面，耗資超過 5,700 萬元（包括員工開支），主要是在軟件開發、技術轉移、技術支援和技術人員培訓各個範疇，為本港的進出口行業提供協助。詳情如下：

- (a) 軟件開發 — 加強成衣出口商及進出口公司所使用的成衣管理資訊系統(GM-SYS)；為香港貨品編碼協會引進的通商易電子數據聯通(“電子聯通”)服務開發一個低成本軟件(TRENDS)；以及為進出口行業的客戶特製軟件。
- (b) 技術轉移 — 與香港貨品編碼協會合作，訓練軟件發售商採用世界通行的電子聯通標準，以及施行可以利用電子聯通的軟件；並向軟件開發商提供符合電子聯通標準的軟件品質保證服務。
- (c) 技術支援 — 與香港貨品編碼協會及 CargoNet 合作推廣電子貿易，以提高進出口貿易的效率；成立軟件業資訊中心，該中心已完成一項有關進出口行業的調查，名為一九九七軟件研究；與中華廠商聯合會合作，為中小型企業舉辦有關使用互聯網的訓練課程及研討會，其中一部分中小型企業是經營進出口業務的；發展中小型企業資訊網絡，以協助檢索和推廣資訊。
- (d) 培訓 — 與貿易通合作培訓八百多名來自 300 間公司的職員，使用電子聯通科技進行貿易報關及申請受限制紡織品出口證；並與主要的資訊科技供應商合辦超過 100 個高級資訊科技培訓課程。

為了確保香港的軟件開發科技，長遠來說能切合本港貿易和進出口行業不斷轉變的需要，生產力促進局已制定下述策略：

- (a) 進一步加強軟件業資訊中心提供的服務，以支援軟件開發商，

以及改善與進出口行業組織的聯繫；

- (b) 鼓勵把互聯網、電子聯通、萬維網合併為外聯網(Extranet)，以供服務業，特別是進出口行業使用；
- (c) 為中小型進出口公司研製管理資訊套裝軟件；
- (d) 研究設立標準貿易服務台，以介紹最新的資訊科技；
- (e) 研製可提高軟件質素的新程式；及
- (f) 繼續推廣最新資訊科技和產品，並提供有關現有資訊科技的深造訓練課程。

Central-Wan Chai Bypass and Island Eastern Corridor Link Consultancy Study

中區至灣仔繞道及東區走廊連接路研究

9. **DR SAMUEL WONG** asked: *In order to ease the heavy road traffic between Hong Kong Island West and Hong Kong Island East, funds were allocated two years ago for the commissioning of the Central-Wan Chai Bypass and Island Eastern Corridor Link Consultancy Study. In this connection, will the Government inform this Council:*

- (a) *of the latest progress of the above study; and*
- (b) *whether the Government will proceed with the Central-Wan Chai Bypass and Island Eastern Corridor Link project; if so, when the Government will start reclamation work between Star Ferry Pier and Hing Fat Street to facilitate the construction of the Bypass?*

SECRETARY FOR TRANSPORT: Mr President,

- (a) Following allocation of funds by the Finance Committee of the Legislative Council, we embarked on the Consultancy Study for the Central-Wan Chai Bypass and Island Eastern Corridor Link in March 1995. The scope of the study involved:

- (a) detailed investigation and design of the proposed trunk road; and
- (b) associated site investigations.

The consultants commissioned to undertake this study have substantially completed the preliminary design of this project. Having carried out an environmental impact assessment as well as a comprehensive review of a number of relevant studies, such as the Territory Development Department's reclamation feasibility studies for the area, the consultants have come up with a recommended alignment and layout for the project.

The proposed Central - Wan Chai Bypass and Island Eastern Corridor Link lies within an existing reclamation site, that is, the Central Reclamation Phase I site (CRI), and two proposed reclamation sites, that is, the proposed Central Reclamation Phase III site (CRIII) and the proposed Wan Chai Reclamation Phase II site (WRII). A location plan is annexed.

The detailed design work for the section of the road project within the CRI site near the Airport Railway Hong Kong Station is ongoing; to date, about 35% of the detailed design has been completed. We expect to complete all design work by early 1998.

As regards the section of the road project, which will be in the form of an underground tunnel, within the CRIII site, the consultants have largely completed the detailed design of the tunnel structure.

As regards the section of the road project within the WRII site, we intend to carry out the necessary design work in conjunction with the detailed design of the reclamation project, as there would be a lot of interface issues between the two projects, such as the siting of the interchange and the land use pattern, which might affect the trunk road design.

- (b) The construction programme of the Central-Wan Chai Bypass and Island Eastern Corridor Link is dependent on the development of the Central Reclamation Phase I (CRI), the Central Reclamation Phase III (CRIII) and the Wan Chai Reclamation Phase II (WRII) projects. The CRI reclamation work was completed in mid-1996. The detailed design for the CRIII project commenced in November 1995 and has been substantially completed. The Preliminary Project Feasibility Study for the WRII project commenced in June 1995 and

was completed in June 1996.

The Administration is reviewing the programme for CRIII and WRII in the context of the current Territorial Development Strategy Review. The programme of the Central-Wan Chai Bypass and Island Eastern Corridor Link is dependent upon this review. We intend to consult members of the public, the district boards concerned and the Legislative Council on the implementation programme in the near future.

(留空一頁貼表)

Income Groups Profile**僱員收入組別剖面**

10. 鄭耀棠議員問：政府可否告知本局：

(a) 可否按“居住房屋類型”、“居住地區”、“住戶人數”及“住戶結構”劃分提供下列(i)至(v)項僱員收入組別在一九八六、一九九一及一九九六3年的資料：

(i) 4,000元以下

(ii) 4,000-5,999元

(iii) 6,000-6,999元

(iv) 7,000-7,999元

(v) 8,000-8,999元；及

(b) 若否，原因為何；及會否考慮搜集有關資料及定期公布？

財經事務司答：主席，所需的統計數字載列於以下各表：

表一：按每月主業收入及房屋類型劃分的僱員數目

表二：按每月主業收入及居住地區劃分的僱員數目

表三：按每月主業收入及住戶人數劃分的僱員數目

表四：按每月主業收入及住戶結構劃分的僱員數目。

這4個統計表是根據人口普查／中期人口統計所得的資料編製。每月主業收入是指從主要工作所獲得的全部收入，但不包括新年花紅及雙糧。

(留 10 頁貼表)

Missing Hong Kong Residents**失蹤本港居民**

11. 蔡根培議員問：政府可否告知本局：

- (a) 目前，有多少本港居民被列為失蹤人士；並請臚列該等人士的性別及年齡組別；
- (b) 上述失蹤人士中，失蹤期最長者為多久；及有否特別措施處理長期失蹤者的個案；
- (c) 會否主動向該等失蹤人士的家庭成員提供各類協助，包括經濟援助及心理輔導；及
- (d) 倘該等失蹤人士在主權移交後被發現在中國境外其他地方出現，會否繼續向他們及其家人提供協助？

保安司答：主席，

- (a) 目前，有 291 名本港居民被列為失蹤人士。按性別和年齡組別列出的數字如下：

年齡組別	性別	
	男	女
0-6 歲	3	3
7-15 歲	10	38
16-20 歲	9	39
21 歲及以上	99	90
總數	121	170

- (b) 在(a)部分列出的失蹤人士中，失蹤期最長者為 7 年。

總區失蹤人口調查組的警務人員負責調查失蹤人士個案，他們每七天覆查每宗報稱有人失蹤的個案一次。屬於警司級的一名警務人員會在接獲這些個案 28 天後覆查所有個案，並在考慮每宗個案的情況後決定應否採取進一步行動。警方會繼續覆查工

作，直至該名負責覆查的警司認為警方已採取所有合理步驟，而進一步調查也不會有任何作用為止。

- (c) 警方會把適當的失踪人士個案轉介給社會福利署（“社署”），而社署的個案工作者會視乎個別情況，聯絡失踪人士的家人，提供適當的協助。社署會提供各種服務，例如給予輔導和轉介當事人接受福利援助，包括經濟援助和心理輔導服務。
- (d) 我們並沒有失踪的香港居民在外國求助的統計數字，但經驗顯示這種情況甚少發生。遭遇危難的香港居民都可以透過領事機關或人民入境事務處尋求協助。這種協助在主權移交之後仍會繼續。

Altars and Temples in Private Buildings

私人大廈內的神壇廟宇

12. 謝永齡議員問：政府可否告知本局：

- (a) 全港目前共有多少神壇廟宇位於私人大廈內；及此類神壇廟宇主要分布在哪些地區；
- (b) 上述神壇廟宇是否需要註冊；若然，目前全港共有多少該等神壇廟宇是未經註冊的，而未經註冊者之中，有多少屬私人管理或擁有；
- (c) 目前有否法例規管私人大廈內的神壇廟宇；若然，有何監管措施確保該等神壇寺廟符合大廈公契的條款及有關消防安全規則；及
- (d) 倘該等神壇廟宇兼有齋菜提供，有否法例規管其提供的食物必須符合衛生標準；若然，監管措施的詳情為何？

政務司答：主席，

- (a) 根據華人廟宇委員會的紀錄，已註冊而位於私人大廈內的華人廟宇共有 79 間，主要分布於中西區、東區、灣仔、深水埗、油

尖旺、九龍城、觀塘及荃灣。

- (b) 根據《華人廟宇條例》(第 153 章)，上述華人廟宇是需要註冊的。對於未經註冊的神壇廟宇，華人廟宇委員會及政府並無紀錄。
- (c) 目前私人大廈內的神壇廟宇，必須符合大廈公契條款及其他有關法例的條文。首先，如神壇廟宇的設立或其運作有違大廈公契的條款，大廈業主或業主立案法團可引用《建築物管理條例》(第 344 章)向土地審裁處要求訟裁。此外，根據《建築物條例》(第 123 章)，如因在私人大廈內設置神壇廟宇而引致單位用途有實質改變，是必須先向建築事務監督提出申請的。建築事務監督更可基於神壇廟宇對大廈結構、消防安全措施等各方面有不良影響而否決其申請，或禁止有關業主把單位繼續作同類用途。另外，消防處若發現大廈內的神壇廟宇存在火警的危險，或儲存過量的危險品，亦可引用《消防條例》(第 95 章)及《危險品條例》(第 295 章)進行檢控。
- (d) 私人大廈內的廟宇若兼有齋菜提供，其食物的衛生是受《公眾衛生及市政條例》(第 132 章)之下的《食物業(區域市政局)附例》及《食物業(市政局)附例》所規管。根據此兩條附例，廟宇提供齋菜膳食須向區域市政局或市政局申領食肆牌照；而獲發給牌照的其中一項條件，是有關廟宇必須符合區域市政局或市政局所訂定的衛生條件。在獲發出食肆牌照後，廟宇食堂持牌人要遵守一套持牌的條件，以確保有關處所的衛生情況。另一方面，衛生督察會定期巡視獲發牌的食肆，以確定持牌人及處理食物的員工遵守有關的衛生法例。對有違反持牌條例及衛生法例的，衛生督察會提出檢控，亦會指導持牌人作出改善。如有需要，衛生督察會加強巡查的次數。遇有屢犯不改的，區域市政局或市政局可採取吊銷或取消牌照的處分。

Increasing Aircraft Movements at Kai Tak

增加啟德機場航機班次

13. **MR HOWARD YOUNG** asked: *Will the Government inform this Council whether there are any plans to increase the number of aircraft movements at the Kai Tak Airport to 31 per hour; if so, what the details are?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, plans are in hand to increase the maximum number of aircraft movements at the Kai Tak Airport to 31 per hour from 7 am to 9 pm during the coming winter scheduling season.

To achieve this target, the Civil Aviation Department has taken the following measures to increase its air traffic capability:

- (a) upgrading the Radar Data Processing and Display System and the Flight Data Processing System;
- (b) recruiting and training additional air traffic controllers; and
- (c) introducing additional air traffic control positions.

Regulation on Transfer of Stock Exchange Membership

規管交易所會籍的轉讓

14. **MISS EMILY LAU** asked: *In his testimony given at the trial of a former vice-chairman of the Hong Kong Stock Exchange on bribery charges, the Chairman of the Securities and Futures Commission said that taking commission in the transaction involving the transfer of stock exchange membership was considered a grey area. In this connection, will the Government inform this Council whether there are plans to amend the relevant legislation to stipulate that the taking of such commission is an offence under the law?*

SECRETARY FOR FINANCIAL SERVICES: Mr President, what the Chairman of the Securities and Futures Commission said in his testimony at the trial was that he did not know the full facts so whether it was black, white or grey, he was unable to judge.

A transaction involving the transfer of membership of the Stock Exchange of Hong Kong is a sale of a share in the Exchange Company which is a private company. Such a transfer is a private transaction and the payment of a

commission is in itself not a criminal offence. In the trial to which the Member refers, the issue was whether the commission was accepted as an inducement to or reward for favouring an applicant. Since such a transaction requires approval by the Council of the Exchange Company, the parties concerned in the transaction could be liable criminally under section 9 of the Prevention of Bribery Ordinance (the Ordinance) if, in connection with approving the transfer, a commission is paid to a Council Member as an inducement or reward to that Council Member for refraining from exercising his or her duty as a Council Member or for acting in breach of that duty.

However, no offence is committed under section 9 of the Ordinance unless the inducement or reward is offered or accepted, as the case may be, without lawful authority or reasonable excuse of the permission of the principal.

A Council Member of the Exchange Company who receives a commission for the transfer of a share could place himself or herself in a position of conflict of duty and interest in that his or her duty to the Exchange is to vote in the interest of the Exchange Company, and his or her interest in the share transaction lies in its completion. The Exchange Company has guidelines for declaring conflict of interest. The Securities and Futures Commission will pursue with the Exchange Company the whole question of the enforcement and adequacy of such guidelines after studying proceedings of the recent court case involving the former vice-chairman of the Exchange Company.

Sites for New Multi-storeyed Car Parks

興建新多層停車場的地點

15. 黃偉賢議員問：據悉，政府的泊車位小組已建議 10 個地點，列入未來 3 年的賣地計劃中，供興建多層停車場用途。政府可否告知本局：

- (a) 上述供興建多層停車場地點的確實位置；
- (b) 該些停車場建成後預計可提供多少個泊車位；及
- (c) 預計該些停車場何時才能啟用，屆時對紓緩本港泊車位不足的情況有何裨益？

運輸司答：主席，泊車位需求研究工作小組建議列入未來 3 年售地計劃的 10 個用以興建多層停車場的地點，以及每個地點暫訂提供的泊車位數目，現載列於隨附的一覽表。這 10 個多層停車場總共提供 1 900 個貨車泊車位和 1 100 個私家車泊車位。其中一個地點已提前列入一九九六至九七年度的售地計劃，並且已經售出。

新停車場啟用的日期，視乎有關地點能否順利售出，以及私營機構設計和興建停車場所需的時間。工作小組會監察有關的進展。

單靠這十個多層停車場，並不足以應付全港貨車泊車位短缺的問題。工作小組已實施泊車位需求研究建議的一些措施，並會繼續推行其他建議的措施，增加貨車泊車位。有關措施包括提供短期租約土地，以及物色更多路旁泊車位，尤其是通宵泊車位。此外，修訂的香港規劃標準與準則已付諸實行，增闢在住宅樓宇、商業樓宇和社區設施內的泊車位。

建議興建多層停車場的地點

售地計劃	位置	泊車位的估計數目
1. (在九七年三月二十五日以拍賣方式售出)	柴灣小西灣填海區	336 個私家車泊車位和 35 個電單車泊車位
2. 一九九七至九八年	九龍灣	200 個私家車泊車位、75 個輕型貨車泊車位、25 個中型／重型貨車泊車位
3. 一九九七至九八年	西貢	90 個輕型貨車泊車位、35 個中型／重型貨車泊車位
4. 一九九七至九八年	沙田石門	100 個私家車泊車位、110 個輕型貨車泊車位、120 個中型／重型貨車泊車位

5.	一九九七至九八年	沙田第 11 區石門	100 個私家車泊車位、35 個輕型貨車泊車位、120 個中型／重型貨車泊車位
6.	一九九八至九九年	觀塘	200 個私家車泊車位、75 個輕型貨車泊車位、25 個中型／重型貨車泊車位
7.	一九九八至九九年	紅磡灣填海區	200 個輕型貨車泊車位、25 個重型貨車泊車位
8.	一九九八至九九年	西九龍填海區	300 個輕型貨車泊車位、100 個中型／重型貨車泊車位
9.	一九九九至二零零零年	柴灣老鼠排填海區	200 個輕型貨車泊車位、200 個中型／重型貨車泊車位
10.	一九九九至二零零零年	九龍灣	200 個私家車泊車位、75 個輕型貨車泊車位、25 個重型貨車泊車位

Chinese Descriptions of Imported Health Food

進口健康食品的中文標籤

16. 朱幼麟議員問：政府可否告知本局：

- (a) 就市面上一般藥房或健康食品店出售的進口健康食品，有否法例規定該等健康食品包裝上需附加中文標籤；若有，中文標籤的內容是否受有關法例監管；及
- (b) 現時有否法例監管以直銷方法出售的進口健康食品；若然，有何監管措施以確保該等食品具有製造商宣稱的功能？

衛生福利司答：現時法例並沒有訂明“健康食品”的釋義，因此現行有關食物的法律條文，均適用於所有食品，包括市面上藥房或健康食品店出售的或直銷出售的進口健康食品。

- (a) 有關預先包裝食物標籤的規管和標籤的內容，載於香港法例第132章《公眾衛生及市政條例》制定的《食物及藥物（成分組合及標籤）規例》內。根據該規例，一般來說，食物標籤可以使用中文、英文、或兩者並用。該規例亦規定標籤的部分內容例如保質期，及某類食品的標籤，例如奶類製品，均需要用中英文說明。
- (b) 現時雖然沒有法例直接監管進口健康食品具有製造商宣稱的功能，不過，有關管制一般食物的法律機制，亦適用於健康食品。例如，根據《公眾衛生及市政條例》第V部及該條例的附屬法例，出售不適宜供人食用的食物，即屬違法。此外，任何宣稱能夠治療或預防疾病的製品，均須按香港法例第138章《藥劑業及毒藥條例》註冊。藥劑製品的註冊準則包括其安全程度、素質和效能，全部均須以科學證據證明。香港法例第231章《不良醫藥廣告條例》亦載有條文，禁止發布廣告宣傳用作治療或預防某些疾病的物質。我們認為現行的法律規管機制已足以保障市民的健康。

Policy on Training Courses for Paging Operators

培訓傳呼從業員的政策

17. 田北俊議員問：電訊管理局提供的統計數字顯示，從去年十月開始，使用傳呼機的人數不斷下降，而使用手提電話的人數卻不斷增加。就此，政府可否告知本局：

- (a) 面對上述市場發展趨勢，僱員再培訓局在培訓傳呼從業員的政策方面有何轉變；
- (b) 本年開辦的傳呼接綫生培訓課程數目及每班人數為何；及
- (c) 過去兩年完成傳呼接綫生培訓課程的學員，與本年首 4 個月完成有關課程的學員比較，兩者的就業情況如何？

教育統籌司答：主席，雖然在香港使用手提電話的人數確實有所增加，但手提電話仍未能佔去傳呼機市場的大部分生意，更遑論淘汰傳呼機。事實

上，很多使用手提電話的人士同時使用傳呼機服務。此外，很多手提電話服務公司提供留言服務，而這項工作需要由傳呼接綫生擔任。

目前沒有證據顯示，這種市場趨勢導致傳呼行業的人力需求大幅減少，或有越來越多傳呼接綫生失業。

在提供了這些背景資料後，我現謹就質詢的 3 個部分答覆如下：

- (a) 僱員再培訓局的原則是，該局開辦的各項訓練課程，包括傳呼接綫生培訓課程，目的都是使學員能夠掌握工作所需的技能。

為了確保學員在完成課程後能重投勞工市場，僱員再培訓局規定開辦課程的培訓機構，均須設立督導小組，成員包括有關行業的僱主、訓練導師和學員代表，負責監察課程的設計和開辦情況，以便可因應市場需求的轉變而修訂課程。此外，修畢課程的學員平均的整體就業率須達到約 70%，培訓機構才可繼續開辦同一課程。

僱員再培訓局亦為傳呼接綫生舉辦多項度身訂造的培訓課程，這類課程是按照某些傳呼公司的需要而特別設計的，這些公司亦同時提供為數較多的職位空缺。因此，報讀這類課程的再培訓學員，在課程未開始前大致上已有就業機會。

