OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 18 December 1996

The Council met at half-past Two o'clock

MEMBERS PRESENT:

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

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

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

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

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

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

THE HONOURABLE SZETO WAH

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

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

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

THE HONOURABLE ERIC LI KA-CHEUNG, O.B.E., J.P.

THE HONOURABLE FRED LI WAH-MING

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

THE HONOURABLE JAMES TO KUN-SUN

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

DR THE HONOURABLE YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

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

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN
THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

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

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN
THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

DR THE HONOURABLE JOHN TSE WING-LING

THE HONOURABLE LAWRENCE YUM SIN-LING

MEMBERS ABSENT:

DR THE HONOURABLE PHILIP WONG YU-HONG

THE HONOURABLE LEE CHEUK-YAN

THE HONOURABLE DAVID CHU YU-LIN

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

PUBLIC OFFICERS ATTENDING:

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

THE HONOURABLE DONALD TSANG YAM-KUEN, O.B.E., J.P.
FINANCIAL SECRETARY

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

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

MR CHAU TAK-HAY, C.B.E., J.P.
SECRETARY FOR BROADCASTING, CULTURE AND SPORT
MR GORDON SIU KWING-CHUE, J.P.
SECRETARY FOR TRANSPORT

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

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

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

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

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

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

MR LAM WOON-KWONG, J.P.
SECRETARY FOR THE CIVIL SERVICE

MR STEPHEN IP SHU-KWAN, J.P.
SECRETARY FOR ECONOMIC SERVICES

MR KWONG HON-SANG, J.P.
SECRETARY FOR WORKS

CLERKS IN ATTENDANCE:

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

MISS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

PAPERS

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

Subject	
Subsidiary Legislation	*L.N. No.*
Immigration (Amendment) (No. 2) Regulation 1996	516/96
Medical Registration (Fees) Regulation.....	517/96
Medical Registration (Miscellaneous Provisions) Regulation	520/96
Medical Practitioners (Registration and Disciplinary Procedure) Regulation.....	521/96
Road Traffic (Construction and Maintenance of Vehicles) (Amendment) Regulation 1996	522/96
Road Traffic (Parking) (Amendment) Regulation 1996.....	523/96
Road Traffic (Public Service Vehicles) (Amendment) (No. 2) Regulation 1996	524/96
Road Traffic (Registration and Licensing of Vehicles) (Amendment) Regulation 1996	525/96
Road Traffic (Village Vehicles) (Amendment) Regulation 1996	526/96
Ferry Services (Amendment) Regulation 1996.....	527/96
Road Tunnels (Government) (Amendment) Regulation 1996	528/96

Road Traffic Ordinance (Amendment of Schedule 8) Order 1996 ..... 529/96

Protection of Children and Juveniles (Places of Refuge) (Amendment) Order 1996 ..... 530/96

Drug Addiction Treatment Centre (Chi Ma Wan Drug Addiction Treatment Centre) Order 531/96

Immigration (Vietnamese Migrants) (Detention Centres) (Designation) (Amendment) Order 1996 .... 532/96

Immigration (Vietnamese Migrants) (Detention Centres) (Amendment) Rules 1996..... 533/96

Securities (Exchange — Traded Stock Options) (Amendment) (No. 3) Rules 1996..... 534/96

Employees Retraining Ordinance (Amendment of Schedule 2) (No. 3) Notice 1996 ..... 535/96

Gas Safety (Amendment) Ordinance 1996 (3 of 1996) (Commencement) Notice 1996 ..... 536/96

Official Languages (Authentic Chinese Text) (Chinese Visa Office (Privileges and Immunities) Ordinance) Order ..... (C) 128/96

Official Languages (Authentic Chinese Text) (Corporate Bodies Contracts Ordinance) Order..... (C) 129/96

Official Languages (Authentic Chinese Text) (Census and Statistics Ordinance) Order ..... (C) 130/96

Sessional Papers 1996-97

No. 44 — Report by the Trustee of the Police Children's Education Trust, Police Education and Welfare Trust for the period 1 April 1995 - 31 March 1996

No. 45 — Environment and Conservation Fund
Trustee Report 1995-96

No. 46 — Report of the Brewin Trust Fund Committee on the Administration of the Fund for the year ended 30th June 1996

No. 47 — Queen Elizabeth Foundation for the Mentally Handicapped
Report and Accounts 1995-96

No. 48 — The Lord Wilson Heritage Trust
Annual Report 1995-1996

No. 49 — Ocean Park Corporation
Annual Report 1995/96

No. 50 — Grantham Scholarships Fund
Annual Report for the year 1 September 1995 to 31 August 1996

No. 51 — The Sir Murray MacLehose Trust Fund
Trustee's Report for the period 1 April 1995 to 31 March 1996

No. 52 — Emergency Relief Fund
Annual Report by the Trustee for the year ending on 31 March 1996

No. 53 — Social Work Training Fund
Thirty-fifth Annual Report by the Trustee for the year ending on 31 March 1996

No. 54 — Revised List of Works annexed to the Regional Council's Revised Estimates of Revenue and Expenditure for 1996/97

No. 55 — Revised List of Works approved by the Urban Council for the quarter ended 30 September 1996

No. 56 — The Accounts of the Lotteries Fund 1995-96

No. 57 AIDS Trust Fund
1995-96 Annual Accounts

ADDRESS

OCEAN PARK CORPORATION ANNUAL REPORT 1995/96

MR RONALD ARCULLI: Mr President, tabled before the Council today is the 1995-1996 annual report of the Ocean Park Corporation.

In the financial year that ended on June 30 1996, the Ocean Park enjoyed another record attendance of 3.34 million visitors, an 1% increase over the year before. Its operating income in the year was $300 million, while its total surplus was $19 million. These encouraging results were achieved despite the adverse financial impact brought on by the Aberdeen landslide that resulted in the Park's partial closure and a three-month disruption in operation.

In terms of tourist visitor numbers, the Park has seen an 8% increase in the year, thanks mainly to the steady increase of visitors from China, Taiwan and Southeast Asia, and a notable 19% increase from Korea. All of these markets are being effectively tapped by intensified advertising and promotion efforts, some in collaboration with the Hong Kong Tourist Association, to promote the Park as one of the territory's top tourist attractions.

Last year was also a year of considerable progress for the Park's conservation function, particularly for captive breeding programmes, and for the Ocean Park's Conservation Foundation and its efforts to save Asia's endangered marine mammals.

On January 21 this year, we opened the Ocean Park Conservation Square with its distinctive bronze baiji dolphin sculpture and a "Friends of the Ocean" signature brick wall at the Park's Main-Entrance Plaza. That day was declared to be Ocean Park's Conservation Day, and the Park's daily admission revenues were donated to the Ocean Park Conservation Foundation, as they shall be every year henceforth on the second Saturday of every January. Response to this programme has been most encouraging.

During the year, the Park's captive breeding programmes gained further successes. The births of another male dolphin, butterflies and rare species of birds justifies our devotion in this endeavour. Whilst on the subject of conservation, a large-scale waste recycling programme was launched to encourage visitors to sort and recycle waste and animated cartoon-style "talking trees" are found in various locations within the Park.

On the educational front, another programme was launched. This is the Ocean Park's "Sealion Fun Express" mobile classroom with this sealion star travelling to schools and community centres. The Ocean Park also has an ongoing commitment to improve access to the Park's facilities for Hong Kong's disabled residents. About 3 000 disabled visitors enjoyed free admission to the Ocean Park on the International Day for Disabled Persons.

The Park's importance as a must-see attraction for many visitors was further highlighted in the year with visits from prominent Chinese leaders including Vice Foreign Ministers Mr JIANG Enzhu and Mr ZHANG Deguang.

On a much broader scale, an inspired and intensified public multimedia advertising and promotional campaign was launched in the summer of 1996. Along with this, the Ocean Park's newest attraction, the $63 million Film Fantasia Simulator Ride, opened in July this year, takes visitors on a fantastic yet realistic adventure with multi-sensory experiences. On the other hand, the Ocean Park Theatre is undergoing a $70 million technical renovation to enhance the living environment of our marine mammals.

Looking to the future, the Ocean Park's long-term development plans will continue to better serve the needs of our guests of different ages and interests within the community. Existing new plans include the creation of "Discovery of the Ancient World" trail in the Lowland area, where visitors will encounter a "lost" civilization living in the environment of a pristine, undisturbed rainforest. This attraction is scheduled to open in the summer of 1997.

After a year that was both rewarding and eventful, the Ocean Park will continue to work to fulfill its mission to provide a balanced mixture of entertaining, recreational, educational and conservation programmes. I believe the Ocean Park is well set to achieve even higher levels of popularity and success.

Thank you, Mr President.

ORAL ANSWERS TO QUESTIONS

Official Residence for Public Officers

1. **MR ERIC LI** asked (in Cantonese): *Will the Government inform this Council:*

(a) whether any specific guidelines have been formulated and, if so, by which public officer and when, regarding the provision of official residence for public officers; and whether, in determining the provision of official residence for public officers, consideration has been given to the constitutional status, authority and job nature of these public officers as well as the existing facilities available for their use; and

(b) whether the Government will conduct reviews regularly in order to determine if the provision of official residence will be extended to other public officers of equal status to those who are presently provided with official residence; if not, why not?

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, official residences are only provided to top officials in the Government, taking into account their status in the Government hierarchy and such relevant factors as representational obligations, authority and nature of job. Provision of official residence is made on a highly selective basis as it includes free utilities (water, gas and electricity), non-accountable entertainment allowance and provision of domestic servants. Each application is considered on its individual merits.

In approving the designation of an official residence, it is necessary to consult the Standing Commission on Directorate Salaries and Conditions of Service before a submission is made to the Finance Committee for approval of the financial implications.

We are satisfied that the present number of official residences is adequate in respect to the existing government hierarchy. The small number of such residences and the very critical scrutiny given to any proposals to create a new residence means that this is not a subject amenable to review.

MR ERIC LI (in Cantonese): *Mr President, I understand that there are currently four official residences. The Government seems to have failed to specify when and by whom the criteria concerned were set. However, this does not matter so much. Since 11 February 1993, the Governor has ceased to be the President of the Legislative Council, and the President has since been elected from among its Members. Since the President of the Legislative Council is also a public officer, will the Government follow the example of some foreign countries which provide official residences to the top officials of their executive, judicial and legislative branches? Can the President of this Council satisfy the application criteria just mentioned? Does the Legislative Council have to submit a formal application before such a request can be considered?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, it is the policy of the Government to provide official residences to civil servants only. I do not think that the President of the Legislative Council falls into this particular category.

MISS EMILY LAU (in Cantonese): *Mr President, does the Government have any information on a comparison between Hong Kong and its neighbouring countries or areas in this particular respect? I so ask because we sometimes feel that the taxpayers of Hong Kong have been treating those top civil servants much too well. That is why we want to know whether the Government is aware of the practices of other places in connection with the provision of official residences. Just how many top officials are provided with official residences? And since the Government sometimes make reference to the private sector when determining the terms and conditions it offers, will the Government also make a similar reference on this particular matter?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, I do not have any information on hand which can compare our practices with those of foreign governments. Regarding the provision of official residences, I must stress that official residence is not a type of fringe benefit. They are provided on the basis of job requirements. As a result, the question of somebody being treated much too well simply does not exist.

Regarding a comparison with the private sector, Mr President, I do not think that making such a reference is at all appropriate because the job nature of the Government is completely different from that of the private sector.

MISS EMILY LAU (in Cantonese): *Mr President, if the Government does not have any information on hand for comparing our practices with those of foreign countries, can a written reply be provided later?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, we can try to obtain some information on this. However, I must stress that since the political systems and responsibilities of civil servants in different countries are not the same, it will be difficult for us to make a straightforward comparison. That said, we will still attempt to obtain some information on this. (Annex I)

DR LAW CHEUNG-KWOK (in Cantonese): *Mr President, since the provision of official residences includes the provision of domestic servants, will the Government inform this Council whether any foreign domestic helpers are currently employed to work in the official residences? Since the wages of foreign domestic helpers are lower, will the Government consider employing them?*

PRESIDENT (in Cantonese): I am afraid this is beyond the scope of the original question and reply.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, the main reply given by the Secretary for the Civil Service mentions the provision of an entertainment allowance. Is there any quota for such an allowance? And, will the Government review whether the quota concerned is reasonable?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, the amount of non-accountable entertainment allowance received by an official provided with an official residence actually depends on his or her rank and post. For example, the Chief Secretary is currently entitled to $392,400 a year, while the Attorney General receives $196,200. Such levels are set in the light of past expenditure patterns and the estimated expenditure adjustments in a coming year.

MR ERIC LI (in Cantonese): *Mr President, it has recently been mentioned that some government departments own some informal official residences. Will the Government confirm that there is no such arrangement, that is, government departments do not own any informal official residences?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, I can confirm that we do not have any informal official residences. Official residences are official residences as the name suggests. Any types of accommodation not classified as official residences will be grouped under the category of government quarters.

MISS EMILY LAU (in Cantonese): *Mr President, according to the Secretary's main reply, he will give very critical scrutiny to such applications. Will the Government inform us of the number of such applications which it received in the past three years? How many of such applications were approved? And, how many of them were rejected?*

SECRETARY FOR THE CIVIL SERVICE (in Cantonese): Mr President, the last time we received an application for creating a new residence was in 1990. At that time, the then Commissioner of Police applied for approval to turn his residence into an official residence. This application was turned down by us.

Contractor-Subcontractor Disputes

2. **MR NGAN KAM-CHUEN** asked (in Cantonese): *It is learnt that in July this year, the developer of a construction site in Tai Po terminated the contract with the contractor for alleged delays in the construction work. The contractor subsequently went into liquidation, and the subcontractors were thus unable to reclaim payments on wages and materials amounting to over $30 million. In this connection, will the Government inform this Council:*

(a) of the channels with which the subcontractor can lodge complaints or claims for compensation if he is in dispute with the contractor or the developer; and

(b) whether there is any legislation requiring a contractor to notify, within a certain period of time following receipt of a notice of termination of contract from the developer, the subcontractor to cease work?

SECRETARY FOR WORKS (in Cantonese): Mr President,

(a) For a construction project, whether for private or public works, sub-contractors and main contractors negotiate and enter into private contracts between them. Contractual disputes between sub-contractors and the main contractors are private commercial/contractual matters which arise in any form of business and are settled in accordance with the terms of their contracts. These are private matters between the various private parties and the Government does not intercede.

The subject matter involves the liquidation of the main contractor, in respect of which the appointed liquidator would apply the relevant statutory provisions of the Companies Ordinance (Cap. 32). Any debts and compensation owed to any of the entitled parties must be taken care of under the rules of the above Ordinance.

(b) There is no legislation requiring a contractor, following receipt of a notice of termination of contract from the developer, to notify his

sub-contractors to cease work. Such matters would normally be dealt with in the contracts between the main contractor and the sub-contractors.

MR NGAN KAM-CHUEN (in Cantonese): *Mr President, in part (a) of his reply, the Secretary for Works states that the Government does not intercede. Under the existing arrangements, an appeal case is dealt with under the sole charge of an adjudicator or professionals in the construction field. For example, an internal hearing may be conducted by the Institute of Architects to the exclusion of the developer, the main contractor and the sub-contractors concerned. Is this practice fair? Will the Government consider the introduction of a more equitable appeal mechanism by, for example, establishing an economic contracts adjudication panel, as in the case of other countries?*

SECRETARY FOR WORKS (in Cantonese): Mr President, I believe that the Honourable NGAN Kam-chuen is referring to the kind of adjudication which involves a main contractor and its employer. However, what we should discuss now actually involves the disputes between a main contractor and its sub-contractors. In general, such disputes should be dealt with according to the legal provisions contained in the contracts concerned.

PRESIDENT (in Cantonese): Mr NGAN, are you claiming that your question has not been fully answered?

MR NGAN KAM-CHUEN (in Cantonese): *No, not fully answered, Mr President. My follow-up question was: Will the Government consider the introduction of a more equitable appeal mechanism, such as an economic contracts adjudication panel?*

SECRETARY FOR WORKS (in Cantonese): Mr President, in case a sub-contractor is the designated sub-contractor specified in the contract concerned, the dispute should be adjudicated according to the procedures applicable to works projects in general. On the other hand, if a private contract is involved, the dispute will be more or less commercial in nature, and should

then be dealt with in the light of the relevant legal provisions.

MR CHAN WING-CHAN (in Cantonese): *Mr President, in part (b) of his reply, the Secretary for Works points out that there is no legislation requiring a contractor, following receipt of a notice of termination of contract from the developer, to notify his sub-contractors to cease work. However, as pointed out by the Honourable NGAN Kam-chuen, this has led to a loss of over $30 million on the part of the sub-contractors now in question. So, can it be concluded that there are loopholes in our existing legislation? And, will the Government consider any amendments to our existing legislation?*

SECRETARY FOR WORKS (in Cantonese): Mr President, there is no provision in the Buildings Ordinance (Cap. 123) requiring a main contractor, following receipt of a notice of termination of contract from the developer, to notify his sub-contractors to cease work. Section 24 of the Buildings Ordinance only requires that in case, for whatever reasons, the employment of the registered general contractor of a construction project is terminated, he must notify the Authorized Persons of the construction project within seven days so that the Authorized Persons can in turn notify the Building Authority. In addition, the registered general contractor must prove that the works he has completed can satisfy the requirements of the Buildings Ordinance and the Buildings Regulations. As I said just now, since the contracts signed between main contractors and sub-contractors are mostly commercial contracts, I do not think that it is necessary to amend the existing Ordinance for the purpose of handling cases such as the one in question. If commercial disputes are involved, I believe that there are some other legislation which can enable the parties affected to claim back the moneys owed to them.

MISS CHAN YUEN-HAN (in Cantonese): *When giving his reply just now, the Secretary for Works stressed the point on commercial contracts. However, the plain fact is that problems are found in the case in question, and in some past cases involving construction projects. A moment ago, two Members asked whether the Government would amend the existing legislation or take any remedial actions because of the problem. The Secretary for Works seems to have failed to answer this question. Is this question already beyond the scope of responsibilities of the Works Branch? Should it be answered by some other officials? Should we take a macro look at our legislation to see if there are any problems with the sub-contracting system adopted by developers and main*

contractors? What Mr NGAN pointed out a moment ago was just a single incident. But, as far as I know, many similar disputes happen in the construction industry every year. I hope that the President can take follow-up action for us in order to find out which government department should answer this question and who should take remedial actions to solve the problems arising from certain commercial contracts.

PRESIDENT (in Cantonese): As far as this question is concerned, the Secretary for Works is the spokesman for the Government.

SECRETARY FOR WORKS (in Cantonese): Mr President, although the case now in question involves a construction project, it is in essence no different from commercial disputes in general. In the case of a restaurant, for example, if it has to be liquidated because its landlord wants to resume the premises it occupies, its suppliers may be unable to get back the money owed to them. In that case, these suppliers will have to initiate legal actions to demand payments from the proprietor. It can thus be seen that disputes involving construction projects and other commercial disputes in general are basically the same.

MISS CHAN YUEN-HAN (in Cantonese): *Mr President, according to Mr NGAN, the case in question was obviously caused by the irresponsibility of the main contractor, and the sub-contractors and sub-sub-contractors were victimized as a result. At the beginning, the adjudication .....*

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, which part of your question has not been answered?

MISS CHAN YUEN-HAN (in Cantonese): *I think that the Government is simply trying to avoid talking about the issue because it has been attributing the case concerned wholly to the problems arising from commercial contracts. I want to ask the Government this question: Are incidents such as the Forest Hill case the result of loopholes in the drawing up of commercial contracts?*

PRESIDENT (in Cantonese): Miss CHAN Yuen-han, what I have just heard gives me the feeling that the Government has indirectly said that it is not prepared to conduct a review. Will the Secretary for Works please confirm whether this is true?

SECRETARY FOR WORKS (in Cantonese): Mr President, I think that there is no need to amend the existing legislation for the sake of this particular commercial dispute, the reason being that other ways of reclaiming the moneys owned are actually available.

PRESIDENT (in Cantonese): Miss CHAN, the Secretary for Works has already answered your question. If you want to discuss this matter further, please bring it up for discussion with the Government in the relevant Panel.

MR LAU CHIN-SHEK (in Cantonese): *Regarding the reclaiming of wages by construction workers, will the Secretary for Works inform this Council whether the liability will be extended from the contractors to the developer?*

SECRETARY FOR WORKS (in Cantonese): Mr President, if the employees of the main contractor want to reclaim payments of their wages, the Labour Relations Division of the Labour Department will handle their case for them. If the employees of the sub-contractors want to reclaim payments of their wages, I believe that the same practice will apply. As at 12 December this year, a total of 81 direct employees of the main contractor of Forest Hill, that is, Grand Choice Construction Company Limited, had approached the Labour Relations Division for assistance in reclaiming their wages and dismissal compensation. Since this company has gone into liquidation, the Labour Relations Division has assisted the employees concerned to apply for *ex-gratia* payments from the Protection of Wages on Insolvency Fund. The processing of these applications is now in progress. As for the employees of the sub-contractors involved in this case, the relevant trade unions have advised them that if they want to reclaim their wages from their employers or the main contractor, they can approach the Labour Relations Division for assistance. However, so far, none of these workers has sought assistance from the Division.

PRESIDENT (in Cantonese): Mr LAU Chin-shek, are you claiming that your question has not been answered?

MR LAU CHIN-SHEK (in Cantonese): *No, not answered, Mr President. Very clearly, my question seeks to clarify whether or not consideration will be given to extending the liability from the contractors to the developer. But, the Secretary for Works has not answered this question.*

SECRETARY FOR WORKS (in Cantonese): Mr President, since there is no direct commercial contracts between the sub-contractors and the developer, I believe that it will be legally difficult to lodge a direct claim against the developer.

MR NGAN KAM-CHUEN (in Cantonese): *Mr President, when replying to the question of the Honourable CHAN Wing-chan just now, the Secretary for Works said that according to section 24 of the Ordinance, the main contractor is required to notify the relevant sub-contractors within one week. I do not know whether I have interpreted his reply correctly. However, for the complaint case under discussion, the relevant sub-contractors were notified more than one week afterwards. Will the Government tell us whether the adjudication to be held will give a ruling on this fact?*

SECRETARY FOR WORKS (in Cantonese): Mr President, I am afraid that Mr NGAN may have misunderstood what I said. According to the existing Buildings Ordinance, the main contractor and the employer are not required to notify the sub-contractors. The Ordinance only requires that if the employment contract of the registered general contractor of a construction project is terminated, he must notify the Authorized Persons for that particular project within seven days, and the Authorized Persons are in turn required to notify the Building Authority.

MR CHEUNG HON-CHUNG (in Cantonese): *Mr President, the current situation is such that having employed some workers to work for him, a*

contractor can subsequently go into liquidation while the developer is not in any way liable. According to the way in which businesses are operated in general, the ownership of the products of the developer is subject to dispute because after receiving the services of its workers, the contractor goes into liquidation. Should the products concerned be regarded as part of the assets to be handled in liquidation? Since the ownership of the flats in question is subject to dispute, can the workers concerned apply for an injunction against the sale of the flats by the developer?

SECRETARY FOR WORKS (in Cantonese): Mr President, since the company concerned has gone into liquidation, the case should be handled in accordance with the provisions on liquidation of companies as contained in the Companies Ordinance. Such provisions, numbering more than 100 and with some of them being more important, are mainly about the liquidator. I believe that the provisions which concern the interests of the sub-contractors include those on appointment of liquidator, vesting of property of company in liquidation, exercise and control of liquidator's powers and liquidator's responsibilities.

MR TSANG KIN-SHING (in Cantonese): *Mr President, before they knew that the developer would terminate the contract of the main contractor, the sub-contractors and the sub-sub-contractors had already purchased huge quantities of materials. Then, upon contract termination by the developer, the hard-earned money of these sub-contractors was gone. How can these sub-contractors and sub-sub-contractors be protected? And, can they reclaim these materials? What steps should they take to achieve this purpose?*

SECRETARY FOR WORKS (in Cantonese): Mr President, in general, according to the contract between the developer and the main contractor, all the materials in the construction site would become the property of the employer following liquidation. However, if a sub-contractor can prove that the materials do belong to him, I believe that he can make a request to the liquidator when the latter is handling the case.

PRESIDENT (in Cantonese): Mr TSANG Kin-shing, are you claiming that your question has not been fully answered? Which part?

MR TSANG KIN-SHING (in Cantonese): *No, not fully answered, Mr President. Regarding the question of how sub-contractors can apply for reclaiming their materials, the existing situation is that the developer is behaving like bandits who rob the sub-contractors of their belongings.*

PRESIDENT (in Cantonese): Mr TSANG, according to the reply given just now, if sufficient evidence is available, an application can be submitted to the liquidator to reclaim the materials concerned.

Tower Ladders of Fire Services Department

3. **MR CHIM PUI-CHUNG** asked (in Cantonese): *Mr President, will the Government inform this Council:*

(a) the total number of fire engines fitted with tower ladders operated by the Fire Services Department (FSD), and the districts in which such fire engines are stationed;

(b) the maximum height reachable by these tower ladders in high-rise rescue operations; and

(c) the rescue measures adopted by the FSD in the event of a fire occurring in a building with its height exceeding that mentioned in the answer to (b) above, and whether the FSD will review and strengthen its fire-fighting equipment so as to better equip itself for high-rise rescue operations?

SECRETARY FOR SECURITY (in Cantonese): Mr President,

(a) The Fire Services Department (FSD) is equipped with 19 turntable ladders and three major snorkels. Of the turntable ladders, six are deployed in the Hong Kong Region, six in Kowloon and seven in the New Territories. As regards major snorkels, there is one in

Kowloon and two in the New Territories.