為傳呼接綫生開辦的再培訓課程，內容不但包括傳呼接綫生的工作技巧訓練，同時亦提供基本電腦操作訓練，以及服務行業的基本客戶服務技巧。因此，再培訓學員修畢這類課程後，亦能擔任傳呼行業以外的其他工作，例如文員、營業員及客戶服務助理。

我們會繼續與僱員再培訓局緊密合作，監察通訊業的發展及對勞工市場的影響，以便能及時對有關的再培訓課程作出適當修改。

- (b) 由舉辦傳呼行業的再培訓課程開始，至一九九七年四月底為止，僱員再培訓局共開設 75 班課程，為 1 310 名人士提供再培訓。在本年首 4 個月，僱員再培訓局已開辦 14 班有關課程，培訓 251 名學員。在一九九七年四月三十日，共有 42 名再培訓學員分兩班接受傳呼接綫的培訓。

- (c) 過去兩年，為傳呼行業而設的再培訓課程，學員的整體就業率平均達到 73% 左右。其中 68% 受僱於傳呼行業，餘下 32% 則擔任不同職位，包括文員、營業員、出納員、客戶服務助理及店務助理等。

在一九九七年首 4 個月修畢課程的學員就業率，根據初步資料，平均是 65%。整體就業率須待就業紀錄編定後才可提供。

Adult Education

成人教育

18. 鄭耀棠議員問：政府可否告知本局：

- (a) 在過去 3 年，有關成人教育事宜的下列資料：
- (i) 教育署的成人教育組分別提供多少個小學至中六程度的正式修補教育課程，這些課程的類別為何，及有多少人完成該等課程；
 - (ii) 教育署 10 個成人教育康樂中心分別提供多少個非正式課程，這些課程的類別為何，及有多少人完成該等課程；
 - (iii) 有哪些志願團體接受教育署資助舉辦成人教育課程，所涉及的資助款額為何，而這些課程的類別及數目分別為何；
 - (iv) 教育署可否按“性別及年齡”、“性別及所從事的行業”、“年齡及所從事的行業”、“性別及所從事的職位”及“年齡及所從事的職位”劃分完成上述(i)、(ii)及(iii)3類課程的人士；
 - (v) 教育署有否提供其他成人教育課程；若然，該些課程的類別、數目及完成課程人數分別為何，並可否按“性別及年齡”、“性別及所從事的行業”、“年齡及所從事的行業”、“性別及所從事的職位”及“年齡及所從事的職位”劃分此類完成課程的人士；

- (b) 若上文(a)(iv)及(v)項答案為否定，教育署沒有搜集該等資料的原因為何，及會否考慮搜集有關資料及定期公布；及
- (c) 教育署會否考慮擴充現時所提供的成人教育課程；若然，詳情為何；若否，原因為何？

教育統籌司答：主席，

- (a)(i) 教育署成人教育組在過去 3 年提供的正規教育課程，以及完成這些課程的人數，詳情如下：

課程	一九九四至 九五年	一九九五至 九六年	一九九六至 九七年
1. 成人普通教育班(小學程度)	229	201	258
2. 官立夜中學中五*	1 568	1 558	1 693
3. 英文專修班(小學、中學和倫大 普通教育文憑程度)	808	802	646

*官立夜中學預科課程在一九九五至九六學年開辦，首批學生仍未畢業。

- (ii) 教育署的 10 個成人教育康樂中心已於一九九六年九月停辦。成人教育康樂中心過往是以興趣小組形式提供兩類短期課程：(i)教育興趣小組：如普通話班、英語班等，以及(ii)文化或消閒興趣小組：如攝影班、中國書法班、社交舞班等。

在一九九四至九五和一九九五至九六學年分別有 4 506 及 1 742 人完成成人教育康樂中心開辦的課程。

- (iii) 參加教育署資助計劃舉辦成人教育課程的志願團體，包括宗教團體及其他福利機構。這些課程共分七大類：包括基本識字班、職業先修訓練及職業輔導課程、勞工及就業教育、德育及社會教育、退休前教育或退休生活教育、初來港人士的適應課程，以及特殊教育。

有關資助團體的數目、資助款額及參加人數，詳情如下：

一九九四至九五年 一九九五至九六年 一九九六至九七年

團體數目	74	78	83
資助款額 (百萬元)	11.2	12.9	14.8
參加人數	17 796	20 042	21 070

(iv) 有關的統計數字，請參閱附件。由於教育署沒有修讀正規成人教育課程的學生所從事的行業及職位的資料，因此只能提供以性別及年齡劃分的統計數字。至於成人教育康樂中心及志願團體舉辦的非正規教育課程，教育署只有修讀人士的性別紀錄，因此只能提供修讀者的男女人數。

(v) 教育署並無提供其他成人教育課程。

(b) 教育署沒有打算搜集報讀正規成人教育課程及資助課程的學生所從事的行業及職位的資料，因為這些資料與課程的設計或管理沒有直接關係。

(c) 教育署定期檢討成人教育課程，以切合需求。由一九九五至九六學年起，教育署舉辦一項三年制的中六課程，學生修畢課程後可以參加香港高級程度會考。此外，由一九九六至九七學年開始，成人教育課程的最低入學年齡，亦由18歲降低至15歲。

附件

(i) 修畢成人普通教育班的學生數目

年齡	一九九四至九五年		一九九五至九六年		一九九六至九七年	
	男	女	男	女	男	女
20歲或以下	0	6	2	21	2	24
21-30	7	39	7	40	9	42
31-40	15	111	14	68	18	104
41-50	4	40	2	38	3	46
51歲或以上	0	7	0	9	0	10
共計	26	203	25	176	32	226
總人數	229		201		258	

(ii) 修畢官立夜中學中五的學生數目

年齡	一九九四至九五年		一九九五至九六年		一九九六至九七年	
	男	女	男	女	男	女
20 歲或以下	244	484	363	501	325	531
21-30	260	400	200	349	251	404
31-40	49	84	22	69	37	92
41-50	16	31	14	40	18	35
51 歲或以上	0	0	0	0	0	0
共計	569	999	599	959	631	1 062
總人數	1 568		1 558		1 693	

(iii) 修畢英文專修班的學生數目

年齡	一九九四至九五年		一九九五至九六年		一九九六至九七年	
	男	女	男	女	男	女
20 歲或以下	9	11	10	11	9	10
21-30	64	132	61	135	48	110
31-40	61	296	54	299	42	239
41-50	45	170	46	168	38	135
51 歲或以上	4	16	3	15	2	13
共計	183	625	174	628	139	507
總人數	808		802		646	

(iv) 修畢成人教育康樂中心課程的人數

	一九九四至九五年	一九九五至九六年	一九九六至九七年
男	1 208	496	
女	3 298	1 246	停辦
共計	4 506	1 742	

(v) 修畢志願團體成人教育課程的人數

	一九九四至九五年	一九九五至九六年	一九九六至九七年
男	4 054	4 298	4 660
女	13 742	15 744	16 410

共計

17 796

20 042

21 070

Blood Bags Discarded by Public Hospitals**公立醫院棄置血液包**

19. 黃偉賢議員問：政府是否知悉：

- (a) 過去 3 年，各間公立醫院每月棄置多少包血液，及佔各間醫院每月從香港紅十字會取用的血液包數量的百分比為何；
- (b) 公立醫院棄置該等血液包的原因為何；及
- (c) 醫管局有否就各公立醫院處理即將到期的血液包發出指引；若然，詳情為何，及有何機制確保各醫院落實執行有關指引？

衛生福利司答：主席，各醫院必須維持充足的血液供應，以供每日進行臨床手術之用。不過，血液的保存期有限，而且醫院對血液的需求並不穩定，因此，公營醫院儲存的部分血液單位，在用來輸血之前已經過了保存限期，須予棄置。但也有一些過了保存期限的血液單位，會用來進行各種化驗，例如血型分類和抗體研究。

根據醫院管理局的紀錄，在過去 3 年，醫院從香港紅十字會輸血服務中心（“輸血服務中心”）取得的血液中，每年平均只有 1.1%過了保存限期。按醫院劃分的分項數字詳載於附件。一般來說，在各主要醫院，過了保存限期的血液單位，佔所接獲血液單位總數的百分率比較低，原因是這些醫院有較多病人需要輸血，因而可採用共同配血程序（即是分配一批共用的血液單位給多名需要輸血的病人，而不是為個別病人預留某個數量的血液單位），以便善用所捐出的血液單位。

為了盡量善用捐出的血液，輸血服務中心和有關的公營醫院有一定的程序，處理即將到期的血液單位。每個血液包都標明使用限期，顯示血液包可供安全使用的期限。輸血服務中心每日或每星期都會分發血液包給各

醫院，醫院會根據“先收先用”的原則用來輸血。醫院須把即將到期的血液單位轉交所屬聯網的其他醫院，以確保血液單位可在到期前得以善用。

設有血庫的醫院一律須定期向輸血服務中心匯報血液的儲存量，包括轉交其他醫院和過了保存限期的血液單位數量。此外，醫院也會定期進行核算工作，確保血液單位獲得善用，以及協定的程序得以嚴格遵循。

(留三頁貼表)

GOVERNMENT MOTION

政府議案

COMPANIES ORDINANCE

公司條例

THE SECRETARY FOR FINANCIAL SERVICES to move the following motion:

"That the Companies (Winding-up) (Amendment) (No. 2) Rules 1997, made by the Acting Chief Justice on 5 May 1997, be approved."

SECRETARY FOR FINANCIAL SERVICES: Mr President, I move the motion standing in my name on the Order Paper.

The Companies (Winding-up) (Amendment) (No. 2) Rules 1997 have been made by the Acting Chief Justice under section 296 of the Companies Ordinance. The Amendment Rules seek to update insolvency practices and streamline procedures for the Official Receiver and the liquidators in dealing with winding-up of companies by the court.

The proposed changes are primarily procedural in nature. These include raising the minimum aggregate amount of miscellaneous expenses that is required to be taxed by the Registrar of the court from \$1,000 to \$3,000. This will relieve the Official Receiver and the liquidator of the obligation of taxing minor bills for work done by their agents.

The archaic provision which requires proxy forms to be completed in handwriting will be repealed, and we propose that proxy forms, except for signatures, can be printed and thereafter lodged by facsimile transmission.

We also propose that the amount of deposit to be placed with the Official Receiver before an order appointing a provisional liquidator is made be raised from \$3,000 to \$3,500. This amount has not been revised since 1993, and the proposed increase is nominal and lower than the accumulated inflation rate in the past four years. We hope that this modest increase will encourage more appointments of private sector insolvency practitioners as liquidators.

Under the Amendment Rules, the period within which the liquidator shall give notice of his intention to declare a dividend will be extended from two months to four months, to allow sufficient time for complicated proofs to be finalized and avoid the expense of further advertisement.

Amendments are made to Rule 88 in respect of the rate of interest payable in the event of a surplus and the period over which such interest to be calculated to be consistent with that applied in the Bankruptcy Ordinance.

Amendments are also made to Rules 142 and 202 so that the liquidator may place notifications in the Gazette direct without having to go through the Official Receiver.

Consequential amendments will be made to Forms 25, 80 and 81. Form 28 will be amended to require the liquidator's identification to be provided and minor textual amendment is proposed for Form 61 in the Schedule.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

議案之議題經提出待議，隨即付諸表決，共獲通過。

GOVERNMENT BILLS

政府條例草案

First Reading of Bills

條例草案首讀

JUDICIAL SERVICE COMMISSION (SPECIAL PROVISIONS) BILL 1997

《1997年司法人員敘用委員會（特別規定）條例草案》

CIVIL AVIATION (AMENDMENT) BILL 1997

《1997年民航（修訂）條例草案》

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

條例草案經過首讀，並依據《會議常規》第 41 條第(3)款的規定，受命安排二讀。

Second Reading of Bills

條例草案二讀

JUDICIAL SERVICE COMMISSION (SPECIAL PROVISIONS) BILL 1997

《1997 年司法人員敘用委員會（特別規定）條例草案》

THE CHIEF SECRETARY to move the Second Reading of: "A Bill to make a transitional arrangement in respect of any meeting of the commission established by the Judicial Service Commission Ordinance (to be known as the Judicial Officers Recommendation Commission Ordinance on the day following 30 June 1997) held on the day following 30 June 1997."

She said: Mr President, I move that the Judicial Service Commission (Special Provisions) Bill 1997 be read the Second time.

We have identified a practical problem that will arise at the first meeting of the Judicial Officers Recommendation Commission to be held on 1 July 1997. Section 3(3) of the Judicial Service Commission Ordinance (Cap. 92) (to be retitled the Judicial Officers Recommendation Ordinance with effect from 1 July 1997 by virtue of item 10 of the Schedule to the Hong Kong Court of Final Appeal Ordinance (Cap. 484)) provides that the Chairman and no fewer than six other members may exercise and perform any of the functions, powers and duties of the Commission. However, when the Commission holds its first meeting to recommend the appointment of the Chief Justice of the Hong Kong Court of Final Appeal (CFA), no judges will have been appointed in the Hong Kong Special Administrative Region (SAR). Without the Chief Justice of the CFA as the Chairman and the two judges appointed under section 3(1)(c)(i) of the Ordinance, there will only be six members of the Judicial Officers Recommendation Commission. This is below the quorum specified in section 3(3) of the Ordinance.

We therefore propose that, as a one-off transitional arrangement, legislative provision should be made to enable a person who serves as a judge immediately before 1 July 1997 to be appointed to the Commission as a member who is a judge for the purpose of any meeting of the Commission to be held on 1 July 1997. This would allow two judges to participate in the first meeting of the Commission and also to take part in making recommendations on the appointment of other judges at any Commission meeting to be held on 1 July 1997. Their appointment would expire at midnight on 1 July 1997.

Mr President, this Bill is a technical one which seeks to provide a practical solution to a practical problem. It must be enacted before 1 July in order to validate meetings of the Judicial Officers Recommendation Commission (JORC) held on that day, and hence the appointment of the Chief Justice of the CFA and the entire Judiciary of the SAR. Clearly we must do everything we can to remove any doubt about the legal status of the JORC and the Judiciary. I therefore commend the Bill to this Council for early passage into law.

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

條例草案二讀議案之議題經提出待議。

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

辯論中止待續，條例草案依據《會議常規》第 42 條第(3A)款的規定交付內務委員會處理。

CIVIL AVIATION (AMENDMENT) BILL 1997

《1997 年民航（修訂）條例草案》

THE SECRETARY FOR ECONOMIC SERVICES to move the Second Reading of: "A Bill to amend the Civil Aviation Ordinance."

經濟司致辭：主席，我動議二讀《1997 年民航（修訂）條例草案》（以下簡稱“本條例草案”）。

一九九四年制定的《民航條例》，代表着香港把有關聯合王國民航成文法則本地化的首個階段。今天動議二讀的《1997 年民航(修訂)條例草案》，代表把該等聯合王國成文法則本地化的第二及最後階段，並反映我們與中方在上月達成的協議。這對確保香港的民航管理制度於過渡期後得以延續是必需的，對維持香港作為國際及區域航空中心的地位也是不可或缺的。

本條例草案的目的，是把藉聯合王國《1949 年民航法令 1969 年(海外地區)令》而適用於香港的聯合王國《1949 年民航法令》(下稱“1949 年法令”)第 8 條本地化，以及保留《1995 年飛航(香港)令》(下稱“1995 年令”)，使它們在一九九七年六月三十日後繼續有效。1949 年法令第 8(1)條是賦權條文，授權女皇會同樞密院訂立條文，以施行一九四四年的《芝加哥公約》及該公約關於國際標準及建議措施的附件，以及概括而言規管航空事宜。1949 年法令第 8(2)條列出可訂立條文的指定事宜。1995 年令是女皇會同樞密院根據 1949 年法令第 8 條制定，為香港的民航管理制度提供法律基礎，其中涵蓋的事宜包括飛機的註冊及標誌、航空經營許可證、適航及飛機裝置、機上機組人員及簽發執照、飛機營運和航空交通管制等。

本條例草案修訂主體條例，加入 1949 年法令第 8 條的條文，以及保留 1995 年令，並對兩者作出適當修改。主要的修改如下：

- (a) 總督會同行政局代替女皇會同樞密院擁有權力訂立條文，以施行《芝加哥公約》及該公約的附件，以及概括而言規管航空事宜；
- (b) 該條文處理民航的日常業務及技術管理；
- (c) 除基於國防理由或在緊急狀態或戰爭狀態期間，總督會同行政局可藉命令訂立條文，禁止飛機飛越可由其指定的香港地方。在該等特殊情況下，總督必須獲得國務大臣的指示，方可作出這種命令。總督根據 1995 年令擁有訂立規例以發出這類禁制的權力亦作同樣修改；及
- (d) 為切合有關罪行，不遵從 1995 年令或根據該令而訂立的任何文書的最高罰款，將由現時的 400 英鎊水平（於超過 20 年前訂定），提高至第六級，即相等於港幣 10 萬元。

主席，我謹此陳辭，建議本局通過《1997 年民航(修訂)條例草案》。

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

條例草案二讀議案之議題經提出待議。

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

辯論中止待續，條例草案依據《會議常規》第 42 條第(3A)款的規定交付內務委員會處理。

Resumption of Second Reading Debate on Bills

恢復條例草案二讀辯論

GOVERNMENT RENT (ASSESSMENT AND COLLECTION) BILL

《地租（評估及徵收）條例草案》

Resumption of debate on Second Reading which was moved on 18 December 1996

恢復於一九九六年十二月十八日動議二讀辯論

陳偉業議員致辭：主席，本人謹以地租（評估及徵收）條例草案委員會主席的身分，代表委員會致辭。本條例草案旨在執行《中英聯合聲明》附件三第二款及第三款所訂有關徵收地租的條文。雖然當局向條例草案委員會委員表明，條例草案只是就這些條文所指租契須繳交的地租的評估及徵收作出規定，但是條例草案委員會在商議過程中發覺，條例草案的法律效力遠遠超過原來的意圖。這正好解釋了為何條例草案委員會要與當局舉行多達 10 次的會議。由於本人會在全體委員會審議階段動議一項修正案，因此現時不打算提述與修正案有關的事宜。本人的陳辭會集中講述條例草案委員會各委員提出的其他關注事項。

現時，有關《差餉條例》第 36 條所指明的物業單位均獲得豁免評估差餉。這些物業單位共分為 12 類，包括農地、農地住宅、鄉村式屋宇，以及完全或主要供公眾作宗教崇拜之用的物業單位。除非擁有這些物業單位的人士，其父系為一八九八年在香港的原有鄉村居民，否則，根據條例草案，這些人士有法律責任繳交地租。雖然條例草案已為確定這些物業單位的應課差餉租值作出規定，但各委員質疑當局為徵收地租而確定這些物業單位的應課差餉租值所持的法律依據。有一點大家必須注意，如某項物業單位根據《差餉條例》第 36 條獲豁免評估差餉，則確定應課差餉租值的問題根本不存在。除了對徵收這類物業的地租的法律依據存疑外，條例草案

委員會各委員亦關注繳交地租對教堂及廟宇所造成的財政影響。根據當局所舉的例子，一所大教堂的估計應課差餉租值為 1,452,000 元，而每年須繳交的地租將為 43,560 元。相信本局議員亦會贊同，這金額對一所教堂而言，並非區區小數。鑑於從教堂、廟宇、寺院及農地所徵得的地租總額每年估計只有 2,000 萬元，對政府收入的整體影響微乎其微，條例草案委員會建議在條例草案中加入一項新條文，規定根據《差餉條例》第 36 條獲豁免評估差餉的每項物業單位，其應課差餉租值須當作不超過訂明的最低應課差餉租值。實際上，每項這類物業單位的應課差餉租值將會當作每年 1 元。雖然主席裁決這項修正案具有由公帑負擔的效力，但本人認為有必要表明條例草案委員會對這問題的基本立場。

主席，在這條例草案的審議過程中，我呼籲有關議員要注意《聯合聲明》附件三第二款的規定，該條款特別把短期租約和特殊用途的契約排除於整體續期條文的適用範圍之外，而這些契約的續期申請，會獲得個別考慮。由於情況如此，條例草案委員會各委員質疑徵收地租的規定，應否適用於短期租約和特殊用途的契約。條例草案委員會特別關注以優惠地價批出的土地契約。當局亦承認，根據《聯合聲明》附件三，政府並不需要對續期的特殊用途租契土地徵收相當於其應課差餉租值 3% 的地租，這項安排由土地委員會討論，並獲得土地委員會同意。當局堅稱，從《聯合聲明》生效之日起至一九九七年六月三十日止所批出的新土地契約，須根據《聯合聲明》附件三第三款規定繳交地租。這些新租契包括以優惠地價批出的特殊用途租契。政府表示，如果不對所有特殊用途租契土地劃一徵收相同的地租，做法便不一致。

本人在此提醒各議員，當局一直都公開表示，《聯合聲明》載明須對沒有續期權利但已獲續期的租契徵收地租，這點並無商議的餘地。但是我們現時發覺，對特殊用途租契土地徵收地租的安排，並非以此為根據，而是基於土地委員會所達成的一項協議。條例草案委員會各委員絕對有理由相信，政府當局是誤導了，我強調，是誤導了特殊用途租契土地的承租人，使他們相信繳交地租，是有關租契根據《聯合聲明》附件三的規定獲得續期的先決條件。因此，從沒有特殊用途租契土地承租人對這項條件提出任何異議，大部分在《聯合聲明》生效之前以優惠地價批出的特殊用途租契，都已獲得續期。當局造成了既成事實的情況。雖然條例草案委員會各委員無意以立法形式凌駕合約的法律責任，但委員會認為更合適的做法，是在有需要時，由個別承租人透過民事訴訟與政府解決問題，但本人必須強調，對於當局處理特殊用途租契續期事宜的手法，條例草案委員會大部分成員都對政府表示失望。

本人再請各議員注意另一個條例草案委員會曾深入討論的問題。條例草案授權政府可向下述人士徵收地租，包括適用租契的承租人，或有法律責任就任何在根據該適用租契而持有的土地上所建立的物業單位而繳交差餉的人士。因此，不僅承租人有繳交地租的法律責任，差餉繳納人亦須承擔這責任。當局提出若干理由，說明為何有這安排。其中主要的原因，是當局並無載有承租人姓名和地址的準確名單，而編印這份名單政府估計需要 70 人做 1 年的時間才能夠完成。由於超過 90% 的差餉繳納人都是承租人，因此當局認為向差餉繳納人徵收地租是合乎情理的做法。本人須要表明，各委員不認為這是一項完全令人滿意的安排，儘管委員也了解當局在向承租人發出地租通知書方面，會有實際的困難。然而，條例草案的一項條文，在若干程度上亦釋除了委員的疑慮。該條文規定，如果差餉繳納人並非承租人但繳交地租，除非他們之間有明文協議或另有規定，否則所繳交的地租，即屬承租人欠差餉繳納人的債項。因應委員的提議，當局已同意動議一項修正案，大意是條例草案的有關係款，會凌駕於任何相關的協議，即使其中載有禁止從根據該協議須繳付的任何款項（包括租金）中抵銷所欠款項的概括規定。

主席，儘管政府當局與條例草案委員會在多個問題上都持有不同意見，但是當局亦有接納委員提出的一些建議，包括在條例草案附表內，載明將被條例草案凌駕的有關標準租契條件，並修改現有向差餉繳納人發出的通知表格，藉以清楚地列出拒絕就評估應課差餉租值所提出的反對的理由。

主席，本人謹此陳辭，交代條例草案委員會的商議工作。

顏錦全議員致辭：主席，本人作為條例草案委員會的成員，必須表明本人及民建聯的立場。

《地租（評估及徵收）條例草案》的目的是提供機制，讓當局根據《中英聯合聲明》附件三的規定，就若干須繳付地租的租契，評估及徵收其地租。這項安排可令市民在無須補地價的情況下為其租契續期，故此民建聯支持有關條例草案。

對於陳偉業議員代表條例草案委員會提出一項全體委員會審議階段修

正案，在原條例草案第 8 條中加入條文(4)，列明根據《差餉條例》第 36 條可獲豁免評估差餉租值各物業單位，其應課差餉租值須當作不超過最低應課差餉租值。雖然有關修正案最後被立法局主席裁定為具有由公帑負擔的效力而不能提出，但本人仍須說明一點，就是陳議員的擬議修正案是違反《聯合聲明》附件三的規定。

正如本人較早前致函各議員時指出，根據《聯合聲明》附件三，只有第二段所述的土地才可獲豁免地租。其他現時獲豁免評估差餉的物業，應該根據其土地用途來評估應課差餉租值，而不應如陳議員所提出，利用立法方法來強行豁免某些應繳交地租的租契。任何人士如對地租的評估感到不滿，可就估值向土地審裁處提出上訴，而不應要求獲得豁免。

其實根據《差餉條例》第 36 條獲豁免評估及繳交差餉的物業，亦有繳交地租的法律責任，而有關法律責任並非視乎該些物業曾否繳付或現在有否繳付差餉而定；而且《聯合聲明》附件三並無任何提述，規定一項物業須作差餉評估，才有繳交地租責任。

至於一些議員要求豁免繳交地租的教堂／廟宇和墳場，在當初獲批租約時已享有優惠地價，而以繳交地租代替補地價已屬一項優惠措施。政府只是根據《聯合聲明》附件三徵收相當於租出土地的不時的應課差餉租值 3%，而無須在為此等租出土地續約時收取須一次清付的地價；加上大部分已獲批出特別用途租約的教堂／廟宇，其批地條款已規定須繳交租出土地的不時的應課差餉租值 3%作為地租。

此外，政府現時評估這些場所的應課差餉租值時，其實應課差餉租值不會太高，徵收 3%作為地租亦不會太貴，相信對他們的影響不大。據政府資料顯示，全港約有 362 間教堂／廟宇及 513 間位於商住單位內的教堂／廟宇，他們所要繳交的地租平均只是每年九千多元至 26,000 元不等，政府的總收入約為每年 1,500 萬元。至於受資助的非政府機構，更可就已繳交的地租向政府申請發還款項。

主席，現時香港的社會人士均要求中英兩國政府能信守《中英聯合聲明》，作為香港立法機關的議員更要以身作則，對《聯合聲明》加以捍衛，又豈能“以身試法”，自己先違反《聯合聲明》？如果自己也“其身不正”，又怎能對他人有所要求呢？

主席，本人謹此陳辭，支持《地租（評估及徵收）條例草案》。

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, I would like to thank the Honourable Albert Chan, Chairman of the Bills Committee and the other members of the Committee for their close examination of the Bill and for their suggestions on how to enhance the clarity of the Bill in many areas.

I shall move amendments to the Bill at the Committee stage, most of which are technical in nature, to take on board their suggestions as far as possible.

I have to reiterate that the Bill does not introduce a new government policy. Its main purpose is to implement and accede to the Sino-British Joint Declaration. The requirement to pay new Government rents was publicized when the Joint Declaration was signed and subsequently made known to the property owners when their non-renewable leases were extended or when they were granted new leases. These leases include those in the New Territories, including New Kowloon, which would expire on 27 June 1997 had they not been extended to 30 June 2047 under the New Territories Leases Extension Ordinance, and those special purpose leases which the Government has granted or extended with provision requiring the payment of ground rent on similar terms.

It should be noted that no premium is charged upon the extension of the leases concerned. The new Government rents to be charged are equivalent to 3% of the rateable value from time to time of the land leased. In the course of deliberations, some members of the Bills Committee questioned the legal basis upon which tenements exempted from assessment to rates under the Rating Ordinance were capable of being so assessed under this Bill and assigned to rateable values for the purpose of charging Government rent. They also queried why the Administration would charge Government rent on those special purposes leases, especially for churches and cemeteries, which have been granted a concessionary premium.

On the first issue, rateable value is given a statutory meaning in clause 2 of the Bill, which sets out that a rateable value may be ascertained under the Bill apart from under the Rating Ordinance. A tenement has a rateable value for the purposes of the Bill which could be ascertained whether or not it is exempted from assessment to or payment of rates under the Rating Ordinance. The fact that a property did not have one or was not assessed for rates as at the entry into force of the Joint Declaration does not mean that it cannot have a rateable value for government rent purposes.

On the second issue, charging Government rent on special purpose leases which have been granted a concessionary premium is not a change in existing policy. This is one of the conditions upon which special purpose leases may be extended. Details of the arrangements for such extension were publicly announced in April 1987. It was explained that when special purpose leases were extended an annual rent equivalent to 3% of the rateable value from time to time would be charged. These arrangements have been discussed and agreed by the Land Commission. The fact that certain special purpose leases were originally granted a concessionary premium does not affect the amount of Government rent to be charged.

Paragraph 3 of Annex III to the Joint Declaration provides that Government rent at 3% of the rateable value from time to time is also charged after 30 June 1997 on new leases that are granted from the entry into force of the Joint Declaration until 30 June 1997. These new leases include special purpose leases which are granted a concessionary premium and the lessees are required to pay the new Government rent.

As the Administration promised to the Bills Committee meetings, I would like to assure Members that persons who have lodged objections under the Bill or the Rating Ordinance will be informed of the reasons for the decisions of the Commissioner of Rating and Valuation on their objections and that the information to be sought by the Commissioner by virtue of clause 31(1)(a) of the Bill will only be for the purposes of the Bill.

Mr President, with these remarks, I recommend the Bill to this Council subject to the amendments I shall move at the Committee stage.

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

條例草案二讀之議題經付諸表決，並獲通過。

Bill read the Second time.

條例草案經過二讀。

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

依據《會議常規》第43條第(1)款的規定，將條例草案付委予全體委員會審

議。

PATENTS BILL

《專利條例草案》

Resumption of debate on Second Reading which was moved on 10 July 1996

恢復於一九九六年七月十日動議二讀辯論

MR AMBROSE LAU: Mr President, I speak in my capacity as the Chairman of the Bills Committee on the Patents Bill. The Bill seeks to give effect to the proposals in the Patent Steering Committee Report relating to the establishment of a new law on patents. The Bills Committee has held 11 meetings with the Administration. It has met with the Law Society of Hong Kong and has received a submission each from the Hong Kong Institute of Trade Mark Practitioners and the Hong Kong Bar Association. All major concerns raised by organizations which the Administration had consulted on the Patent Steering Committee Report and on the draft Bill have been considered by the Bills Committee. I shall highlight the main issues deliberated by members.

The Bill empowers the Governor in Council to designate a patent office established outside Hong Kong such that the patents granted in that office for an invention may be used as the basis for the grant of a patent for the same invention in Hong Kong. The patent offices to be designated include the United Kingdom Patent Office, the Chinese Patent Office, and the European Patent Office in respect of patents designating the United Kingdom. Some members have queried the reasons for designating the Chinese Patent Office but not the United States Patent Office given the differences in the legal systems between China and Hong Kong. The Administration's explanations are that in considering designating the proposed three Patent Offices, it has taken note of their reputation, the similarity of the patent systems, the high level of trade between Hong Kong and these countries, strong links between China and Hong Kong, and the need to provide sufficient choice to users of the system. Members note that the Patent Steering Committee has given full consideration to the possibility of registering patents from the United States. However, the United States operates on a first-to-invent system as opposed to Hong Kong's first-to-file system. This

significant difference precludes the United States Patent Office from being designated. The Chinese system, on the other hand, is a Paris Convention system. Its scope, basic criteria for patentability, eligibility of applicants, term, and priority claims under the Paris Convention are by and large consistent with the European system.

Members may wish to note that the subject of short-term patents has been the focal point of deliberations of the Bills Committee. Members have considered in depth the need for a short-term patent system and its proposed features. In discussing the proposal of a short-term patent system, Members have made reference to overseas jurisdictions which have a similar system in the form of petty patents or utility model patents, in particular, the Australian petty patent system. Both the Law Society and the Institute of Trade Mark Practitioners welcome the introduction of a short-term patent system in Hong Kong. The Law Society considers it a worldwide trend to provide a quick and relatively easy way of patent protection for inventions for businesses which make products with a short commercial life. The Bar, on the other hand, has reservations regarding the introduction of a short-term patent system. It doubts the need to create, alongside standard patents, short-term patents which protect the same subject matters and have the same standards of patentability. In the Bar's view, if a short-term patent system is introduced at all, it should be kept distinct from the standard patent system, require a lower level of inventiveness and cover a restricted scope of subject matters in order to cater for Hong Kong's need.

The Administration has explained to Members that the results of the public consultation exercise have indicated substantial commercial support for the idea of a short-term patent. In recognition of the needs of local businesses which frequently work with products with a short-term market, the Administration considers that the most flexible arrangement for Hong Kong businesses is to have the widest possible range of matters which can be protected by a short-term patent. Standard patents and short-term patents are designed to cater for different types of goods. The Administration expects that few people will apply for both types of patents for the same invention. Taking into account Hong Kong's unique situation, the absence of an acceptable reference base, and subjectivity in determining the level of inventiveness, the Administration does not recommend a lower level of inventiveness for short-term patents.

After establishing the need for a short-term patent system, the Bills

Committee then deliberated when a search report should be submitted. A search report gives information on users on the prior art and assists them in assessing the validity of a patent. Both the Law Society and the Institute of Trade Mark Practitioners object to the proposed requirement to submit a search report at the point of application. They are of the view that the high costs of preparing a search report will discourage the use of the system by small businesses, defeating its very purpose to give a quick and cheap means of protection to local inventors. The Law Society and the Institute suggest that an applicant for a short-term patent should only be required to submit a search report prior to initiating proceedings against an infringer. Their view, however, is not shared by the Bar which considers it reasonable to require the submission of a search report in filing an application. The Administration has clarified that the reason behind the proposed requirement is to prevent abuse to restrict third party use. The Administration, nevertheless, acknowledges the concern about the cost of a search report. Noting that Australia is considering revising its system such that a petty patent is granted after a formality examination only, the Administration discussed the matter further with the two legal professions and the Institute of Trade Mark Practitioners and then modifies its proposal such that only a formality examination will be conducted on an application and a search report is to be filed before grant of a short-term patent. Members welcome this revised proposal.

The most contentious issue throughout the deliberations of the Bills Committee has been whether interlocutory injunctive relief should be made available to proprietors of short-term patents. The Bar strongly opposes to making available this remedy which, in its view, provides an easy way by which a short-term patentee can block third parties from entering the market to compete for a product with a short commercial life. On the other hand, the Law Society and the Institute of Trade Mark Practitioners are adamant that it is most crucial for interlocutory injunctive relief to be made available to a short-term patentee to enable him to immediately stop any suspected infringement. Removal of this remedy will render short-term patents effectively worthless. The majority of members of the Bills Committee share the view of the Law Society and the Institute. In arriving at this stance, members have considered the Administration's advice that Article 50 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) of the World Trade Organization (WTO) requires all WTO members to make available interlocutory injunctive relief to patent proprietors. Withholding this remedy for short-term patents risk exposing Hong Kong to being challenged at the WTO for

failure to comply with the TRIPS Agreement. The Administration has undertaken to review the short-term patent system after its operation for a certain period of time and report the results of the review to Members.

The Bills Committee welcomes the Administration's decision for taking on board a number of suggestions made by members. These include removing the limit of subsidiary claims in respect of an invention and leaving it to the common law to decide on a case-by-case basis as to whether goods in transit fall within the meaning of importation.

Last but not least, on behalf of the Bills Committee, I wish to thank the Administration for its open-mindedness, co-operation, and promptness in providing information to clarify each and every query raised by members in the seven-month deliberations of the Bills Committee. May I also thank the staff concerned of the Legislative Council Secretariat for providing efficient support in the course of the scrutiny of this complex Bill. Subject to the Committee stage amendments to be moved by the Administration, I commend this Bill to Members.

MISS MARGARET NG: Mr President, Hong Kong needs to set up its own system for the protection of patents after 1 July. The Patents Bill which is the instrument to achieve this purpose, therefore, has to be passed before that date, and I support that.

However, the Bill also seeks to create something new. Something Hong Kong has never had before, and that is the creation of a system of "Short-Term Patents".

Not only is this new to Hong Kong, but it is unlike anything in any other part of the world. First, in terms of what can be patented, there is no difference between the standard patent and short term patent.

However, unlike standard patent, it is an unexamined system. All you have to do for registration is to meet certain formal requirements, including the filing of a search report. In other words, you do not have to prove that the invention you want to patent is inventive, or that you are the rightful innovator.

But once registered, you get the same protection as standard patent owners. The only difference is that under the standard patent, your right is for a longer period; whereas under the short-term patent, you enjoy the right for eight years.

Moreover, there is nothing in the Bill to prevent anyone from applying for both a standard patent and a short-term patent at the same time in respect of the same invention. While your application for a standard patent is being examined with all the usual high standards, you can already enjoy all the rights under a short term patent without having to prove anything.

Mr President, the Bills Committee is told by the industry and those representing it that short-term patents will greatly enhance commerce and industrial developments in Hong Kong and is very good for business. Let us assume that this is entirely true.

However, the Bar is very concerned about the potential for abuse of such an unexamined system. This is particularly because under the Bill, every remedy available to the examined, standard patent is also available to the unexamined short-term patent. This includes interlocutory injunction which, in the experience of practitioners in the field, may be obtained on superficial proof.

If the matter comes to trial, then of course a wrongfully obtained injunction may be discharged with the penalty of costs and damages. But, again as a matter of experience, very few of these matters ever arrive at the point of trial. Commercial consideration would drive even a wrongfully sued defendant to settle. Against this reality, the provision of speedy trial is more illusory than real.

As the Bar envisages, small businesses will be the most vulnerable to this abuse. We cannot refrain from speaking out on this potential loophole for injustice.

There must be a balance somewhere. In the Bills Committee, I have argued that it is for this reason that the short-term patent is unsatisfactory. I have also stated that I would be less worried if an amendment can be made to remove the remedy of interlocutory injunction from short-term patents. However, it is argued for the other side that, without interlocutory injunction, a short-term patent will be almost worthless. Those rightfully owning patentable

inventions will be without effective remedy.

It is therefore an "all or none" situation with short-term patents.

Mr President, I am relieved to hear that those representing the Administration do not regard my concerns as unreasonable or far-fetched. They have agreed that the operation of short-term patents be kept under review, particularly with respect to the use of interlocutory injunctions. They will note how many applications are made and granted, and of these how many proceed to trial and with what result, and an evaluation will be made in a year or so. In the meantime, efforts will be made to ensure the court is fully informed of the nature of short-term patents. In the Administration's reply today, I hope these pledges will be confirmed. I cannot say that these assurances fully meet my concern or effectively prevent abuse. However, if we were to take time to search for an answer to short-term patents satisfactory to all, this will mean a substantial delay to the Bill, and that, Mr President, we cannot afford.

It is in these circumstances that I support the Second Reading of the Bill. But I wish to put on record the misgivings which I share with the Bar, and the promise of the Administration to keep the matter under review.

Thank you, Mr President.

SECRETARY FOR TRADE AND INDUSTRY: Mr President, I am most grateful to the Chairman, the Honourable Ambrose LAU, and members of the Bills Committee for examining and giving us advice on the Patents Bill in the most meticulous and professional manner.

The Committee has met 11 times since last November and has put forward many constructive suggestions which the Government has been pleased to adopt. As I have explained to this Council before, a patent gives an inventor an exclusive right to exploit his invention within a said term. It protects and therefore encourages technical innovation. In exchange for the patent protection the inventor has to disclose his new technology. As such, a patent system also facilitates technology transfer.

The new patent system set out in the Bill will preserve the well-recognized virtues that the existing United Kingdom-based regime already offers. It will also bring us three additional advantages. Firstly, while still requiring applicants for standard patents to complete their substantive search and examination requirements at reputable designated patent offices elsewhere, our Registrar of Patents will be able to administer the patent once granted independently of the status of that patent in the relevant designated patent office. Once granted in Hong Kong, each patent will be capable of being tested for validity, amended, revoked and enforced in the Hong Kong courts in accordance with Hong Kong law.

Secondly, we plan to designate three patent offices to facilitate applications for standard patents in Hong Kong. They are the Chinese Patent Office, the United Kingdom Patent Office and the European Patent Office designating the United Kingdom. The new system will, therefore, provide more choice to applicants while maintaining continuity with the existing system. I am grateful to the Honourable Ambrose LAU just now for explaining so succinctly to this Council why the Administration does not consider it appropriate to designate the United States Patent Office.

Thirdly, the new system offers a new form of protection. Other than the grant of standard patents covering protection of up to 20 years, we will grant short-term patents of up to eight years. Interlocutory injunction will be allowed as a remedy against infringement of short-term patents.

Mr President, the Honourable Ambrose LAU has just explained to this Council the Bills Committee's concern and deliberations about the propriety of short-term patents, the justifications for allowing interlocutory injunction as a remedy against infringement and the timing for submission of search reports for short-term patent applications. The Honourable Miss Margaret NG also spoke on this subject just now. I think it would be appropriate for me to explain the Government's thinking on these matters in a little more detail.

The purpose of providing short-term patents is to allow proprietors of inventions with a short-term commercial life to have recourse to a quicker and less costly form of patent protection as compared with standard patents. The need for doing so was identified by the Patents Steering Committee which recommended that the Registrar of Patents should grant a short-term patent upon

completion of a formality examination only. The Government has accepted this recommendation. The Government's position is strongly supported by the professional bodies with the exception of the Bar as well as the business sector. Here I would like to state for the record that in recent years, a trend to non-examination systems can be seen being practised more and more widely. In this connection, I refer to Australia's practice in respect of innovation patents. I also refer to the practice in mainland China in respect of utility models, as well as the practice adopted in Japan.