(b) There are two types of turntable ladders. They can reach a maximum height of 50 m and 37 m respectively. A major snorkel can reach a maximum height of 30 m.

(c) During fire operations, apart from using aerial equipment like turntable ladders to fight the fire externally, the firemen crew will also conduct internal fire suppression and rescue operation inside a building through staircases. The fire service installations in a building, including, for example, fire hoses and sprinkler system, will also be used to extinguish or to limit the fire.

FSD conducts regular review on the provision of fire fighting and rescue facilities, including the adequacy of aerial equipment for fire-fighting in high-rise buildings.

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, we know that a severe fire has occurred recently. Let me not mention which fire I am referring to because inquiries are still in progress, and I do not want to prejudice such inquiries. However, we all saw on television how tower ladders were used to rescue people from the fire which threatened their lives. We saw that although there were people waiting for rescue in every two windows, only one tower ladder was elevated at any one time to rescue one person only, and the descend was very slow. Why? I saw that there were three tower ladders at the scene. It was indeed very brazen of the Governor to assert, during the recent Governor's Question Time, that the fire-fighting equipment of Hong Kong was adequate. Will the Government conduct a serious review to see whether the deployment of two or three more tower ladders would have prevented more people from dying in the fire?*

SECRETARY FOR SECURITY: Mr President, I believe the Honourable CHIM Pui-chung was referring to the Garley Building fire. I did not think that the mentioning of the name of the building would have prejudiced judicial inquiries in any way.

Let me perhaps answer the Honourable CHIM Pui-chung in this way. There were three 50-metre turntable ladders and one major snorkel deployed to carry out fire fighting and rescue operation in the case of the Garley Building fire. The fire, although an extremely severe one, was not, I repeat was not, covering a very widespread area. Due to the topographical constraint, the deployment of additional turntable ladders was not operationally effective or possible. The use of additional turntable ladders would only hamper the movement of a ladder as each ladder needs adequate turnaround space to operate efficiently.

I do not accept the allegation in the Honourable CHIM Pui-chung's question that the Fire Services Department (FSD) has been negligent in any way in doing their best to fight the very tragic fire. The two reports published by the FSD last week on the cause of the fire and on the reasons why so many casualties were experienced were for all to see. There was no evidence whatsoever that the deployment of turntable ladders was the cause of the large number of casualties.

Having said that, the FSD itself recommends in the report that a further study should be made on the deployment of turntable ladders. I should just like to remind the Honourable CHIM Pui-chung that the Government has also just announced that a Committee of Inquiry under the Commissions of Inquiry Ordinance is to be established and it has a wide remit to look into all aspects of the Garley Building fire including the response of all our emergency services.

PRESIDENT (in Cantonese): Mr CHIM Pui-chung, are you claiming that your question has not been fully answered?

MR CHIM PUI-CHUNG (in Cantonese): *Mr President, what I have said was what I saw. The Government is free to account for it.*

PRESIDENT (in Cantonese): This is not a question.

MR CHAN WING-CHAN (in Cantonese): *Mr President, the Secretary for Security has just said that turntable ladders can reach a maximum height ranging from 37 m to 50 m. However, buildings nowadays are as tall as 40 storeys or even 50 storeys. How can a fire be put out once it has broken out?*

Also, in order to tie in with the development of these high-rise buildings what contingency fire-fighting measures does the FSD, or the Government, have in case the sprinkler system of a building breaks down?

SECRETARY FOR SECURITY (in Cantonese): Mr President, firstly, most of these very tall buildings of 40 to 60 storeys are relatively new ones, and inside these new buildings, there are usually adequate fire-fighting facilities such as fire hoses and sprinkler systems, which can help put out a fire or stop the spread of it. Secondly, during fire-fighting operations, apart from using what is known as aerial equipment, the FSD also sends its crew to conduct internal fire suppression and rescue operation inside a building through staircases.

MR JAMES TO (in Cantonese): *Mr President, major snorkels can reach a maximum height of 30 m, and turntable ladders can reach a maximum height of 37 m to 50 m. I believe that they all have their own special features and are equipped with the flexibility to handle operations under different circumstances. In paragraph (a) of the main reply, it is said that there is no major snorkel in the Hong Kong Region, while there is one in Kowloon and two in the New Territories. Although the maximum height of 30 m which a major snorkel can reach and its unique range of manoeuvre may perhaps make it different from a turntable ladder, I still wonder why there is not even one major snorkel in the Hong Kong Region? Is this a problem of resources, or of something else?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, Mr TO is quite right in saying that these two kinds of aerial equipment are of different designs and should be used for different purposes. During rescue operations, they can be deployed to meet different needs. For example, turntable ladders can reach greater heights, and can be operated in relatively narrow topographical environments. This is its mechanical feature. As for major snorkels, the heights they can reach are smaller, but their lateral range of operation is larger. Therefore, what equipment is to be used will have to depend on the topographical environment involved, one example being the room available for operations in the vicinity. Based on its past experience, the FSD views that owing to the hilly relief of Hong Kong Island, its narrow street layouts and the existence of old districts, major snorkels are not very suitable for use on Hong Kong Island under most circumstances. Therefore, it is absolutely not a problem of resources. Instead, it is the professional judgment of the FSD that there are not many places in the Hong Kong Region where it is suitable to use major snorkels.

Two-way Permit Holders

4. **MR YUM SIN-LING** asked (in Cantonese): *Mr President, will the Government inform this Council:*

(a) of the number of people entering Hong Kong from China on two-way exit permits and the number of such people who have overstayed, in the past 12 months;

(b) whether the Government will review the penalties for overstayers to ascertain if these penalties have any deterrent effect; if not, why not;

(c) in view of the fact that some of the two-way permit holders are involved in illegal activities (such as fraud, prostitution, illegal hawking and working as illegal foreign workers), what measures are in place to prevent such people from engaging in these illegal activities during their stay in the territory and to ensure that the offenders will not be able to come to the territory again; and

(d) whether it has discussed with the Chinese Government the problem of two-way permit holders committing crimes in the territory; if so, whether a consensus has been reached with the Chinese authorities for combating such activities?

SECRETARY FOR SECURITY (in Cantonese): Mr President,

(a) From 1 December 1995 to 30 November 1996, 298 775 Two-way Permit holders came to Hong Kong. During the same period, 28 636 Two-way Permit holders were found to have overstayed. Compared with the figures for the same period for the previous year, the percentage of overstayers has decreased from 15% to 9%.

(b) Any persons, including the Two-way Permit holders, who have breached their condition of stay in Hong Kong, will be charged for breach of condition of stay under section 41 of the Immigration

Ordinance (Cap. 115). In January 1996, a legislative amendment was introduced to increase the maximum fine for breach of condition of stay by 10 times from $5,000 to $50,000. After the revision, the usual fines imposed by the Courts on Two-way Permit overstayers have increased considerably from the former range of $500 - $1,000 to the current range of $1,500 - $2,000, with about 4% of the convicted overstayers fined $5,000 - $10,000. The decrease in the number of Two-way Permit overstayers from a monthly average of 3 188 in 1995 to 2 345 in 1996 indicates that the increased fines coupled with the stepping up of enforcement measures are effective deterrents.

The Administration will keep its immigration policy under constant review, but we do not have any plan to revise the penalties for overstaying at present.

(c) Any persons who are found to have committed an offence in Hong Kong will be apprehended and charged under the relevant provisions of the laws of Hong Kong.

In addition to the normal law enforcement measures taken by the police and other departments, the following actions have been taken:

(i) Regular and frequent raids and prosecution actions against Two-way Permit illegal workers and their employers have been launched. In the first 11 months of 1996, 1 523 anti-illegal worker operations were conducted. As a result, 2 191 Two-way Permit illegal workers and 778 employers hiring them were arrested. 2 066 of the Two-way Permit illegal workers and 329 employers were subsequently prosecuted.

(ii) A territory-wide publicity campaign against illegal employment was launched. Posters and announcements of public interest were prepared to send out a clear message to employers not to employ illegal workers.

(iii) Since March 1996, information leaflets were distributed to

Two-way Permit holders at immigration control points to alert them to the fact that it is an offence for them to take up employment, to establish or join in any business, to study or overstay, and that they would be prosecuted and repatriated if they commit any immigration offence.

(iv) With effect from January 1996, the maximum fines have been increased from $5,000 to $50,000 for any person taking up illegal employment, and, for employers of such illegal workers, from $250,000 to $350,000.

(v) Immigration Department will include the details of blatant offenders, whether of People's Republic of China (PRC) origin or otherwise, in a stop-list to prevent them from coming to Hong Kong again.

(d) Close and regular liaison is maintained with the Chinese authorities with a view to curbing illegal activities and abuses of the Two-way Permit system. The liaison between the police and the PRC law-enforcement agencies is done at both bilateral meetings and in the course of routine liaison through Interpol.

The Immigration Department and the relevant PRC authorities also exchange information on a regular basis. Information concerning blatant overstayers from China has also been passed to the Chinese side for their follow-up actions. The response from the Chinese authorities has been very positive. This is evidenced by their ready assistance to verify doubtful identities, confirmation of acceptance of persons to be repatriated, tightened control at their control points, and so on. We also understand that they have tightened up the issue of Two-way Permits to blatant offenders.

MR YUM SIN-LING (in Cantonese): *Mr President, paragraph (a) of the main reply pointed out that the percentage of overstayers has decreased. However, as the number of overstayers amounts to 30 000 per year, if the majority of the overstayers are involved in illegal activities, then the number of law offenders would be rather considerable. Could the Secretary provide this Council with the exact figure concerned? If the majority of overstayers have not involved in*

illegal activities, then could the Government provide this Council with the statistics regarding cases in which it has exercised its discretion to change the two-way permits concerned into one-way permits to enable the holders to stay in Hong Kong with their families? As a matter of fact, the Administration should review the situation with the Chinese Government and to provide the public with a clear account of the issue. Could the Secretary inform this Council whether information in this respect is available?

SECRETARY FOR SECURITY (in Cantonese): Mr President, it is not our practice to change the two-way permits into one-way permits. Under the existing Immigration Ordinance, the Director of Immigration could exercise certain kind of discretion. The Director of Immigration, after considering all the relevant information involved in a certain case, could exercise his discretion and permit certain overstayers who do not have the right of abode in Hong Kong to stay in the territory, no matter whether they entered Hong Kong legally or illegally. However, it only implies that the overstayers concerned will not be repatriated, the travel documents they held when entering Hong Kong will never be changed to other kinds of travel documents.

PRESIDENT (in Cantonese): Mr YUM Sin-ling, are you claiming that your question has not been fully answered?

MR YUM SIN-LING (in Cantonese): *Just about the power of discretion that the Secretary for Security has referred to. Could the Secretary inform this Council whether there is any statistics reflecting the types of cases in which the Director of Immigration has exercised his discretion?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, I do not have such figures on hand. However, as far as I know, the number of cases in which the Director of Immigration has exercised his discretion and permited the illegal immigrants concerned to stay in Hong Kong is very few. As for cases involving two-way permit holders, the number should be even less.

MRS SELINA CHOW (in Cantonese): *Mr President, a number of women from*

mainland China were found to have engaged in prostitution during the anti-vice operations held recently. Could the Secretary inform this Council how many, over the past 11 months, of such women with two-way permits were found to have overstayed? Does the Government have any special measures to curb the problem, such as tightening the processing procedures regarding single women entering the territority?

SECRETARY FOR SECURITY (in Cantonese): Mr President, it is true that a number of Chinese women holding two-way permits have been prosecuted for engaging in prostitution. During the first eight months of 1996, a total of 567 overstayers have been prosecuted for engaging in prostitution. When compared with the same period in 1995, the number of prosecution instituted has risen by 54%. In this regard, we have already discussed with the relevant bodies under the Chinese Government and have requested the Chinese authorities not to issue two-way permits to those applicants with bad records, especially those who have involved in prostitution or other illegal activities in Hong Kong before. In addition, if our staff members at the border control points reasonably suspect that certain two-way permit holders are entering Hong Kong with undesirable intentions, or that such persons do not have the financial resources to support their lives in Hong Kong, they are empowered to refuse the entry of such persons and to repatriate them back to China.

MR JAMES TO (in Cantonese): *Mr President, Could the Secretary inform this Council whether any first time entrants holding two-way permits have been refused entry? It is pointed out in paragraph (c)(v) of the main reply that two-way permit holders who have breached the conditions of stay would be included in a stop-list and denied entry when they come to Hong Kong again. In other words, the reason for the Government to prevent such persons from coming to the territory again is that they have offended the laws of Hong Kong before. I would like to know if there are any cases where factors such as sovereignty and the like have made it hard for the Administration not to allow certain persons from coming to Hong Kong for the first time, and it has to wait till the second time to deny them entry. In addition, would there be any difficulty for the Administration to request the Chinese Government not to issue permits to any persons if it is actually suspected that such persons would not abide by the conditions of stay or would engage in prostitution upon their first entry?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, just like any other visitors, two-way permit holders also have to go through immigration clearance when they come to Hong Kong. If our staff members stationing at the immigration control points have any reason to suspect that the intention to visit Hong Kong or the identity claimed by certain persons are not true, or that such persons would involve in undesirable activities in Hong Kong, or if we suspect that the travel documents that such persons hold are forged documents, we could refuse them entry. As far as the legal aspect is concerned, there has never been any difficulty. With regard to refusing two-way permit holders entry to Hong Kong and repatriating such persons back to China, there has not been any difficulty either according to my knowledge.

MR JAMES TO (in Cantonese): *Mr President, I have one more supplementary question. Could the Secretary provide us with the figures regarding the number of two-way permit holders who have been refused entry over the past few years?*

SECRETARY FOR SECURITY (in Cantonese): I would like to clarify if the Honourable James TO is referring to the number of two-way permit holders who have been refused entry upon their first visit to Hong Kong. I do not have such figures on hand, but I will provide Mr TO with an answer in writing. (Annex II)

MR HOWARD YOUNG (in Cantonese): *Mr President, the main question raised by the Honourable YUM Sin-ling is limited to two-way permit holders, but I believe that the crux of the problem lies in overstaying. The Secretary pointed out in his reply that the number of two-way permit holders overstaying is on the decrease. However, apart from two-way permits, Chinese Passport holders travelling to a third country en route Hong Kong could stay visa-free in the territority for seven days. I have asked about the figures in this respect in the past. Could the Secretary inform this Council if he knows whether the problem*

of overstaying of Chinese Passport holders is similar to that of the two-way permit holders, in other words, whether the situation is improving or deteriorating?

PRESIDENT (in Cantonese): The main question only asks about the two-way permit holders, but since other persons are also covered in part (b) of the question as it asks about overstayers, the Secretary may answer Mr Howard YOUNG's question if he so wishes, or he can provide Mr YOUNG with an answer in writing.

SECRETARY FOR SECURITY (in Cantonese): Mr President, as part of this supplementary question has exceeded the scope of the main question, I do not have the relevant information on hand, but I will provide Mr YOUNG with a written reply. (Annex III)

MISS EMILY LAU (in Cantonese): *Mr President, the Secretary mentioned in his main reply that 298 775 two-way permit holders have come to Hong Kong over the past 12 months, that means almost 288 persons every day. This is indeed an astonishing figure. Mr President, I would like to know why the Government has to allow so many people to come to Hong Kong everyday? Does the Government have the power to determine the number of persons coming to Hong Kong or is it solely determined by the Chinese Government? I would also like to know the reason for letting so many people in every day.*

SECRETARY FOR SECURITY (in Cantonese): Mr President, first of all, I would like to clarify one point. The way the Honourable Miss Emily LAU put it sounds like so many people are coming to settle in Hong Kong. This is by no means the case. Many two-way permit holders come to Hong Kong to visit their relatives here or for sight-seeing, both purposes are contributory to the economy of Hong Kong. As regards the figures, it has been our practice to discuss with the Chinese Government the number of two-way permit holders that we can receive over a certain period of time. Every decision is made after consultation has been completed and will be implemented step by step. With regard to our discussion with the Chinese Government, it was agreed by both

sides in 1994 that Hong Kong could receive on average 680 two-way permit holders every day.

Shelters for Taxi Stands

5. **MR CHOY KAN-PUI** asked (in Cantonese): *Mr President, it is learned that most taxi stands in Hong Kong are without shelters except those located at large shopping centers. Given that a considerable number of bus stops are already provided with shelters, will the Government inform this Council whether it will consider providing shelters at those taxi stands where the construction of such shelters is feasible, for the benefit of passengers queuing up for taxis; if so, of the expected commencement and completion dates of the projects concerned and the criteria adopted for determining the priority of the construction of shelters at taxi stands?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, covered shelters are provided for taxi passengers at many major public transport interchanges and commercial developments where taxi stands are located. For example, the taxi stands at the Edinburgh Place Ferry Concourse, Tsim Sha Tsui Ferry Concourse, Macau Ferry Terminal and Kai Tak Airport are all under cover. In the New Territories, covered taxi stands are also available at major transport interchanges and commercial complexes in Sha Tin, Fanling, Sheung Shui, Kwai Chung, Kwai Fong, Tsuen Wan and Tuen Mun. Covered taxi stands will also be provided in future at new transport interchanges such as those at the new airport and new MTR stations along the Airport Railway. We will also take the opportunity to provide cover for existing taxi stands under transport terminus modification projects, for instance, at Fu Heng Estate in Tai Po. In addition, some taxi stand shelters have been funded by district boards.

Many road side taxi stands, particularly those in the urban areas, are already protected by buildings and purpose-built shelters are therefore not necessary. In a few other cases, the taxi stands are located at places where the

construction of such shelters is not feasible. The need for cover is more urgently felt at taxi stands which are still exposed and heavily utilized. A number of these stands are in the New Territories. We are drawing up a list of such locations, in order of priority, and preparing a programme for implementation.

MR CHOY KAN-PUI (in Cantonese): *Mr President, could the Secretary inform this Council how many taxi stands have been provided with shelters by the Government so far; and of the number of sheltered taxi stands the Government plans to construct in future for various districts in the territority?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, we have already constructed 54 sheltered taxi stands territory-wide and we are planning to construct at least 46 more such taxi stands once we have identified the right locations and drawn up a priority list for implementation.

MR BRUCE LIU (in Cantonese): *Mr President, could the Secretary inform this Council whether the Government, after the policy as well as objective standards regarding the construction of shelters at taxi stands have been formulated, would consult the various district boards concerned before drawing up any list of location or list of priority? In addition, I would also like to ask the Secretary whether the Government has made similar policy as well as objective standards for green minibuses?*

PRESIDENT (in Cantonese): Secretary for Transport, you do not have to answer the second part of the question.

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, with regard to consultation, quite a number of district boards have already provided the Transport Department with many valuable opinions during our previous chances of co-operation. In relation to the 46 additional sheltered taxi stands that I referred to just now, the location for many of such taxi stands are in fact

proposed by the district boards concerned. To cite a few examples, the taxi stands located next to the Shatin Town Hall, at Fuk Man Road in Sai Kung, as well as at Fook Hong Street in Yuen Long, they are all provided with shelters after we have consulted the district boards concerned.

As for the green minibus stands, I would only say that if we could get enough resources for the purpose and that there are stands not protected by buildings nearby, then we would consider providing shelters for such stands.

PRESIDENT (in Cantonese): I knew you would answer that part as well.

MR JAMES TO (in Cantonese): *Mr President, just now the Secretary mentioned that the provision of shelters would be dependent upon the availability of resources. I have noticed that some advertisements are posted at certain carparks as well as at the shelters of certain bus stands in Central District, providing information and entertainment for the people as well as income for the companies concerned. Could the Secretary inform this Council whether the Government would apply this idea to the shelters at taxi stands, so that it could get the benefits that I have mentioned just now and should be glad to construct the shelters as a result?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, I think the Honourable James TO is referring to those bus stand shelters constructed by the bus companies concerned where advertising spaces are available for advertisers to bid for. We would consider adopting this measure at the taxi stands.

WRITTEN ANSWERS TO QUESTIONS

Expenditure of KCRC West Rail Division

6. **MR LO SUK-CHING** asked (in Chinese): *It is learnt that the Managing Board of the Kowloon-Canton Railway Corporation (KCRC) has endorsed the plan to reduce 50% of the staff of its West Rail Division (WRD), and that only about a dozen out of the 100 or so employees retained are local staff. However, despite this reduction, the monthly expenditure of the WRD still comes to about $20 million. This has given rise to public concern about whether the number of*

expatriate staff and the monthly expenditure of the WRD are still on the high side. In this connection, does the Government know:

(a) having regard to the fact that only about a dozen local employees of the WRD are retained, whether there is any impact on the Division in the long term in such areas as technology transfer, localization and communication with the Chinese side; if so, what the remedial measures are;

(b) whether the monthly expenditure of the WRD is spent entirely on monitoring consultancy contracts which amount to an average monthly cost of about $20 million; if so, of the reasons for this 1:1 ratio of supervision fees which differs from the normal ratio of 1:5;

(c) if the answer to (b) is in the negative, whether part of the monthly expenditure is spent on commissioning the study on Phase II projects; if so,

(i) of the respective percentages of the amounts spent on monitoring consultancy contracts and commissioning the study on Phase II projects; and

(ii) whether it is appropriate to commence the study on Phase II projects at the present stage?

SECRETARY FOR TRANSPORT (in Chinese): Mr President, at its meeting on 18 November 1996, the Managing Board of the Kowloon-Canton Railway Corporation (KCRC) decided to downsize the West Rail Division from 267 to 110 professional staff and 25 clerical and administrative staff members, and consequently the monthly expenditure of the West Rail Division will be cut by about half. This reduced monthly expenditure is dedicated mainly towards managing the Phase I technical studies, which are urgently needed to firm up the alignment and establish the land requirement of the Western Corridor Railway (WCR) project.

There are currently 10 KCRC staff members on the project team. Seven of them are Hong Kong permanent residents, while the remaining three are expatriates who have been working in Hong Kong for at least seven years. All

10 will remain on the downsized team. The remaining 100 professional staff members will continue to be filled by consultant staff. In the longer term, the KCRC envisage a progressive build up of their staff as planning for the project advances. The KCRC are now in the process of increasing the proportion of KCRC staff on the team through internal transfer and external recruitment.

As regards the specific points raised:

(a) The relatively small number of KCRC staff at present is not a permanent arrangement. As indicated above, the KCRC are in the process of progressively replacing consultant staff with their own staff. Such an approach should ensure a smooth transfer and retention of experience within the Corporation. As regards the KCRC's recruitment policy, the main criterion is to get the right person for the job. Localization is an important factor as the Corporation advertise overseas if and only if no suitable local candidates can be found.

(b) As will be seen from the first paragraph above, the monthly expenditure of the West Rail Division is incurred mainly for work relating to the Phase I technical studies. We are not aware of the ratio referred to by the Honourable Member; and

(c) There is no current spending on Phase II technical studies. However, in the light of Government's decision last week to construct the domestic passenger line of the WCR project first, there will be a need, in the months ahead, to move on to those parts of the Phase II technical studies which are necessary for the detailed design of this domestic passenger service. This will be the subject of further discussions between Government and the KCRC when the new Chairman of the Corporation is in post.

Refurbishment of MTR Train Cars

7. **MR LAU CHIN-SHEK** asked (in Chinese): *It is learnt that the Mass*

Transit Railway Corporation will spend more than a billion dollars to refurbish some 700 of its train cars. In this connection, does the Government know:

(a) whether the contract for this project will be awarded through open tender; if so, when the tender exercise will be conducted; and

(b) of any specific measures in place to ensure that this project is cost-effective and will not lead to fare increases in the future?

SECRETARY FOR TRANSPORT (in Chinese): Mr President, the Mass Transit Railway Corporation intends to award a contract for this project through public tender. The Corporation is now preparing the tender documents and expects to issue them early next year to a number of international companies which have been assessed and qualified as being suitable to carry out this project. The contract will be awarded in the last quarter of 1997. The target completion date for the whole project is 2001.

The costs and benefits of the project have been rigorously scrutinized by the Corporation and the capital expenditure required has been included in the Corporation's long-term financial forecasts. Since the capital expenditure will be spread over many years, it will not have any direct impact on fares.

Rules and Codes of Conduct for Stock Brokers

8. **MR CHIM PUI-CHUNG** asked (in Chinese): *Does the Government know:*

(a) of the respective dates of the introduction of rules and codes of conduct by the Securities and Futures Commission and the Stock Exchange of Hong Kong Limited, which spell out clearly the principles and practices which registered stock brokers or their staff should follow when dealing in transactions either for their own accounts or for their clients;

(b) whether, prior to the introduction of the above rules and codes of conduct, it was beyond the power of the authorities concerned to intervene in the way in which registered stock brokers or their staff handled their own transactions or those made on behalf of their

clients; and

(c) whether the Financial Secretary or the Secretary for Financial Services has the authority to ensure there are checks and balances in the application of the existing rules and codes of conduct; if not, why not?

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

(a) The Securities and Futures Commission (SFC) issued a Code of Conduct for persons registered with the Securities and Futures Commission in February 1994.

In addition, in 1986, the Stock Exchange of Hong Kong Limited (SEHK) promulgated the Exchange Rules and Regulations. In November 1993, the SEHK further issued a Code of Conduct Regulations which specifically expanded on the conduct requirements of the Exchange Rules and Regulations in compliance with the principles set out by the International Organization of Securities Commissions.

Together, they set out the principles and practices which registered stock brokers and their staff should follow when dealing in transactions either for their own accounts or for their clients.