However, the absence of a requirement for substantive search and examination for short-term patents has raised concern about possible abuses. Accordingly, we have included four specific safeguards in the Bill. The first safeguard is to require an applicant to file with the Registrar before grant and publication of the short-term patent a search report made by a prescribed searching authority. This search report will give information to users on whether the short-term patent under application is new or in technical terms a prior art. A second safeguard is to clarify in the Bill the fact that a short-term patent has been registered shall be of no account in any proceedings before a court for the enforcement of rights conferred under the ordinance to be enacted. This means that the onus always rests on the plaintiff or the patent owner to prove that his patent is a valid one.

The third safeguard is to stipulate that if an interlocutory injunction is made, the defendant may apply to the court for the matter to proceed to early trial. This would minimize the defendant's damage pending trial. The fourth safeguard is to provide a civil remedy for groundless threats of infringement proceedings. Any person aggrieved by the threats may bring proceedings in the court against a person making the threats for relief, including damages, declaration that the threats are unjustifiable and injunction against a continuance of the threats.

Some members of the Bills Committee have also suggested that interlocutory injunction may be too powerful a remedy against infringements of short-term patents which are granted without substantive examination. We have consulted the relevant professional bodies again and reviewed the issue very seriously. We remain convinced that interlocutory injunction should be an integral part of the system for a number of reasons. First of all, we consider that without the remedy, the convenience and attractiveness of the short-term patent

system would be seriously undermined. The Law Society and the Institution of Trade Marks Practitioners have both confirmed this view.

Secondly, we note that the principles for the grant of interlocutory injunctions are authoritatively laid down in the House of Lords case *American Cyanamide v. Athecon*. A key guiding principle, for example, is that the action must not be frivolous or vexatious. Further, if granted an interlocutory injunction, the plaintiff must give a cross-undertaking to the court to pay the defendant damages if he is unsuccessful at full trial. There are also practice directions issued by the Chief Justice relating to the practice and procedures of the application of interlocutory injunctions.

Thirdly, under the agreement on Trade-Related Intellectual Property Rights (or TRIPS, in short) all members of the World Trade Organisation, including Hong Kong, are required to make available provisional measures to prevent an infringement of any intellectual property right from occurring and to preserve relevant evidence in regard to the alleged infringement. We are providing for this remedy in respect of standard patents. On legal policy grounds, we believe we should extend this remedy to cover short-term patents as well.

With regard to the undertaking sought by the Honourable Miss Margaret NG just now, I am happy to give this undertaking that the Administration will review the provisions for interlocutory injunctions a year after the new law coming into effect to see if there are indications that this form of remedy is being abused. I should also like to say we are happy to take on board other constructive suggestions from the Bills Committee in this particular regard.

Mr President, I would now like to turn to a number of other issues addressed by the Bills Committee and to which I shall propose amendments at Committee stage. The first issue relates to control of goods in transit. Initially, we considered that, from a trade policy angle, goods in transit should not be considered to be import for the purpose of clause 73 in the Patents Bill relating to civil infringement action. Given Hong Kong's free port status and the huge volume of goods into and transit through Hong Kong on a daily basis, our view then was that there should be no unwarranted interference with the flow of trade.

However, the Law Society, the Hong Kong Institute of Trade Marks Practitioners and some members of the Bills Committee have made strong representation to us, pointing out that patent owners should have the right to take civil action in respect of goods in transit. They have also advised that there should be no specific exclusion of goods in transit but that the question should be left to the common law and the courts to develop. We accept that taking out the exclusion clause will enhance the integrity of our patent protection regime without necessarily compromising the free flow of goods. I will accordingly propose a Committee stage amendment to delete the exclusion clause in clause 73(2).

The second issue relates to timing for the submission of search reports for short-term applications which the Honourable Ambrose LAU also referred to just now. While agreeing that an applicant for short-term patents should submit a search report before grant, some members of the Bills Committee have asked whether the applicant would have practical difficulty in securing such report at the time of application and whether there would be scope for flexibility.

We have reviewed the relevant provisions in the Bill and can confirm that the proposed system will allow the search report to be submitted any time before grant, rather than at the time of filing an application. Clause 119 of the Bill also provides an option for an applicant to request for deferral of the grant of a short-term patent for a maximum period of six months after the date of filing an application. To provide additional flexibility, I will propose a Committee Stage amendment to extend this deferral period to 12 months. This will effectively allow the applicant six more months if he so wishes to complete his formalities.

The third issue is about the procedural arrangements for international applications for short-term patents. The Patents Bill already contains a provision to deal with international applications for standard patents provided for under the Patent Co-operation Treaty. For completeness and upon clarification with our counterparts in the Chinese Patent Office, we will add a new provision to make it clear that our short-term patent system will also be able to deal with international applications seeking utility model protection in the Mainland provided that these applications comply with all requirements relating to local short-term patents as set out in the Bill. I will again propose the necessary amendment at Committee stage.

Mr President, the Patents Bill laid before the Council this afternoon will enable Hong Kong to develop a modern patent protection regime that is compatible with international standards in all respects. Subject to its enactment, I will return to this Council to invite it to approve a series of subsidiary legislation to facilitate the administration of the new system. The task ahead of us, especially colleagues in the Intellectual Property Department, is pressing and most challenging, but we are all geared up for that. We look forward to the target commencement of the new Hong Kong patent system towards the latter part of June. In anticipation, I would like to thank the Patents Bill Bills Committee and this Council once again for helping to make this possible.

With these remarks, I commend the Patents Bill to this Council subject to the amendments I shall move at Committee stage.

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

條例草案二讀之議題經付諸表決，並獲通過。

Bill read the Second time.

條例草案經過二讀。

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

依據《會議常規》第 43 條第(1)款的規定，將條例草案付委予全體委員會審議。

Committee Stage of Bills

條例草案全體委員會審議階段

Council went into Committee.

本局進入全體委員會審議階段。

全委會主席：在全體委員會審議《地租（評估及徵收）條例草案》之前，本席想簡單解釋就《會議常規》第 45(6)條而言，本席裁定陳偉業議員擬就條例草案第 8 條提出之修正案是具有“由公帑負擔之效力”之原因。本席明白陳偉業議員代表審議此條例草案之條例草案委員會提出修正案。

根據條例草案，是項須繳付地租之契約，計有兩類。第一類是由於施行《新界土地契約（續期）條例》第 6 條，而獲續期至二零四七年六月三十日之契約。除該條例第 9 條所指有關農村土地之少數例外情況外，第 8 條已有法定條文，規定有關之租出土地之每年租金，須相等於為該土地所不時訂定之應課差餉租值之 3%。

第二類契約是獲續期或獲批至二零四七年六月三十日之契約。該等契約已明確載有須每年繳付租金之契約義務，數額亦相等於為該租出土地所不時訂定之應課差餉租值之 3%。

陳議員於一九九七年五月十九日作出預告，表示擬就條例草案第 8 及 36 條提出修正案。就第 36 條提出之擬議修正案並不需要本席作出裁決。

至於第 8 條，陳偉業議員的修正案擬加入新訂之第(4)款，即“為施行本條例，根據《差餉條例》（香港法例第 116 章）第 36 條獲豁免評估差餉的各物業單位，其應課差餉租值須當作不超過最低應課差餉租值。”按照稍後會由公職人員就條例草案第 2 條所提出之一項修正案，以首份地租登記冊而言，“最低應課差餉租值”是指 3,000 元。該位公職人員稍後亦會再就第 8 條提出另一項修正案，使條例草案規定，如差餉物業估價署署長認為任何物業單位之應課差餉租值不超過最低應課差餉租值，則該物業單位之應課差餉租值須當作為 1 元。倘這兩項修正案獲通過，而陳議員獲批准動議其擬議修正案而該修正案亦獲通過，則獲通過之 3 項修正案會把政府從陳議員修正案內所涵蓋之各該物業所能收取之地租，定為每年 3 仙（即相等於最低應課差餉租值（即 1 元）之 3%）。政府聲稱如此一來，一整年內預計將損失 3,500 萬元收入。就本財政年度餘下時間而言，即會損失 2,600 萬元。

明顯可見，已有法規訂明在第一類契約之續期期間，政府有權每年收取相等於應課差餉租值 3%之地租。儘管這筆租金尚未開始收取，但政府確有真實而現存之權利可收取租金。因此，陳偉業議員之擬議修正案若獲通過，會令政府無法就陳議員建議之第 8(4)條所涵蓋之物業收取應收之正確租金——而《差餉條例》第 36(1)條的確列出為數甚多之該類物業！

至於第二類契約，即自《中英聯合聲明》生效以來，以合約形式批至二零四七年六月三十日之新契約，或以合約形式續期至二零四七年六月三十日之契約。雖然是以合約形式訂定，但每年收取之地租，亦訂明了相同之底綫，即相等於應課差餉租值之 3%。政府謂這一類別契約，約有 130 份，包括約 4 000 項物業，現已繳付租金。陳議員之修正案倘獲通過，亦使政府無法就《差餉條例》第 36(1)條所涵蓋之物業收取應收之正確租金。

因此，本席認為，就《會議常規》第 45 條第(6)款而言，陳偉業議員之擬議修正案對政府之收入，具有“由公帑負擔之效力”，故此需要總督授權才可提出該建議。

GOVERNMENT RENT (ASSESSMENT AND COLLECTION) BILL

《地租（評估及徵收）條例草案》

Clauses 1, 2, 4, 6 to 11, 13, 15, 16, 18, 19, 23 to 26, 29 to 35, 38, 40, 41, 43, 44, 46, 47 and 48

條例草案第 1、2、4、6 至 11、13、15、16、18、19、23 至 26、29 至 35、38、40、41、43、44、46、47 及 48 條

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members. As I explained earlier, most of the amendments are technical in nature. I would, however, highlight a number of the amendments.

Clause 1 has been amended to allow the Ordinance to come into operation when gazetted. Clause 2 has been amended to allow for better interpretation of the Bill by adding a number of definitions. Clause 4 has been amended to better set out the exemption criteria. Clause 8 has been amended to deem the rateable value of a tenement, if not exceeding the minimum rateable value, to be \$1. Clauses 10 and 11 have been expanded to make it clear that the Governor may direct the Commissioner of Rating and Valuation to prepare a new Government Rent Roll or a part of the Government Rent Roll.

Clause 16, as suggested by the Bills Committee, has been reworded to make clear that it is the entry in the government rent roll and its rateable value that can be objected to or appealed against. Clause 38, as suggested by Members, has been amended to show, by reference to a schedule, the covenants and conditions in a lease which are to be overridden by the Bill. Clause 43 has been amended to provide that the period in which complaints can be made is reduced from six years to one year. The process of raising an interim valuation of the tenement takes up to one year to be completed and the complaint period is to be at least to match this.

Clause 44, as suggested by the Bills Committee, has been amended to allow the Commissioner of Rating and Valuation to delete the rateable value and make an interim valuation of where a person is convicted of an offence under the Bill. The wording of clause 46 has been tightened up as suggested by the Bills Committee. The clause now relates to an inadvertent misnomer. We agreed to the Bills Committee's suggestion that clause 47 should be deleted. Clause 48, as suggested by the Bills Committee, has been expanded to remove ambiguity and to ensure that the printing of a name of an authorized person as duly authorized by the Commissioner.

These amendments have been made known to members of the Bills Committee who have not raised any objection. Thank you, Mr Chairman.

Proposed amendments

擬議修正案內容

Clause 1

條例草案第 1 條

That clause 1 be amended —

- (a) in the heading, by deleting "**and commencement**".
- (b) by deleting subclause (2).

Clause 2

條例草案第 2 條

That clause 2 be amended —

- (a) in the definition of "Government Rent Roll", by adding ", and includes part of the roll" after "values".
- (b) in the definition of "lease" -
 - (i) by adding "is" before "granted";

-
- (ii) by deleting "and a lease within the meaning of section 8(1) of the Crown Rent and Premium (Apportionment) Ordinance (Cap. 125)".
 - (c) in the definition of "rateable value" -
 - (i) in paragraph (a), by deleting "for an identical tenement,";
 - (ii) in paragraph (b), by deleting "assessed" and substituting "ascertained".
 - (d) in the definition of "resite house grant", by adding "or to a tso or tong" after "villager".
 - (e) in the definition of "returned requisition", by deleting ", owner" and substituting "or the owner".
 - (f) in the definition of "small house holding" -
 - (i) by deleting "holding" and substituting "grant";
 - (ii) by deleting "土地)" and substituting "批租約)".
 - (g) by adding -

""comprised" (包含) means wholly or partly comprised;

"exemption from liability to pay Government rent" (繳交地租的法律責任的豁免) means the exemption from liability to pay Government rent under section 4, and "exempted from liability to pay Government rent" (獲豁免繳交地租的法律責任) shall be construed accordingly;

"minimum rateable value" (最低應課差餉租值) means -

 - (a) for the first Government Rent Roll, \$3,000;

- (b) for subsequent Government Rent Rolls, the amount prescribed by resolution of the Legislative Council for the purposes of section 36(1)(l) of the Rating Ordinance (Cap. 116);

"mortgage (按揭), in relation to any interest held under an applicable lease, includes a charge in respect of that interest;

"mortgagee in possession" (管有承接人) means a person who in the right of a mortgage has entered into and is in possession of the interest subject to the mortgage;

"rates" (差餉) means the rates within the meaning of the Rating Ordinance (Cap. 116);

"Regional Council area" (區域市政局轄區) has the meaning assigned to it under the District Boards Ordinance (Cap. 366);

"section" (段) means any portion or division of a lot, which portion or division has been assigned, alienated or retained for the whole of the term or interest created by the lease of the lot by or under the terms of an instrument registered in the Land Registry;

"small house holding" (丁屋) means land held under a small house grant;

"specified form" (指明表格) means a form specified by the Commissioner under section 34(2);

"Urban Council area" (市政局轄區) has the meaning assigned to it under the District Boards Ordinance (Cap. 366);".

條例草案第 4 條

That clause 4(1) be amended —

- (a) by deleting "An" and substituting "Subject to other provisions of this section, an".
- (b) by deleting "in land".
- (c) in paragraph (b), by adding "or" at the end.
- (d) in paragraph (c)(ii), by adding "or" at the end.
- (e) by deleting paragraph (ii) and substituting -

"(ii) which -

- (A) has not since its ceasing to be held by the indigenous villager been conveyed to any person who is not a lawful successor in the male line of the indigenous villager; and
- (B) continues to be held by a person who is a lawful successor in the male line of the indigenous villager."

That clause 4(2) be amended —

- (a) by deleting "as provided for in subsection (1) applies to an interest that is an undivided share in land and to a section in a lot" and substituting "under subsection (1) or (1A) applies to an interest that is a section of or an undivided share in the land leased".
- (b) by deleting "after a subsequent transaction in relation to the land" and substituting "or the eligible tso or tong, as the case may be, after a subsequent transaction in relation to the land leased".

That clause 4(3) be amended —

- (a) by deleting "as provided for in subsection (1) applies" and substituting "under subsection (1) or (1A) applies to an interest that is a section of or an undivided share in the land leased".
- (b) by deleting "in the lot" and substituting "of".
- (c) by deleting everything after "land leased" and substituting "not being exempted from liability to pay Government rent."

That clause 4(4) be amended —

- (a) by deleting "An" and substituting "Subject to other provisions of this section, an".
- (b) by deleting "in land".
- (c) by deleting everything after "rural holding" and substituting -

"or a resite house grant that an eligible tso or tong held on 30 June 1984 and has since 30 June 1984 continued to be so held."
- (d) by renumbering it as clause 4(1A).

That clause 4 be amended, by deleting subclause (5) and substituting —

"(5) Subject to subsections (2) and (3), an exemption from liability to pay Government rent under subsection (1) or (1A) does not apply to an interest held under an applicable lease, unless all other interests held under that applicable lease (excluding any interest held by way of a mortgage but including any interest held by a mortgagee in possession) is -

- (a) held by 1 or more eligible indigenous villagers, or by 1 or more eligible tsos or tongs, or by any combination of

both; and

- (b) exempted from liability to pay Government rent under subsection (1) or (1A).

(5A) Subject to subsections (2) and (3), an exemption from liability to pay Government rent under subsection (1) or (1A) does not apply to an interest held under an applicable lease that is held by more than 1 holder (excluding a holder holding the interest by way of a mortgage but including a holder holding the interest as a mortgagee in possession), unless -

- (a) each of such holders is either an eligible indigenous villager or an eligible tso or tong; and
- (b) the interest so held in so far as each of such holders is concerned would, apart from this subsection, have been exempted from liability to pay Government rent under subsection (1) or (1A)."

That clause 4(6) be amended —

- (a) by adding "in respect of an interest held under an applicable lease" after "Government rent".
- (b) by deleting "ownership of an interest under a lease" and substituting "the interest".
- (c) in paragraph (a), by deleting "under his ownership" and substituting "from liability to pay Government rent in respect of the interest".
- (d) in paragraph (b) -
 - (i) by deleting "held under the lease";
 - (ii) by deleting "for exemption" and substituting "for the exemption".

That clause 4(7) be amended —

- (a) by adding "an interest held under" before "an applicable lease".
- (b) by adding "in respect of that interest" after "the rent payable".

That clause 4(8) be amended —

- (a) by adding "held" after "an interest".
- (b) by deleting "his interest" and substituting "the interest held".
- (c) by adding "from liability to pay Government rent" after "exemption".

That clause 4(9) be amended, by deleting "applies to an interest held under a" and substituting "from liability to pay Government rent applies to an interest held under an applicable".

That clause 4 be amended, by adding —

- "(12) (a) For the purposes of subsections (2) and (3), a reference to an undivided share in relation to any land leased shall be regarded as a reference to an undivided share in a lot comprised in the land leased, the owner of which share is, as between himself and the owners of the other undivided shares in that lot, entitled under the terms of an instrument registered in the Land Registry to the exclusive possession of any part of any building erected on the lot or of any part of the lot.
- (b) For the purposes of this section, a reference to an eligible indigenous villager shall, in relation to an interest held under an applicable lease, be a reference to a person who -

- (i) is an indigenous villager; and
 - (ii) in relation to that interest, is the lawful successor in the male line of an indigenous villager holding the interest on 30 June 1984.
- (c) For the purposes of this section, a reference to an eligible tso or tong shall be a reference to a tso or tong -
 - (i) which is a tso or tong recognized as such under Chinese custom;
 - (ii) all members of which have been on and since 30 June 1984 indigenous villagers; and
 - (iii) in respect of which prescribed certificates, reports and information have been submitted in accordance with the regulations."

Clause 6

條例草案第 6 條

That clause 6(1) be amended —

- (a) by deleting "The" and substituting "Subject to section 4, the".
- (b) by deleting "Government rent to the Commissioner each year" and substituting "by way of Government rent to the Commissioner in accordance with this Ordinance an annual rent".
- (c) by deleting everything after "the land leased" and substituting a full stop.

That clause 6(2)(a) be amended, by deleting "will" and substituting "is required to".

That clause 6(2)(b) be amended, by deleting "calculated" and substituting "ascertained".

That clause 6(2)(d) be amended —

- (a) by adding "subject to any specific provisions of this Ordinance," before "any refund".
- (b) by deleting "tenement" and substituting "land leased".

That clause 6(3)(b) be amended, by deleting "under section 4" and substituting "from liability to pay Government rent".

That clause 6(3)(c) be amended, by deleting "a contractual" and substituting "an express".

That clause 6(5)(b) be amended, by deleting "erected on" and substituting "comprised in".

That clause 6(5) be amended —

- (a) by deleting "徵收地租" where it twice appears and substituting "要求繳交地租".
- (b) by deleting "所徵收" and substituting "所要求繳交".
- (c) by deleting "徵收任何" and substituting "要求繳交任何".

That clause 6(6) be amended —

- (a) by deleting "erected on" and substituting "comprised in".

- (b) by adding "express" after "is an".

That clause 6(7) be amended, by adding after "the lessee" —

"even if any agreement between the lessee and the person contains a general prohibition against the setting off of monies owed against or deduction of monies owed from any monies, including rental payments, payable under the agreement".

That clause 6(8) be amended —

- (a) by deleting "not required to repay" and substituting "required to refund".
- (b) by deleting "except in refund of Government rent paid" and substituting "in respect of a tenement".

That clause 6(11) be amended, by adding "Government" after "to refund".

Clause 7

條例草案第 7 條

That clause 7 be amended —

- (a) by renumbering it as clause 7(1).
- (b) by adding -

"(2) The rateable value of the land leased under an applicable lease or of any tenement comprised in the land leased can be ascertained by reference to the rateable value set out in respect thereof in -

- (a) the Government Rent Roll; or
- (b) if an interim valuation has been made, the notice of interim valuation, and the rateable value so set out in the Government Rent Roll or the notice of interim valuation, as the case may be, shall, subject to other provisions of this Ordinance, be regarded as the rateable value of the land leased or the tenement, as the case may be."

Clause 8

條例草案第 8 條

That clause 8(1) be amended —

- (a) by adding "comprised therein" after "tenement".
- (b) by deleting "determine" and substituting "ascertain".

That clause 8(2) be amended, by deleting "assessment" and substituting "ascertainment".

That clause 8 be amended, by adding —

"(3) For the purpose of this Ordinance, where the rateable value of a tenement does not in the opinion of the Commissioner exceed the minimum rateable value, the rateable value of the tenement shall be deemed to be \$1."

Clause 9

條例草案第 9 條

That clause 9(2) be amended —

- (a) by deleting "the land leased" and substituting "any land leased under an applicable lease".

- (b) by deleting "該租出土地" and substituting "該土地".

That clause 9(3) be amended, by deleting "the land leased" and substituting "any land leased under an applicable lease".

That clause 9(4) be amended —

- (a) by deleting "the land leased" and substituting "any land leased under an applicable lease".
- (b) by deleting "determine the rateable value" and substituting "ascertain the rateable value".

Clause 10

條例草案第 10 條

That clause 10(1)(a) be amended, by deleting everything after "prepare" and substituting —

"in respect of the rateable values of tenements comprised in land leased under an applicable lease which are situated in the Urban Council area or of such tenements situated in the Regional Council area or of both, a new Government Rent Roll or any new part of a Government Rent Roll, whether or not by way of replacement of an existing Government Rent Roll or any part of an existing Government Rent Roll, in accordance with section 11; and".

That clause 10(1)(b) be amended —

- (a) by deleting "roll" and substituting "Government Rent Roll or that new part of the Government Rent Roll, as the case may be".

- (b) by deleting "tenements in the Urban Council area or Regional Council area" and substituting "any of the tenements".

Clause 11

條例草案第 11 條

That clause 11(1) be amended —

- (a) by adding "or a part of a Government Rent Roll, as the case may be," before "containing".
- (b) in paragraph (a), by deleting everything after "every tenement" and substituting -

"the rateable value of which has been ascertained for the purposes of the Government Rent Roll or the part of the Government Rent Roll, as the case may be, which he is directed to prepare under section 10; and".

- (c) in paragraph (b), by deleting everything after "of the rateable value" and substituting "ascertained under section 9 where the tenement is situated partly on land leased under an applicable lease."

That clause 11 be amended, by deleting subclause (2).

That clause 11(3) be amended —

- (a) by adding "and" after "lease".
- (b) by deleting "payment of" and substituting "liability to pay".

That clause 11(4) be amended, by adding ", subject to any such determination," after "and may".

That clause 11(6)(a) be amended, by deleting "Rolls" and substituting "Roll".

That clause 11(8) be amended, by deleting "in land".

That clause 11(9) be amended, by deleting "in the rent roll".

Clause 13

條例草案第 13 條

That clause 13(1)(a) be amended, by deleting "Rolls" where it twice appears and substituting "Roll".

Clause 15

條例草案第 15 條

That clause 15(3) be amended, by adding "Government" before "rent or the imposition".

Clause 16

條例草案第 16 條

That clause 16 be amended, by deleting subclause (1) and substituting —

"(1) Subject to subsection (2), a person may object to, make a proposal on, or appeal against, an entry in the Government Rent Roll, including the rateable value ascertained under this Ordinance."

That clause 16(2) be amended —

(a) by deleting "amount of an assessment" and substituting "rateable

value of a tenement recorded in the Government Rent Roll".

- (b) by deleting "his tenement recorded in the Government Rent Roll" and substituting "the tenement".

That clause 16 be amended, by deleting subclause (3).

Clause 18

條例草案第 18 條

That clause 18(2) be amended —

- (a) by deleting "other than rateable value" and substituting ", other than rateable value, made in respect of an identical tenement in the Valuation List".
- (b) by adding "to be made in respect of the identical tenement" after "same alterations".

That clause 18 be amended, by deleting subclause (4).

That clause 18 be amended, by deleting subclause (5) and substituting —

"(5) The Commissioner may make an appropriate amendment to the Government Rent Roll where he has altered the entry of a corresponding tenement, which is not an identical tenement, in the Valuation List as a result of a correction, deletion, interim valuation, objection, proposal or appeal under the Rating Ordinance (Cap. 116)".

Clause 19

條例草案第 19 條

That clause 19(1)(b) be amended, by adding "and" at the end.

That clause 19(3) be amended, by adding "Government" after "surcharges on".

Clause 23

條例草案第 23 條

That clause 23(2) be amended, by deleting "in land".

Clause 24

條例草案第 24 條

That clause 24(2) be amended, by adding "is not included, but" before "should".

That clause 24(5) be amended, by deleting "interest in an applicable lease" and substituting "interest held under an applicable lease".

That clause 24(6) be amended —

- (a) by deleting "'lessee, owner or occupier" (承租人、擁有人或佔用人)" and substituting "'the lessee or the owner or occupier" (承租人或擁有人或佔用人)".
- (b) by deleting "the lessee, owner or occupier" and substituting "the lessee or the owner or occupier".

That clause 24(7) be amended, by deleting everything after "payable" and substituting —

"(the "effective date of deletion") is -

- (a) subject to paragraph (c), for a tenement where the effective date of deletion is prescribed by regulations

made for the purposes of this section, the effective date so prescribed;

- (b) subject to paragraph (c), for any other tenement, the date on which the notice of the deletion could have first been served had the Commissioner proposed so to do; or
- (c) the date the Commissioner may determine in any particular case."

That clause 24(8) be amended —

- (a) by deleting "(the "effective date")" and substituting "(the "effective date of interim valuation)".
- (b) in paragraphs (a) and (b), by adding "subject to paragraph (c)," at the beginning.
- (c) in paragraph (a) -
 - (i) by deleting "must be determined in accordance with" and substituting "of interim valuation is prescribed by".
 - (ii) by deleting "a date that is so determined" and substituting "the effective date so prescribed".

That clause 24(9) be amended —

- (a) by deleting "subsection (8)(a)" and substituting "subsections (7)(a) and (8)(a)".
- (b) in paragraphs (b) and (c), by adding "of deletion or the effective date of interim valuation" after "effective date".

- (c) in paragraph (d), by adding "a deletion or" before "an interim valuation".

Clause 25

條例草案第 25 條

That clause 25(1)(b) be amended, by adding "or" at the end.

That clause 25(2) be amended, by deleting "do agree" and substituting "so agree".

Clause 26

條例草案第 26 條

That clause 26(2)(a) be amended —

- (a) by deleting "interest in an applicable lease" and substituting "interest held under an applicable lease".
- (b) by adding "from liability to pay Government rent" after "exemption".

Clause 29

條例草案第 29 條

That clause 29(5) be amended, by deleting "不能" and substituting "無法".

Clause 30

條例草案第 30 條

That clause 30(4) be amended, by adding "but" after "subsection (1)".

That clause 30(5) be amended, by adding "but" after "subsection (1)".

Clause 31

條例草案第 31 條

That clause 31(1)(a) be amended, by adding "comprised in land leased under the applicable lease" after "tenement".

That clause 31(1)(b) be amended —

- (a) by adding "comprised in land leased under the applicable lease" after "a tenement".
- (b) by deleting "the tenement" and substituting "the interest held under the applicable lease or the tenement, as the case may be".

That clause 31(1)(c) be amended —

- (a) by deleting "to make copies of" and substituting "for making copies".
- (b) by deleting "tenement," and substituting "interest held under the applicable lease or the tenement, which have been".

That clause 31(1)(d) be amended —

- (a) by deleting "the tenement or of the lessee" and substituting "a tenement comprised in land leased under an applicable lease or of the lessee of the applicable lease".
- (b) by deleting "a tenement" and substituting "the tenement".
- (c) in subparagraphs (i) and (iv), by deleting "interest in the applicable lease" and substituting "interest held under the applicable lease".

- (d) in subparagraph (i), by adding "的應課差餉租值" after "權益".
- (e) in subparagraph (iii), by deleting "未" and substituting "沒有".
- (f) in subparagraph (iv), by adding "的估價" after "權益".

That clause 31(2) be amended —

- (a) by deleting "the tenement under" and substituting "a tenement under".
- (b) by deleting "lessee, owner" and substituting "lessee of the applicable lease, or the owner".
- (c) by deleting "tenement for the" and substituting "land or the tenement, as the case may be, for the".
- (d) by deleting "during day-light".
- (e) by deleting "and tenement" and substituting "or the tenement, as the case may be,".
- (f) by adding "或獲估價署長書面授權的人" before "可向".

That clause 31(3) be amended, by deleting "lessee, owner or occupier of the tenement" and substituting "lessee of the applicable lease, or the owner or occupier of the tenement, as the case may be,".

Clause 32

條例草案第 32 條

That clause 32(1) be amended, by adding "under section 31(1)(a)" after "on him".

That clause 32(2) be amended, by deleting "The" and substituting "Upon an

application to him under subsection (1), the".

Clause 33

條例草案第 33 條

That clause 33 be amended, by deleting "interest in an applicable lease held" and substituting "interest held under an applicable lease".

Clause 34

條例草案第 34 條

That clause 34(1) be amended —

- (a) in paragraphs (a), (b), (f) and (g), by deleting "determining" and substituting "ascertaining".
- (b) in paragraphs (a) and (b), by deleting "interests in applicable leases" and substituting "interests held under applicable leases".
- (c) in paragraph (d), by deleting "of the assessment".
- (d) in paragraph (f), by deleting "a partial re-development" and substituting "a development or a partial development or a redevelopment or a partial redevelopment".
- (e) in paragraph (h), by adding "a deletion and of" after "effective date of".
- (f) in paragraph (i), by deleting everything after "Government rent for" and substituting "tenements and interests held under applicable leases with rateable values not exceeding the minimum rateable value;".
- (g) by adding -

"(ja) submission of certificates, reports and information in connection with eligibility for exemption from liability

to pay Government rent;

- (jb) prescribing any matter or thing which is referred to in this Ordinance as prescribed;".

Clause 35

條例草案第 35 條

That clause 35(2) be amended —

- (a) by deleting "sufficient".
- (b) by adding "there being" before "any arrears".

Clause 38

條例草案第 38 條

That clause 38 be amended —

- (a) in the heading, by deleting ", **etc., over-ridden**" and substituting "**overridden**".
- (b) by deleting subclause (1) and substituting -

"(1) (a) Subject to paragraph (b), this Ordinance and regulations made under this Ordinance override the covenants and conditions (however described) under an applicable lease that are in all material particulars to the like effect as any of the covenants and conditions set out in Parts I and II of the Schedule.

- (b) For so long as an interest held under an applicable lease is exempted from liability to pay Government rent, the rent which would apart from this section have been payable in respect of

that interest under the applicable lease shall remain payable and shall be so payable in the same manner as such rent would have been payable under the applicable lease."

That clause 38(2) be amended —

- (a) by deleting "in a covenant" and substituting "in or of a covenant".
- (b) by deleting "over-ridden by this Ordinance" and substituting "overridden under this section".

That clause 38(3) be amended —

- (a) by deleting "over-ridden by this Ordinance" where it twice appears and substituting "overridden under this section".
- (b) by deleting "現有" and substituting "待決的或".
- (c) by adding "現有" before "權利、法律".

Clause 40

條例草案第 40 條

That Clause 40(a) be amended, by deleting "or".

That clause 40(c) be amended, by deleting "for an interest" and substituting "from liability to pay Government rent for an interest held".

Clause 41

條例草案第 41 條

That clause 41(a) be amended, by deleting "or neglects".

That clause 41(b) be amended —

- (a) by adding "held" after "interest".
- (b) by adding "by virtue of section 31(1)(b)" after "required to produce".

That clause 41(c) be amended —

- (a) by deleting "to copy" and substituting "for making copies".
- (b) by adding "held" after "interest".

Clause 43

條例草案第 43 條

That clause 43 be amended —

- (a) in the heading, by deleting "**6 years**" and substituting "**1 year**".
- (b) by deleting "6 years" and substituting "1 year".

Clause 44

條例草案第 44 條

That clause 44(1) be amended —

- (a) by deleting "delete the rateable value and make an interim valuation of an interest" and substituting ", in respect of an interest held".
- (b) by adding "comprised in land leased under an applicable lease, make a deletion from the Government Rent Roll, make an interim valuation, or both," after "tenement" where it first appears.

That clause 44(2) be amended, by deleting everything before "are effective" and substituting —

"(2) A deletion and an interim valuation under subsection (1)".

Clause 46

條例草案第 46 條

That clause 46 be amended, by deleting the clause and substituting —

"46. Inadvertent misnomer

An inadvertent misnomer or misdescription of a person, place, lease or tenement in a document required under this Ordinance does not invalidate the document."

Clause 47

條例草案第 47 條

That clause 47 be amended, by deleting the clause.

Clause 48

條例草案第 48 條

That clause 48 be amended, by deleting everything after "required" and substituting —

"under this Ordinance or to be given for the purposes of this Ordinance by the Commissioner or a person authorized in writing by him under this Ordinance shall not be invalid solely because the name of the Commissioner or the person so authorized, as the case may be, is, if so authorized by the Commissioner, printed instead of signed therein."

陳偉業議員致辭：主席，條例草案委員會支持剛才規劃環境地政司所提出的有關修正。我想藉此機會回應顏錦全議員在剛才條例草案二讀時對委員會的一些批評。他指摘委員會提出的一項修正案，即剛才主席裁決認為涉及公帑開支成分而否決了的修正案。顏錦全議員剛才指摘委員會提出這項修正是違反了《聯合聲明》的規定。

我想在這裏清楚解釋及指出，委員會提出有關修正，既無任何意圖，亦無任何事實根據，也無任何法律分析或理據來作出這種結論。因為正如剛才我在條例草案二讀發言時指出，委員會審議這條例草案時，絕大部分成員，特別是一些法律界的議員很清楚指出，向現時獲豁免繳交差餉的業權持有人徵收地租，在法律依據上存有一個很大的疑問。這疑問在於地租是根據確定應課差餉租值，我強調，是確定應課差餉租值的 3% 來徵收。既然根據《差餉條例》，有關的業權持有人獲豁免繳交差餉，根本就沒有確定應課差餉租值這一回事。有關物業有評估應課差餉租值，英文是“assessed”，但在法律上，有關物業卻沒有個確定、英文是“ascertained”，確定應課差餉租值。如果以這邏輯推論的話，由於沒有確定應課差餉租值，所以根本沒有法律依據，向沒有確定應課差餉租值的業權持有人徵收地租。這是純法律觀點的分析和評論。在討論過程中，與差餉物業估價署……

全委會主席：陳偉業議員，你是指顏錦全議員剛才的發言還是本席的裁決？

陳偉業議員：我是指顏錦全議員的發言。對於剛才主席的裁決，我並無異議。

全委會主席：你發言完畢以後，本席才作解釋，請你繼續發言。

陳偉業議員：因此，當時委員會討論過後，我們考慮以一個法律上定義的方式，盡量跟隨《聯合聲明》和《差餉條例》的精神來提出這建議。當然，最終主席作出裁決，而委員會也尊重和接受主席的裁決。不過，我要再三澄清，在整個討論過程中，並無任何意圖，也無任何根據，以及顏錦全議員雖然在委員會中提出了他的意見，但在整個討論中，就法律觀點方面的

解釋及演繹，顏錦全議員也沒有任何新的理據，駁斥我剛才所說的論據。因此，我對顏錦全議員今天再提出這項指摘，感到失望及遺憾。

謝謝主席。

全委會主席：本席想作兩點補充解釋關乎本席的裁決，因為陳偉業議員發言中所提及顏錦全議員的某些論據，都可能與本席的裁決扯上關係。第一，本席的裁決完全與《中英聯合聲明》無關，本席所說的是關乎現行的香港法例以及現有的某些政府及承租人的契約。

至於 3% 的地租徵收率，作為基數的應課差餉租值，本席則設為一個依照一般方式來裁定的應課差餉租值。根據《差餉條例》第 36(1) 條，有某些物業單位是可以豁免評估差餉，但政府仍有權訂定應課差餉值。所以倘議員建議將地租徵收率由 3% 降低至 2%，便會產生“由公帑負擔之效力”的作用。倘若將地租徵收率由 3% 降低至 2% 的建議，有“由公帑負擔之效力”，但政府是有權提出的。至於會否因此而違背了契約的國際承諾，則須由政府本身來承擔。本席的裁決只關乎具有“由公帑負擔之效力”這一點，本席希望可以澄清這一點，特別要澄清的是，若將應課差餉值的評估，因某些方式而令基數降低，是具有“由公帑負擔之效力”。

顏錦全議員致辭：主席，對於陳偉業議員表示遺憾，我也感到遺憾。

在剛才我的發言中，我並沒有指摘他，我只不過評論這件事是違反了《聯合聲明》，並就這件事表達我的意見。

在委員會審議條例草案時，我已對這意見有所保留，但他剛才發言時卻沒有提到委員會中有這種意見，所以我反覺得遺憾。

謝謝主席。

Question on the amendments put and agreed to.

修正案之議題經付諸表決，並獲通過。

Question on clauses 1, 2, 4, 6 to 11, 13, 15, 16, 18, 19, 23 to 26, 29 to 35, 38, 40, 41, 43, 44, 46, 47 and 48, as amended, put and agreed to.

經修正的條例草案第 1、2、4、6 至 11、13、15、16、18、19、23 至 26、29 至 35、38、40、41、43、44、46、47 及 48 條之議題經付諸表決，並獲通過。

Clauses 3, 5, 12, 14, 17, 20, 21, 22, 27, 28, 37, 39, 42 and 45 were agreed to.

條例草案第 3、5、12、14、17、20、21、22、27、28、37、39、42 及 45 條獲得通過。

Clause 36

條例草案第 36 條

全委會主席：規劃環境地政司及陳偉業議員均作出預告，表示擬就第 36 條動議修正案。按照《會議常規》第 25(4)條，本席會先請陳偉業議員動議其修正案。

陳偉業議員致辭：主席，本人謹代表地租（評估及徵收）條例草案委員會動議一項修正案，以刪除條例草案第 36 條。這項修正獲委員會一致支持，理應沒有其他爭論。

條例草案第 36 條的其中一項規定是：任何物業單位如包括有僭建建築物，則索取地租或追討地租，並不賦予合法權限以佔用該物業單位，亦不賦予對該物業單位任何形式的法定業權。本局議員定會知道，當局對屬於僭建物的物業單位徵收差餉，但又不承認其法定地位，這種做法長期受到批評。條例草案第 36 條將這政策進一步伸延至地租的徵收。經過連串會議後，當局同意在評估物業單位的應課差餉租值時，不會理會任何已知的僭建物，並會退還就這類建築物所繳交的地租。雖然當局願意修正條例草案第 36 條，以刪除有關僭建物的有關提述，條例草案委員會委員認為，經修正的條文未能，我強調，是未能釋除他們的疑慮。條例草案第 36 條如經修正，將會有這樣的法律效果：繳交地租本身不會形成具有法律約束力的批租人與承租人的關係。本人想告知議員，這正是問題的關鍵所在。條例草案委員會不能贊同這條文的精神，因為條文容許當局向有關人士索取地租，但卻同時剝奪該人由於繳交地租而應享有的任何權利。這項安排顯然有欠公允，絕對不應納入法例內。條例草案第 36 條如獲通過，可能損害任何人因繳交地租而或會獲得的任何權利，特別是當該受影響人士被起訴時，或會影響衡平法上對禁止翻供的補救。雖然條例草案委員會委員明白當局提出條例草案第 36 條的理由，是要避免政府與地租繳納人在無意中形

成批租人與承租人的關係，但委員會仍然認為，當局有責任避免在疏忽大意下將並無法律責任繳交地租的物業單位列入地租登記冊內。

主席，本人謹此陳辭，代表委員會提出上述修正案，希望各位議員支持。

Proposed amendment

擬議修正案內容

Clause 36

條例草案第 36 條

That clause 36 be amended, by deleting the clause.