(b) Under the Securities and Futures Commission Ordinance, the SFC is responsible for supervising and monitoring the activities of the SEHK; to take all reasonable steps to safeguard the interests of persons dealing in securities; to promote and encourage proper conduct amongst members of the SEHK; to suppress illegal, dishonourable and improper practices in dealing in securities; and to promote and maintain the integrity of registered persons.

These legislative requirements, either taken alone or together with the SFC's Code of Conduct, form the basis upon which the SFC carries out its surveillance and enforcement activities.

Separately, the Stock Exchanges Unification Ordinance requires the SEHK to ensure an orderly and fair market in securities trading through the facilities of the SEHK and to act in the interests of the public, having particular regard to the interests of the investing public. Since its inception, the SEHK has been monitoring the activities of its members and their employees in accordance with the obligations and powers stipulated in its Memorandum and Articles of Association, which provide that the SEHK should, *inter alia*, promote and protect the interests of all members of the public having dealings on the SEHK or with its members; make, amend and repeal rules and by-laws affecting the conduct of its members; and establish committees for the interpretation and enforcement of any such rules, by-laws and the requirements under the Stock Exchanges Unification Ordinance. In pursuit of these objects, the SEHK has made the Rules and Regulations referred to in Part (a) of this reply.

As the front-line regulator of the securities market, the SEHK has a duty to monitor compliance by its members and their staff of the Rules and Regulations and to ensure that they would deal with clients honestly and fairly, give clients priority in all trading and disclose fully to clients information relevant to dealing in securities for or on behalf of clients.

It is therefore the considered view of the Administration that there is no question of the SFC and the SEHK acting beyond their authorities in monitoring the registered persons or their members' dealing activities and in taking the necessary enforcement action to safeguard the interests of the investing public prior to the introduction of the relevant rules and codes of conduct.

(c) Any amendment to the Memorandum and Articles of Association, or to the Rules and Regulations of the SEHK proposed by the SEHK Council are subject to the approval of the SFC as set out in these documents and the Stock Exchanges Unification Ordinance.
The SFC in turn is subject to checks and balances stipulated in the law and under common law. For example, under the Securities and Futures Commission Ordinance (Cap. 24), the SFC is required to consult the Financial Secretary before exercising certain powers

under the Ordinance, and under the same Ordinance, the Governor may give to the SFC such directions in writing as regards the performance of any of its functions as he considers appropriate, and the SFC must comply with any such direction. The SFC's disciplinary powers to suspend or revoke a registration is also subject to appeal to the SFC Appeals Tribunal, an independent body appointed by the Governor; and the common law requires due process and reasonable exercise of the SFC's authorities. Failure to do so would expose the SFC to a judicial review.

Succession of Civil Service Directorate Staff

9. **MR CHEUNG MAN-KWONG** asked (in Chinese): *Will the Government inform this Council:*

(a) of the numbers of serving directorate staff in the Civil Service who have opted for the new Pension Scheme and the old Pension Scheme respectively, together with the names and ages of those directorate staff who have opted for the old Pension Scheme as well as the Policy Branches or departments in which they are now serving; and

(b) how the authorities concerned works out the succession plans in those departments with a relatively large number of directorate staff reaching the age at which they can opt to retire, so as to avoid a succession gap caused by staff wastage?

SECRETARY FOR THE CIVIL SERVICE (in Chinese): Mr President,

(a) The age profile of the 1 379 directorate officers (as at 1 October 1996) in the Civil Service and the pension scheme options of those on permanent and pensionable terms are as follows:

	age					
Pension Schemes	*below 40*	*40-44*	*45-49*	*50-54*	*above 54*	*Total*
New Pension Scheme (NPS)	87	146	263	216	198	910 (66%)
Old Pension	6	16	118	117	15	272

Scheme (OPS)						(20%)
Agreement Terms	16	30	65	53	33	197 (14%)
Total	109 (8%)	192 (14%)	446 (32%)	386 (28%)	246 (18%)	1 379 (100%)

Since which pension scheme an officer has opted for is a matter of an individual's privacy, it would be inappropriate to provide Members with a name list of directorate officers and their pension scheme options and ages.

(b) The Administration has a long established mechanism for planning directorate succession in each department. The overall objective is to ensure smooth succession and to identify and groom younger officers in departments for higher responsibilities. Directorate succession plans are reviewed and updated at half-yearly intervals to identify possible and suitable successors to directorate posts and to discuss training and other career development needs for senior officers.

As part of this process, we consider carefully those departments which may have a relatively larger proportion of directorate officers approaching their retirement age. These include Education Department, Social Welfare Department, Information Services Department and the Royal Hong Kong Police Force. Retirement of officers is a natural process and offers the chance of renewal. Through proper planning, we have worked together with the heads of departments and have developed a pool of candidates suitable for directorate positions. The age profile and experience level of professional officers in these departments, and our succession reviews, indicate that there are suitable officers ready to rise up the directorate ranks to fill vacancies that might arise.

Supplementary Labour Scheme

10. **MR LEE KAI-MING** asked (in Chinese): *Regarding the Supplementary Labour Scheme, will the Government inform this Council of:*

(a) the total number of applications for the importation of foreign workers which have been approved, as well as the total number of workers involved, since the implementation of the Scheme in February this year; and

(b) the total number of foreign workers who have already entered the territory to work under the Scheme during the same period, together with a breakdown of such workers by industry, type of work and post?

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

(a) As at 17 December 1996, we have approved 378 applications for a total of 1 948 workers under the Supplementary Labour Scheme.

(b) As at 17 December 1996, for the 1 948 workers approved under the Supplementary Labour Scheme, 783 visa applications have been received. Of the 783 applications, 169 have been approved and 552 are under processing. 101 workers (with approved visas) have entered Hong Kong for employment.

A breakdown of the 101 workers by industry is as follows:

Industry	*No. of workers*
Construction	87
Wholesale, Retail and Import/Export	5
Manufacturing	4
Agriculture and Fishing	3

Catering	2
	Total: 101

The breakdown by job title is as follows:

Job Title	*No. of workers*
Driller	44
Mechanical Engineering Technician	12
Foreman	11
Electrician	10
Plant and Equipment Operator	8
Gardening Worker	3
Stock Supervisor	2
Captain	2
Production Technician	2
Electric Arc and Gas Welder	2
Plant Mechanics	1
Precast Erection Operator	1
Paper Joss Stick Crasftsman	1

Merchandiser	1
Machine Operator	1
	Total: 101

Unemployment

11. **MR CHENG YIU-TONG** asked (in Chinese): *Regarding the statistics on unemployment, will the Government inform this Council of the following in each of the past five years:*

(a) the median duration of unemployment;

(b) the respective quarterly proportions of the unemployed in the following industries, who were unemployed due to dismissal or lay-off or who left employment because of dissatisfaction with their jobs, to the total number of unemployed persons:

(i) manufacturing,

(ii) wholesale, retail, import and export trade,

(iii) catering,

(iv) hotels; and

(c) the quarterly proportion of unemployed persons believed to have no chance of finding employment to the total number of unemployed persons?

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

(a) Statistics on the median duration of unemployment for each of the past five years from 1991 to 1995 and for the third quarter of 1996 are given below:

	Median duration of unemployment (days)
1991	54
1992	60
1993	66
1994	70
1995	77
1996 Q3	66

These statistics indicate that the median duration of unemployment had lengthened to 77 days in 1995 when the unemployment rate showed a marked rise. But as labour market conditions improved thereafter, the median duration of unemployment also fell, to 66 days by the third quarter of 1996, a level which was broadly the same as in 1993.

(b) Breakdowns of the unemployed in the manufacturing sector by the reason of leaving their last job are provided in Table 1, and for the wholesale, retail, import/export trades, restaurants and hotels sector in Table 2.

Further breakdowns into the wholesale, retail and import/import trades sub-sector, and into the restaurants and hotels subsectors are however not available, as such breakdowns are subject to relatively large sampling errors.

In 1995, the proportion of dismissals/lay-offs in the manufacturing sector averaged at round 72%, and the proportion of the unemployed

due to dissatisfaction with the job was around 22%. For the wholesale, retail and import/export trades, restaurants and hotels sector taken together, the proportion of dismissals/lay-offs was lower, at around 42%, while the proportion of the unemployed due to dissatisfaction with the job was higher, at around 46%.

(c) Statistics gathered from the General Household Survey (GHS) on the proportion of discouraged workers, that is, those unemployed persons who believe to have no chance of finding employment, are given in Table 3. Quarterly figures are subject to larger sampling errors and hence only the annual figures are presented here.

The total number of discouraged workers averaged at 1 900 in 1995, representing around 2% of the total number unemployed.

In the GHS, discouraged workers are defined as those unemployed persons who are available for work but have not sought work because they believe work is not available to them. The definition and coverage used in this regard follow closely the guidelines and recommendations of the International Labour Organization. Currently, the GHS is based on a scientifically selected sample of some 27 000 living quarters covering around 80 000 persons in each quarter.

Table 1 Unemployed persons with a previous job in the manufacturing industry by mode of leaving last job

		Mode of leaving last job						
				Leaving job on own accord				
		Dismissed or laid off		*Dissatisfied with job*		*Others **		
Year	*Quarter*	*No.*	*%*	*No.*	*%*	*No.*	*%*	*Total*

		Mode of leaving last job						
				Leaving job on own accord				
		Dismissed or laid off		*Dissatisfied with job*		*Others **		
Year	*Quarter*	*No.*	*%*	*No.*	*%*	*No.*	*%*	*Total*
1991	1st Quarter	6 300	47.7	5 500	42.0	1 400	10.2	13 200
	2nd Quarter	7 400	47.1	6 200	39.2	2 200	13.7	15 800
	3rd Quarter	4 600	34.8	6 000	45.7	2 600	19.6	13 200
	4th Quarter	4 500	39.7	5 500	48.7	1 300	11.5	11 400
1992	1st Quarter	9 400	55.3	5 800	34.2	1 800	10.5	17 000
	2nd Quarter	8 000	44.7	7 200	39.8	2 800	15.4	18 000
	3rd Quarter	6 400	45.8	5 100	36.5	2 500	17.7	13 900
	4th Quarter	8 600	57.4	4 300	28.7	2 100	13.9	15 000
1993	1st Quarter	11 900	72.1	3 600	21.8	1 000	6.1	16 500
	2nd Quarter	8 300	58.8	4 600	32.6	1 200	8.5	14 000
	3rd Quarter	9 500	64.8	3 700	25.0	1 500	10.2	14 700
	4th Quarter	7 500	53.3	3 600	25.9	2 900	20.7	14 100
1994	1st Quarter	9 200	61.2	3 200	21.2	2 600	17.6	15 000
	2nd Quarter	6 700	48.3	4 500	32.4	2 700	19.2	13 800
	3rd Quarter	8 500	56.0	4 400	29.3	2 200	14.6	15 200
	4th Quarter	10 500	70.4	3 500	23.3	900	6.3	14 900
1995	1st Quarter	14 200	68.4	5 800	28.1	700	3.6	20 700
	2nd Quarter	12 700	62.3	5 600	27.4	2 100	10.3	20 400
	3rd Quarter	21 100	75.4	5 600	20.1	1 200	4.4	27 900
	4th Quarter	19 000	78.2	3 700	15.1	1 600	6.6	24 300

Notes: * Including those leaving the previous job because of illness, going to

school and personal business.

Owing to rounding, there may be a slight discrepancy between the sum of individual items and the total as shown in the above table.

Table 2 Unemployed persons with a previous job in the wholesale, retail and import/export trades, restaurants and hotels sector by mode of leaving last job

		Mode of leaving last job						
				Leaving job on own accord				
		Dismissed or laid off		*Dissatisfied with job*		*Others* *		
Year	*Quarter*	*No.*	*%*	*No.*	*%*	*No.*	*%*	*Total*
1991	1st Quarter	2 700	23.1	7 900	67.9	1 100	9.0	11 700
	2nd Quarter	3 600	21.7	10 700	65.1	2 200	13.2	16 400
	3rd Quarter	3 400	22.6	9 100	60.4	2 600	17.0	15 200
	4th Quarter	3 200	23.4	8 400	61.7	2 000	14.9	13 700
1992	1st Quarter	3 700	24.8	9 500	63.4	1 800	11.9	15 000
	2nd Quarter	2 500	15.7	10 800	68.5	2 500	15.7	15 800
	3rd Quarter	2 000	15.4	8 700	65.9	2 500	18.7	13 200
	4th Quarter	3 900	27.7	6 800	48.9	3 300	23.4	13 900
1993	1st Quarter	4 500	26.1	11 000	63.7	1 800	10.3	17 200
	2nd Quarter	3 400	20.1	11 600	67.8	2 100	12.1	17 100
	3rd Quarter	5 100	35.0	7 300	50.6	2 100	14.4	14 500
	4th Quarter	3 800	27.7	9 000	65.5	900	6.8	13 700
1994	1st Quarter	4 100	26.2	9 000	58.3	2 400	15.5	15 500
	2nd Quarter	5 100	34.4	7 500	50.5	2 200	15.1	14 800
	3rd Quarter	6 200	30.1	12 100	58.3	2 400	11.6	20 700
	4th Quarter	4 900	34.9	8 000	57.5	1 100	7.6	14 000
1995	1st Quarter	6 800	32.4	11 300	54.0	2 800	13.6	21 000
	2nd Quarter	9 900	38.6	12 500	48.7	3 300	12.7	25 600
	3rd Quarter	12 000	44.4	12 800	47.4	2 200	8.2	27 000

4th Quarter	14 600	47.8	10 800	35.4	5 200	16.8	30 600

Notes: * Including those leaving the previous job because of illness, going to school and personal business.

Owing to rounding, there may be a slight discrepancy between the sum of individual items and the total as shown in the above table.

Table 3 Discouraged workers

Year	*Number*	*As a % of total unemployed persons*
1991	1 500	3.0
1992	1 300	2.4
1993	1 300	2.3
1994	900	1.6
1995	1 900	2.0

Land for Parking Container Trucks and Storing Containers

12. **MR CHAN WING-CHAN** asked (in Chinese): *It is learnt that over 100 trucks and private cars recently took part in a slow-drive protest against the Government's failure to provide sufficient land for parking container trucks and storing containers and for use as scrap-yards. In this connection, will the Government inform this Council:*

(a) of the current total provision of land in the territory for the above purposes and whether any assessment has been made regarding the demand for land for such uses;

(b) of the proportion of agricultural land in the New Territories being used as unauthorized car parks;

(c) of the number of prosecutions over the past three years in respect of the unauthorized use of agricultural land in the New Territories as car parks; and

(d) whether consideration will be given to extending to five years the term for short-term modification of land use in the New Territories?

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

(a) 356 hectares of land have been zoned on statutory plans for port back up and open storage uses. This is substantially more than the 243 hectares of land zoned for such uses in 1990. In addition, 192 hectares of land zoned "Industrial" or "Industrial (Group D)" on statutory plans can be used for vehicle-related trade such as vehicle repair workshops and industrial developments with provision of floorspace for such uses. We are monitoring the demand for land for such uses as an on-going exercise.

(b) We estimate that about 36 hectares of land in the rural New Territories is being used as unauthorized container trailer parks.

(c) Over the past three years, the owners of nine unauthorized container trailer parks have been prosecuted. Apart from prosecution, warning letters and enforcement notices are also issued as a means to stop unauthorized land uses.

(d) The time limit for temporary planning permission to be granted by the Town Planning Board is stated in the Notes attached to an Outline Zoning Plan. Applications for extension of the time limit can be submitted to the Town Planning Board, which will consider each case on its individual merits.

Transition Issues on Joint Liaison Group Agenda

13. **MR HENRY TANG** asked (in Chinese): *In view of the Government's*

decision to proceed to legislate on offences involving subversion and secession, will the Government inform this Council whether there are major transition issues now under consideration by the Joint Liaison Group over which the Chinese side and the British side have serious disagreement, which may lead again to the Hong Kong Government proceeding to legislate on such issues?

SECRETARY FOR CONSTITUTIONAL AFFAIRS (in Chinese): Mr President, the main transition issues that remain to be resolved by the Joint Liaison Group (JLG) include:

(a) right of abode and related immigration issues;

(b) transfer of defence responsibilities;

(c) other transfer of government issues;

(d) localization of laws;

(e) adaptation of laws

(f) international rights and obligations;

(g) the programme of bilateral agreements;

(h) air services agreements (ASAs);

(i) the two United Nations human rights covenants; and

(j) legal and procedural arrangements between Hong Kong and mainland China in civil and commercial.

Many of these issues are of a legal or technical nature. While good progress is being made, there is still a lot of ground to cover. We are actively engaging the Chinese side and we have every intention to continue to do so. Where legislation is needed before 1 July 1997 to implement a JLG agreement, we will always strive to reach agreement with the Chinese before introducing the

legislation.

It is therefore very much the Hong Kong Government's intention to complete the work on the JLG agenda before 1 July 1997. With the Chinese side's co-operation, there is no reason why we cannot achieve that objective.

Mental Health Hotline Service

14. **DR HUANG CHEN-YA** asked (in Chinese): *With regard to the mental health hotline service provided by the Hospital Authority (HA), is the Government aware of:*

(a) the total number of calls for assistance received in the past 12 months;

(b) the categories of such calls and the ways of handling the calls; and

(c) what publicity plans does the HA have to enhance the public's awareness of the service?

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, a total of about 900 calls were received by the 24-hour psychiatric hotline provided by the Hospital Authority (HA) in the past 12 months. The majority of these calls were related to general information such as the clinical condition of different mental illnesses and their corresponding medical treatment, as well as the availability of mental health services in Hong Kong.

The HA has formulated a set of guidelines for the handling of incoming calls to the 24-hour psychiatric hotline. Callers seeking general information are normally advised on the spot. Callers who require other more specific assistance are provided with details about the appropriate service agencies or referred to public hospitals and specialist out patient clinics for management.

Mental health services currently provided by the HA, including the psychiatric hotline, are promoted through territory-wide publicity campaigns

such as the Mental Health Month, information pamphlets and periodic broadcasts or announcements of public interest in the electronic media. The Authority will also liaise regularly with the relevant government departments to assess the need for enhancement to its psychiatric services.

Housing Department Staff Shortage Problem

15. **DR DAVID LI** asked: *It is learnt that the Housing Department is facing a severe staff shortage problem, with more than 500 posts remaining vacant despite strenuous efforts made to fill them. In this connection, will the Government inform this Council of:*

(a) the breakdown of the vacancies by grade;

(b) the causes of a large number of vacancies in the Department; and

(c) the measures which will be taken by the Department to resolve the staff shortage problem?

SECRETARY FOR HOUSING: Mr President, as at 1 December 1996, the number of vacancies in the Housing Department was 440, or nearly 3% of total establishment. A breakdown by grades is as follows:

Grades	*Number of vacancies*
Professional grades	23
Technical and inspectorate grades	184
Housing management grades	74
General grades and other staff	159

Within the next three months, 262 new recruits are expected to report for

duty. Assuming no further vacancies arise during this period, the actual number of vacancies will be reduced to 178, or 1.2% of total establishment.

The vacancies arise from normal turnover of staff. The 3% vacancy rate is within the normal limit, and is not a cause for concern.

In order to speed up the process of recruitment, the Housing Department will also conduct walk-in or phone-in interviews, and intensify its publicity efforts, such as advertising through the Housing Authority home page of the Internet. Closer contacts with the Local Employment Service of the Labour Department and the Construction Industry Training Authority will also be maintained.

Local Employees on Overseas Assignments

16. **MR LEUNG YIU-CHUNG** asked (in Chinese): *At present, many employees recruited locally are often required to work in mainland China and Southeast Asian countries for long or short periods. However, the employers may not have obtained from the governments of these countries work permits for their employees before requiring them to work in the countries concerned. In this connection, will the Government inform this Council:*

(a) which of the above countries currently require foreign workers to obtain work permits before they are allowed to work in the countries concerned;

(b) of the current estimated number of locally recruited employees in various trades and industries who are required by their employers to work overseas for long or short periods;

(c) if the employees are required by their employers to work in the countries mentioned in the answer to (a) above on tourist visas and without work permits and:

(i) are consequently prosecuted or detained by the governments

concerned; or

(ii) met with accidents, fallen ill, sustained injuries or die while at work overseas.

what responsibilities do the employers have for their employees and what protection do such employees get under Hong Kong's employment or other legislation; and

(d) whether employees can refuse to take up overseas assignments in the countries mentioned in the answer to (a) above if their employers have not obtained the required work permits for them; whether employers are permitted to dismiss their employees for such refusals, and whether employers are liable to prosecution for dismissing the above-mentioned employees who refuse to work overseas?

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

(a) The Government does not keep a record of the work permit requirements of other countries and regions. However, we believe that, as a general rule, a person who wishes to take up employment in a place outside Hong Kong is required to obtain an appropriate visa before going there. Hong Kong residents should contact the relevant authorities of the country or region concerned for information on the visa requirements.

(b) The Government does not have any statistics on the number of locally recruited employees who are required by their employers to work outside Hong Kong for any period of time. This is because employers are not required by law or by any administrative rules to report such employment to Government.

(c) There is no provision in the Employment Ordinance (Cap. 75) (EO) requiring an employer to obtain a work permit for his employee before assigning him or her to work outside Hong Kong. However,

it is advisable for an employer who wishes to send an employee on a work-related trip outside Hong Kong to ascertain the relevant entry requirements of that country, in particular whether or not a work permit is required for his employee. For their own protection, employees should also make similar enquiries to ensure that their overseas work assignments will not constitute illegal employment in the country concerned.

As regards the responsibilities of employers for their employees who have been prosecuted or detained by the governments concerned, or who fall ill, sustain injuries or die accidentally whilst on duty outside Hong Kong, the various areas of protection under the law are broadly set out in the following paragraphs.

Where such employees who are working outside Hong Kong are employed by employers in Hong Kong, they are entitled to all the rights and benefits provided by Hong Kong's labour legislation, as if they are working in Hong Kong, provided that they fulfil the qualifying requirements for the relevant benefits. The protection will be available to such employees regardless of whether or not they have obtained a work permit to work in a place outside Hong Kong.

For instance, such employees who have fallen ill or injured by accident will be entitled to sickness allowance benefits under the Employment Ordinance. Where such employees are injured or die in an accident arising out of and in the course of their employment, they will be entitled to compensation from the employer as laid down under the Employees' Compensation Ordinance (Cap. 282) (ECO). The employer is also required under the ECO to take out an insurance policy to cover his or her liability both under the ECO and at common law for injuries or death at work for their employees.

Also, employees have remedies against their employer independently of the ECO and may seek damages from the employer where injury has resulted from any negligence, breach or other

wrongful act or omission for which the employer are responsible.

(d) An employee can refuse to perform any duty which is illegal or which is not provided for in his employment contract. He can also refuse to work outside Hong Kong without a valid work permit if he knows this is illegal. Under these circumstances, the employer cannot invoke section 9 of the EO to dismiss the employee summarily for failing to obey a reasonable or lawful order.

MTR Island West Extension

17. **MR WONG WAI-YIN** asked (in Chinese): *Regarding the project for the construction of the Island West extension of the Mass Transit Railway (that is, extending the Mass Transit Railway Line from Sheung Wan to Western District on Hong Kong Island), does the Government know:*

(a) of the present progress of the above project;

(b) whether consideration will be given to constructing the above extension before the Green Island Reclamation Area is developed; if not, why not; and

(c) when the construction work is expected to commence and when it will be completed:

SECRETARY FOR TRANSPORT (in Chinese): Mr President, the Railway Development Strategy (RDS) announced in December 1994 recognizes the need in the longer term to extend the existing MTR Island Line from Sheung Wan, via Kennedy Town, to the proposed Green Island reclamation. Its implementation was to have regard to the scale and timing of the Green Island reclamation.

The Mass Transit Railway Corporation (MTRC) have in the meantime completed a feasibility study to extend the MTR Island Line to the western part

of Hong Kong in two phases; namely Phase I to Kennedy Town and Phase II to the Green Island Reclamation. The Corporation are still considering the results of their study, including the financial viability of the two Phases. The Administration will consider MTRC's proposal when it is received. Our priority at this stage is the implementation of the three priority railway projects that is, Western Corridor Railway, MTR Tsueng Kwan O Extension and a rail link between Ma On Shan and Tai Wai together with a KCR Extension from Hung Hom to Tsim Sha Tsui.

Allocation of Rates Revenue

18. **MR SIN CHUNG-KAI** asked (in Chinese): *Will the Government inform this Council:*

(a) of the basis for determining the allocation of the revenue from rates to the Government's General Revenue Account and to the Urban Council and Regional Council;

(b) of the basis for determining the amount, debited from the rates allocated to the Government's General Revenue Account, to be used for meeting the expenses of the Water Supplies Department; and

(c) whether the revenue from rates allocated to the Government's General Revenue Account is used for other specific purposes apart from meeting the expenses of the Water Supplies Department; if so, please specify the purposes to which the revenue from rates is put, the basis for allocation and the amount involved in each of the past three years; if not, why not?

SECRETARY FOR THE TREASURY (in Chinese): Mr President,

(a) Revenue from rates is shared between Government and the two municipal councils on the basis of specified rates percentages

stipulated in the Rating Ordinance which are determined once every three years to tie in with the triennial rates revaluation cycle. The allocation of revenue from rates to Government and to the municipal councils is determined on the basis of the expenditure requirements of the councils, their financial position, and the Government's budgetary position and policies. The allocations thus determined are then translated into specified rates percentages for the General Rates and the respective rates for the municipal councils. Changes to the specified rates percentages are subject to the approval by resolution of the Legislative Council under the Rating Ordinance.