全委會主席：本席提議進行合併辯論，一併辯論由陳偉業議員及規劃環境地政司分別就第 36 條所提出之修正案。

本委員現進行合併辯論，一併辯論由陳偉業議員及規劃環境地政司分別就第 36 條所提出之修正案。本席會請規劃環境地政司就陳偉業議員提出之修正案以及其本人之修正案發言，但除非陳偉業議員之修正案遭否決，否則本席不會請規劃環境地政司動議修正案。倘陳議員之修正案獲可決，即表示規劃環境地政司之擬議修正案不獲通過。

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, as the Administration discussed with members of the Bills Committee, we do not consider it appropriate for clause 36 to be deleted. Clause 36 has been included in the Bill to make clear that any payer of Government rent who is not a lessee cannot assert that an implied lease between him and the Government has been created and that no government lessee can assert any rights against the Government or attempt to prevent the Government from taking enforcement action for breaches of lease conditions solely on account of his having paid the Government rent. Clause 36 seeks to put the position beyond argument.

Nevertheless, I wish to reiterate that even if clause 36 is deleted, the Government's position is that no implied lease will be created, nor will a government lessee be entitled to assert rights or seek to prevent enforcement action for his own breaches of lease conditions in consequence of his paying

Government rent.

Mr Chairman, although I am not moving my proposed amendment, yet I would like to take this opportunity to explain that my proposed amendment to clause 36 is to better reflect the Administration's position, in particular the demand for or recovery of Government rent by itself gives rise to any additional rights to the occupier against a lessee or the Government.

Thank you, Mr Chairman.

Question on Mr Albert CHAN's amendment put and agreed to.

陳偉業議員之修正案之議題經付諸表決，並獲通過。

全委會主席：規劃環境地政司，由於陳偉業議員就第 36 條動議之修正案已獲可決，你不可就第 36 條動議擬議修正案，因這與剛才之決定不一致。剛才之決定是將第 36 條刪除。

New clause 38A

新訂的第 38A 條

Deed of mutual covenant overridden

對公契的凌駕

Heading before New clause 49

新訂的第 49 條之前的標題

New clause 49

新訂的第 49 條

Consequential Amendments

Lands Tribunal Ordinance

相應修訂《土地審裁處條例》

Ordinances under which matters
may be submitted to the Tribunal
for determination

將有關事宜呈交

審裁處裁定所根據的條例

Heading before New clause 50

新訂的第 50 條之前的標題

New clause 50

新訂的第 50 條

Rating Ordinance

《差餉條例》

Interpretation

釋義

New clause 51

新訂的第 51 條

Section added

加入條文

New clause 52
新訂的第 52 條

Payment and recovery of rates
差餉的繳交及追討

New clause 53
新訂的第 53 條

Payment of rates under an
interim valuation
根據臨時估價繳交差餉

New clause 54
新訂的第 54 條

Rounding down of amounts due
須繳款額計至元位的情況

Heading before New clause 55
新訂的第 55 條之前的標題
New clause 55
新訂的第 55 條

Rating (Effective Date of Interim
Valuation) Regulation
《差餉（臨時估價生效日期）規例》
Effective date of interim valuation
臨時估價的生效日期

Heading before New clause 56
新訂的第 56 條之前的標題
New clause 56
新訂的第 56 條

Crown Rent and Premium
(Apportionment) Ordinance
《地稅及地價（分攤）條例》
Application
適用範圍

Heading before New clause 57
新訂的第 57 條之前的標題
New clause 57
新訂的第 57 條

New Territories Leases
(Extension) Ordinance
《新界土地契約（續期）條例》
Burdens and covenants
負擔及契諾

New clause 58
新訂的第 58 條

Part repealed
廢除第 III 部

New clause 59
新訂的第 59 條

Power to make regulations
訂立規例的權力

Heading before New clause 60
新訂的第 60 條之前的標題

New Territories Land
(Exemption) Ordinance

New clause 60

新訂的第 60 條

《新界土地（豁免）條例》

Interpretation

釋義

Heading before New clause 61

新訂的第 61 條之前的標題

Sex Discrimination Ordinance

《性別歧視條例》

New clause 61

新訂的第 61 條

Further exceptions to this Ordinance

本條例的進一步例外情況

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

條例草案條文經過首讀，並依據《會議常規》第 46 條第 (6) 款的規定，受命安排二讀。

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that new clause 38A, heading before new clause 49, new clause 49, heading before new clause 50, new clauses 50, 51 to 54, heading before new clause 55, new clause 55, heading before new clause 56, new clause 56, heading before new clause 57 and new clauses 57, 58, 59, heading before new clause 60, new clause 60, heading before new clause 61 and new clause 61, as set out in the paper circularized to Members be read the Second time.

Clause 38(A) provides for certain provisions contained in deeds of mutual covenant in relation to payment of Government rent to be overridden by the Bill. Clauses 49 to 61 provide for consequential amendments to the Lands Tribunal Ordinance, the Rating Ordinance, the Rating (Effective Date of Interim Valuation) Regulation, the Crown Rent and Premium (Apportionment) Ordinance, the New Territories Leases (Extension) Ordinance, the New Territories Land (Exemption) Ordinance and the Sex Discrimination Ordinance. These amendments have been made known to members of the Bills Committee who have not raised any objection.

Thank you, Mr Chairman.

Question on the Second Reading of the headings and clauses proposed, put and

agreed to.

條例草案標題及條文二讀之議題經提出待議，隨即付諸表決，並獲通過。

Headings and clauses read the Second time.

條例草案標題及條文經過二讀。

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr Chairman, I move that new clause 38(A), heading before new clause 49, new clause 49, heading before new clause 50, new clauses 50, 51 to 54, heading before new Clause 55, new clause 55, heading before new clause 56, new clause 56, heading before new clause 57 and new clauses 57, 58, 59, heading before new clause 60, new clause 60, heading before new clause 61 and new clause 61 be added to the Bill.

Proposed additions

擬議的增補

New clause 38A

新訂的第 38A 條

That the Bill be amended, by adding—

"38A. Deed of mutual covenant overridden

(1) This Ordinance and regulations made under this Ordinance override the provisions (however described) under a deed of mutual covenant for any land leased under an applicable lease, in so far as such provisions relate to -

(a) any contribution to -

(i) the payment of any of the Government rent payable in respect of the land or any part thereof (other than in respect of any of the common parts of that land or of any building erected thereon or of both); or

- (ii) the payment of any monies (however described and whether or not described as comprising any such Government rent), to the extent that such payment comprises any such Government rent;
- (b) any payment of any of the Government rent payable in respect of the land or any part thereof (other than in respect of any of the common parts of that land or of any building erected thereon or of both); or
- (c) any right to seek or recover a contribution within the meaning of paragraph (a) or a payment within the meaning of paragraph (b).

(2) To the extent that there is a default or breach subsisting at the date of commencement of this section in or of a provision under a deed of mutual covenant that is overridden under this section, the rights and obligations under the deed of mutual covenant relating to the default or breach are not extinguished by this section and may be exercised and enforced in the same manner and to the same extent as they could have been before the commencement of this section.

(3) To the extent that a deed of mutual covenant is not overridden under this section, the deed of mutual covenant remains in full force and effect subject to any existing rights, liabilities and remedies under the deed of mutual covenant. The rights and obligations under the deed of mutual covenant that are not overridden under this section may be exercised and enforced in the same manner and to the same extent as they could have been before the commencement of this section.

(4) In this section -

"common parts" (公用部分), in relation to any land leased under an applicable lease or any building erected thereon or both, means the whole of the land or the building or both, as the case may be, except such parts as have been specified or

designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner;

"deed of mutual covenant" (公契), in relation to any land leased under an applicable lease or any part thereof, means a document which -

- (a) defines the rights, interests and obligations of owners of the undivided shares in the land among themselves; and
- (b) is registered in the Land Registry;

"Government rent" (地租), in relation to any land leased under an applicable lease or any part thereof, means -

- (a) Government rent as defined in section 2; or
- (b) any monies (however described) payable by way of rent under the lease of the land;

"owner" (業主) means -

- (a) a person who for the time being appears from the records at the Land Registry to be the owner of an undivided share in land on which a building is erected;
- (b) a registered mortgagee in possession of such share."

Heading before new clause 49 and new clause 49

新訂的第 49 條之前的標題及新訂的第 49 條

That the Bill be amended, by adding—

"Consequential Amendments

Lands Tribunal Ordinance

49. Ordinances under which matters may be submitted to the Tribunal for determination

The Schedule to the Lands Tribunal Ordinance (Cap. 17) is amended by adding -

" of 1997. Government Rent (Assessment
and Collection) Ordinance.".

Heading before new clause 50 and new clause 50

新訂的第 50 條之前的標題及新訂的第 50 條

That the Bill be amended, by adding—

Rating Ordinance

50. Interpretation

Section 2 of the Rating Ordinance (Cap. 116) is amended -

- (a) in the definition of "owner" by adding "or chargee" after "mortgagee";
- (b) by adding -

""Government rent" (地租) has the meaning assigned to it under section 2 of the Government Rent (Assessment and Collection) Ordinance (of 1997);

"Government Rent Roll" (地租登記冊) has the meaning assigned to it under section 2 of the Government Rent (Assessment and

Collection) Ordinance (of 1997);

"identical tenement" (相同物業單位) means a tenement the entry for which in the Government Rent Roll is identical to an entry in the valuation list;".

New clause 51, 52, 53 and 54

新訂的第 51、52、53 及 54 條

That the Bill be amended, by adding—

51. Section added

The following is added -

**"16A. Alterations on changes to
corresponding entry in the
Government Rent Roll**

The Commissioner may make an appropriate amendment to the valuation list where he has altered the entry of a corresponding tenement, which is not an identical tenement, in the Government Rent Roll as a result of a proposal, correction, objection or appeal under the Government Rent (Assessment and Collection) Ordinance (of 1997).".

52. Payment and recovery of rates

Section 22 is amended by adding -

"(5) (a) Subject to paragraph (b), the Commissioner may demand any of the rates payable in respect of a tenement under the demand note to be issued in respect of any of the Government rent payable in respect of that tenement.

- (b) Where under paragraph (a) any of the rates and the Government rent payable in respect of a tenement are demanded under the same demand note, there shall be set out in the demand note the respective amounts payable as the rates and as the Government rent in respect of that tenement.
- (6) (a) If the amount received by the Commissioner in respect of a demand note under which any of the rates and the Government rent payable in respect of a tenement are demanded is more than or less than the aggregate amount of the rates and the Government rent so payable, he may in his discretion apportion the amount so received, subject to any specific instructions from the payer.
- (b) The acceptance or receipt of payment of any part of the amount of the rates demanded under a demand note shall not be a waiver by the Commissioner for the part not paid."

53. Payment of rates under an interim valuation

Section 29 is amended by adding -

"(4) Where the Commissioner has made an interim valuation in respect of a tenement, he may demand any of the rates payable in respect of that tenement in the manner specified in section 22(5), and section 22(6) shall apply accordingly."

54. Rounding down of amounts due

Section 50A(1) is amended by adding "or the Government Rent (Assessment and Collection) Ordinance (of 1997)" after "Ordinance".

Heading before new clause 55 and new clause 55

新訂的第 55 條之前的標題及新訂的第 55 條

That the Bill be amended, by adding—

**Rating (Effective Date of Interim
Valuation) Regulation****55. Effective date of interim valuation**

Section 3 of the Rating (Effective Date of Interim Valuation) Regulation (Cap. 116 sub. leg.) is amended by adding -

"(3) Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply to the determination of an effective date under this section."

Heading before new clause 56 and new clause 56

新訂的第 56 條之前的標題及新訂的第 56 條

That the Bill be amended, by adding—

**Crown Rent and Premium (Apportionment)
Ordinance****56. Application**

Section 3 of the Crown Rent and Premium (Apportionment) Ordinance (Cap. 125) is amended -

(a) by adding before subsection (1) -

"(1A) (a) Subject to paragraph (b), this Ordinance does not apply to any interest in land held under an

applicable lease within the meaning of the Government Rent (Assessment and Collection) Ordinance (of 1997) as from -

- (i) in the case of an applicable lease extended by section 6 of the New Territories Leases (Extension) Ordinance (Cap. 150), 28 June 1997;
 - (ii) in the case of an interest held under an applicable lease which was exempted from liability to pay Government rent under the Government Rent (Assessment and Collection) Ordinance (of 1997), the date on which the exemption ceases to apply;
 - (iii) in the case of an applicable lease under which there is an express obligation to pay an annual rent of 3% of the rateable value from time to time of the land leased, the date specified in the lease as the date from which the rent is payable.
- (b) Nothing in paragraph (a) shall affect any right or liability already acquired or incurred in respect of any interest referred to in that

paragraph under or by virtue of any provision of this Ordinance at any time before this Ordinance ceases to apply to such interest by virtue of that paragraph.";

- (b) in subsection (1), by repealing "This" and substituting "Subject to subsection (1A), this".

Heading before new clause 57 and new clause 57

新訂的第 57 條之前的標題及新訂的第 57 條

That the Bill be amended, by adding—

New Territories Leases (Extension) Ordinance

57. Burdens and covenants

Section 7(1)(c) and (d) of the New Territories Leases (Extension) Ordinance (Cap. 150) is repealed and the following substituted -

"(c) a reservation of -

- (i) subject to subparagraph (ii), the Government rent payable under the Government Rent (Assessment and Collection) Ordinance (of 1997);
- (ii) in the case of an exemption from liability to pay Government rent under the Government Rent (Assessment and Collection) Ordinance (of 1997), the annual rent payable immediately before the period of extension; and

- (d) a covenant by the lessee to pay the Government rent specified in paragraph (c)(i) or the annual rent specified in paragraph

(c)(ii), as the case may be -

- (i) in the case of such Government rent, in accordance with the Government Rent (Assessment and Collection) Ordinance (of 1997);
- (ii) in the case of such annual rent, in the same manner and on the same days as applied immediately before the period of extension."

New clauses 58 and 59

新訂的第 58 及 59 條

That the Bill be amended, by adding—

58. Part repealed

Part III is repealed.

59. Power to make regulations

Section 11(a) to (h) and (j) is repealed.

Heading before new clause 60 and new clause 60

新訂的第 60 條之前的標題及新訂的第 60 條

That the Bill be amended, by adding—

New Territories Land (Exemption) Ordinance

60. Interpretation

Section 2 of the New Territories Land (Exemption) Ordinance (Cap.

452) is amended -

- (a) in subsection (1), in the definition of "rural land", by adding "holding" after "small house";
- (b) in subsection (2) -
 - (i) by adding "holding" after "small house";
 - (ii) by repealing "New Territories Leases (Extension) Ordinance (Cap. 150)" and substituting "Government Rent (Assessment and Collection) Ordinance (of 1997)".

Heading before new clause 61 and new clause 61

新訂的第 61 條之前的標題及新訂的第 61 條

That the Bill be amended, by adding—

Sex Discrimination Ordinance

61. Further exceptions to this Ordinance

Section 1 of Part 1 of Schedule 5 to the Sex Discrimination Ordinance (Cap. 480) is amended in the definition of "indigenous villager" by repealing "section 9 of the New Territories Leases (Extension) Ordinance (Cap. 150)" and substituting "section 2 of the Government Rent (Assessment and Collection) Ordinance (of 1997)".

SCHEDULE

[s. 38]

COVENANTS AND CONDITIONS OVERRIDDEN

PART I

1. (a) From 1 July 1997 until the expiry of the term hereby granted the rent for the lot shall be calculated and paid with reference to the period commencing on 1 April and ending on 31 March in each year, and the Lessee shall pay and there shall be collected by the Director as rent for the lot for each such period an amount equal to 3% of the rateable value from time to time of the lot, the said rent to be paid by four equal quarterly instalments in advance on 1 April, 1 July, 1 October and 1 January in each year, and the first quarterly payment together with all accrued arrears of rent becoming due and to be paid on 1 July 1997.
- (b) For the purposes of this General Condition the rateable value of the lot shall be the rateable value as set out from time to time in the list declared or the interim valuation made by the Commissioner under the Rating Ordinance (Cap. 116) or any legislation amending or replacing the same, of the tenement, or, if there is more than one tenement, the aggregate of the rateable values and/or interim valuations as so set out or made of all the tenements comprised wholly or partly within the lot.
- (c) For the purposes of subparagraph (b) -
 - (i) a rateable value in a new list, when declared, and an interim valuation, when made, and a correction, alteration or variation of a rateable value or an interim valuation, when made, shall take effect from the effective dates for the same under the Rating Ordinance (Cap. 116);
 - (ii) if the effective date of an interim valuation is earlier than the date of the making of the interim valuation, or if the rateable value has been corrected, altered or varied and the effective date of such correction, alteration or variation is earlier than the date of the making of the correction, alteration or variation, and as a result

the rent for the lot is increased, the rent due for the period since the effective date of the interim valuation or the correction, alteration or variation shall, in so far as it has not been already paid, be added by the Director to the next payment of rent due following the date of the making of the interim valuation, correction, alteration or variation, and if as a result of the making of the interim valuation, correction, alteration or variation the rent for the lot is reduced, any amount found to be overpaid by the Lessee may be deducted by the Director from the next payment of rent due following the date of the making of the interim valuation, correction, alteration or variation, or shall be otherwise credited to the account of or refunded to the Lessee;

- (iii) a tenement shall be deemed to be comprised partly within the lot if the building in which it is contained stands partly within the lot; and where a tenement is so deemed to be comprised partly within the lot, there shall be included for the purpose of determining the rateable value of the lot only the same proportion of the rateable value in the list declared or the interim valuation made under the Rating Ordinance (Cap. 116) or, as the case may be, the rateable value fixed under sub-subparagraphs (iv), (v) and (vi), as, in the opinion of the Director whose decision thereon shall be final, the area of the lot bears to the area of all the lots on which the building stands;
- (iv) in the event that no rateable value has been ascertained under the Rating Ordinance (Cap. 116) in respect of a tenement, whether by reason of the exemption of such tenement from assessment to rates or otherwise, the Director may cause to be

fixed such rateable value as if the tenement were assessable to rates under that Ordinance, and the rateable value so fixed shall be the rateable value of the tenement;

- (v) in the event that as a result of the demolition of a tenement or of a tenement being unoccupied by reason of an order of the Government its rateable value is deleted under the Rating Ordinance (Cap. 116), the rateable value of the lot shall, if the Director in his absolute discretion thinks fit and until an interim valuation of a tenement or tenements wholly replacing the demolished or unoccupied tenement is made under the Rating Ordinance (Cap. 116), include the rateable value of such tenement as last ascertained by the Commissioner; and
 - (vi) where an interim valuation is made of a tenement or tenements which replace part of a former tenement in respect of which the rateable value as last ascertained by the Commissioner was included in the rateable value of the lot in accordance with sub-subparagraph (v) the rateable value of the part of the former tenement not replaced by the interim valuation shall be such portion of the rateable value of the former tenement, as last ascertained by the Commissioner, as the Director shall in his absolute discretion consider appropriate to that part.
- (d) There shall be added to the yearly rent of the lot fixed in accordance with subparagraph (a) such sum as may be necessary to make the total number of dollars a multiple of 4.

-
2. (a) In lieu of the collection of the yearly rent by the Director under paragraph 1(a), there may in addition to the rates to be collected quarterly by the Commissioner or the Collector of Rates, as the case may be, under the Rating Ordinance (Cap. 116) in respect of any tenement comprised wholly or partly within the lot, be demanded and collected by the Commissioner or the Collector of Rates, as the case may be, from the Lessee an amount equal to one fourth of 3% of the rateable value of any such tenement together with such sum as may be necessary to make the total number of dollars in any such demand an integer. For the purpose of this subparagraph the provisions of paragraph 1(c)(i) and (ii) shall apply *mutatis mutandis*.
- (b) For the purpose of subparagraph (a), in the event that only part of a tenement is comprised within the lot the amount that may be demanded in respect of that part shall bear the same proportion to 3% of the rateable value of the tenement as, in the opinion of the Director whose decision shall be final, the area of such part bears to the area of the whole of such tenement.
- (c) Upon a demand being made by the Commissioner or the Collector of Rates, as the case may be, under subparagraph (a), the Lessee shall pay the amount so demanded within the time specified in such demand.
- (d) Payment under subparagraph (c) of an additional demand under subparagraph (a) shall operate as an absolute discharge for the Lessee from his liability to pay the rent in respect of the quarter for which such demand was made.
3. The reference in paragraph 1(b) to the rateable value of a tenement as set out from time to time in the list declared or to an interim valuation made under the Rating Ordinance (Cap. 116) shall include in a case where such rateable value or interim valuation is corrected, altered or varied under

that Ordinance, a reference to such rateable value or interim valuation as so corrected, altered or varied.

PART II

1. (a) Subject to subparagraph (e), from 1 July 1997 until the expiry of the term hereby granted the rent for the lot shall be calculated and paid with reference to the period commencing on 1 April and ending on 31 March in each year, and the Lessee shall pay and there shall be collected by the Director as rent for the lot for each such period an amount equal to 3% of the rateable value from time to time of the lot, the said rent to be paid by four equal quarterly instalments in advance on 1 April, 1 July, 1 October and 1 January in each year, and the first quarterly payment together with all accrued arrears of rent becoming due and to be paid on 1 July 1997.
- (b) For the purposes of this General Condition the rateable value of the lot shall be the rateable value as set out from time to time in the list declared or the interim valuation made by the Commissioner under the Rating Ordinance (Cap. 116) or any legislation amending or replacing the same, of the tenement, or, if there is more than one tenement, the aggregate of the rateable values and/or interim valuations as so set out or made of all the tenements comprised wholly or partly within the lot.
- (c) For the purposes of subparagraph (b) -
 - (i) a rateable value in a new list, when declared, and an interim valuation, when made, and a correction, alteration or variation of a rateable value or an interim valuation, when made, shall take effect from the effective dates for the same under the Rating Ordinance (Cap. 116);

- (ii) if the effective date of an interim valuation is earlier than the date of the making of the interim valuation, or if the rateable value has been corrected, altered or varied and the effective date of such correction, alteration or variation is earlier than the date of the making of the correction, alteration or variation, and as a result the rent for the lot is increased, the rent due for the period since the effective date of the interim valuation or the correction, alteration or variation shall, in so far as it has not been already paid, be added by the Director to the next payment of rent due following the date of the making of the interim valuation, correction, alteration or variation, and if as a result of the making of the interim valuation, correction, alteration or variation the rent for the lot is reduced, any amount found to be overpaid by the Lessee may be deducted by the Director from the next payment of rent due following the date of the making of the interim valuation, correction, alteration or variation, or shall be otherwise credited to the account of or refunded to the Lessee;
- (iii) a tenement shall be deemed to be comprised partly within the lot if the building in which it is contained stands partly within the lot; and where a tenement is so deemed to be comprised partly within the lot, there shall be included for the purpose of determining the rateable value of the lot only the same proportion of the rateable value in the list declared or the interim valuation made under the Rating Ordinance (Cap. 116) or, as the case may be, the rateable value fixed under sub-subparagraphs (iv), (v) and (vi), as, in the opinion of the Director whose decision thereon

shall be final, the area of the lot bears to the area of all the lots on which the building stands;

- (iv) in the event that no rateable value has been ascertained under the Rating Ordinance (Cap. 116) in respect of a tenement, whether by reason of the exemption of such tenement from assessment to rates or otherwise, the Director may cause to be fixed such rateable value as if the tenement were assessable to rates under that Ordinance, and the rateable value so fixed shall be the rateable value of the tenement;
- (v) in the event that as a result of the demolition of a tenement or of a tenement being unoccupied by reason of an order of the Government its rateable value is deleted under the Rating Ordinance (Cap. 116), the rateable value of the lot shall, if the Director in his absolute discretion thinks fit and until an interim valuation of a tenement or tenements wholly replacing the demolished or unoccupied tenement is made under the Rating Ordinance (Cap. 116), include the rateable value of such tenement as last ascertained by the Commissioner; and
- (vi) where an interim valuation is made of a tenement or tenements which replace part of a former tenement in respect of which the rateable value as last ascertained by the Commissioner was included in the rateable value of the lot in accordance with sub-subparagraph (v) the rateable value of the part of the former tenement not replaced by the interim valuation shall be such portion of the rateable value of the former tenement, as last ascertained by the Commissioner, as the Director shall in his absolute discretion consider appropriate to that

part.

- (d) There shall be added to the yearly rent of the lot fixed in accordance with subparagraph (a) such sum as may be necessary to make the total number of dollars a multiple of 4.
 - (e) For so long as the lot is beneficially owned by the Lessee or in an unbroken line of succession in title to the lot by a person who is descended through the male, but not the female, line from him the yearly rent for the lot shall be the sum of \$20, if demanded, provided that if an undivided share or interest in the lot together with the right to the exclusive use and occupation of all or a part of a building on the lot is beneficially owned by a person other than the Lessee or in an unbroken line of succession in title to such undivided share or interest a person who is descended through the male line from him the rent for the lot shall be calculated and paid in the manner described and shall be the amount specified in subparagraph (a) in which event for the purpose of this proviso -
 - (i) the rateable value of the lot shall be the rateable value of the said building or part thereof; and
 - (ii) the yearly rent or a due proportion thereof for the lot under subparagraph (a) shall become due and shall be paid on the first quarterly day after the date on which the said undivided share or interest was first beneficially owned by a person other than the Lessee or in an unbroken line of succession in title to the said undivided share or interest a person who is descended through the male line from him.
2. (a) In lieu of the collection of the yearly rent by the Director under paragraph 1(a), there may in addition to the rates to be collected quarterly by the Commissioner or the Collector of

Rates, as the case may be, under the Rating Ordinance (Cap. 116) in respect of any tenement comprised wholly or partly within the lot, be demanded and collected by the Commissioner or the Collector of Rates, as the case may be, from the Lessee an amount equal to one fourth of 3% of the rateable value of any such tenement together with such sum as may be necessary to make the total number of dollars in any such demand an integer. For the purpose of this subparagraph the provisions of paragraph 1(c)(i) and (ii) shall apply mutatis mutandis.

- (b) For the purpose of subparagraph (a), in the event that only part of a tenement is comprised within the lot the amount that may be demanded in respect of that part shall bear the same proportion to 3% of the rateable value of the tenement as, in the opinion of the Director whose decision shall be final, the area of such part bears to the area of the whole of such tenement.
- (c) Upon a demand being made by the Commissioner or the Collector of Rates, as the case may be, under subparagraph (a), the Lessee shall pay the amount so demanded within the time specified in such demand.
- (d) Payment under subparagraph (c) of an additional demand under subparagraph (a) shall operate as an absolute discharge for the Lessee from his liability to pay the rent in respect of the quarter for which such demand was made.

3. The reference in paragraph 1(b) to the rateable value of a tenement as set out from time to time in the list declared or to an interim valuation made under the Rating Ordinance (Cap. 116) shall include in a case where such rateable value or interim valuation is corrected, altered or varied under that Ordinance, a reference to such rateable value or interim valuation as so corrected, altered or varied."

Question on the addition of the new clauses 38A, Heading before new clause 49, new clause 49, Heading before new clause 50, new clauses 50, 51 to 54, Heading

before new clause 55, new clause 55, Heading before new clause 56, new clause 56, Heading before new clause 57 and new clauses 57, 58, 59, Heading before new clause 60, new clause 60, Heading before new clause 61 and new clause 61 proposed, put and agreed to.

增補新訂的第 38 A 條、新訂的第 49 條之前的標題、新訂的第 49 條、新訂的第 50 條之前的標題、新訂的第 50 條、第 51 至 54 條、新訂的第 55 條之前的標題、新訂的第 55 條、新訂的第 56 條之前的標題、新訂的第 56 條、新訂的第 57 條之前的標題、新訂的第 57 條、第 58、59 條、新訂的第 60 條之前的標題、新訂的第 60 條、新訂的第 61 條之前的標題及新訂的第 61 條文之議題經提出待議，隨即付諸表決，並獲通過。

PATENTS BILL

《專例條例草案》

Clauses 1, 3, 4, 6, 7, 9, 10, 11, 13, 14, 17, 18, 20, 21, 25 to 28, 30 to 36, 38 to 42, 44, 45, 47 to 50, 53, 54, 55, 57 to 60, 63 to 72, 76 to 80, 83 to 90, 92, 93, 95 to 103, 105, 107, 108, 111, 112, 114, 116, 118, 120 to 124, 126, 127, 129, 131, 133 to 139, 141, 142, 143, 145 to 155 and 159 to 162 were agreed to.

第 1、3、4、6、7、9、10、11、13、14、17、18、20、21、25 至 28、30 至 36、38 至 42、44、45、47 至 50、53、54、55、57 至 60、63 至 72、76 至 80、83 至 90、92、93、95 至 103、105、107、108、111、112、114、116、118、120 至 124、126、127、129、131、133 至 139、141、142、143、145 至 155 及 159 至 162 條獲得通過。

Clauses 2, 5, 8, 12, 15, 16, 19, 22, 23, 24, 29, 37, 43, 46, 51, 52, 56, 61, 62, 73, 74, 75, 81, 82, 84, 91, 94, 104, 106, 109, 110, 113, 115, 117, 119, 125, 128, 130, 132, 140, 144, 156, 157 and 158

第 2、5、8、12、15、16、19、22、23、24、29、37、43、46、51、52、56、61、62、73、74、75、81、82、84、91、94、104、106、109、110、113、115、117、119、125、128、130、132、140、144、156、157 及 158 條

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized and tabled for Members' consideration.

Apart from the key amendments which I referred to in my Second Reading debate speech, most of the amendments are drafting and technical in nature. They serve to remove ambiguities or inconsistencies and introduce procedural refinements. We have briefed the Bills Committee on all proposed amendments.

Mr Chairman, I beg to move.

Proposed amendments

擬議修正案內容

Clause 2

條例草案第 2 條

That clause 2(1) be amended —

- (a) by deleting the definition of "convention country".
- (b) in the definition of "international application", by deleting "Co-operation" and substituting "Cooperation".
- (c) in the definition of "Patent Co-operation Treaty", by deleting "Co-operation" and substituting "Cooperation".
- (d) by adding -

""Paris Convention country" (巴黎公約國) means -

- (a) any country for the time being specified in Schedule 1 as being a country which has acceded to the Paris Convention;
- (b) any territory or area subject to the authority or under the suzerainty of any country specified in Schedule 1 pursuant to paragraph (a), or any territory or area administered by any such country, on behalf of which such country has acceded to the Paris Convention;

"WTO member country, territory or area" (世界貿易組織成員國) means any country, territory or area for the time being specified in Schedule 1 as being a country, territory or area which has acceded to the World Trade Organisation Agreement."

That clause 2(1) be amended, in the definition of "註冊與批予請求", by deleting "公布" wherever it appears and substituting "發表".

That clause 2(1) be amended —

- (a) in paragraph (b) of the definition of "專利產品" by deleting "的" where it first appears.
- (b) in paragraph (c) of the definition of "提交日期" by adding "為提交日期" after "指明".

That clause 2(2) be amended, under the column "Expression" by deleting "(公布)" and substituting "(發表)".

Clause 5

條例草案第 5 條

That clause 5 be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 5 be amended, in the heading, by deleting "公布" and substituting "發表".

That clause 5(1)(a) be amended, by deleting "(公布)" and substituting "(發表)".

That clause 5(2)(d)(ii) be amended, by deleting "Co-operation" and substituting "Cooperation".

Clause 8

條例草案第 8 條

That clause 8 be amended, by deleting "regulation" and substituting "notice published in the Gazette".

Clause 12

條例草案第 12 條

That clause 12(1)(a) be amended, by deleting "於香港提出的指定專利申請下的" and substituting "指定專利申請下於香港的".

That clause 12(1)(b) be amended, by deleting ", or his successor in title".

Clause 15

條例草案第 15 條

That clause 15(1) be amended, by deleting "12" and substituting "12(1)".

That clause 15(1) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 15(2) be amended —

- (a) by adding "be signed by the applicant and" after "such request shall".

(b) in paragraph (a), by deleting "verified copy" and substituting "photocopy".

(c) in paragraph (b), by deleting "the name of the inventor" and substituting -

"a statement identifying the person or persons whom the applicant believes to be the inventor or inventors".

(d) by adding -

"(ba) the name and address of the person making the request;"

(e) by deleting paragraph (c) and substituting -

"(c) where the person filing the request is a person other than the person named as applicant in the designated patent application, a statement explaining his entitlement to apply for the grant of a standard patent for the invention and prescribed documents supporting that statement;"

(f) in paragraph (d)(ii), by deleting "and".

(g) in paragraph (e) -

(i) by deleting "corresponding";

(ii) by deleting the full stop and substituting "; and".

(h) by adding -

"(f) an address in Hong Kong for service of documents."

That clause 15(2) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 15(6) be amended, by deleting "公布" wherever it appears and substituting "發表".

Clause 16

條例草案第 16 條

That clause 16 be amended —

- (a) by deleting "Co-operation" and substituting "Cooperation".
- (b) in paragraph (b), by deleting "verified copy" wherever it appears and substituting "photocopy".

That clause 16 be amended —

- (a) in paragraph (b)(iii) -
 - (i) by deleting "作出" and substituting "發表";
 - (ii) by deleting "公布".
- (b) in paragraph (d), by deleting "為" where it first appears and substituting "第".

That clause 16(a) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 16(b)(i) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 16(b)(ii) be amended, by deleting "公布" wherever it appears and

substituting "發表".

Clause 19

條例草案第 19 條

That clause 19(4) be amended, by adding "solely" after "relating".

Clause 22

條例草案第 22 條

That clause 22(1)(a) be amended, by adding "and has not been refused, withdrawn or deemed to be withdrawn" after "section 20".

That clause 22(1)(b)(i) be amended, by adding "corresponding" before "designated patent application".

That clause 22(1)(b)(ii) be amended, by adding "corresponding" before "designated patent application".

That clause 22(1) be amended —

- (a) in paragraph (b)(iii), by adding "申請" after "專利".
- (b) by deleting "公布日期" wherever it appears and substituting "發表日期".

Clause 23

條例草案第 23 條

That clause 23(1) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 23(2) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 23(3) be amended, by deleting paragraph (b) and substituting —

"(b) if the person filing the request is a person other than the person named in the register as the applicant for a standard patent for the invention, a statement explaining the first-mentioned person's entitlement to apply for the grant of a standard patent for the invention and prescribed documents supporting that statement;".

That clause 23(3) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 23(3)(c) be amended, by deleting "而具有優先的權利" and substituting "利而具有優先權".

Clause 24

條例草案第 24 條

That clause 24 be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 24(1)(a) be amended, by deleting "已".

That clause 24(2)(a) be amended, by deleting "publication of the specification"

and substituting "date of grant".

Clause 29

條例草案第 29 條

That clause 29(3) be amended, by deleting "The" and substituting —

"Where prior to the refusal or deemed withdrawal of the application mentioned in subsection (1)(i) the request to record had been published under section 20, the".

Clause 37

條例草案第 37 條

That clause 37(1) be amended, by deleting ", subject to section 134,".

Clause 43

條例草案第 43 條

That clause 43 be amended, by deleting subclause (2) and substituting —

"(2) The Registrar shall record the amendment to the specification of the designated patent by making an appropriate entry in the register and upon that recording the standard patent shall be treated as having been amended in a like manner.

(2A) As soon as practicable after a standard patent has been amended under this section the Registrar shall -

- (a) publish the amendment;
- (b) advertise the fact of the amendment by notice in the

Gazette."

That clause 43(2) be amended, by deleting "公布" wherever it appears and substituting "發表".

Clause 46

條例草案第 46 條

That clause 46(2) be amended, by deleting "法律效力" and substituting "有效性".

That clause 46(5) be amended, by deleting "On filing of the court order and supporting documents" and substituting "Upon receipt of the court order and supporting documents filed".

That clause 46(5) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 46(7) be amended, by deleting "因應該項申請而使任何法院命令生效" and substituting "就實施法院因應該項申請所作出的任何命令".

Clause 51

條例草案第 51 條

That clause 51(1) be amended, by deleting "under" and substituting "for the purposes of".

That clause 51(2) be amended —

(a) in paragraph (a) -

(i) by deleting "requiring" and substituting "providing for";

- (ii) in subparagraph (ii), by adding "published" before "applications".

- (b) in paragraph (b), by deleting "the requirements in".

That clause 51(2) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 51(2)(a)(ii) be amended, by deleting "中或在專利和專利的申請" and substituting "之中或之".

That clause 51(11) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 51(13) be amended, by deleting "或" and substituting "及".

Clause 52

條例草案第 52 條

That clause 52(1) be amended, by deleting paragraphs (a), (b) and (c) and substituting —

"(a) either -

- (i) application has not been made for registration of the earlier transaction, instrument or event; or
- (ii) in the case of any application for a standard patent which has not been published or any application for a short-term patent, notice of the earlier transaction, instrument or event has not been given to the Registrar

in accordance with rules (if any) made for the purposes of section 51(2)(c); and

- (b) the person claiming under the later transaction, instrument or event did not know of the earlier transaction, instrument or event."

That clause 52(3)(c) be amended, by adding at the beginning "在專利或申請下的".

Clause 56

條例草案第 56 條

That clause 56(1) be amended, by adding "或" after "特許".

That clause 56(3) be amended, by deleting "that section" and substituting "section 55".

Clause 61

條例草案第 61 條

That clause 61(2)(a) be amended, by deleting "在香港受僱" and substituting "受僱於香港".

That clause 61(2)(b) be amended, by deleting "並非主要在任何地方受僱" and substituting "沒有主要受僱於任何地方".

That clause 61(5) be amended, by deleting "it" and substituting "the patent".

That clause 61(8)(b)(ii) be amended, by adding "亦" after "則".

That clause 61(8)(b)(iv) be amended, by adding "亦" after "則".

That clause 61(8)(c)(i) be amended, by deleting "則指" and substituting "則亦指".

That clause 61(8)(c)(ii) be amended, by adding "亦" after "則".

That clause 61(8)(c)(iii) be amended, by deleting "高級".

That clause 61(8)(c)(iv) be amended, by deleting "高級".

Clause 62

條例草案第 62 條

That clause 62(2) be amended, by deleting "section" and substituting "Ordinance".

That clause 62(6)(a) be amended, by deleting "specific" and substituting "specified".

That clause 62(4)(b) be amended, by deleting "一筆" and substituting "一整筆".

Clause 73

條例草案第 73 條

That clause 73(1) be amended, by deleting paragraphs (a), (b) and (c) and substituting —

- "(a) in relation to any product which is the subject-matter of the patent -
- (i) making, putting on the market, using or importing the product; or
 - (ii) stocking the product, whether for the purpose of putting it on the market (in Hong Kong or elsewhere) or otherwise;
- (b) in relation to any process which is the subject-matter of the patent -
- (i) using the process; or
 - (ii) offering the process for use in Hong Kong when the third party knows, or it is obvious to a reasonable person in the circumstances, that the use of the process is prohibited without the consent of the proprietor of the patent;
- (c) where the invention is a process, then in relation to any product obtained directly by means of that process -
- (i) putting on the market, using or importing the product; or
 - (ii) stocking the product, whether for the purpose of putting it on the market (in Hong Kong or elsewhere) or otherwise."

That clause 73 be amended, by deleting subclause (2).

Clause 74

條例草案第 74 條

That clause 74(2) be amended, by deleting the passage beginning "except" and ending "person supplied" and substituting —

"unless the supply or offering is made for the purpose of inducing the person supplied or, as the case may be, to whom the offer is made".

Clause 75

條例草案第 75 條

That clause 75 be amended, by deleting paragraphs (d) and (e) and substituting

"(d) the use of the invention which is the subject of the patent -

- (i) on board vessels registered in any of the Paris Convention countries or WTO member countries, territories or areas, other than Hong Kong; or
- (ii) in the body of such vessels, or in the machinery, tackle, gear or other accessories of such vessels,

when such vessels temporarily or accidentally enter the territorial waters of Hong Kong, but only if the invention is used in such waters exclusively for the needs of the vessel;

(e) the use of the invention which is the subject of the patent in the construction or operation of -

- (i) aircraft, hovercraft or land vehicles of Paris Convention countries or WTO member countries, territories or areas, other than Hong Kong; or
- (ii) such aircraft, hovercraft or land vehicle accessories,

when such aircraft, hovercraft or land vehicles temporarily or accidentally enter Hong Kong;"

That clause 75(c) be amended, in the Chinese text, by deleting "'registered

medical practitioner"" and substituting ""註冊醫生"".

Clause 81

條例草案第 81 條

That clause 81 be amended, by adding —

"(5) Without limiting the effect of subsection (4), where an order has been made by the court under section 46(1) allowing an amendment of the specification of a patent, no damages shall be awarded in any proceedings for an infringement of the patent committed after the date on which the order is made and before a copy of the order is filed with the Registrar for the purposes of section 46(5).".

That clause 81(4) be amended, by deleting "公布" wherever it appears and substituting "發表".

Clause 82

條例草案第 82 條

That clause 82 be amended, by deleting subclauses (1) and (2) and substituting —

"(1) If the validity of a patent is put in issue in proceedings for infringement of the patent and it is found that the patent is only partially valid, the court may, subject to subsection (2), grant relief in respect of that part of the patent which is found to be valid and infringed.