(b) Revenue from General Rates is all credited to the General Revenue Account. This revenue then becomes an integral part of the General Revenue, like revenue from any other sources contributing to it. Money in the General Revenue Account is used to meet government expenditure without any distinction as to source of revenue or type of expenditure; and there is no direct hypothecation of the revenue from General Rates for meeting the expenses of the Water Supplies Department. The contribution from rates to the revenue of the Water Authority, as shown in the Authority's operating accounts, is only notional income.

(c) As explained in (b) above, once the revenue from General Rates is credited to the General Revenue Account, it becomes an integral part of the General Revenue which is used to meet all types of government expenditure. There is no hypothecation of the revenue from General Rates for meeting any specific purposes.

Hong Kong Residents Seeking Assistance from British Embassy in Beijing

19. **MISS EMILY LAU** asked: *In his comments on the controversy over whether beneficiaries of the British Nationality Selection Scheme can get consular protection, the Governor has reportedly stated that if any British citizen going to a British Embassy or Consulate to ask for assistance, the British Government will do everything it can to help, just like what it has been doing when Hong Kong residents get into difficulty in China. Will the Administration*

inform this Council of:

(a) the number of Hong Kong residents who have approached the British Embassy in Beijing for assistance since 4 June 1989;

(b) the number of people in (a) above who have been provided with assistance and the nature of such assistance; and

(c) the number of people in (a) above whose requests for assistance have been refused and the reasons for refusal?

SECRETARY FOR SECURITY: Mr President, the answers to the Honourable Member's questions, in the order they are raised, are as follows:

(a) The number of Hong Kong residents who have approached the British Embassy in Beijing for assistance since 1991 amounts to 40 where action has been necessary. There have, however, been numerous other cases where only advice on various matters such as nationality, passports, marriage, legal/contractual disputes, lost documents was sought and given. Records before 1991 are not available.

(b) All Hong Kong residents who have contacted the Embassy in Beijing have received the assistance asked for. Such assistance includes obtaining funds from relatives and friends in Hong Kong, helping to trace missing persons, obtaining details of Hong Kong residents detained in China, arranging hospital visits, and obtaining replacement travel documents. The Embassy has also offered assistance by giving advice on nationality and marriage matters, and provided lists of lawyers in cases of legal dispute.

(c) The British Embassy in Beijing has never refused a request for assistance. There have been in some cases a limit to the assistance the Embassy can give. This is particularly true in cases involving company/contractual/business disputes. However, the Embassy

has made every possible effort in helping Hong Kong residents.

Airline Services in Summer 1997

20. **MR HOWARD YOUNG** asked: *Will the Government inform this Council how it plans to meet the airlines' requests for operating scheduled and non-scheduled services during the summer months in 1997?*

SECRETARY FOR ECONOMIC SERVICES: Mr President, a total of 3 510 applications for scheduled flights per week during the summer months in 1997 have been received from the airlines. Over 90% of the requests have been met. For those applications which have been unsuccessful, the Civil Aviation Department (CAD) is liaising with the airlines concerned to see whether their requests can be accommodated by making use of the slots which are still available, mostly in the early morning period between 6.30 am and 7.55 am.

From past experience, it is most likely that some airlines may also submit applications to operate non-scheduled flights during the summer months. The CAD has asked the airlines to submit any plans for the operation of non-scheduled services during the summer period by the end of March 1997. Any such applications will be considered on a case by case basis and airlines will be allocated vacant slots which have not been utilized by scheduled carriers.

In addition, the CAD is examining measures to increase runway capacity temporarily to cope with the additional demand.

GOVERNMENT MOTIONS

SEX DISCRIMINATION ORDINANCE

THE SECRETARY FOR HOME AFFAIRS to move the following motion:

"That the Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation, made by the Secretary for Home Affairs on 3 December 1996, be approved."

He said: Mr President, I move the resolution standing in my name on the Order Paper. The resolution is to the effect that the Sex Discrimination (Proceedings by the Equal Opportunities Commission) Regulation made under section 89 of the Sex Discrimination Ordinance be approved.

The Sex Discrimination (Proceedings by the Equal Opportunities Commission) Regulation, if passed, will enable the Equal Opportunities Commission to bring court proceedings in its own name when it appears to the Commission that the claim is well founded, and where the case raises a question of principle and it is in the interests of justice to do so.

The Regulation will also enable the Commission in any such proceedings to seek a declaration that the act, which is the subject of the proceedings, is an unlawful act, or an injunction in respect of such act or both.

Mr President, I beg to move.

Question on the motion proposed.

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

MR LEUNG YIU-CHUNG (in Cantonese): Mr Deputy, during the deliberation of the Subcommittee, I proposed to delete from the Codes of Practice on Employment under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance some provisions which cannot protect the rights and interests of the employees. My proposal included deleting the words "and are encouraged to consider progressive implementation of equal pay for equal value" because the word "progressive" allows the employers to procrastinate indefinitely and the word "consider" gives them the freedom to implement or otherwise. Employers would have fulfilled the requirement of the Code of Practice so long as they have "considered" the relevant cases and they could then come up with the decision of not doing anything. As regards grooming codes in workplaces, the Equal Opportunities Commission (EOC) recommends that employers should consult their employees first. Regrettably, however, the provision begins with

"where practicable" which means that the employees will only be consulted "where practicable". Where it is "impracticable", there will simply be no consultation. In fact, if the employers consider nothing is practicable, they will not have to do anything. "Where practicable" is thus rendered into an amulet for employers so that there will be peace to their ears and they can just sit back and relax. Originally, I proposed to delete those words but was regrettably rejected at the meeting of the Subcommittee. Some Members even pointed out that should I push through my amendment, they would propose different amendments which would complicate the whole operation. As a result, the Code of Practice on Employment might be thrown into greater confusion and its implementation delayed. Therefore, finally I could only reluctantly accept the present arrangement under such circumstances. I hope that the Code of Practice on Employment can be implemented as soon as possible because this is the wish of most of the people and organizations.

Despite the foregoing, I would like to reiterate the principle of "equal pay for work of equal value" here. In fact, it is stated in section 12.6 of the Code of Practice on Employment under the Sex Discrimination Ordinance: "Where women undertake work as demanding as that of their male colleagues, even though their work is different, women should receive the same pay and benefits. That is, jobs of equal value warrant equal pay." Actually, the concoction of certain high-sounding job titles has resulted in different pay for work of equal requirements. For example, an employer will offer a higher pay to a male administrative assistant rather than to a female secretary even though their job nature or the requirements in terms of academic qualifications, skills, responsibility and efforts are more or less the same. This simply results in an unequal phenomenon.

Another example of unequal pay for work of equal value occurs in clothing factories. Although the job nature of a cutting room operative and that of a sewing machine operator are different, many sewing machine operators have told me that the requirements and skills of these two jobs are very similar. However, clothing factories in general will not allow women to be cutting room operatives as the job offers a higher pay.

There are still lots of examples of unequal pay for work of equal value. Countries elsewhere have focused much attention on this issue and have drawn up legislation to foster the implementation of equal pay for work of equal value. In 1970, Britain already had in place an Act on equal pay for equal work. However, British women later discovered that the Act was not of much help to

them because for a long time discrimination against women had been very serious in the community. This resulted in job segregation and most of the women could only be engaged in trades which traditionally offered low wages. In fact, the skills and academic qualifications required of such low-paid jobs were in no way inferior to those that generally fetched a higher pay and were traditionally dominated by men. The implementation of the principle of equal pay for work of equal value has thus become a social objective. In 1983, Britain endorsed the principle of equal pay for work of equal value. For this to be implemented, all companies and organizations first have to set down the job requirements of each post, including academic qualifications, responsibility, skills, efforts and so on, and then design a method of evaluation for each requirement. The personnel or administrative department will then prepare the relevant guidelines accordingly and calculate the value and pay for the different posts. Some employers in Hong Kong may be afraid of following suit because once the principle of equal pay for work of equal value is introduced, they will be at a loss as the idea is too new to them and there is also the possibility that litigation may crop up frequently. However, the situation in Britain has not been very pessimistic since the introduction of equal pay for work of equal value. In fact, Britain has only had about 20 such court cases each year. It is not really as horrible as some people have imagined.

It cannot be denied that equal pay for work of equal value is a new concept both to the employers in Hong Kong as well as their employees. We therefore have to learn this together, and the EOC has the responsibility to promote and publicize this principle of equality among the employers and the employees. The whole community needs to absorb and accept new things. We cannot give up the principle of equality just because we are afraid of something new.

In this connection, the EOC has an even more important role to play. It should publicize widely the two Ordinances on discrimination and the Codes of Practice on Employment so that more people, whether employers or employees, will know what they are all about. Before implementing the Codes of Practice, however, I sincerely hope that the EOC and its staff would study the Codes seriously and acquaint themselves with their contents. In so doing, they will be more effective in carrying out publicity work and handling cases in future. I further hope that staff of the EOC would put themselves into the victims' shoes when handling their cases instead of just going by the book. This is because the present Codes of Practice only advise the employers what they can do to avoid contravening the law without letting the employees know what rights they are

entitled to. Thus, the interests of the employees could hardly be protected if they only go by the book.

Also, I hope that the EOC or the Government can put in more resources for launching publicity activities instead of just paying attention to window-dressing work which will not achieve any concrete results. In a recent survey conducted by the Association for the Advancement of Feminism, half of the female adult respondents said they did not know that the EOC exists. The Association for the Advancement of Feminism had once approached the EOC for 400 publicity pamphlets about the EOC but was given not any. Is this because there are inadequate resources or has there been a lack of determination to launch publicity? Therefore, I sincerely hope that the EOC and the Government can put in more efforts in this aspect.

Lastly, it is also my hope that when handling cases in future, the EOC will ensure that all problems put forth by the complainants will be dealt with in a helpful and professional manner, and its staff will not adopt a perfunctory attitude, or query the complainants or make life difficult for them. Otherwise, I am afraid not many people will lodge their complaints with the EOC, rendering our substantive legislation existing in name only.

With these remarks, I support the motion.

MISS CHAN YUEN-HAN (in Cantonese): Mr Deputy, at long last the Codes of Practice on Employment under the Sex Discrimination Ordinance and the Disability Discrimination Ordinance are presented to this Council, and the Subcommittee has also held meetings to discuss this issue. As was pointed out just now by my colleague the Honourable LEUNG Yiu-chung, we do have different views on the principle of equal pay for work of equal value as it is laid down in the Codes of Practice. However, we consider that if we are to resolve our differences, the implementation of the Codes of Practice on Employment may be delayed still further. We all know that the Codes of Practice should in fact have been implemented in September this year. That is why if we still spend time on discussing our different views, more delay may result. Therefore, we have reached a consensus, whereby we would make just a few amendments.

Mr Deputy, the principle of equal pay for work of equal value as laid down in the Sex Discrimination Ordinance, which is the source of arguments in the

Subcommittee this time, is in fact a concept put forward by the Hong Kong Federation of Trade Unions (HKFTU) a long time ago. We asked the Government to introduce the principle of equal pay for work of equal value because we noticed at that time that many types of jobs, despite the hard labour required, were meagre in wages and were more often than not performed by women. For example, female workers are the busiest along our production lines, and child-minding and child care work are usually carried out by women. We are of the opinion that the duties and responsibilities of these jobs are similar to those of other types of jobs. However, the women employed in these jobs are offered the lowest wages, while those who are employed in those other jobs are paid as professionals.

Let me quote an example. At present, women engaged in jobs of a child-minding nature have to possess professional knowledge, and they have to look after children with loving care and patience so as to enable them to grow up healthily. In terms of the efforts made, the women engaged in such jobs are comparable to the staff in secondary schools or other educational institutions. However, these two types of jobs are treated very differently in terms of recognized work value. For this reason, the Women's Affairs Committee under the HKFTU already proposed a long time ago that the Government should introduce the concept of equal pay for work of equal value into Hong Kong. Regrettably, when the Government was drafting the legislation, it aimed only to introduce the concept into Hong Kong, and the relevant provisions thus drafted are so empty that it will be very difficult to implement them. The Ordinance states only that consideration will be given to the progressive implementation of equal pay for work of equal value. Since the implementation of the concept did not form part of the Government's overall consideration at the stage of drafting, the provisions thus not specifically worded.

At the very initial stage, the Women's Affairs Committee under the HKFTU attempted to discuss this point with the government departments concerned on a number of occasions, stressing the importance of specificity, in the hope that specific provisions on equal pay for work of equal value could be drawn up in the light of the actual situation in Hong Kong. Regrettably, the Government did not incorporate the views of the labour sector when drafting the legislation. And we are forced to accept the reality when confronting this legislation today. Just how does society as a whole look at the principle of

equal pay for work of equal value? How is the concept as a whole going to be put into practice? And, how should we get to know this concept well? All these questions seem to indicate that a lot of work has yet to be done. In view of this, during the deliberations of the Subcommittee, we accepted the standpoint that the implementation of this principle should be deferred.

Mr Deputy, I have just stated the aspirations and ideas of the organizations which yearned for equal pay for work of equal value years back, and I have also described the suggestions which we put forward to the Government at that time. When we deal with draft provisions today, we agree to endorse the proposed amendments because we think that we have the responsibility to promote the concept of equal pay for work of equal value in Hong Kong and to achieve the desired result. I suggest that the relevant government departments and the Equal Opportunities Commission (EOC) should widely publicize the ideas of the new provisions, so that the public can understand them. Also, I think that it is necessary to implement other supporting measures.

Mr Deputy, when we raised these suggestions with the Government last year, we already expressed these ideas. Regrettably, we were heard, but we were not listened to, and the provisions finally drafted are still very abstract. It is my hope that the Government can draw up a time-table, telling this Council how it will progressively implement this new concept. It is hoped that after listening to all these suggestions today, the Government will not still remain in the same position with the same empty provisions after two or three years. I hope that today the Secretary for Home Affairs will undertake to draw up a time-table on the progressive implementation of publicity activities on equal pay for work of equal value, and on the implementation of the concept itself in future.

Mr Deputy, these are my remarks.

MR LAU CHIN-SHEK (in Cantonese): Mr Deputy, my speech will cover the Codes of Practice on Employment under both the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO).

Mr Deputy, though the SDO and the DDO were enacted more than a year ago, the Codes of Practice on Employment which the Equal Opportunities Commission (EOC) is required to issue under the Ordinances have only just been submitted to the Legislative Council. I am sure that the EOC has made very

great efforts with respect to the submission of these two Codes of Practice. However, owing to inherent weaknesses and human errors, both the Ordinances and the Codes of Practice are marked with four major loopholes and I hope that the EOC will make haste to plug them.

First, the Confederation of Trade Unions (CTU) has always demanded that clear provisions should be laid down in the Codes of Practice for the implementation of equal pay for work of equal value by employers. When the principle of equal pay for work of equal value was discussed during the last session of the Legislative Council, it was agreed that this principle should be implemented. However, the Government has turned a blind eye to this and has since made no progress at all. As a result, the EOC has been turned into a scapegoat which has to bear the blame for women's lack of protection and equal opportunities in gravely segregated occupations. The Government has procrastinated up to now and the relevant promise still remains unfulfilled in the finalized versions of the Codes of Practice. We find this most regrettable. I hope that with respect to the "progressive implementation of equal pay for work of equal value" by employers as required in the Codes, the EOC will contribute actively and constructively to the work of supervision and assistance so as to ensure that the principle can be implemented as soon as possible.

Second, the compensation ceiling of $150,000 as stipulated in the SDO already came under severe criticisms during the debate on the relevant bill last year. Obviously such a ceiling cannot produce any deterrent effect on organizations with strong financial backing. What is of more serious concern is the fact that the levels of damages payable as a result of civil proceedings on tort have never been subject to any ceilings. Instead, such levels are determined in the light of the actual losses inflicted on the victims concerned. Therefore, I hope that the Government will respect the rights of victims, and abolish the compensation ceiling of $150,000 as soon as possible.

Third, as early as 1987, the United Kingdom already abolished the exemption clause from anti-discrimination legislation enjoyed by companies with fewer than five employees. From the perspective of equality, even when there is only one employee, we should still protect that employee from discrimination. Everyone should be equal before the law. Why then should employers who employ only four persons be exempted from the sanction under our anti-discrimination legislation? What is more, the existing SDO only requires that employers do not violate the rules against discrimination and sexual

harassment. Since these are conceptual rules, one can simply comply with them at hardly any additional costs. Therefore, there is no justification at all for the preferential treatment given to small businesses. Under the existing laws, these small companies still have a grace period of one and a half years during which they are exempted from the legislation concerned. In order to give the same protection to women employed in small companies, I hope that this exemption clause will be abolished as soon as possible.

Fourth, since the SDO stipulates that the Government must amend the existing laws which are in conflict with it, the Labour Department has recently proposed to delete, on an across-the-board basis, all the provisions on women in the Women and Young Persons (Industry) Regulations. The CTU strongly objects to this. If protection for female workers are abolished for the sake of equality between men and women, the elimination of sex discrimination will become more or less an excuse for depriving workers of their rights. The enactment of the SDO stems from a desire to strengthen the protection for women and also serves to signal that our society must strive for equality. An across-the-board abolition of all provisions on women in the Women and Young Persons (Industry) Regulations is, in my opinion, an irresponsible act which ignores the need for providing employment security to women and even the whole labour force. The CTU suggests that instead of reducing the protection for women to achieve the so-called "equality", the EOC should extend the protection on working hours to men, on the basis of the principle that men and women should enjoy the same treatment in terms of employment opportunities, labour protection and improvements to their standard of living.

These are my remarks. Thank you, Mr Deputy.

MR MICHAEL HO (in Cantonese): Mr Deputy, I will speak on the Codes of Practice on Employment under both the Sex Discrimination Ordinance (SDO) and the Disability Discrimination Ordinance (DDO).

Mr Deputy, the Democratic Party supports the principle of equal pay for work of equal value. However, in the course of scrutinizing the relevant provisions, we also realized that the implementation of the principle of equal pay for work of equal value would involve many practical difficulties.

During the discussions, Members with the background of employers

expressed rather great concern about the implementation of the principle of equal pay for equal value. Obviously they were concerned that employers would have to bear great expenses for the purpose of determining whether different kinds of work are of equal value. In the case cited by the Honourable Miss CHAN Yuen-han, what is the "value" of a child-minder? Is the job of a child-minder of "equal value" to other jobs of a similar nature? During the discussions, the Honourable James TIEN often cited the examples of ironing workers and sewing workers. If we could determine that their "values" are the same, the matter would be simple. However, it is rather difficult to determine their respective "values".

I very much hope the Equal Opportunities Commission (EOC) can conduct their study with full speed so that more concrete ways can be identified to assess work of equal value and implement the principle of equal pay for work of equal value in the near future. That way, we will not be left with just a principle even after several years.

Mr Deputy, I would like to speak in a different capacity, as Chairman of the Subcommittee scrutinizing the relevant provisions. Basically, the Subcommittee supports all the relevant provisions, including the amendment moved by the Administration today and the amendment to be moved in my name.

During the meetings of the Subcommittee at the initial stage, Members obviously held widely divergent views about the principle of equal pay for work of equal value as laid down in the two Codes of Practice. However, after discussing the matter for a week or so, I am glad that Members have basically come to a consensus, and that is to amend paragraph 12.8 of the Code under the SDO and paragraph 13.7 of the Code under DDO. The major amendment is to substitute "to consider progressive implementation" with "to progressively implement". Basically, this amendment is supported by the Government. I myself once talked to the Chairperson of the EOC, Dr Fanny CHEUNG, on the telephone and she indicated their acceptance of the amendment we propose today. However, she said that the EOC was unable to convene a meeting at such a short notice, so it would be difficult for them to ask the Government to move the amendment.

During a meeting of the Subcommittee, we also discussed the words "man" and "woman" mentioned in paragraph 10.6.7 of the Code of Practice under the SDO. At the meeting, the EOC basically agreed to move an amendment

themselves. However, probably due to some communication problems between the Government and the EOC in the process, we have noticed after the deadline for notification to move amendments that the amendment proposed by the Government does not seek to amend the wording in paragraph 10.6.7 as agreed at the meeting.

I hope that the EOC will later on correct the wording promptly because the question of principle is not involved. And, if words like "woman" or "man" are used directly when drafting this Code of Practice, the drafting approach is in itself unfair to a certain sex already. So I hope the EOC will hold a meeting as soon as possible to follow up the relevant amendment.

These are my remarks.

SECRETARY FOR HOME AFFAIRS (in Cantonese): Mr Deputy, I thank Members for their speeches. However, I would like to point out that the Government will indeed move several motions relating to equal opportunities. The motion that I moved earlier on relates to the Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation. But I have not yet moved really the motions on the Code of Practice on Employment mentioned by Members a while ago. Nevertheless, since Members have already put forward their views, debates may be saved when I move the relevant motion later on. So, Mr Deputy, with your leave, I would like to respond briefly to the various points raised by Members.

Members may recall that oral questions were asked in this Council two weeks ago mainly on the idea of "equal remuneration for equal value" and on the question of whether or not the Equal Opportunities Commission had consulted the public in drafting the Code of Practice. At the time, I pointed out unequivocally that there had been comprehensive public consultation in the drafting process. In addition, the Commission made it a point to meet the relevant organizations to seek their opinions. Indeed, the opinions collected have been consolidated into the proposals presently contained in the Code of Practice.

In their speeches earlier, many Members suggested that the idea of "equal remuneration for equal value" was rather new. In fact the idea has been put forward for quite some time, but it is widely known only quite recently. As pointed out by the Honourable Michael HO, the Commission has agreed to look

into the issue. A study will be conducted by the Commission early next year and a study report is expected to be completed before the end of the same year. In this connection, the Commission has formulated a timetable. I hope that when the study is completed, the various questions raised by Members can be answered. Such questions include the definition of "equal value" and how it can be determined. The Commission will also be making references to relevant experiences overseas.

As regards education and publicity, the Honourable LEUNG Yiu-chung reported an instance in which an organization went to the Commission to request 400 promotional pamphlets but the Commission could not supply them. I hope that was because they happened to run out of stock. I do not believe they did not have even 400 pamphlets. Perhaps it was just a case of administrative mismatch. I will nevertheless find out what happened. I can hardly believe that they did not have even 400 pamphlets. Regarding the attitude of their staff, the Commission understands very well what sort of attitude it should adopt. From the discussions that I have held with staff members of the Commission, I think they are sincere and the staff have been trained to serve the public with their best effort so that members of the public who seek help will feel that they are being treated with respect and due diligence. In this respect, I can assure Members that the Commission would serve the public well in the future.

I will not repeat these points in my speech later. Thank you, Mr Deputy.

Question on the motion put and agreed to.

SEX DISCRIMINATION ORDINANCE

THE SECRETARY FOR HOME AFFAIRS to move the following motion:

"That the Code of Practice on Employment issued under section 69 of the Sex Discrimination Ordinance, published as Government Notice No. 5203 of 1996 and laid on the table of the Legislative Council on 20 November 1996, be amended in the Chinese text -

(a) in paragraph 6.2.6 by adding "受" after "對";

(b) in paragraph 6.2.7 by adding "等" after "該";

(c) in paragraph 6.2.8 by repealing "向" and substituting "為從事";

(d) in paragraph 8 by adding "8.1." before "《";

(e) in paragraph 11.8 by repealing "實事求是" and substituting "依據事實";

(f) in paragraph 15.1.3 by adding "如適當的話" before "建";

(g) in paragraph 15.1.4 by adding "原則" after "密";

(h) in paragraph 17.1 by adding "完全" after "能";

(i) in paragraph 18.1. by adding "因此，" before "可" where it secondly appears;

(j) in paragraph 18.2 by adding "判斷" and substituting "認識";

(k) in paragraph 18.3 by adding "或" before "是";

(l) in paragraph 19.3 by adding "以下" and substituting "這裏簡述的";

(m) in paragraph 21.4.1 by adding "因素" and substituting "角色";

(n) in paragraph 24.3 by adding "應" and substituting "宜";

(o) by repealing paragraph 25.1 and substituting -

"25.1. 僱員有責任協助建立一個不容性騷擾出現的工作環境，他們可憑着對性騷擾問題的警覺性和敏銳力，及確保本身及同事的操守行為不會冒犯他人，在防止性騷擾方面發揮積極作用。";

(p) in paragraph 25.10 by repealing "應儘" and substituting "宜盡"."

He said: Mr Deputy, I move that the Chinese text of the Code of Practice on Employment under the Sex Discrimination Ordinance, tabled in this Council on 20 November 1996, be amended as set out in the proposed resolution of the Legislative Council circulated to Members.

The purpose of the amendments is to better achieve consistency of translation between the English and the Chinese texts of the Code of Practice.

Mr Deputy, I beg to move.

Question on the motion proposed, put and agreed to.

DISABILITY DISCRIMINATION ORDINANCE

THE SECRETARY FOR HEALTH AND WELFARE to move the following motion:

"That the Code of Practice on Employment issued under section 65 of the Disability Discrimination Ordinance, published as Government Notice No. 5204 of 1996 and laid on the table of the Legislative Council on 20 November 1996, be amended -

(1) in the English text, in paragraph 11.5.1 repealing "develop" where it secondly appears;

(2) in the Chinese text -

(a) in paragraph 3.1.3 by repealing "弱聽人" where it secondly appears and substituting "麥女";

(b) in paragraph 6.1.3 by repealing "刻意" and substituting "不必要地";

(c) in paragraph 6.2.7 by adding "對" before "該";

(d) in paragraph 7.1 -

(i) by repealing "因";

(ii) by repealing "而遭受另一人（歧視者）歧視，該名人士可能成為受害人" and substituting "，僱傭範疇中“使人受害”的歧視行為可能出現";

(e) in paragraph 11.11 -

(i) by adding "一些" before "調" where it first appears;

(ii) by repealing "等" where it first appears and substituting "些";

(f) in paragraph 11.12.3 by repealing "慣用" and substituting "工作";

(g) in paragraph 11.18 by adding "可" before "包";

(h) in paragraph 12.8 by repealing "實事求是，以客觀務實的態度" and substituting "依據事實，按求職者的技能及能力";

(i) in paragraph 12.15 by adding "合理地" before "必";

(j) in paragraph 15.1 by adding "在任何其他方面" before "的";

(k) in paragraph 16.1.3 by adding "如適當的話，" before "建";

(l) in paragraph 16.1.4 by repealing "規定" and substituting "原則";

(m) in paragraph 18.1 by adding "完全" before "有";

(n) in paragraph 19.2 by repealing "判斷" and substituting "認識";

(o) in paragraph 19.3 by adding "或" before "是";

(p) in paragraph 21.3 by repealing "應" and substituting "宜";

(q) in paragraph 21.4 repealing "應" and substituting "宜"."

She said: Mr Deputy, I move the resolution standing in my name on the Order Paper. To ensure consistency of the Chinese and English versions of the Code of Practice on Employment under the Disability Discrimination Ordinance (G.N. 5204) which was introduced into this Council on 20 November 1996, I propose a textual amendment to the gazetted English version of the Code and a total of 17 textual amendments to the Chinese version as specified in my resolution.

Mr Deputy, I beg to move.

Question on the motion proposed, put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

THE SECRETARY FOR HEALTH AND WELFARE to move the following motion:

"That the Disability Discrimination (Formal Investigations) Rules, published as Legal Notice No. 474 of 1996 and laid on the table of the Legislative Council on 20 November 1996, be amended in the form of Notice in Schedule 1, by repealing "section 64(1) of the Ordinance" and substituting "section 67 of the Sex Discrimination Ordinance (Cap. 480)"."

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

The Disability Discrimination (Formal Investigations) Rules (L.N. 474/1996) were introduced into this Council on 20 November. The purpose of this amendment is to rectify a textual error in the form of Notice in Schedule 1 to the rule. This is to reflect, correctly, the proper source under which the Equal Opportunity Commission has delegated its function to a person to serve a notice to furnish information for the purpose of an investigation.

Mr Deputy, I beg to move.

Question on the motion proposed, put and agreed to.

GOVERNMENT BILLS

First Reading of Bills

RAILWAYS BILL

EMPLOYEES RETRAINING (AMENDMENT) BILL 1996

OFFICIAL SECRETS BILL

OZONE LAYER PROTECTION (AMENDMENT) BILL 1996

GOVERNMENT RENT (ASSESSMENT AND COLLECTION) BILL

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

Second Reading of Bills

RAILWAYS BILL

THE SECRETARY FOR TRANSPORT to move the Second Reading of: "A

Bill to provide for the resumption of land, creation of easements or rights and the exercise of other powers by the Government for the construction of railways and to provide for compensation for losses caused by the exercise of the powers."

He said: Mr Deputy, I move that the Railways Bill be read a Second time. This Bill is new legislation designed to support in general the implementation of railway projects.

The Railway Development Strategy formulated in 1994 accorded high priority to three railway projects for implementation. One of the three projects, the Western Corridor Railway, will be one of Hong Kong's largest heavy rail projects. The sheer length of the railway means that many private lots will be affected and large scale land resumption will have to be undertaken.

In the course of studying the feasibility of the project, we have also examined a number of our existing Ordinances which have land resumption provisions and found that none are entirely adequate on its own for the implementation of railway projects. It was decided that new legislation should be drafted to take forward the new projects.

A suitable legal framework would need to contain provisions for the preparation and publication of plans, objections, payment of compensation to persons whose interests are affected, reclamation of land, resumption of land or strata, creation of temporary and permanent easements and wayleaves.

The Bill is modelled mainly on the Roads (Works, Use and Compensation) Ordinance. The improvements are based on past experience and are to speed up the land resumption process without compromising the rights of affected parties.

While there are basic differences between roads and railways, the Roads Ordinance contain many of the provisions that are required for the implementation of railway projects. In particular, the existing land resumption procedures and compensation matters under the Roads Ordinance have been in use for almost two decades and the system is tried and trusted.

The Railways Bill consists of five Parts. Part I deals with preliminary

matters. Part II provides for the preparation of a railway scheme, its publication, objections, the power to amend the scheme and make corrections, minor works, resumption, easements and other rights, the effect on utility services and related issues. Part III addresses the right to compensation and claims procedure. A Schedule supplements with specific provisions on compensation procedure. Part IV gives jurisdiction to the Lands Tribunal to assess and award compensation and Part V covers a number of miscellaneous issues.

It is our intention that the Railways Bill will apply to all future railway projects including those to be constructed by the Mass Transit Railway Corporation. As such, the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276) should be repealed following the enactment of the Railways Bill. However, in order not to delay the progress of the Quarry Bay Congestion Relief Works which is urgently needed to relieve congestion and improve safety at the Quarry Bay Station, we intend to proceed with this project under Cap. 276. It should be noted that the scale of land resumption involved in the Quarry Bay Congestion Relief Works is relatively small.

The early enactment of the Railways Bill is essential for the Western Corridor Railway project. While certain planning work could be undertaken prior to the enactment, the alignment cannot be finalized until all the required preparatory works are completed. Such works include site inspections and surveys of private properties which the Kowloon-Canton Railway Corporation is not empowered to enter. Even more important, the new legislation has to be in place before the railway scheme could be gazetted. It is therefore our aim to have the Bill enacted in the early part of 1997 to enable the timely implementation of this project.

Thank you, Mr Deputy.

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

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

EMPLOYEES RETRAINING (AMENDMENT) BILL 1996

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

He said (in Cantonese): Mr Deputy, I move that the Employees Retraining (Amendment) Bill 1996 be read the Second time.

The purpose of the Bill is to extend the Employees Retraining Scheme to include new immigrants so that they can apply to attend courses subsidized by the Employees Retraining Board.

Section 17 of the existing Employees Retraining Ordinance provides that only "local employees" may apply to attend the retraining courses. A "local employee" refers to an employee who shall be a permanent Hong Kong resident as specified in section 2(1) of the Immigration Ordinance. In recent years, the number of immigrants from China continues to grow. Most of them come to settle in Hong Kong with a one-way permit. In the seven years from October 1989 to September 1996, there are over 250 000 one-way permit holders coming to Hong Kong. Unless they have resided in Hong Kong continually for seven years and become permanent residents, they will not be eligible for attending the retraining courses.

In the middle of this year, we conducted a comprehensive review of the retraining scheme. The review has been completed recently. A consultation paper was released on 3 December to solicit public opinion on the review. An important recommendation of the review is to extend the retraining service to new immigrants to enable them to learn occupational skills relevant to the local labour market and to help them to find jobs.

The Bill we are submitting to the Legislative Council serves to extend the retraining scheme to include new immigrants. Since we do not have a definition for the term "new immigrants", we propose amending the term "local employee" in the Employees Retraining Ordinance to "eligible employee", the definition of which in general includes a person holding an identity card issued under the Registration of Persons Ordinance or a certificate of exemption referred to in section 17G of the Immigration Ordinance.

If the Bill is passed, all persons, who are legally residing in Hong Kong and may be freely employed by any employers, including immigrants from China, will become "eligible employees". They may apply to attend the retraining courses. However, other persons who are residing in Hong Kong temporarily as employees or students, including overseas domestic helpers and those who come to Hong Kong under the labour importation scheme, will not be eligible.

We believe that providing retraining for new immigrants may help them in job seeking. In the long run, this may improve the quality of our local labour. At the same time, this may eliminate the burden on social security arising from new immigrants who are out of jobs for a prolonged period of time. All sectors of the community, including Legislative Council Members, are in full support of the proposal to include new immigrants in the retraining scheme. Therefore, I hope this Council would pass the amendment as soon as possible so that new immigrants may be benefited earlier.

Thank you, Mr Deputy.

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

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

OFFICIAL SECRETS BILL

THE SECRETARY FOR SECURITY to move the Second Reading of: "A Bill to control the unauthorized obtaining or disclosure of official information."

He said: Mr Deputy, I move the Second Reading of the Official Secrets Bill.

This Bill localizes the provisions of the United Kingdom Official Secrets Acts currently applying to Hong Kong. These Acts will lapse on 1 July 1997; we thus need to introduce local legislation to replace them.

The Bill deals with two broad categories of offences: espionage, and unlawful disclosure of official information. In drafting the Bill, we have modified various provisions in the Acts to reflect local circumstances. For the unlawful disclosure offences, the Bill covers six key areas of information: security and intelligence, defence, international relations, information obtained in confidence from other states or international organizations, crime, and special investigations under statutory warrants. These areas of information, if disclosed without lawful authority, would cause or be likely to cause substantial harm to the public interest.

There are a number of provisions in the Acts which have not been reproduced in the Bill. These include provisions dealing with matters already covered in other Hong Kong legislation, such as the power of arrest. We have also removed an outdated provision which requires persons in the business of receiving postal packets to register with the police. We have, in addition, included a new safeguard in the provision requiring a person to give information to the police about suspected espionage, to ensure that the information he gives cannot be used against him in criminal proceedings.

We have not included from the United Kingdom Acts the rebuttable presumption of purpose in relation to espionage, by which a person's guilty purpose is presumed in certain circumstances unless he can prove otherwise. This sort of presumption is out of step with current Hong Kong legislative practice, and there is no merit in retaining it in the localized legislation.

There have been some suggestions that "public interest" and "prior disclosure" defences should be included in the Bill. Such defences, which do not exist in other common law jurisdictions, are not a feature of the existing Acts applying to Hong Kong. As I have mentioned, the Bill specifies six areas of protected information; we believe that, given the nature of the information concerned, any unauthorized disclosure would of itself be likely to harm the public interest. To provide statutorily for a "public interest" defence for disclosing information relating to matters under one of these areas set out in the legislation would be contradictory. Furthermore, the Official Secrets Bill is a localizing Bill, not a law reform exercise. It would thus be inappropriate to include such defences in the Bill. Ultimately, it would be for the courts to decide whether an offence has been committed under the Bill and, if so, what penalties might be appropriate in all the circumstances.

Evidence of prior disclosure will be relevant in deciding whether a particular disclosure does, in fact, cause harm of a kind specified in the legislation. Where there has been a prior disclosure it will be open for a defendant to argue that the disclosure, which is the subject of the prosecution, has done no further harm. This may not always be the case, however, as there may be circumstances in which the timing and placing of a fresh disclosure may cause harm which an earlier disclosure had not. That is why the Bill leaves the matter of prior disclosure to the courts to decide, rather than creating a blanket defence.

We have consulted the Chinese side, through the Sino-British Joint Liaison Group, on our proposals to localize the Official Secrets Acts. The Chinese side have agreed that the localizing legislation should proceed.

Thank you, Mr Deputy.

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

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

OZONE LAYER PROTECTION (AMENDMENT) BILL 1996

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS to move the Second Reading of: "A Bill to amend the Ozone Layer Protection Ordinance."

He said (in Cantonese): Mr Deputy, I move that the Ozone Layer Protection (Amendment) Bill 1996 be read the Second time.

The Ozone Layer Protection Ordinance was enacted in June 1989 to enable Hong Kong to fulfil its international obligations under the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer. The Ordinance seeks to reduce the use of ozone depleting substances by prohibiting their local manufacturing and controlling their import and export.

The Ordinance requires importers and exporters of specified ozone depleting substances to obtain a licence from the Director of Environmental Protection and provides for the seizure of specified substances which are imported without a licence. However, there is no provision on the arrangements to deal with seized substances found without an owner. In the current amendment exercise, therefore, we propose to provide a mechanism for the handling of seized substances for which no apparent owner could be identified. The proposed arrangement requires the Director of Environmental Protection to exhibit a notice to invite claim of ownership and allows him to apply for forfeiture if no claim has been established.

We also propose some administrative changes to streamline the operation of the Ordinance. These include transfer of the regulation making power from the Governor in Council to the Secretary for Planning, Environment and Lands in consultation with the Advisory Council on the Environment, and transfer of the appeal hearing function from the Governor to the Administrative Appeals Board.

The proposed amendments will enable Hong Kong to discharge its international obligations to protect the earth's zone layer more effectively by improving the efficiency of the current procedures and strengthening the enforcement arrangements. I urge Members to give this amendment Bill favourable consideration.

Thank you, Mr Deputy.

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

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

GOVERNMENT RENT (ASSESSMENT AND COLLECTION) BILL

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS to move the Second Reading of: "A Bill to provide for the assessment and collection of rents on certain Government leases extending past 30 June 1997."

He said (in Cantonese): Mr Deputy, I move the Second Reading of the Government Rent (Assessment and Collection) Bill.

The Bill does not introduce a new government policy. Its main purpose is to implement Annex III to the Sino-British Joint Declaration (JD). The requirement to pay new government rents was publicized when the JD was signed, and subsequently made known to property owners when their non-renewable leases were renewed, 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 a 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 of the land leased. In other words, they amount to approximately half of the rates currently being paid by property owners. Most of these government rents will be payable only after 27 June 1997. We estimate about 950 000 properties will be affected. Out of these properties, approximately 60% are small residential flats (up to 70 sq m in saleable area) for which the rents payable should generally be less than $200 per month. 6% are medium sized residential flats (70 sq m to 100 sq m) for which the average rent will be around $500 per month and approximately 4% are large residential flats (100 sq m and over) for which the rent would average around $1,200 per month.

Certain properties will not have to pay the new government rents. These are Housing Authority rented flats constructed on land vested in the Housing Authority; most properties on Hong Kong Island and Kowloon (south of Boundary Street); certain rural properties owned by indigenous villagers and tsos and tongs; and very low value properties such as small agricultural lots and ruined houses.

Mr Deputy, this Council may wish to note that since the entry into force of the JD in May 1985, those non-renewable leases and those special purpose leases in the urban areas that have been extended are already paying the new government rents under the provisions in their lease documents. Most of the properties which will be required to pay the new government rents are those whose leases will be extended to 30 June 2047 under the New Territories Leases (Extension) Ordinance. Although that Ordinance provides for the power to make regulations to govern the assessment and collection of the new government rents, it only applies to leases in the New Territories and New Kowloon. It is therefore necessary to introduce new legislation to embrace all the affected leases. Indeed, from an administrative point of view, it is essential to adopt a uniform and standardized approach in assessing and collecting all the new government rents.

The Bill is modelled largely after the Rating Ordinance. It seeks to codify and standardize the method of assessment, collection and payment of the new government rents. Like rates, the new government rents will be assessed on a tenement basis.

Under the Bill, landowners are primarily responsible for the payment of the new government rents as lessees, but, for practical reasons, the Government has the power to demand the new government rents from the ratepayer who, in most cases, is also the lessee. Where the ratepayer is not the lessee, the sum so paid shall be a debt due to the ratepayer by the lessee unless there is prior agreement otherwise.

The Commissioner of Rating and Valuation will assess and update the rateable value of the land leased in the same manner as provided for under the Rating Ordinance. Specific provisions have been incorporated for the assessment of the rateable values of those properties which are not liable for assessment to rates, for examples, agricultural land and land not yet developed or under redevelopment.

The Commissioner will prepare a Government Rent Roll, containing the address or description of tenements subject to payment of the new government rents, and the rateable value of such tenements. The rateable values in the Government Rent Roll will be reviewed and updated in the same manner, and at the same frequency, as the Valuation List under the Rating Ordinance. The Government Rent Roll will be available for public inspection. The Commissioner will also be responsible for collecting the new government rents. As in the case of rates, late payment of the new government rents will be subject to surcharge.

The Bill also provides for an appeal mechanism. Where the entries of tenements are not identical in the Government Rent Roll and the Valuation List, proposals to alter the Government Rent Roll can be made under the Bill in July, August and September 1997 for the first Government Rent Roll, and in April and May each year for subsequent Government Rent Rolls. However, where the entries of tenements are identical, any proposal, objection or appeal against the rateable value shall be made under the Rating Ordinance only, and any consequential change to the rateable value will be made in both the Government Rent Roll and the Valuation List. A person who is aggrieved by the Commissioner's decision on his proposal, objection or appeal may appeal to the Lands Tribunal.

Similarly, an indigenous villager or a tso or tong aggrieved by the need to pay the new government rents in respect of a rural holding may appeal to the Director of Lands. Where he is aggrieved by the decision of the Director, he

may also appeal to the Lands Tribunal.

Mr Deputy, we would be grateful if Honourable Members would give priority to the scrutiny of the Bill with a view to enacting it as soon as possible. It is important that we have the legislative framework for the collection of the new government rents in place well before the lessees concerned will need to pay them. Early enactment of the Bill will enable other related and very necessary actions to be taken before June 1997. These include bringing into force the regulations required, preparing the Government Rent Roll, arranging publicity on the assessment procedures and rent collection before the first batch of demand notes are issued, and fine-tuning the computer system for the billing and collection of the new government rents. We envisage the above actions will need a few months to complete.

Thank you, Mr Deputy.

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

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

Resumption of Second Reading Debate on Bills

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS (AMENDMENT) BILL 1996

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

MRS SELINA CHOW: Mr Deputy, the Commissioner for Administrative Complaints (Amendment) Bill 1996 seeks to introduce various changes to the principal Ordinance. A Bills Committee was formed to study the Bill and as its Chairman, I would now report on its behalf. It held three meetings with the Administration, during one of which we also met representatives from the Office of the Commissioner for Administrative Complaints.

The Administration has informed the Bills Committee that 43 other countries and territories have adopted the title of "Ombudsman" for office which carries out the functions similar to the Commissioner for Administrative Complaints (COMAC) and 37 countries and territories have adopted other titles. In the light of such information, the Bills Committee agrees to support the

proposed change of the English title of Commissioner to "The Ombudsman".

The Bills Committee also agrees to support the proposed change to the secrecy provision, which is an improvement to the existing one since it will remove unnecessary restrictions on disclosure of information required by the Commissioner which are necessary for the purpose of investigating a complaint or in deciding whether an investigation should be taken, continued or discontinued.

The Bills Committee has considered the proposal to give the Commissioner a discretion to report evidence of maladministration to the head of the organization carefully. Members were informed that the Commissioner had already been provided with the discretion to investigate a complaint and he is at present furnishing complainants with detailed reports even if their cases are not substantiated. Members were assured that the Commissioner will exercise the discretionary power discreetly and reasonably. Members observed that in respect of cases of simple and minor nature, the proposal will enable complainants to obtain investigation results quickly and the time saved will be very significant. Since the proposal will enable the Commissioner to make better use of his limited resources to provide a balanced service of quality and speed, and since most complainants would, most likely, opt for quick solutions rather than a full investigation report, the Bills Committee agrees to support the proposal.

Regarding the proposed paragraph 10 of Schedule 2 which adds into the list of actions not subject to investigation by the Commissioner "any action taken in relation to prevention, detection or investigation of any crime or offence", the Administration confirms that it is intended to apply to the police and the Independent Commission Against Corruption (ICAC) only. The Chief Secretary will therefore move a Committee stage amendment to reflect the intention more clearly and the Bills Committee supports the amendment.

Mr Deputy, the Honourable James TO has also given notice to move a Committee stage amendment to empower the Commissioner to investigate all administrative actions taken by the police. The Bills Committee has drawn no conclusion on this proposal. The Administration vigorously objects to this proposal for reasons they explained in detail in their letter to members dated 17 December.

I shall make clear the Liberal Party's position on Mr TO's amendment at

the Committee stage.

Mr Deputy, subject to the Committee stage amendments, I commend the Bill to Members.

MR JAMES TO (in Cantonese): Mr Deputy, it appears at a glance that the amendment moved by the Government aims to expand the jurisdiction of the Commissioner for Administrative Complaints (COMAC) to include the Police Force as well as the secretariats of some committees, giving the impression that the COMAC can better live up to his reputation of "The Ombudsman". Unfortunately, Honourable colleagues, this is only a false impression.

This is because the Government's proposal in fact fails to bring the COMAC closer into line with the objective and purpose of "The Ombudsman". Why do I say so?

The Government only proposes in its amendment that the "Royal Hong Kong Auxiliary Police Force", the "Royal Hong Kong Police Force", the "Independent Commission Against Corruption", the "Secretariat of the Public Service Commission" and the "Secretariat of the Independent Police Complaints Council" be added to the new Part II in Schedule 1 of the Commissioner for Administrative Complaints Ordinance.

Such a move can only empower the COMAC to receive complaints against the violation of the Code on Access to Information by the aforesaid organizations and conduct investigations. Nonetheless, the move at the same time serves to shackle the COMAC, preventing him from taking complaints against such organizations of having maladministration in other areas. From this, we can see that the Government's proposal is very restrictive. Although I agree that the COMAC should have the power to investigate instances of violations of the Code on Access to Information, I am also of the opinion that an amendment should be moved to the effect of enabling the COMAC to investigate cases of Police maladministration not involving criminal investigation.

The people of Hong Kong have long lost confidence in the arrangement of having the Complaints Against Police Office (CAPO) of the Police Force to handle all cases of police maladministration, including abuse of power. They harbour much doubt about the independence and credibility of the CAPO's investigations which are conducted by members of the Police Force on their

fellow officers. Under such circumstances, credibility is bound to be greatly undermined. People have long wanted to have a government department independent of the Police Force to receive complaints and conduct independent investigations.

Since its inception, the Office of the Commissioner for Administrative Complaints (the Office) has gradually established sound credibility and acceptability and many people in Hong Kong also place their trust in the Office, believing that the investigations it conducts will be more independent, objective and impartial. Hence, by having the Office investigate police maladministration not involving criminal investigations will be in line with the interests and aspirations of the public. Furthermore, it will also help the Government and the Police Force to build a better image as well as a redress system for administrative complaints which is fairer, more impartial and of a higher degree of transparency.

Mr Deputy, what I would also like to point out is that the Government is saying that our amendment is bringing a drastic change to the existing procedure for handling complaints against police officers.

In this connection, I would like to raise a few points. In fact, after amendments have been made to this amendment Bill today, Schedule 2 of the Ordinance will further provide for the addition of "Any action ..... in relation to the prevention, detection or investigation of any crime or offence....." to "Actions Not Subject To Investigation". In other words, the COMAC cannot investigate complaints about police officers suspected of abusing their power and resulting in possible criminal offences. Such complaints will still be handled by the CAPO, to be monitored by the Independent Police Complaints Council (IPCC).

Although I do have my opinion in this respect, I will follow it up in the deliberation of the Independent Police Complaints Council Bill. If however my amendment is passed, it will in fact only enable the COMAC to handle cases relating to general police maladministration not related to criminal investigation, such as police officers delaying in taking statements from witnesses (not the statements from suspects), ill-treating people who come forward to report crimes or offer assistance, being impolite, neglecting their duties, being unfair in handling matters, failing to work according to procedures or even failing to respond to complaints. How then can it be said to be a drastic change!

Be it intentional or otherwise, the amendment proposed by the Government to Schedule 2 actually restricts further the power of the COMAC. They purposely adopt a low profile in bringing up this amendment while claiming that my amendment will lead to a drastic change.

Furthermore, the scope of investigation for the COMAC at present already includes other disciplined services and other departments relating to law or even departments having to take vigorous front-line actions when enforcing the law. For example, the Immigration Department may get involved in misbehaving, maladministration and even disputes when handling illegal immigrants; the anti-narcotics team and anti-smuggling team of the Correctional Services Department and the Customs and Excise Department may have to take law enforcement actions similar to those of the Narcotics Bureau of the police but still they are subject to full investigation by the COMAC; and the Fire Services Department, the Legal Aid Department and the Legal Department and so on have all been included in Schedule 1.

Hence it can be seen that having the COMAC investigate maladministration of the disciplined services will in no way hinder them from performing their law enforcement duties. It is only that we have specially identified the police and the ICAC. In fact, the Office has already had similar and established experience in handling such maladministration involving the disciplined services.

At a meeting of the Bills Committee on the Commissioner for Administrative Complaints (Amendment) Bill, the Assistant Commissioner for Administrative Complaints, Mr Y L CHAN, also expressed openly that he did not object to including the Police Force in Schedule 1 and that is what I have proposed in my amendment to enable the COMAC to handle complaints about police maladministration. He also said that what the COMAC needed would be an increase in manpower and corresponding adjustments to tie in with the change. Moreover, the former COMAC Mr Arthur GARCIA also said repeatedly on many occasions that the COMAC was the right person to investigate police maladministration.

Mr Deputy, I understand that after the amendments have been made to the Ordinance, the Office will need to increase its manpower to cope with a possible increase in complaints. For example, the Office will need new staff to step up the investigation of disciplined services, particularly police officers who have

neglected their duties. Therefore, my amendment this time will not take effect immediately. Instead, it will require the Legislative Council to approve a commencement date by means of a resolution at a later date for the amendment to formally take effect.

Based on the above reasons, I hope that Honourable colleagues will later support my amendment, agreeing in principle to empower the COMAC to receive complaints about and conduct investigations into police maladministration not relating to criminal investigations. I also hope that they will make suggestions for improvement so that maladministration resulting in injustice will be monitored and improved, thereby protecting the rights and interests of the people and providing the police with a clear and impartial system for people to lodge complaints.