(2) Where in any such proceedings it is found that a patent is only partially valid, the court shall not grant relief by way of damages or costs, except where the plaintiff proves that the specification for the patent was framed in good faith and with reasonable skill and knowledge, and in that event the court may grant relief in respect of that part of the patent which is

valid and infringed, subject to the discretion of the court as to costs and as to the date from which damages should be reckoned."

That clause 82(3) be amended, by deleting "修改" where it twice appears and substituting "修訂".

Clause 84

條例草案第 84 條

That clause 84(2) be amended, in the Chinese text, by deleting ""indemnity basis"" and substituting ""彌償基準"".

Clause 91

條例草案第 91 條

That clause 91(1) be amended —

(a) in paragraph (e), by adding "which is invalid" after "of the patent".

(b) by deleting paragraphs (f), (g) and (h) and substituting -

"(f) that the patent is one of 2 standard patents for the same invention, the applications for which were filed by the same person and have the same deemed date of filing;

(g) that the patent is one of 2 short-term patents for the same invention, the applications for which were filed by the same person and have the same date of filing;

(h) that -

(i) the patent is one of 2 patents for the same invention, one such patent being a standard patent and the other being a short-term patent, the applications for which were filed by the same person and have the same deemed date of filing or date of filing; and

- (ii) the 2 patents are not under the proprietorship of the same person;"

That clause 91(1)(d) be amended —

- (a) by deleting "的申請書" and substituting "的申請".
- (b) by deleting "專利申請書" and substituting "專利的申請".

That clause 91 be amended, by adding —

"(3) In subsection (1)(f), (g) and (h) -

- (a) reference to the date of filing or deemed date of filing of an application for a patent shall be read as a reference to that date or, if priority was claimed in respect of the application, to the date of priority of the application;
- (b) reference to the applications for 2 patents being filed by the same person shall be read as a reference to that case or to the case where -
 - (i) the person filing one of the applications is the successor in title to the person filing the other application; or
 - (ii) the persons filing the applications are both successors in title to the same former proprietor of the invention."

Clause 94

條例草案第 94 條

That clause 94(2)(a) be amended, by adding "standard" before "patent".

That clause 94(3) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 94(3)(a) be amended, by deleting "a patent" and substituting "a standard patent".

Clause 104

條例草案第 104 條

That clause 104(3) be amended, by deleting "現聲明".

That clause 104(4)(b) be amended, by deleting "的任何" and substituting "中任何".

That clause 104(4)(c) be amended, by adding "提交採用該其他語文的該文件及" after "規定".

That clause 104(5) be amended, by deleting "under" and substituting "for the purposes of".

That clause 104(5)(a) be amended, by adding "譯本" after "文件".

Clause 106

條例草案第 106 條

That clause 106 be amended, by deleting subclause (2) and substituting —

"(2) If -

- (a) the language of the proceedings before the designated patent office is other than one of the official languages; and
- (b) the corresponding designated patent or designated patent application as translated into one of the official languages confers protection which is narrower than that conferred by it in the language of the proceedings before the designated patent office,

then a translation into one of the official languages of the specification of the corresponding designated patent or of the claims of the corresponding designated patent application shall be treated as the authentic text of the specification of the standard patent or of the claims of the standard patent application respectively for the purpose of any proceedings under this Ordinance, other than proceedings for the revocation of the patent."

That clause 106(3) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 106(3) be amended —

- (a) in paragraph (a), by deleting "該項申請" and substituting "該項徵用".
- (b) by deleting "使用" wherever it appears and substituting "徵用".

That clause 106(4) be amended, by deleting "公布" wherever it appears and substituting "發表".

Clause 109

條例草案第 109 條

That clause 109 be amended —

- (a) in paragraph (a), by deleting "當其時就該項發明的申請人或" and substituting "就申請人或當其時該項發明的".
- (b) by deleting "專利申請書" and substituting "專利申請".
- (c) by deleting "支持該項符合任何訂明條件的" and substituting "符合任何訂明條件的支持該項".

That clause 109(b) be amended, by deleting "at the date of commencement of this Ordinance".

Clause 110

條例草案第 110 條

That clause 110(1)(a) be amended, by deleting "convention country" and substituting "Paris Convention country or WTO member country, territory or area".

That clause 110(2)(a) be amended, by deleting "convention country" and substituting "Paris Convention country or WTO member country, territory or area".

That clause 110(2)(b) be amended, by deleting "convention country" and substituting "Paris Convention country or WTO member country, territory or area".

That clause 110(3) be amended —

- (a) in paragraph (a), by adding "of an application for a short-term patent" after "filing".

- (b) in paragraph (b), by adding "for a short-term patent" after "previous first application".
- (c) in paragraph (c), by adding "for a short-term patent" after "previous application".
- (d) by deleting "'regular filing" (正規提交)" and substituting "'regular filing of an application for a short-term patent" (短期專利申請的正規提交)".
- (e) by adding "for the short-term patent" after "the application" where it first appears.

That clause 110(4) be amended, by deleting "convention country" and substituting "Paris Convention country or WTO member country, territory or area".

That clause 110(4) be amended, by deleting "型號" and substituting "新型".

Clause 113

條例草案第 113 條

That clause 113(1) be amended —

- (a) by adding "be signed by the applicant and" after "short-term patent shall".
- (b) in paragraph (b)(ii), by deleting "and 4 subsidiary claims".

That clause 113 be amended, by deleting subclause (2) and substituting —

"(2) An application for a short-term patent -

- (a) shall state the name and address of the applicant;
- (b) shall identify the person or persons whom the applicant believes to be the inventor or inventors and shall specify the last known address of that person or persons;
- (c) where the applicant is not the sole inventor or the applicants are not the joint inventors, shall contain a statement indicating the derivation of his or their entitlement to exercise the right to the short-term patent; and
- (d) shall specify an address in Hong Kong for service of documents."

That clause 113(4)(b) be amended —

- (a) in subparagraph (iii), by deleting "or".
- (b) in subparagraph (iv), by deleting the full stop and substituting a semicolon.
- (c) by adding -
 - "(v) in relation to any invention which requires for its performance the use of a micro-organism, information concerning the availability to the public of samples of the mirco-organism."

That clause 113(4)(b) be amended, in the Chinese text, by deleting subparagraph (ii) and substituting —

"(ii) 按照第 111 條所作出的就任何較早的專利申請具有優先權的聲

稱和該條所指的支持優先權的文件”。

That clause 113(8)(a) be amended, by adding "報告" after "查檢的”。

Clause 115

條例草案第 115 條

That clause 115(1) be amended, by deleting "mentioned in" and substituting "made for the purposes of”。

That clause 115(4) be amended, by deleting "優先的" and substituting "優先”。

Clause 117

條例草案第 117 條

That clause 117 be amended, by deleting paragraph (d) and substituting —

"(d) any matter specified in section 45, 77, 78, 79, 93, 94, 96, 97, 100, 109, 110, 111(2) to (6) or 120(2).”。

That clause 117 be amended, by deleting "明文的" and substituting "有明文”。

Clause 119

條例草案第 119 條

That clause 119(1) be amended, by deleting "不得在" and substituting "不得”。

That clause 119(1)(b) be amended, by deleting "6" and substituting "12”。

Clause 125

條例草案第 125 條

That clause 125(1)(b) be amended, by adding "and (2A)" after "(2)".

That clause 125 be amended, by adding —

"(2A) Despite subsection (2), where the date of grant of a short-term patent occurs after the expiry of the 4th year from the date of filing of the application for that patent then -

- (a) the prescribed renewal fee may be paid at any time before the expiry of 3 months beginning from the date of grant and in the event of such payment the patent shall remain in force for the balance of the period of 4 years specified in subsection (2);
- (b) the patent shall cease to have effect under this section if, and only if, the prescribed renewal fee is not paid as provided in paragraph (a)."

That clause 125(4) be amended, by adding "or (2A), as the case may be," after "(2)".

That clause 125(4) be amended —

- (a) by deleting "緊接".
- (b) by deleting "的有效期".
- (c) in paragraphs (b) and (c), by deleting "的有效期沒有" and substituting "未曾".

That clause 125(5)(b) be amended, by deleting "生效" and substituting "有效".

That clause 125(5)(b) be amended, by adding "or (2A)" after "(2)".

Clause 128

條例草案第 128 條

That clause 128(1)(a) be amended, by deleting "registered" and substituting "granted".

Clause 130

條例草案第 130 條

That clause 130(1) be amended, by deleting "is entitled to appear" and substituting "shall be entitled to appear or be represented".

Clause 132

條例草案第 132 條

That clause 132(1) be amended —

- (a) in paragraph (b), by deleting "he" where it first appears and substituting "the Registrar".
- (b) by adding -

"(3) Reference in subsection (1) to an option to make an application either to the court or to the Registrar includes reference to an option to refer a question either to the court or to the Registrar."

Clause 140

條例草案第 140 條

That clause 140 be amended, by deleting the clause and substituting —

"140. Falsification of register, etc.

A person who -

- (a) makes or causes to be made a false entry in any register kept under this Ordinance, knowing the entry to be false; or
- (b) makes or causes to be made a writing falsely purporting to be a copy or reproduction of an entry in any register kept under this Ordinance, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the writing to be false,

commits an offence and is liable -

- (i) on summary conviction, to a fine at level 5 and to imprisonment for 6 months;
- (ii) on conviction on indictment, to imprisonment for 2 years."

Clause 144

條例草案第 144 條

That clause 144(2)(b) be amended, by adding "行" after "可公訴罪".

That clause 144(7) be amended, by deleting "shall be guilty of the like offence" and substituting "is also guilty of the offence and liable to be proceeded against and punished accordingly".

Clause 156

條例草案第 156 條

That clause 156 be amended, by deleting subclause (2) and substituting —

"(2) Subject to subsection 3 and to necessary modification -

- (a) sections 73 to 75, 80, 81, 85 to 87, 89 and 90 shall apply to any act done on or after the commencement date which infringes an existing registered patent; and
- (b) sections 82 to 84 shall apply to any such act which infringes an existing registered 1977 Act patent,

as those sections apply to infringements of a patent granted under this Ordinance."

Clause 157

條例草案第 157 條

That clause 157(1) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 157(2) be amended, by deleting "公布" wherever it appears and substituting "發表".

That clause 157(2)(d) be amended, by adding "的" after "法令專利".

That clause 157(3) be amended —

(a) in paragraph (g) -

- (i) by deleting "entries appearing at the commencement date in the register kept under the repealed Ordinance" and substituting "details of patents registered under the

repealed Ordinance before the commencement date";

(ii) by deleting "such entries" and substituting "such details";

(iii) in subparagraph (ii), by deleting "of an entry in the register." and substituting "in the register of such details;".

(b) by adding -

"(h) for the amendment by the Registrar by notice published in the Gazette of any time limit specified in, or any Schedule to, such rules.".

That clause 157(3)(c) be amended, by deleting everything from "即使" to "會具有效力" and substituting "在生效日期當日或之後生效的在聯合王國的現有註冊專利的任何修訂或撤銷，即使或會自任何早於生效日期的日期起在聯合王國具有效力，"。

Clause 158

條例草案第 158 條

That clause 158 be amended, in the definition of "待決的將專利根據已廢除條例註冊的申請", by deleting "的申請（該項申請並非屬一項在生效日期時已根據廢除條例註冊的申請）" and substituting "（但在生效日期時仍未根據已廢除條例註冊）的申請；"。

That clause 158(1) be amended —

(a) by deleting the definition of "existing registered patent" and substituting -

""existing registered patent" (現有註冊專利) means a 1949

Act or 1977 Act patent which -

- (a) was registered under the repealed Ordinance before the commencement date; and
- (b) at the commencement date -
 - (i) was still in force in the United Kingdom;
 - (ii) had ceased to have effect in the United Kingdom, but subsequently is treated for the purposes of the 1977 Act as having never expired; or
 - (iii) had ceased to have effect in the United Kingdom but subsequently is restored by an order made under the 1977 Act;"
- (b) by deleting the definition of "published application for a 1977 Act patent" and substituting -

""published application for a 1977 Act patent" (已發表的 1977 年法令專利的申請) means an application for a patent -

- (a) pursuant to which there could be granted a 1977 Act patent; and
- (b) published before the commencement date,

and in the case of an international application reference in paragraph (b) to publication shall be read as a reference to such publication of the application by a designated patent office as serves to indicate that the international application has validly entered its national

phase;".

Question on the amendments put and agreed to.

修正案之議題經付諸表決，並獲通過。

Question on clauses 2, 5, 8, 12, 15, 16, 19, 22, 23, 24, 29, 37, 43, 46, 51, 52, 56, 61, 62, 73, 74, 75, 81, 82, 84, 91, 94, 104, 106, 109, 110, 113, 115, 117, 119, 125, 128, 130, 132, 140, 144, 156, 157 and 158, as amended, put and agreed to.

經修正的條例草案第 2、5、8、12、15、16、19、22、23、24、29、37、43、46、51、52、56、61、62、73、74、75、81、82、84、91、94、104、106、109、110、113、115、117、119、125、128、130、132、140、144、156、157 及 158 條之議題經付諸表決，並獲通過。

New clause 124A

新訂的條例草案第 124A 條

Short-term patent application

based on international application

以國際申請為基礎的短期專利申請

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

條例草案條文經過首讀，並依據《會議常規》第 46 條第(6)款的規定，受命安排二讀。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I propose that new clause 124A as set out in the paper circularized to Members be read the second time.

Clause 124A makes it clear that our short-term patent system will also be able to deal with international applications seeking utility model protection in the Mainland. This new clause is supported by the Bills Committee.

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

條例草案條文二讀之議題經提出待議，隨即付諸表決，並獲通過。

Clause read the Second time.

條例草案條文經過二讀。

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that new clause 124A be added to the Bill.

Proposed addition

擬議的增補

New clause 124A

新訂的第 124A 條

That the Bill be amended, by adding immediately after clause 124 —

**"124A. Short-term patent application based
on international application**

(1) Where an international application seeking a patent for a utility model and designating the People's Republic of China has entered its national phase in the People's Republic of China, the applicant in the international application may apply for a short-term patent for the invention (if any) disclosed in that application.

(2) An application for a short-term patent made pursuant to this section may be filed at any time before a date 6 months after the entry into the national phase of the international application in the People's Republic of China, or such other date as may be prescribed by rules.

(3) An application for a short-term patent made pursuant to this section shall contain -

- (a) a photocopy of the international application as published by the International Bureau under Article 21 of the Patent Cooperation Treaty;

- (b) a photocopy of the international search report in relation to the international application as published under Article 21(3) of the Patent Cooperation Treaty (whether contained in the international application as published or separately published);
- (c) the date of entry of the international application into the national phase in the People's Republic of China;
- (d) a photocopy of the translation of the international application (if any) published by the Chinese Patent Office; and
- (e) a photocopy of any information that may be published by the Chinese Patent Office concerning the international application.

(4) Section 113 applies in relation to an application for a short-term patent made pursuant to this section as if for subsection (1)(b) to (d) of that section there was substituted a reference to the documents specified in subsection (3)(a) to (e) of this section.

(5) Where an application made pursuant to this section results in the grant of a short-term patent, the application shall be deemed to have as its date of filing the international filing date accorded to the international application for the purposes of Article 11 of the Patent Cooperation Treaty and, in this Ordinance, reference to the date of filing of an application in relation to a short-term patent which has been granted pursuant to an application made as provided for in this section shall be construed accordingly.

(6) In this section, "Chinese Patent Office" (中國專利局) means the office established under the laws of the People's Republic of China for the granting of patents for inventions."

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

增補新條文之議題經提出待議，隨即付諸表決，並獲通過。

Schedules 1 and 2

附表 1 及 2

SECRETARY FOR TRADE AND INDUSTRY: Mr Chairman, I move that the Schedules be amended as set out in the papers circularized and tabled for Members' consideration. The changes are technical and we have briefed the Bills Committee on these.

Mr Chairman, I beg to move.

Proposed amendments

擬議修正案內容

Schedule 1

附表 1

That Schedule 1 be amended —

- (a) by deleting the Schedule heading and substituting "PARIS CONVENTION COUNTRIES AND WTO MEMBER COUNTRIES, TERRITORIES AND AREAS".
- (b) by deleting -

**"Countries which have acceded
to the Paris Convention"**

and substituting -

"Paris Convention countries"

The following are specified for the purposes of the definition of "Paris Convention country" in section 2(1) as countries which have acceded to the Paris Convention -".

- (c) under the heading "**Paris Convention countries**", by adding -

"Colombia
Equatorial Guinea
Nicaragua
Panama
Sierra Leone
United Arab Emirates".

(d) by deleting -

**"Countries, territories and areas
which have acceded to the World
Trade Organisation Agreement
(not including countries
which have acceded to
the Paris Convention)"**

and substituting -

**"WTO member countries, territories
and areas (not including Paris
Convention countries)"**

The following are specified as being countries, territories or areas which have acceded to the World Trade Organisation Agreement -".

(e) under the heading **"WTO member countries, territories and areas (not including Paris Convention countries)"** -

(i) by deleting -

"Colombia
Nicaragua
Tanzania
United Arab Emirates";

(ii) by adding -

"Angola
Papua New Guinea
Solomon Islands".

That Schedule 1 be amended, under the heading "Paris Convention countries" —

(a) by deleting -

"中華人民共和國
馬其頓
梵蒂岡
摩爾達維亞";

(b) by adding -

"中國
馬其頓，前南斯拉夫共和國
摩爾多瓦共和國
羅馬教廷".

Schedule 2

附表 2

That Schedule 2 be amended, by deleting everything after "如下 —" and substituting —

""7G. 過渡性條文

(1) 任何關於以下方面的問題 -

(a) 在生效日期前由政府或獲總督授權的人根據第 7B 條(按第 7B 條在緊接生效日期前的內容)作出的作為，是否構成為官方服務而徵用一項專利發明；或

- (b) 就任何上述徵用而須作出的任何付款（不論是付給有權就該項發明註冊專利的人或專利持有人或專用特許持有人），

須按照第 7B 至 7D 條（按第 7B 至 7D 條在緊接生效日期前的內容）予以裁定。

(2) 凡一項作為是在生效日期之前開始作出並在該日期當日或之後持續作出，而如該項作為根據在緊接該日期前有效的法律是會構成為官方服務而徵用一項專利發明的，則該項作為的持續，即構成本條例所指的官方徵用，而非構成對權利的侵犯。

(3) 在本條中，“生效日期” (commencement date) 指《1996 年知識產權（世界貿易組織修訂）條例》（1996 年第 11 號）第 11 條開始實施的日期。”。

Question on the amendments put and agreed to.

修正案之議題經付諸表決，並獲通過。

Question on Schedules 1 and 2, as amended, put and agreed to.

經修正的附表 1 及 2 之議題經付諸表決，並獲通過。

Council then resumed.

全體委員會隨而回復為立法局。

Third Reading of Bills

條例草案三讀

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

規劃環境地司報告謂：

GOVERNMENT RENT (ASSESSMENT AND COLLECTION) BILL

《地租（評估及徵收）條例草案》

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

經修正後已通過全體委員會審議階段。他動議三讀上述條例草案。

Question on the Third Reading of the Bill proposed, put and agreed to.

條例草案三讀之議題經提出待議，隨即付諸表決，並獲通過。

Bill read the Third time and passed.

條例草案經三讀通過。

THE SECRETARY FOR TRADE AND INDUSTRY reported that the

工商司報告謂：

PATENTS BILL

《專利條例草案》

had passed through Committee with amendments. She moved the Third Reading of the Bills.

經修正後已通過全體委員會審議階段。她動議三讀上述條例草案。

Question on the Third Reading of the Bill proposed, put and agreed to.

條例草案三讀之議題經提出待議，隨即付諸表決，並獲通過。

Bill read the Third time and passed.

條例草案經三讀通過。

MEMBERS' MOTIONS

議員議案

主席：兩項無法律效力之議案。本席已接納內務委員會就議案辯論之發言時限所提建議，而各位議員亦已於五月二十六日接獲有關通告。每位動議議案之議員連發言答辯在內可有 15 分鐘發言，另有 5 分鐘可就擬議修正案發言。動議修正案之議員及其他議員則每人各有 7 分鐘發言。根據《會議常規》第 27A 條，任何議員若發言超逾時限，本席須令該議員停止發言。

SUPPRESSING PROPERTY PRICES

壓抑樓價

陳婉嫻議員動議下列議案：

“本局促請政府進一步採取有效措施壓抑樓價，以免因炒賣活動導致樓價飆升，使市民無法負擔。此外，為了使市民免受種種炒樓手法的影響，政府應增加房屋資訊的透明度，以協助有意置業的市民作出明智決定。政府更要從速落實以下建議： ”

- (a) 每年公布未來 5 年用於興建房屋的土地供應量；