I understand that the Government has recently lobbied many Members intensively and I have also discussed with these Members who may later on vote against my amendment during the Committee stage. Many of them told me that even though they might object to my amendment and support the Government's amendment, the present system really needs an overhaul. In particular, there will indeed be a big problem if all complaints are handed back to the police for investigation. Whether Members are voting for or against the amendment is not important. I hope that Honourable colleagues can give the Government an important message, and that is whether it is proper to have CAPO of the police to conduct investigations into all cases involving the police, regardless of whether the complaints are related to non-criminal investigations, criminal investigations, general maladministration or civil misconduct. I hope that Members can give the Government a very strong and clear message even if you are against the amendment I am about to move.

MR IP KWOK-HIM (in Cantonese): Mr Deputy, ever since he came to Hong Kong, Governor Chris PATTEN has been striving hard to increase the transparency of government departments as well as to put strong emphasis on their accountability to the public. Yet regrettably, incidents of maladministration are still occurring frequently among government departments. This is shown by the fact that after the Commissioner for Administrative Complaints Ordinance was passed by this Council and the scope of investigation of the Commissioner for Administrative Complaints (COMAC) changed, the number of complaints received has increased several fold. However, this does

not mean that the COMAC should investigate all government departments, not least those which already have their own monitoring mechanisms. The Democratic Alliance for the Betterment of Hong Kong (DAB) is against monitoring the operation of government departments in a way that duplicates efforts and causes wastage of resources.

The DAB has reservations about the amendment moved by the Honourable James TO today. Regarding his proposal to include the police and auxiliary police in Schedule 1 of the COMAC Ordinance so as to bring them under the COMAC's general jurisdiction, the DAB thinks that this could achieve nothing but cause wastage of resources and confusion to the existing complaints mechanisms because all complaints concerning the Police Force are at present taken care of by the Independent Police Complaints Council (IPCC). Furthermore, the Legislative Council has already started scrutinizing the new Bill introduced by the Government to improve the operation of the IPCC. We believe the Bill will further improve the relations between the IPCC and the Police Force, the procedures for interviewing witnesses of police complaints, as well as increase the transparency of the IPCC. All these issues are naturally what Members taking part in the scrutiny of this Bill are concerned about, and we expect that through such scrutiny, the above goals can be achieved. The DAB thinks that the way to enhance public confidence in the existing monitoring mechanism regarding the Police Force should start with improving the existing monitoring channels, rather than introducing additional monitoring mechanisms to perform the same function. Therefore, the DAB opposes the amendment.

DR ANTHONY CHEUNG (in Cantonese): Mr Deputy, one important amendment in this Bill introduced by the Government is the inclusion of the Royal Hong Kong Auxiliary Police Force, the Royal Hong Kong Police Force and the Secretariats of the Public Service Commission (PSC) and the Independent Police Complaints Council (IPCC) in the new Part II of Schedule 1 of the Commissioner for Administrative Complaints (COMAC) Ordinance.

Originally, the inclusion of these departments or organizations in the COMAC Ordinance is a move to be welcomed since it strengthens the function of the COMAC. However, as the Honourable James TO has pointed out, the present amendments are put under the new Part II of Schedule 1. This means that the COMAC can only have the power to receive complaints, and carry out investigation and supervision in connection with any acts of non-compliance with the Code on Access to Information by the above organizations but cannot act upon other instances of maladministration. This in effect limits the power of

the COMAC of monitoring these organizations.

I will now concentrate on the question of the Secretariats of the IPCC and the PSC. If we look at the present COMAC Ordinance, we will find that the Legislative Council Secretariat, and the Secretariats of the two municipal councils, the Standing Commission on Civil Service Salaries and Conditions of Service and the Standing Committee on Disciplined Services Salaries and Conditions of Service all come under the existing Schedule 1 and they will remain in Part I of Schedule 1.

The Democratic Party fails to see the difference between the Secretariats of PSC and IPCC and the secretariats of the above-mentioned organizations in Schedule 1, which makes it necessary to exclude the two secretariats from the investigations of the COMAC on maladministration. If the Government fears that the COMAC would interfere with the personnel cases of the Civil Service and the law enforcement and investigations carried out by the police once these two secretariats are included in Part I of Schedule 1, that will be quite unnecessary. This is because Schedule II of the COMAC Ordinance (including the new item 10 of Schedule 2 as proposed by the Government) clearly states that such actions are not within the scope of investigation by the COMAC.

Mr Deputy, I actually proposed in the Bills Committee that the Government should introduce an amendment to include the two secretariats in Part I of Schedule 1. However, this proposal was rejected by the Government. I also tried to introduce a Committee stage amendment under my name. Unfortunately, the Government raised its objection on the grounds that this amendment might lead to more complaints and create the need for additional personnel in the Office of the COMAC, bringing about a charging effect. The President also ruled that this would have a charging effect and therefore I could not propose a Committee stage amendment. The Democratic Party finds the Government's stance most regrettable.

Mr Deputy, we feel that opposing the amendment on the grounds of its charging effect is using a technical matter to evade a matter of principle. In principle, we do not see how the amendment originally proposed by us goes against the spirit of the establishment of the COMAC system. As a matter of fact, the spirit of this Government Bill is to extend the jurisdiction of the COMAC. Thus we do not see how the spirit of the amendment proposed by us goes against the amendments the Government wishes to make now. During the

course of deliberation by the Bills Committee, the representative of the COMAC did not object to the inclusion of the two secretariats in Part I of Schedule 1. As to the so-called charging effect, it is the Government which proposes to put the two secretariats under the COMAC's jurisdiction. Will there not be any need for additional investigation personnel if the two secretariats are included in Part II of Schedule 1? Therefore, we fail to understand the Government's logic.

Under the existing Standing Orders of this Council, we certainly cannot prevent the Government from putting a stop to our amendment procedurally on the grounds that it will have a charging effect. However, we feel that such a procedural means cannot cover up the weakness in its argument.

Mr Deputy, these are my remarks.

MR LEUNG YIU-CHUNG (in Cantonese): Mr Deputy, as the saying goes, "Tasteless as chicken ribs are, it would be a bit of a waste to throw them away." The Commissioner for Administrative Complaints (COMAC) has been looked upon as a "toothless tiger". No matter what the COMAC finds out after an investigation, and no matter what improvements he advises the Government to adopt, he will still be helpless and unable to force it to introduce any changes as long as it refuses to co-operate. That being the case, how can the COMAC, which as no statutory powers over the maladministration of government departments, be called an "ombudsman"?

The Committee stage amendment to be moved by the Honourable James TO, which seeks to empower a non-police body to conduct investigations into complaints against the police, is desirable in principle. However, there are three obvious inadequacies in Mr TO's amendment. First, as I said just now, the Administration can simply ignore the COMAC's investigation findings. So it is probable that no practical results can be achieved. Second, since the Bill has already specified that the COMAC cannot investigate any criminal offences and other related actions, his scope of investigating cases of police complaints may be significantly reduced. The third, and also the most fundamental problem, is that even if the amendment of Mr TO is carried, it does not mean that the COMAC can, at any time, start to handle those cases related to police complaints. He still has to wait until this Council passes a resolution on the commencement date of the proposals. Therefore, it can be said that the amendment today is just something that "looks attractive"!

There are currently more than 3 000 complaints against the police every year. However, less than 5% of these complaints are classified as substantiated. As long as complaints involving police officers are investigated by the Police Force itself, it will be difficult to convince members of the public that the investigations are impartial. That is why I must reiterate that the Government must set up an independent "Complaints Against Police Office" to handle such complaints and to safeguard the human rights of the people. That said, for lack of a better alternative, I can but very reluctantly accept and support the amendment which is like "chicken ribs" to be moved by Mr TO.

Thank you, Dr Deputy.

MR CHIM PUI-CHUNG (in Cantonese): Mr Deputy, I support the amendment moved by the Honourable James TO. However, it is my hope that after the Commissioner for Administrative Complaints (COMAC) has been empowered, he will let members of the public know exactly how much power he is having, and he must not lead members of the public to think that as "everything is bright and promising", they may lodge whatever complaints they can think of with the COMAC. The COMAC must not let the public rejoice too soon while it fails to do anything at all.

There are actually many aspects to be reviewed about the police. We are not challenging the police and asking them to surrender the "Number 1" vehicle licence plate for auction. But I hope that the police will follow good advice and improve their means of enforcing the law.

MR WONG WAI-YIN (in Cantonese): Mr Deputy, I would like to respond briefly to the remarks made by the Honourable IP Kowk-him of the Democratic Alliance for the Betterment of Hong Kong (DAB) just now. Mr IP openly praised the Office of the Commissioner for Administrative Complaints (COMAC) and noted that it has been receiving more and more complaints. This clearly reflects two things: first, maladministration in government departments might be getting more serious; second, the COMAC's credibility is on the rise all the time. Some Honourable colleagues think that the COMAC's power is extremely limited. While we agree that his power is limited, we hope that some improvement can at

least be made.

Of course, in the final analysis, the Democratic Party knows very clearly that what it wants is an independent Complaints Against Police Office. On the basis of the remarks just made by Mr IP, I initially thought that he would support the Honourable James TO's amendment. However, after having delivered a few sentences, he took an abrupt turn and said that many departments have internal complaints mechanisms now. He thought that it is unnecessary to duplicate the efforts and these departments do not need another department to handle complaints about maladministration. In fact, this is in line with the usual style of the DAB of criticizing mildly but giving support. Where does the question lie now? The question is not whether there are complaints mechanisms, but whether these complaints mechanisms are effective and whether the public have confidence in them.

Obviously, the public have lost confidence in the internal complaints mechanisms of some departments. The Complaints Against Police Office (CAPO) is one of the internal complaints mechanisms in which the public have lost the most confidence. This mechanism has many problems. I am sure the Government is aware that there are many problems. However, the Government is also subject to the pressure of strong opposition from the Police Force.

We have always been fighting for the complete independence of the CAPO. It can be said that we have fought for this for 10 years. Since we joined this Council, we have been fighting for this. We do not just start asking for a change in the complaints mechanism of the CAPO and strengthening the complaints mechanism of the authorities concerned today. We have never stopped fighting for this, but we have met with very strong resistance. Maybe the Security Branch of the Government also hopes to realize this but the opposition from the Police Force has been too great. We fail to understand why the Police Force is so worried about letting non-police officers act as investigators. The Chairman of the Independent Police Complaints Council, Mr Denis CHANG, has also raised the issue of letting non-police officers join the CAPO, and that the investigations do not have to be carried out entirely by police officers. While the Government has even rejected such minor changes, we actually have no idea whether we can finally succeed in fighting for the independence of the CAPO. Therefore, so long as a sound complaints mechanism can be established to make the public a little more confident in it and to allow the public to get fairer treatment, the Democratic Party will give its

support.

The amendment introduced by Mr James TO on behalf of the Democratic Party is aimed at achieving this goal. We are not just looking at whether a certain department has a complaints mechanism. If the mechanism is just a sham and cannot practically help the public get fair treatment, it will not be useful and it will be worthless in the eyes of the public. Thus, we are looking at whether this mechanism is useful. If it is useful, it can be maintained and improved. If not, we should think of some ways to replace it with other mechanisms or enhance its functions. Therefore, we hope that other Members will support the Democratic Party's amendment.

Thank you, Mr Deputy.

MR BRUCE LIU (in Cantonese): Mr Deputy, there are three main reasons for objecting to including cases of maladministration involving the Police Force under the jurisdiction of the Commissioner for Administrative Complaints (COMAC).

(1) The method is impracticable

The Hong Kong Association for Democracy and People's Livelihood (ADPL) finds this reason most untenable. At present, the COMAC is empowered to handle complaints about maladministration in the disciplined services with the exception of the Police Force. Such disciplined services include the Immigration Department, the Correctional Services Department, the Customs and Excise Department and the Fire Services Department.

Why should it be practicable for the COMAC to handle complaints against those disciplined services other than the Police Force, and not practicable for him to handle complaints against the police? Is this not rather discriminatory?

(2) A blow to police morale

I think this reason should be considered from another point of view, and that is the acts of maladministration of the black sheep in the police can be fairly handled and suggestions of punishment can even be put forward. In so doing, the image of the police among the public can actually be improved and boosted.

The data on past complaints show that there are indeed black sheep in the Police Force. For instance, complaints filed by the grassroots people still reveal cases in which the police extort confessions by torture, suspects are beaten up until they confess or about the bad attitude of police officers and even about some police officers "loafing" when they are on patrol duties.

Although the public resent this, they lack confidence in lodging their complaints with the Complaints Against Police Office (CAPO) as they somehow mistrust the investigation of police officers by police officers. As they find this a bit unreliable, they strongly demand for the independence of the police complaints mechanism from the Police Force.

Therefore, if we have to choose between dealing a blow to the morale of the Police Force and to the confidence of the public, the ADPL would rather choose the former. It is because a mild blow is equivalent to stimulation. I hope the police officers will try to do their best.

(3) Duplication of efforts

The Administration argues that since there is an existing Complaints Against Police Office (CAPO) and the Independent Police Complaints Council (IPCC) Bill will soon be discussed, any extra mechanism would be a duplication of efforts. However, the amendment moved by the Honourable James TO is aimed at working out a feasible proposal under the present defective system.

Actually, our long-term objective is to fight for the independence of the whole police complaints mechanism. This is also a long-term objective the public have been pressing the Legislative Council to achieve over a long period of time. We hope that during the upcoming deliberation on the IPCC Bill, we could consider in detail how to achieve this. Even if this amendment is passed, it will not become effective immediately. A resolution will have to be adopted in the future before it will formally come into effect.

The people of Hong Kong require an effective complaints mechanism. We have taken this opportunity to put this issue on the agenda for discussion. I hope that Members of this Council will support Mr James TO's amendment.

Lastly, I would like to add one more point. If the Office of the COMAC really is to be responsible for investigating complaints against the police,

especially the complaints about maladministration, it would require additional resources. In particular, it might need to recruite some staff and investigators who have practical experience in the operation of the police. Therefore, if the COMAC files a request for funding with this Council, we must give it our support, lest the Office of the COMAC should become a toothless tiger.

Mr Deputy, these are my remarks.

CHIEF SECRETARY: Mr Deputy, I would like to thank the Honourable Mrs Selina CHOW, Chairman of the Bills Committee, and other members of the Bills Committee for their hard work and efficiency in examining this Bill. In a relatively short span of time, they have looked carefully at all aspects of the Bill. In the light of concerns expressed by members on a particular aspect of the Bill, I shall move amendments during the Committee stage.

The Bill seeks to empower the COMAC to investigate complaints of non-compliance with the Code on Access to Information (the Code) against the police, the Independent Commission Against Corruption (ICAC) and the Secretariats of the Independent Police Complaints Council and the Public Service Commission, to improve the COMAC's working procedures and to change the COMAC's English title to "The Ombudsman".

The Administration has stated publicly that the Code will be extended throughout the Government by the end of this year. We are committed to this undertaking. The Code will be extended to the last of the 90 government departments and branches later this month. For the more efficient operation of the Code we consider it preferable to have a single, independent review body for all agencies included under the Code. The Bill therefore seeks to amend the COMAC Ordinance to enable the COMAC to investigate complaints of non-compliance with the Code against the four agencies, that is, the police, the ICAC and the Secretariats of the Independent Police Complaints Council and the Public Service Commission, which are at present not subject to the COMAC's jurisdiction.

A member of the Bills Committee considers that the COMAC's jurisdiction should be extended so that he may investigate all general complaints of maladministration on the part of the Administration. The Administration is strongly against this proposal. I shall explain our position during the

Committee stage.

Other members of the Bills Committee point out that our proposed amendments to schedule 2 of the Ordinance seem to go further than our expressed intention in that it was not limited to actions involving the police and the ICAC. The Administration accepts this point. I will, therefore, be moving a Committee stage amendment to spell out more clearly our intention.

The Bill proposes two improvements to the COMAC's working procedures. First, the existing secrecy provision under section 15 of the COMAC Ordinance is unnecessarily restrictive. The Bill seeks to facilitate the COMAC and his staff in their investigation of complaints. The Bills Committee agrees with our proposal. Secondly, the proposed amendment to section 16(1) of the COMAC Ordinance will make the reporting requirements of the COMAC under the section discretionary instead of mandatory. This will enable the COMAC to have more flexibility in handling simple and minor complaints so that he can put the resources available to him to the most effective use.

The COMAC will exercise this discretion very carefully, taking into account the nature of individual complaint cases. He will continue to inform the complainant the result of his investigation and be required to provide a report on the outcome of his investigations to the head of an organization concerned under section 17(2) of the Ordinance, if he has not already done so under section 16(1). This proposal, too, has been approved by the Bills Committee.

Finally, the proposed change of the COMAC's English title to "The Ombudsman" will reflect more accurately his present powers and jurisdiction which are now more akin to those of a traditional ombudsman following the legislative changes effected in June 1994. It will also bring him into line with international practice. The Bills Committee has also agreed to this proposal.

Mr Deputy, the Bills Committee has indicated support for the Bill subject to the amendment of schedule 2 and one minor amendment to the Chinese text which I shall move during the Committee stage. I hope that Members of this Council will support these Committee stage amendments and the Bill as a whole and oppose the amendment that will be moved by the Honourable James TO. I would like to make it clear that, for the reasons that I shall give during the Committee stage, if these amendments are agreed to by this Council, the Administration will have no option but to withdraw the Bill before it is given its

Third Reading.

Thank you, Mr Deputy.

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

Bill read the Second time.

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

ARBITRATION (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 9 October 1996

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

Bill read the Second time.

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

BANKRUPTCY (AMENDMENT) BILL 1996

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

MR RONALD ARCULLI: Mr Deputy, as Chairman of the Bills Committee on the Bankruptcy (Amendment) Bill 1996, I wish to report to Honourable Members the deliberations of the Bills Committee on this Bill. In considering the Bill, we have invited views from interested parties, and we are grateful to the Hong Kong Society of Accountants, the Consumer Council and The Hong Kong Association of Banks which have offered valuable comments on different aspects of the Bill.

The purpose of this Bill is to implement recommendations contained in the Report on Bankruptcy of the Law Reform Commission of Hong Kong to simplify

bankruptcy procedures and to place greater emphasis on rehabilitation rather than punishment. To simplify the procedures, the Bill proposes to remove the concept of "acts of bankruptcy", which constitutes the grounds on which a bankruptcy petition may be presented, and to abolish bankruptcy notices issued to creditors, which are based on judgements and require a debtor to pay a due debt. These procedures will be replaced by a statutory demand requiring a debtor to pay his debts specified in circumstances and failure to comply will lead to the presentation of a bankruptcy petition. The Bill also introduces an automatic discharge from bankruptcy, subject to there being no objections from the trustee of the bankrupt's estate or a creditor, three years for a first-time bankrupt, and five years for subsequent bankruptcies.

Whilst members of the Bills Committee are generally in support of the Bill, detailed discussions have taken place in respect of a number of concerns. One such concern involves the question of tax secrecy. Members consider the provision for the Official Receiver or the trustee, through an application to the court, to obtain tax information of the bankrupt a gradual erosion of the tax secrecy provision in the Inland Revenue Ordinance. They are of the view that the exclusion clause to the preservation of secrecy should only be confined to the trustee. As for the Official Receiver, he should only be allowed access on condition that he is acting as the trustee and the information is necessary for tracing the bankrupt's asset. The Administration will, during the Committee stage, move an amendment to this effect.

Members are also concerned about the impossibility for the trustee to preserve the secrecy of tax information of the bankrupt when a bankrupt is examined by the court, when such proceedings may be open to the public. The Bills Committee suggested that if tax information has to be revealed, the hearings should be conducted in private and no person by virtue of being a creditor be allowed to attend any private examination of the bankrupt or indeed of any other party. The Administration has agreed to move amendments to the effect that tax records can only be examined during private examinations and to add a new section to ensure that no creditor or a member of a creditors' committee will have access to the contents of a document disclosed under this provision. At the suggestion of the Bills Committee, the Administration has also agreed to propose amendments to the Bill to include a provision specifically empowering the trustee to refuse disclosure of such tax information.

Another concern the Bills Committee had was the four years the trustee has to make a decision on a proof of debt after the claim is filed with him. The Hong Kong Society of Accountants consider this period unreasonably long, especially when there is already provision for the trustee to apply to the court for extension of the adjudication period. The Bills Committee also shares this concern. According to the Administration, the four-year adjudication period for proofs of debt is proposed on the basis of practical considerations. In actual experience, a large proportion of the dividend distributions in the past few years was made over four years after the proofs of debt were filed. This is due to the fact that in many cases, the main asset of a bankrupt's estate is the monthly income contribution made by the bankrupt and it often takes up to four years to build up an amount that would justify declaring a dividend bearing in mind the costs involved.

Having considered the Administration's explanation and the position in other jurisdictions such as Australia and the United Kingdom, members recognized with some hesitation that the proposed four-year adjudication period is an improvement. Furthermore, members acknowledge that as the bankruptcy procedure would be substantially different from the present ones after the enactment of the Bill and the difficulty to assess at this stage the effect of such change on the resource implications, members therefore consider that the position be reviewed sometime after the enactment of the Bill. In this connection, the Administration has agreed to move an amendment to add an enabling provision in the principal Ordinance for subsequent prescription of the adjudicating period in the Bankruptcy Rules, which will be put to this Council shortly after the enactment of this Bill.

The Bills Committee also debated at length the apparent incongruity between the four-year adjudication period for a trustee to make a decision on a proof of debt and the provision that a first-time bankrupt can be discharged automatically three years after a bankruptcy order is issued, subject to there being no objection from creditors or the trustee. The Administration stresses that the two issues are distinct and independent in principle, and this automatic discharge mechanism is more to do with rehabilitation rather than the practicalities of administration. However, the Bills Committee is of the view that the public will have difficulty in reconciling the apparent incongruity between the two periods. The Bills Committee believes that a four-year bankruptcy period prior to automatic discharge for first-time bankrupts is more appropriate in the context bearing in mind Hong Kong's social environment. Members' reasons for this include concerns that the proposed three-year bankruptcy period may be too

lenient to the debtor nor sufficiently effective a deterrent. The Administration has agreed to incorporate the Committee's view in this respect by moving an appropriate amendment to that effect.

A further concern of members was the absence of any sanction on a discharged bankrupt for not fulfilling his obligations in giving assistance to the trustee in the administration of the estate and/or to continue making payments into the estate. The Bills Committee therefore recommended that the relevant sections of the Bill be amended to provided a sanction of contempt of court on a discharged bankrupt for non-compliance with the obligations prescribed or imposed on him. The Administration has agreed to move an amendment accordingly.

Lastly, Mr Deputy, I would like to report that subsequent to the Bills Committee's report to the House Committee on 6 December 1996, the Administration has advised that The Hong Kong Association of Banks wishes to draw the Bills Committee's attention to two issues on which the Association still disagrees with the Administration. These two issues are related to the determination of what constitutes a reasonable prospect that a debtor will be able to pay a debt when it falls due and the ability to include or exclude items from the bankrupt's estate by the trustee. Members of the Bills Committee have been consulted by circulation with respect to these two points and no objection has been raised to the Administration's stand.

Mr Deputy, on behalf of the Bills Committee, I ask for this Council's support on the Bill and the amendments to be moved by the Administration.

THE PRESIDENT resumed the Chair.

SECRETARY FOR FINANCIAL SERVICES: Mr President, I am grateful to the members of the Bills Committee, and in particular its Chairman, the Honourable Ronald ARCULLI, for the detailed scrutiny that they have given to the Bankruptcy (Amendment) Bill 1996 which is a long and technical Bill. We are grateful for their support of the Bill and also for the constructive suggestions that they have made in relation to it.

I outlined the main elements of this Bill when it was introduced into the Council earlier this year and I do not propose to repeat them again now. Suffice

it to say, the Bill will modernize and streamline the legislative framework and procedures for the administration of personal insolvencies and also represents the first phase in a comprehensive overhaul of our insolvency system.

Mr President, I shall be proposing a limited number of amendments to the Bill at the Committee stage, all of which have been agreed with the Bills Committee. These amendments, which are mainly technical, are being proposed primarily in response to specific concerns raised in submissions made to the Bills Committee, notably by The Hong Kong Association of Banks and the Hong Kong Society of Accountants, as well as issues raised by the Bills Committee itself.

Of particular concern to the accountancy sector was the possibility that tax information relating to a bankrupt that was obtained by the trustee in bankruptcy might also become available to creditors or other unrelated parties. To allay this concern, I shall move an amendment to provide suitable safeguards in relation to maintenance of tax secrecy.

One aspect which received close attention from the Bills Committee was the proposed time period leading up to the automatic discharge from bankruptcy for a first-time bankrupt. The Bill proposes that this should be three years based on the precedents set under the United Kingdom Insolvency Act 1986 and the Australian Bankruptcy Amendment Act 1981. However, the Bills Committee felt that this may not be sufficiently long, noting also that under bankruptcy legislation in Singapore, the corresponding period is five years. Members of the Committee considered that four years rather than three would be more appropriate for Hong Kong's situation. I am prepared to defer to their judgement particularly in view of the fact that it is open to a bankrupt to apply for early discharge. I shall be moving an amendment to reflect this change.

Under the existing Bill, there are no specific provisions for sanctions if a discharged bankrupt subsequently fails to co-operate with the trustee after his discharge from bankruptcy. At the request of the Bills Committee, I will move an amendment to provide for sanctions to be imposed for such non-co-operation.

Under the Bill, a new statutory duty is imposed on the trustee to adjudicate proofs of debts within four years or to seek an extension of time from the court,

in cases where there is a reasonable prospect of a dividend being paid. We have subsequently agreed with the Bills Committee that the specific period will be prescribed in the rules.

With these remarks, I commend the Bill to Honourable Members.

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

Bill read the Second time.

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

POST-RELEASE SUPERVISION OF PRISONERS (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 27 November 1996

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

Bill read the Second time.

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

WILD ANIMALS PROTECTION (AMENDMENT) BILL 1996

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

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

Bill read the Second time.

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

SUBMARINE TELEGRAPH BILL

Resumption of debate on Second Reading which was moved on 20 November 1996

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

Bill read the Second time.

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

Committee Stage of Bills

Council went into Committee.

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS (AMENDMENT) BILL 1996

Clauses 2 to 7 and 11 to 14 were agreed to.

Clauses 1 and 9

MR JAMES TO (in Cantonese): Mr Chairman, I move that clauses 1 and 9 be amended as set out in the paper circulated to Members.

Mr Chairman, I have in fact roughly discussed the arguments for this amendment during the Second Reading, and I have also mentioned the background and information concerning this amendment in my letter to Honourable Members in these few days. Perhaps I can briefly explain my idea. First of all, I would like to let Members know why I have to propose the amendment. Firstly, the original proposal only relates to the investigation regarding the Code of Access to

Information and has a very restricted scope. Secondly, the police really need to conduct independent and fair investigations on cases of maladministration. Thirdly, my amendment is actually still subject to the provision of Schedule 2 of the Bill. According to the relevant provision, even if my amendment is carried, the Office of the COMAC can still not investigate into any activities related to criminal offences. Fourthly, the jurisdiction of the COMAC actually includes conducting investigation into all other disciplined forces. As mentioned by the Honourable CHIM Pui-chung , this amendment only takes away a special privilege enjoyed by the Police Force, which is totally unjustified. Fifthly, I hope that all Committee members would agree to adopt the same principle and attitude. In fact, I have given the Government time to make preparations for work such as giving the COMAC more manpower.

Some Members, including the Honourable LEUNG Yiu-chung, said just now that this proposal is like "chicken ribs", having little value. I also agree that this amendment appears like "chicken ribs". But even so, the Government still wants to play a "lose hit, win take" game. Our respected Chief Secretary even said that if the amendments were supported by this Council, the Government would withdraw the Bill. Is this a political threat? Does the Government intend to turn this Bill into a replica of the Employment Bill we debated earlier on? Why do we have to do so? Is it true that even if some minor amendments are made, the Government would still not tolerate an independent organization to investigate into maladministration not related to criminal offences? The Legislative Council rarely withdrew bills in the past, why is it doing so now?

I hope the Government would think twice and that Members would make known their position. If the Government can do this now, it can also do the same to other bills in the future. What principles should the Legislative Council base on when amending and scrutinizing bills? I hope that Honourable colleagues will not be held back by the political threat. If they have something to say or if they find that improvements have to be made, they should express their views.

Mr Chairman, with these remarks, I move the amendment.

Proposed amendments

Clause 1

That clause 1 be amended —

(a) by deleting the heading and substituting "**Short title and commencement**".

(b) by renumbering the clause as clause 1(1).

(c) by adding -

"(2) Section 9(c) and (d) shall come into operation on a day to be appointed by a resolution of the Legislative Council.".

Clause 9

That clause 9 be amended, by adding —

"(c) in Part I, by adding -

"Royal Hong Kong Auxiliary Police Force.
Royal Hong Kong Police Force.";

(d) in Part II, by repealing -

"Royal Hong Kong Auxiliary Police Force.
Royal Hong Kong Police Force.".".

Question on the amendments proposed.

DR YEUNG SUM (in Cantonese): Mr Chairman, I seldom speak on matters of security since the Democratic Party already has a very competent spokesman in this field, and we have been following up this issue for quite a long time. However, I still want to speak on behalf of the Democratic Party as I hope to put our strong protest on record. It is because the Chief Secretary said just now that if the amendment of the Honourable James TO is passed, the Administration would withdraw the Bill.

Mr Chairman, I want to put the strong protest of the Democratic Party on record because if the Chief Secretary really does so, she would strike a heavy blow at the spirit and procedures of the Council. In fact, each time when the

Government proposes a bill, if it sends all the government officials to engage in lobbying, the bill will most probably be passed. However, amendments moved by Members only have a slight chance of being carried. Does it mean that if a bill has the possibility of being passed, it cannot be proposed? Does the Government insist that all bills be passed intact as intended by the Government, otherwise they cannot be proposed? If this is so, will the legislative assembly be biased towards a certain side? Secondly, why can the Government not accept some different opinions?

Mr TO has been planning to move this amendment for a long time and we all know that the public have been hoping that the Complaints Against Police Office can become independent. Now that it cannot be independent, the COMAC is just trying to extend its scope of investigation to cover the police. However, even such a slight improvement cannot be made. Is it intended that in order to safeguard the prestige of the police, the public's complaints cannot be properly entertained? Why can the Government not try to strike a balance? Why does it have to entirely support the so-called prestige of the police? If the prestige cannot be gained through proper channels, is it not futile? Probably, it is just bureaucratic airs, not popular prestige.

A lot of people talk about government prestige or executive-led government nowadays. No matter whether it is executive-led government or prestige, why is it not built on popular trust? Is it not better than "putting on bureaucratic airs"? I do not understand why the Government cannot accept such a minor amendment. Many opinion polls show that people are greatly discontented with the channels of lodging complaints against the police. In fact, I think that Mr James TO's amendment is basically still inadequate. But in respect of such a minor amendment, the Chief Secretary, on behalf of the Government, even openly asks Members not to give their support or else the Government will withdraw the whole bill. I want to put the strong protest of the Democratic Party on record. The Government has done this before with the Employment (Amendment) Bill and it caused the resignation of the Honourable LAU Chin-shek. I will not resign for this because I will soon be relieved of my office. I will definitely not resign now because of this. However, I hope that my anger can be put on record. In so doing the Government strikes a heavy blow at the procedures and spirit of the legislative assembly.

Thank you, Mr Chairman.

MRS SELINA CHOW: Mr Chairman, the Liberal Party considers it inappropriate at this point to bring about such a major change in the investigation of complaints, albeit on administrative actions only, of the police.

This involves a fundamental change in the arrangements which presently stand. The existing arrangement provides for all complaints, administrative or operational, to be investigated by Complaints Against Police Office (CAPO), and these investigations are closely monitored by the Independent Police Complaints Council. The authority and capability to monitor are currently being closely examined by the Bills Committee scrutinizing the Independent Police Complaints Council Bill.

The proposed amendment if adopted will, as Mr James TO has earlier explained, place the investigation of administrative complaints against the police under the jurisdiction of the Commissioner. Such a change is a major policy alteration and should not be introduced through the back door as it is now the case, but should be thoroughly debated so that full implications could be recognized.

Besides, we do not believe it is meaningful or cost effective to separate complaints on administration actions from those on operational or criminal actions, and allow two separate agencies to deal with them separately. We wonder whether that separation can be determined at all in some cases. We are, therefore, not convinced there is enough merit in the proposed amendment to warrant our support. On the contrary, it may create uncertainty and even dissatisfaction if the complainant concerned does not agree with the classification of a certain complaint.

For these reasons, the Liberal Party opposes Mr James TO's amendment.

MR CHEUNG MAN-KWONG (in Cantonese): Mr Chairman, the Legislative Council should be a place of the virtuous. What kind of behaviour could be regarded as virtuous then? To cite an example, if a Member has made any inappropriate or rude remarks in this Council, the President can stop the Member concerned or even order that Member to leave the Chamber. In a place of the virtuous, we should all behave virtuously and apply the rules of the game of the virtuous to resolve our differences and conflicts instead of resorting to villainous measures.

What are villainous measures? Making political threats is one example.

If the amendment moved by the Honourable James TO is carried and the Government claims that it has no alternative but to withdraw the Bill before its Third Reading, then this is a political threat made by a real villain. Does the Government really have no other choice? No one has asked it to act like a villain, In fact, the Government could carry itself virtuously in this Council just like all the Honourable Members. For instance, today outside this Chamber, actually there are active lobbying, canvassing as well as vote-counting going on in our Ante-chamber. All these are virtuous actions which we should take. If you have enough votes, you win; otherwise you lose. This is an undisputable rule. However, the present situation is not like this. May be the Government is not so sure about the number of votes it could get, so it chooses to be a real villain and tells us that it would be futile even if the amendment is carried because the Government will withdraw the Bill. But if we lose, the Government will proceed with the Bill. The Government is a real villain and what it tries to do is truly a "lose hit, win take" behaviour. This will certainly trample on and cause great harm to the parliamentary spirit or our virtuous behaviour, especially when this is an elected legislative assembly.

What we expect of the Government is that it should possess the executive power to put forward bills and to lobby all Members to accept those bills. Only a real villain would withdraw or rule out a bill the amendment to which may be amended and passed by this Council in a way not to its liking. Should our Government practise such villainy? Should such villainous behaviour be stated so explicitly and clearly by our highest ranking government official? I found that most shocking and totally unacceptable. I think this will further turn the principle of executive-led government — the highest philosophy in the eyes of the Government — into executive autocracy.

Should Hong Kong be put under executive autocracy? If the Government could exercise its autocratic power arbitrarily, what is the point of having a legislative assembly? Would it not be better for the Government, when introducing bills to this Council for examination, to set out a list and state clearly, "Honourable Members, here are the restricted areas of this Bill, beyond which you must not stray, or this Bill will not be kept any more." In view of the present situation, the Government should rein in before it is too late and think it over carefully whether such political threats should be continued; whether the "lose hit, win take" measure should continue to be adopted; and more importantly, whether the villainous autocratic approach should still be followed? Whether

Members support the amendment of Mr James TO or not, I hope that they will safeguard the dignity of a democratic legislative assembly, instead of chiming in with a villainous government after being trampled by it. Whether this Bill will be withdrawn or not, we ought to criticize such kind of villainous spirit in the strongest terms. Thank you, Mr Chairman.

MR YUM SIN-LING (in Cantonese): Mr Chairman, in the past, there used to be an anti-corruption unit within the Police Force. However, it later turned out to be the headquarters of corruption and became an international laughing stock. As a result, the Hong Kong Government resolutely set up the Independent Commission Against Corruption which has proved to be very effective. In addition, it has won an international reputation for Hong Kong as well as gained the respect of the Chinese Government.

The Honourable Bruce LIU thinks that this amendment is like "chicken ribs" and has little value, but I would say it is a "partly concealed" amendment. It is true that the public would like to see the whole picture, but it would be more important if we could take the first step, that is, take an important step forward and win the applause of the public.

Thank you, Mr Chairman.

DR LEONG CHE-HUNG: I would like only to speak on Mr TO's amendment, but before I express my views, I would like to declare my interest as a Vice Chairman of the Independent Police Complaints Council, the body that is currently responsible to monitor the activities of CAPO and which is currently having a Bill before this Council to make it into a statutory body.

While, Mr Chairman, I do not think anybody would doubt that the actions of our police, be they the Royal Hong Kong Police Force or the Royal Hong Kong Auxiliary Police Force, should not be properly monitored, in particular that the powers that they use are not being abused. The amendments moved by Mr TO in essence really mean three things, or rather two things. Firstly, the COMAC would therefore be directly investigating complaints made against these disciplinary services, a job currently being dealt with by the CAPO and monitored by the IPCC. Secondly, the need and the role of the IPCC would therefore be put into question. In short, would such a body like the IPCC be needed any more?

As a Vice Chairman of this organization, I would probably welcome this move because it would take away the very heavy responsibility that is put on my shoulders. Yet, whilst the Bill is under discussion, which is to make this body a statutory body, while improvements — and I can say that with actual experience — are being made to improve the work of this organization, the IPCC, the passage of Mr TO's amendment would throw the whole machinery into disarray.

Mr TO's amendment, therefore, not only puts the investigatory power of police complaints into the IPCC, but extends it into a much wider context of whether an independent statutory body is needed to monitor police complaints. It should really be deliberated in a much wider context before coming to a conclusion.

I remember just now that Mr WONG Wai-yin has repeatedly said that it is the aim of the Democratic Party, and I think very few people in this Council would not support it, that there should be an independent body to investigate police complaints. Now, I thought the IPCC, especially with the fact that when made into a statutory body it would be given even wider powers if we were going to discuss it in the Bills Committee, would perform this particular role.

On that basis, Mr Chairman, therefore, I would oppose Mr TO's amendment.

MR WONG WAI-YIN (in Cantonese): Mr Chairman, I believe that my Honourable colleagues must be very angry when they heard the last sentence of the speech delivered by the Chief Secretary during the Second Reading debate of the Bill. I was no exception. However, if I lose my temper right now, it will not do any good either! Anyway, my expectation of the Government also seems to diminish gradually.

Just now the Honourable James TO has stated in detail a lot of arguments to explain why the Democratic Party is moving this amendment. Over a long period of time in the past, many of our Honourable colleagues have raised numerous arguments regarding the issue in order to explain why we want to strengthen the monitoring of the Complaints Against Police Office, as well as why an independent mechanism would even be needed. Mr James TO has stressed earlier on that even if the amendment is carried, it may not take effect

immediately but has to wait until a commencement date is determined by the Legislative Council in a resolution. Even if we pass and accept this principle today, the Government still has a lot of time to discuss with Members about when would the appropriate time to confer this amended power on the Commissioner for Administrative Complaints be.

I have always regarded the Legislative Council as a place where we reason. However, with the incident of the Honourable LAU Chin-shek Incident a few years ago and the recurrence of a similar problem today, I am more and more convinced that while we try to state our reasons, the Government does not need any reason at all. If its reasoning fails, it will just overturn the table and quit. I would like to ask, in the light of the situation today, in case an Honourable colleague proposes an amendment to the Independent Police Complaints Council Bill at a meeting of the Bills Committee I shall chair, will the Chief Secretary tell us again that she will withdraw the bill? Or, as the Honourable CHEUNG Man-kwong has said, all the bills to be introduced by the Government in future would be supplemented with this statement: "This Bill will be withdrawn if it is amended substantially." I would rather they add the statement and be a "true villain". Otherwise, we will be spending a lot of time in examining the bills and expressing our different opinions after the examination work is completed. We believe that this method would be more effective in safeguarding the interests of the people and ensuring fairness to them. We will have to do it. Such intimidatory measure taken by the Government are definitely undesirable. I believe that both this Council and the people of Hong Kong will not support the Government in this respect.

Dr the Honourable YEUNG Sum mentioned that Mr LAU Chin-shek resigned on a previous occasion because of the Employment (Amendment) Bill. Today the Democratic Party is not suggesting that Mr James TO should resign. However, I do have a suggestion. I suggest that if Mr James TO's amendment is carried, the Chief Secretary should resign. In that case, she could then join the elite team of the Special Administrative Region Chief Executive Designate TUNG Chee-hwa as a matter of course and no more explanation would be required!

Thank you, Mr Chairman.

MISS CHRISTINE LOH: Mr Chairman, perhaps I am one of those Councillors

today who have had to agonize over how I am going to vote, but perhaps I can share my decision-making process with Members of this Council, and perhaps, actually the Government can assure me that I should support its motion a little bit more if they have a few more minutes to answer some questions.

My reservation with Mr TO's amendment is that I also believe, like some other Councillors here, that we have not had sufficient time to go into it. Of course, right now we are sitting in a Bills Committee to investigate the Bill on the IPCC. And at the last meeting just a couple of days ago, Mr Chairman, we looked at the IPCC Bill and we did ask quite a lot of questions about whether it has sufficient powers to carry out the work that it is intended to. I personally recognize that over the last few years especially that the Administration, including the police, have made perhaps the beginning of what I call a cultural change in being willing to become more accountable. But whether the IPCC is going far enough at this stage, I would still like to hold back my view on this.

As far as Mr TO's amendment is concerned, I think Mr TO is trying to push as hard as he can with all the measures available within this Council to push that debate forward and I think I applaud his efforts for doing so, although as I said, I am not sure that the full ramification of his amendment has been adequately discussed amongst ourselves. So, I just wondered whether the Administration can at this stage make a few positive comments about its willingness to look into the powers of the IPCC, because at the last meeting really again we did not have adequate assurances from the Administration that they were willing to look at increasing the powers by actual measures to allow the IPCC to be able to investigate cases where they determine what ought to be reviewed, and I think I would be much more assured if the Administration were prepared to make very positive comments in that regard.

Thank you, Mr Chairman.

CHIEF SECRETARY: Mr Chairman, the Administration strongly opposes the amendments moved by the Honourable James TO to extend the COMAC's general jurisdiction to cover the Royal Hong Kong Police Force and the Royal Hong Kong Auxiliary Police Force.

Complaints against the police are already monitored and reviewed by the Independent Police Complaints Council (IPCC). On 10 July 1996, the Administration introduced into the Legislative Council the IPCC Bill which proposes to make the IPCC a statutory body. This will provide the legal basis

for the IPCC to discharge its functions of monitoring and reviewing the investigations by the Complaints Against Police Office (CAPO) into complaints against police officers. It will increase the credibility of the IPCC and enhance public confidence in the existing police complaints system. Members of this Council have started to examine this Bill. The first meeting of the Bills Committee was held on 16th December. We consider that any proposal to improve the police complaints system should be examined in the context of the IPCC Bill. The Commissioner for Administrative Complaints (Amendment) Bill is not the appropriate forum.

Apart from introducing the IPCC Bill, the Administration has already implemented a number of measures to improve the police complaints system. These include in July 1994 enabling the IPCC to interview witnesses, including both the complainant and the complainee; in September 1994, installing close-circuit television, video or tape recording facilities in the CAPO to ensure transparency during interviews; in April 1996, introducing the IPCC Observer Scheme whereby IPCC members may participate in scheduled and surprise observations of CAPO investigations to enhance the credibility and transparency of the system.

In addition, we will be implementing the recommendations arising from an independent review of CAPO procedures and a comparative study of overseas police complaints system. These will ensure that complaints are handled thoroughly, impartially and with due expedition, for example, by setting time limits for investigation and by setting up a special panel of the IPCC to monitor serious cases.

The above measures demonstrate that we are committed to improving the existing police complaints system. We strongly oppose the proposal to involve an additional statutory body, the COMAC, in investigating complaints against the police. This will result in drastic changes to the existing system which has been running smoothly and to which improvements are being made. It will also cause considerable confusion. What, for example, would be the role of the IPCC under the new system? Is it envisaged that the IPCC would monitor the investigations carried out by the COMAC? If so, how would that square with the COMAC's independence? We should also not underestimate the effect that these changes would have on the police themselves. At this time, more than any other, we need a Police Force that is focused on its work and confident in its ability to serve the community, not one that is distracted by other issues and that

feels under attack from Members of this Council.

One other important point is that the proposal to place the police under the COMAC's general jurisdiction would have serious practical implications for the COMAC's operations. The large number of complaints handled by the CAPO in recent years would mean a very substantial increase in the number of complaint cases the COMAC would have to deal with. In 1994 and 1995, for example, the CAPO handled 4 328 general complaints of maladministration against the police. This is about 1.24 times the total number of complaints received by the COMAC during the same period. Apart from requiring a significant increase in staff resources, the COMAC would also need special expertise to handle these new cases.

Experience has shown that investigations of complaints against police officers are often associated with matters concerning criminal investigations. The COMAC would find it difficult, if not impossible, to conduct these investigations effectively without the assistance of highly trained and experienced professional investigators. This applies equally to complaints of a non-criminal nature. The special circumstances of police work are such that for complaints to be investigated by outsiders could be very difficult and possibly counter-productive.

At a time when the COMAC is working off a large backlog of cases arising from the introduction of the direct access policy in 1994, the Administration strongly believes that even if it were desirable to give him jurisdiction over all complaints against the police, which it is not, it would not be feasible or in the public interest for him to take them on.

Mr Chairman, to sum up, we consider that it would be quite wrong to include the police and the auxiliary police under the COMAC's general jurisdiction. The Administration cannot accept these amendments. As I said in my speech during the Second Reading debate on this Bill, if they are approved by Members, we do not have any option but to withdraw the Bill. I therefore strongly urge Members to vote against the amendments.

I have thought it necessary to make clear the Administration's position on this issue now before we proceed further. This is not intended in any way to be

political intimidation. Rather, I would say that it is simply having the courage to make clear the Administration's position rather than springing a surprise on Members at the Third Reading stage. As Mr TO has pointed out, the Administration rarely withdraws a Bill before the Third Reading, and would not do so if the Administration was able to accept the amendments proposed by Members. That we have chosen to invoke our right on this occasion reflects the very strong objections we have to the amendment for both policy and resource reasons.

Thank you, Mr Chairman.

MR JAMES TO (in Cantonese): Mr Chairman, as the mover of this amendment, I wish to respond to the opinions of my Honourable colleagues. To start with, I am very grateful to Dr the Honourable LEONG Che-hung for suggesting one point, even though he does not support my amendment. Dr LEONG is a Vice Chairman of the Independent Police Complaints Council (IPCC) responsible for monitoring the front-line work and complaints lodged against police officers. He has accumulated a lot of experience over the years, yet he also thinks that it is necessary to conduct independent investigation. This opinion of his is on record. I hope that the Government would think it over clearly. Dr LEONG Che-hung is appointed by the Government because he is reputable, has integrity and understands the situation, in short, the Government believes that he possesses the appropriate quality to monitor front-line work. Not only does Dr LEONG Che-hung take this view, the Honourable Denis CHANG is also of the same view. Mr CHANG is a Member of the Executive Council, a member of your cabinet. So would the Government think twice whether there is a problem?

The Honourable Miss Christine LOH hopes that when the Bills Committee on the IPCC Bill meets and proposes amendments, the Administration will give more assurances that it is willing to look at increasing the powers of the IPCC so that under certain circumstances, it can have its own investigation team or to review cases. However, the Administration did not answer Miss LOH. Why? As the Chief Secretary has said, the circumstances of the police are so special that it could be very difficult for outsiders to investigate complaints. Let us now turn to the Commissioner for Administrative Complaints (COMAC) Ordinance. The Customs and Excise Department, the Fire Services Department

and the Immigration Department are all included in the Ordinance and their operations also involve some front-line actions. Just now the Chief Secretary mentioned that if these operations are to be investigated, "highly trained" special expertise would be required. What kind of expertise is required to investigate cases of power abuse in the Hong Kong Customs or anti-smuggling squads — bearing in mind that these are non-criminal investigations? At present these departments are already under the COMAC's general jurisdiction, is the Chief Secretary telling us that his staff is not at all qualified to investigate such cases? I am very puzzled.

Besides, the Chief Secretary said: "I give the COMAC a general jurisdiction". Honourable colleagues, please look carefully. This is an overall amendment, not a general jurisdiction. I am saying it the eighth time today: it deals with maladministration in connection with non-criminal investigation. I understand that criminal investigation is the lifeblood of the Police Force and crisis resembling the clash between the police and the Independent Commission Against Corruption (ICAC) might be triggered off if this area is touched. More time is therefore needed to prepare for it. However, non-criminal investigations do not involve the arrest of suspects or "framing up charges". We are not talking about criminal investigations, yet even a small amendment as such cannot be accommodated. In other words, the Police Force has become an independent kingdom so overbearing that even the Chief Secretary has to take cue from it and no amendment whatsoever is allowed. If this is the case, we are really scared. What has our society become? Is this a problem which our future Chief Executive TUNG Chee-hwa will be able to solve? That is questionable.

Moreover, the Government said that the proposal to place the police under the COMAC's general jurisdiction would have serious practical implications for the COMAC's operations. I would like to ask the Chief Secretary to go ask the COMAC if this is true. If she has asked and the COMAC has really said so, please quote that statement in her reply. This is only the Government's own wishful thinking. The Assistant COMAC, Mr Y L CHAN, has said on a public occasion that there would be no problem, no difficulty nor objection, but additional resources have to be provided. Just as the Chief Secretary has stated, resources will need to be provided to hire some professionals. The Equal Opportunities Commission is a very good example. They have hired several resigned police inspectors who are specialized in investigations. They were not fired, but resigned. Some of the inspectors have had police training as well as legal training, and some were ex-prosecutors who had been police officers before.

They resigned to join the Equal Opportunities Commission. It is not true to say that we cannot find expertise in investigation. We can certainly find some as the Equal Opportunities Commission has been able to hire four or five of them.

Furthermore, we are actually investigating cases involving the Customs and Excise Department. The Government said that the Complaints Against Police Office investigates more than 4 000 cases each year, that is 1.4 times the number of complaints received by the COMAC. Honourable colleagues, please note that the amendment I am moving today has nothing to do with criminal investigations. In other words, the actual number of cases would be much less than 4 000 as most of these cases are related to criminal investigations. In fact, if enough resources are provided, the additional workload could certainly be handled. I am deeply grieved today. As a representative of the people, we are shouldering the heavy burden of the people of Hong Kong in the same way as all the Honourable Members do. When we see injustice or justice being hampered, we cannot help but tell the Government and the people of Hong Kong. We hope that the Government would introduce reforms. Should my amendment be negatived, I still hope that the Government can learn from the experience. A lot of my Honourable colleagues have pointed out to the Government that an independent complaint mechanism is needed. We do not want the existing complaint mechanism within the Police Force because it does not work, nor can it uphold justice or enforce the law against a handful of black sheep. In the long run, this could be very bad to the reputation of the police. We are only giving a signal: "They can be secure in the knowledge that they have strong backing, and investigation is useless against them." I have discussed with some senior staff members of the ICAC recently and they told me that they have also noticed the situation. Let me cite a simple example. Some eight to 10 years ago, you would not see front-line policemen eating wonton noodle without paying. I exchanged experiences with many Honourable Members today in the Ante-chamber and they have felt the same. People in their communities told them that the situation has been retrograding and incidents where policemen eating wonton noodle without paying were good examples. This is a horrible situation and we have to send out a signal that we need reform. "While craving for their intelligent, resolute, firm as well as persistent service, the Government should also be determined to deal with the blacksheep in the Police Force." We have to send out such a signal, otherwise we would not know what is going to happen to Hong Kong in the future. I have thought about it seriously. If the Chief Secretary really withdraws the Bill, I may consider introducing a Members' Bill to move an amendment to the Ordinance. If I choose to do so, the Chief

Secretary will not be able to withdraw the Bill. Perhaps the Governor will not sign it, but then it will turn into an even graver constitutional crisis. Do we really have to do that?

Question on the amendments put.

Voice vote taken.

CHAIRMAN (in Cantonese): Committee will now proceed to a division.

CHAIRMAN (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendment to the Commissioner for Administrative Complaints (Amendment) Bill 1996 moved by Mr James TO be approved.

Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

CHAIRMAN (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr CHIM Pui-chung, Mr Frederick FUNG, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendments.

Mr Allen LEE, Mrs Selina CHOW, Dr David LI, Mr NGAI Shiu-kit, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan,

Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr IP Kwok-him, Mr Ambrose LAU, Mr LEE Kai-ming, Mr LO Suk-ching, Miss Margaret NG and Mr NGAN Kam-chuen voted against the amendments.

Miss Christine LOH abstained.

THE CHAIRMAN announced that there were 27 votes in favour of the amendment and 27 votes against them.

CHAIRMAN (in Cantonese): In accordance with my previous ruling based on Speaker DENISON's decision in 1867, my vote has to go with the "noes" so as to leave the Bill in its existing form.

THE CHAIRMAN therefore declared that the amendments were negatived.

Question on the original clauses 1 and 9 put and agreed to.

Clauses 8 and 10

CHIEF SECRETARY: Mr Chairman, I move that clauses 8 and 10 be amended as set out under my name in the paper circulated to Members. The amendment to clause 8 is a minor one in the Chinese text which clarifies the intention of our proposal to enable the COMAC to have greater flexibility in handling simple and minor complaints. The amendment to clause 10 is in response to the concern expressed by members in the Bills Committee and is supported by the Committee.

When the police and the ICAC are brought within the COMAC's jurisdiction for the purpose of the Code on Access to Information, we need to ensure the security of sensitive materials relating to the prevention, detection or investigation of crime. The amendment seeks to clarify the intention of our proposed new Item 10 in schedule 2 of the Ordinance by stating explicitly that the proposed restriction on the COMAC's investigation into matters relating to the prevention and investigation and detection of crime, should be limited to actions involving the police and the ICAC.

Proposed amendments

Clause 8

That clause 8 be amended, in the Chinese text, by deleting the clause and substituting —

"8. 專員的報告

第16(1)條現予修訂 —

(a) 廢除“則專員須”而代以“則專員如認為適宜，可”；

(b) 廢除“則須”而代以“則可”。".

Clause 10

That clause 10 be amended, by deleting the proposed paragraph 10 and substituting —

"10. Any action taken by the Independent Commission Against Corruption, the Royal Hong Kong Auxiliary Police Force or the Royal Hong Kong Police Force in relation to the prevention, detection or investigation of any crime or offence, whether or not the action is taken solely by any one of these organizations, or jointly by more than one of these organizations or by any one or more of them together with any other organizations or persons.".

Question on the amendments proposed, put and agreed to.

Question on clauses 8 and 10, as amended, put and agreed to.

ARBITRATION (AMENDMENT) BILL 1996

Clauses 1 to 18 were agreed to.

BANKRUPTCY (AMENDMENT) BILL 1996

Clauses 1, 3, 5 to 12, 16 to 19, 22, 26, 27, 28, 30, 32 to 35, 37 to 41, 43, 45, 48 to 69, 71 to 75, 77 to 98 were agreed to.

Clauses 2, 4, 13, 14, 15, 20, 21, 23, 24, 25, 29, 31, 36, 42, 44, 46, 47, 70 and 76

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

Under clause 20 of the Bill, a first-time bankrupt is discharged from bankruptcy at the expiration of three years from the commencement of the bankruptcy, subject to there being no valid objection from the trustee or a creditor. As I mentioned earlier, the Bills Committee felt that a period of four years would be more appropriate in the context of Hong Kong. Appropriate amendments are therefore made to sections 30A(2) and 30C(2), the latter of which is a transitional provision covering existing bankrupts. The amendment to section 30A(3) is consequential to this change and reflects the position taken by the Bills Committee that even where objections to automatic discharge are raised by the trustee or a creditor and the period of bankruptcy is subsequently extended, the total maximum period of a bankruptcy should remain at eight years.

The amendment to section 30A(8) makes it clear that if a discharged bankrupt subsequently fails to co-operate with the trustee after his discharge from bankruptcy, such non-co-operation will constitute contempt of court for which sanction is already available.

The Hong Kong Society of Accountants and members of the Bills Committee expressed concern over the extent of section 30D of the Bill which deals with the ability of the court to order the Commissioner of Inland Revenue to produce certain documents relating to a bankrupt before the court. The proposed amendment to clause 21, new section 30D of the Bill, limits the production of such documents to private examinations held in Chambers, restricts access to this information to suitably qualified trustees and also imposes a duty of confidentiality on the trustee. The Commissioner of Inland Revenue is also empowered to apply to the court for the discharge or variation of the order.

Clause 25 of the Bill adds claims in tort to the types of unliquidated

damages that are provable in bankruptcy. Amendments are made to clause 25 to clarify that a trustee may refer debts or liabilities relating to such unliquidated damages to the court for valuation. At the request of The Hong Kong Association of Banks a further clarification is made in respect of the conversion method used when dividends are paid in foreign currency.

The new section 34(7A) provides that the trustee shall be obliged to make a decision on a proof of debt within a period to be prescribed in the rules.

Under new section 51A of the Bill, where a person has benefited indirectly from a "transaction at an undervalue" or an "unfair preference" undertaken by a debtor and that person "was an associate of, or was connected with" the debtor or the person with whom the debtor dealt in the first instance, then the interest or benefit received is presumed to have been received other than in good faith and suitable redress may be sought by the debtor's estate. The Hong Kong Association of Banks queried the extension of the provision to "connected" persons which is not defined and could inadvertently catch an innocent bank dealing with a debtor in the normal course of business. We accept that these words can be deleted without materially altering the objective of the subsection and I, therefore, propose that clause 36 be amended accordingly.

The proposed amendment to clause 47 of the Bill takes on board a concern raised by the Bills Committee in relation, particularly, to the issue of tax secrecy. It widens the classes of persons who may make a complaint to the court about the conduct of a trustee so as to include the Official Receiver, the bankrupt or any other person.

The other amendments proposed are either technical or textual in nature or to amend the Chinese text of the Bill to reflect drafting improvements. All the amendments have been agreed by the Bills Committee.

Mr Chairman, I beg to move.

Proposed amendments

Clause 2

That clause 2(b) be amended —

(a) in the definition of "proposal" by deleting "who is an individual".

(b) by adding -

""bankruptcy debt" (破產債項), in relation to a bankrupt, means -

(a) any debt or liability to which he is subject at the commencement of the bankruptcy; and

(b) any debt or liability to which he may become subject after the commencement of the bankruptcy (including after his discharge from bankruptcy) by reason of any obligation incurred before the commencement of the bankruptcy;".

Clause 4

That clause 4 be amended —

(a) in the proposed section 4(2)(a) by deleting "所經營的業務" and substituting "經營業務".

(b) in the proposed section 6A(2)(a) by adding "亦" before "稱為".

(c) in the proposed section 6B(1)(b) by deleting "明確" and substituting "明文".

Clause 13

That clause 13 be amended —

(a) in the proposed section 20C(1)(a) by deleting "破產人" and

substituting "債務人".

(b) in the proposed section 20J(4)(b) by deleting "其可" and substituting "債務人可".

(c) in the proposed section 20L(1)(a) by adding "其" after "履行".

Clause 14

That clause 14 be amended, in the proposed section 23(2)(b) by deleting "任何破產案提供一般保證，而在該宗破產案中，該名提供保證的人是可獲委任為受託人的" and substituting "提供保證的人是可獲委任為受託人的任何破產案提供保證".

Clause 15

That clause 15 be amended by deleting paragraph (b) and substituting —

"(b) by repealing subsections (2) to (9);

(c) in subsection (10) by repealing "committee of inspection" and substituting "creditors' committee".".

Clause 20

That clause 20 be amended —

(a) in the proposed section 30A(2)(a) by deleting "3" and substituting "4".

(b) in the proposed section 30A(3)(a) by deleting "5" and substituting "4".

(c) in the proposed section 30A(8) by adding ", and if a discharged bankrupt does not comply with the requirements of this subsection,

he shall be guilty of a contempt of court and may be punished accordingly on the application of the trustee" after "estate".

(d) in the proposed section 30B(1) by deleting "Notwithstanding section 30A" and substituting "Notwithstanding that the relevant period under section 30A has not yet expired".

(e) by deleting the proposed section 30B(2)(a) and substituting -

"(a) has previously entered into -

(i) a composition or scheme of arrangement under this Ordinance, as it existed before the Bankruptcy (Amendment) Ordinance 1996 (of 1996) came into operation; or

(ii) a voluntary arrangement;".

(f) in the proposed section 30B by adding -

"(3) A bankrupt shall give notice to the trustee of an application under this section at least 28 days before the date of the hearing and the trustee shall advise each creditor of the application.

(4) The trustee or a creditor may object to the discharge of the bankrupt on one or more of the grounds set out in section 30A(4) and the court may decline to make an order discharging the bankrupt if it is satisfied that the objection is valid.

(5) Section 30A(8) and (9) applies to a discharge under this section.".

(g) in the proposed section 30C(2)(a) by deleting "3" and substituting "4".

That clause 20 be amended —

(a) in the proposed section 30B(2)(b) by deleting "釐定的且是" and substituting "確定是由".

(b) in the proposed section 30C(1) by deleting "人" and substituting "令".

Clause 21

That clause 21 be amended, in the proposed section 30D —

(a) in subsection (1) by deleting everything before paragraph (a) and substituting -

"(1) For the purposes of an examination under section 29, the court may, on the application of the trustee where the trustee is -

(a) the Official Receiver; or

(b) a professional accountant as defined in the Professional Accountants Ordinance (Cap. 50) or a solicitor,

order the Commissioner of Inland Revenue to produce to the court -";

(b) by adding -

"(1A) Notwithstanding any other Ordinance, the Commissioner of Inland Revenue shall, within 21 days of the order being made by the court -

(a) produce the document in such form as is acceptable to the court; or

(b) apply to the court for the discharge or variation of the order.";

(c) in subsection (2) by deleting "the Official Receiver or";

(d) by adding -

"(3) The trustee shall not disclose to any other person the contents of a document disclosed to him by order of the court under this section unless they are disclosed as part of an examination under section 29.

(4) For the avoidance of doubt, no creditor or member of a creditors' committee is entitled to see the contents of a document disclosed to a trustee under this section.".

Clause 23

That clause 23 be amended, in the proposed section 32(8) by adding "作" after "保證人或".

That clause 23(2) be amended, by deleting the proposed section 32(2)(a) and (b) and substituting —

"(a) on the functions (so far as they remain to be carried out) of the trustee and the operation of the provisions of this Ordinance for the purposes of carrying out those functions; or

(b) on the liability of the discharged bankrupt to make continuing contributions to his estate pursuant to an order made under section 30A(9).".

Clause 24

That clause 24 be amended —

(a) in the proposed section 33(2) by deleting "該項呈請所基於" and substituting "所基於".

(b) in the proposed section 33(3) by deleting "破產解除" and substituting "解除破產".

Clause 25

That clause 25 be amended —

(a) in paragraph (c) -

(i) in the proposed subsection (3B) by deleting "the Hong Kong Association of Banks" and substituting "The Hong Kong Association of Banks";

(ii) in the proposed subsection (3C) by adding ", and in the latter case he shall determine the foreign currency equivalent using the same conversion method as in subsection (3B) but as of the day of the payment of the dividend" after "equivalent of Hong Kong dollars".

(b) by adding -

"(ca) in subsection (4) by adding "or, alternatively, the trustee may refer such debt or liability to the court for valuation in which case the court shall establish a value in accordance with subsection (7)" after "certain value";".

(c) by deleting paragraphs (d) and (e) and substituting -

"(d) by repealing subsection (6);

(e) in subsection (7) -

(i) by repealing "If in the opinion of the court the value of the debt or liability is capable of being fairly estimated" and substituting "Where the trustee has referred the question of valuation to it under subsection (4)";

(ii) by repealing ", and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy";

(f) by adding -

"(7A) The trustee shall make a decision to -

(a) accept; or

(b) reject in whole or in part,

a proof of debt within -

(i) a period, prescribed by the rules, after the proof is filed with him; or

(ii) such longer period as the court may on application allow,

but this subsection does not apply if there is no reasonable prospect of a dividend being paid to the class of creditor to which the proof of debt relates.".".

Clause 29

That clause 29 be amended, in the proposed section 41 by deleting "在該破產人" and substituting "在破產人".

Clause 31

That clause 31 be amended —

(a) in the proposed section 43(1) by adding "and sections 43A to 43E" after "section".

(b) in the proposed section 43F(1) by deleting "owns real property in which he normally resides, he shall be entitled to continue residing in it" and substituting "normally resides in premises which comprise part of his estate, he shall be entitled to continue residing in such premises".

Clause 36

That clause 36 be amended, in the proposed section 51A(3)(b) by deleting ", or was connected with,".

That clause 36 be amended —

(a) in the proposed section 50(4) by deleting "該債務人" and substituting "債務人".

(b) in the proposed section 51(1)(c) by adding "優惠" after "不公平的".

(c) in the proposed section 51A(1)(a) by deleting "在".

(d) in the proposed section 51A(1)(g) by deleting "其在" and substituting "在".

(e) in the proposed section 51A(2)(b) by deleting "從該項交易或不公平的優惠真誠地以付出價值而收取" and substituting "真誠地並付出價值而從該項交易或不平的優惠獲取".

Clause 42

That clause 42 be amended, in the proposed section 61A —

(a) in the heading by deleting "**Supervision**" and substituting "**Control**";

(b) by deleting subsection (2).

Clause 44

That clause 44 be amended, in the proposed section 71(2) by deleting "preferential shall" and substituting "proved in bankruptcy shall, before being applied for any other purpose,".

That clause 44 be amended, in the proposed section 71A(3)(a) by adding "嚴重" before "過高".

Clause 46

That clause 46 be amended, by deleting the clause.

Clause 47

That clause 47 be amended, by deleting paragraph (a) and substituting —

"(a) in subsection (1) -

(i) by adding "who shall act in a fiduciary capacity and deal with property under their control honestly, in good faith, with proper skill and competence and in a reasonable manner," after "trustees,";

(ii) by adding ", the Official Receiver, the bankrupt or any other person" after "creditor";".

That clause 47(b) be amended, by deleting "以變現為在當時情況下屬合理可得的最佳價格" and substituting "以在當時情況下屬合理可得的最佳價格變現".

Clause 70

That clause 70(c)(v) be amended by deleting ", (10) and (11)" and substituting "and (10)".

Clause 76

That clause 76 be amended, by deleting "of the Companies Ordinance (Cap. 32)".

Question on the amendments proposed, put and agreed to.

Question on clauses 2, 4, 13, 14, 15, 20, 21, 23, 24, 25, 29, 31, 36, 42, 44, 46, 47, 70 and 76, as amended, put and agreed to.

New clause 47A Trustee to furnish list of creditors

New clause 75A Section added

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

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clauses 47A and 75A as set out in the paper circulated to Members be read the Second time.

The new clause 47A amends section 87 of the Ordinance to provide for the fee that may be charged by the trustee or the Official Receiver for supplying a creditor with the list of creditors and debts due, to be prescribed in subsidiary legislation rather than being specified in the principal Ordinance as it now is.

The new clause 75A makes a consequential amendment to the Companies Ordinance. It is consequential to clause 36 of the Bill which repeals sections 47 to 51 of the Bankruptcy Ordinance, dealing with "fraudulent preferences", and replaces them with new provisions on "transactions at an undervalue" and "unfair preferences", which are concepts that are defined under the relevant sections of the Bill.

The concept of "fraudulent preferences" is also employed in sections 266 and 266A of the Companies Ordinance and account therefore needs to be taken of the changes brought about by this Bill. The proposed section 266B deems a "fraudulent preference" to be an "unfair preference", as provided for under section 50 of the Bankruptcy Ordinance, in the case of a company being wound up after the commencement of the Bankruptcy (Amendment) Ordinance 1996. For a winding-up commenced before this date, the present provisions of the Companies Ordinance will continue to apply.

Mr Chairman, I beg to move.

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

Clauses read the Second time.

SECRETARY FOR FINANCIAL SERVICES: Mr Chairman, I move that new clauses 47A and 75A be added to the Bill.

Proposed additions

New clause 47A

That the Bill be amended, by adding —

"**47A. Trustee to furnish list of creditors**

Section 87 is amended by repealing "and shall be entitled to charge for such list the sum of 25 cents per folio of 72 words" and substituting "and the creditor requiring such list shall pay a fee at the prescribed rate".".

New clause 75A

That the Bill be amended, by adding after the heading "**Companies Ordinance**" —

"**75A. Section added**

The Companies Ordinance (Cap. 32) is amended by adding -

"**266B. Fraudulent preference deemed to be an unfair preference**

(1) On and after the day section 36 of the Bankruptcy (Amendment) Ordinance 1996 (of 1996) (the "amending Ordinance") comes into operation, where the winding up of a company commences on or after that date -

(a) a reference in section 266 or 266A of this Ordinance to a fraudulent preference shall be deemed to be a reference to an unfair preference as provided for in section 50; and

(b) a reference in section 266 of this Ordinance to a period of 6 months shall be deemed to be a reference to

a period of -

(i) 6 months; or

(ii) 2 years in the case of a person who is an associate as provided for in section 51B,

of the Bankruptcy Ordinance (Cap. 6) (the "principal Ordinance").

(2) Where the winding up of a company commences before the amending Ordinance comes into operation, the provisions of the principal Ordinance as it existed before being amended by the amending Ordinance apply in respect of sections 266 and 266A of this Ordinance.".".

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

Schedules 1 to 4 were agreed to.

POST-RELEASE SUPERVISION OF PRISONERS (AMENDMENT) BILL 1996

Clauses 1, 2 and 3 were agreed to.

WILD ANIMALS PROTECTION (AMENDMENT) BILL 1996

Clauses 1 to 22 were agreed to.

SUBMARINE TELEGRAPH BILL

Clauses 1 to 11 were agreed to.

Schedule was agreed to.

Council then resumed.

Third Reading of Bills

THE CHIEF SECRETARY reported that the

COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS (AMENDMENT) BILL 1996

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

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

THE ATTORNEY GENERAL reported that the

ARBITRATION (AMENDMENT) BILL 1996

had passed through Committee without amendment. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

THE SECRETARY FOR FINANCIAL SERVICES reported that the

BANKRUPTCY (AMENDMENT) BILL 1996

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

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

THE SECRETARY FOR SECURITY reported that the

POST-RELEASE SUPERVISION OF PRISONERS (AMENDMENT) BILL 1996

had passed through Committee without amendment. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

THE SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

WILD ANIMALS PROTECTION (AMENDMENT) BILL 1996

had passed through Committee without amendment. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

THE SECRETARY FOR ECONOMIC SERVICES reported that the

SUBMARINE TELEGRAPH BILL

had passed through Committee without amendment. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

MEMBERS' MOTIONS

SEX DISCRIMINATION ORDINANCE

MR MICHAEL HO to move the following motion:

> "That the Code of Practice on Employment issued under section 69 of the Sex Discrimination Ordinance, published as Government Notice No. 5203 of 1996 and laid on the table of the Legislative Council on 20 November 1996, be amended, in paragraph 12.8, by repealing "consider progressive implementation of" and substituting "progressively implement"."

MR MICHAEL HO (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

The motion seeks to amend paragraph 12.8 of the Code of Practice on Employment under the Sex Discrimination Ordinance by, as I said a moment ago, repealing "consider progressive implementation of" and substituting "progressively implement". This amendment is accepted by all the members of the subcommittee formed to study the Code. I hope that Members will support this amendment.

I beg to move.

Question on the motion proposed, put and agreed to.

DISABILITY DISCRIMINATION ORDINANCE

MR MICHAEL HO to move the following motion:

"That the Code of Practice on Employment issued under section 65 of Disability Discrimination Ordinance, published as Government Notice No. 5204 of 1996 and laid on the table of the Legislative Council on 20 November 1996, be amended, in paragraph 13.7, by repealing "consider progressive implementation of" and substituting "progressively implement"."

MR MICHAEL HO (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

This motion seeks to amend paragraph 13.7 of the Code of Practice on Employment under the Sex Discrimination Ordinance by repealing "consider progressive implementation of" and substituting "progressively implement". Mr President, this amendment is also unanimously endorsed by the subcommittee formed to study the Code. I hope that Members will support this motion.

Question on the motion proposed, put and agreed to.

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR RONALD ARCULLI to move the following motion:

"That in relation to the —

(a) Waste Disposal (Permits and Licences) (Forms and Fees) (Amendment) Regulation 1996, published as Legal Notice No. 492 of 1996;

(b) Waste Disposal (Chemical Waste) (General) (Amendment) Regulation 1996, published as Legal Notice No. 493 of 1996;

(c) Water Pollution Control (General) (Amendment) Regulation 1996, published as Legal Notice No. 494 of 1996;

(d) Noise Control (General) (Amendment) (No. 2) Regulation 1996, published as Legal Notice No. 496 of 1996;

(e) Noise Control (Air Compressors) (Amendment) Regulation 1996, published as Legal Notice No. 497 of 1996;

(f) Noise Control (Hand Held Percussive Breakers) (Amendment) Regulation 1996, published as Legal Notice No. 498 of 1996;

(g) Air Pollution Control (Specified Processes) (Amendment) Regulation 1996, published as Legal Notice No. 499 of 1996;

(h) Road Traffic Ordinance (Amendment of Schedule 10) Order 1996, published as Legal Notice No. 500 of 1996;

(i) Ozone Layer Protection (Fees) (Amendment) Regulation 1996, published as Legal Notice No. 501 of 1996; and

(j) Dumping at Sea (Fees) Regulation 1996, published as Legal Notice No. 502 of 1996,

which were laid on the table of the Legislative Council on 4 December 1996, the period referred to in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) for amending subsidiary legislation be extended under section 34(4) of that Ordinance to the sitting of 8 January 1997."

MR RONALD ARCULLI: Mr President, I move the motion standing in my name on the Order Paper.

The 10 regulations seek to increase various fees by different percentages with effect from 10 January 1997. At the House Committee meeting held on 6 December 1996, members agreed to form a subcommittee to study these 10 subsidiary legislation. To allow the Subcommittee sufficient time to consider these regulations, members agreed at the same meeting that the expiry date for making the amendments to these regulations be extended to 8 January 1997.

Mr President, I beg to move.

Question on the motion proposed, put and agreed to.

PRESIDENT (in Cantonese): Two motions with no legal effect. I have accepted the recommendations of the House Committee as to the time limits on speeches for the motion debates and Members were informed by circular on 10

December. The movers of the motions will each have 15 minutes for their speeches including their replies, and another five minutes to speak on the proposed amendment. Other Members, including the movers of the amendments, will each have seven minutes for their speeches. Under Standing Order 27A, I am obliged to direct any Member speaking in excess of the specified time to discontinue his speech.

TOWN PLANNING BILL

***MR ALBERT CHAN to move the following motion**:*

> "That this Council regrets that the Government fails to honour its commitment to introduce the Town Planning Bill into this Council but has instead published a consultation paper in the form of a White Bill, and urges the Government to expeditiously introduce the Town Planning Bill into this Council, so as to improve the representativeness of the Town Planning Board and increase the transparency and efficiency of the decision-making process and vetting procedures related to town planning."

MR ALBERT CHAN (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

Hong Kong is an internationally renowned modern metropolis and its achievement is evident to all. However, behind the prosperity and glory, we can still see numerous shabby buildings and rotten squatters on the hillside throughout Hong Kong, Kowloon and the New Territories.

Meanwhile, we can also see chimneys in the vicinity of the residential areas, with the nearby car repair depots, cement factories, gas stations and even abattoirs affecting the residents' lives all day long. Another weird phenomenon in the countryside of Hong Kong is that we can see colourful container yards scatter amidst the green fields, and it looks as if the stacked containers are struggling to reach the sky. This is impressive indeed.

Mr President, the above phenomena are problems that the Government is well familiar with. But the improvements made by the Government over the past years are not notable. This can be attributed to the fact that the Town

Planning Ordinance of Hong Kong is unable to meet our present needs. The problems arose thus reappear constantly, whereas the public can do nothing but tolerate.

The Town Planning Ordinance of Hong Kong was enacted in 1939. Although a few consequential amendments were made in 1974 and 1991, the main body of the Ordinance still failed to undergo any substantive reform. It is therefore totally out of line with the pace of change with respect to Hong Kong's society, economy and politics. The outdated Town Planning Ordinance affects not only the lives of the people, but also the supply and demand of land and our development needs. The scope involved is very extensive and complicated.

Mr President, the Town Planning Ordinance of Hong Kong is facing three major problems. They are:

1. the lack of opportunity for the public to participate;

2. the lack of transparency in the decision-making process; and

3. the lack of representativeness of the Town Planning Board.

In connection with the above three points, the Democratic Party, as well as its predecessor, the United Democrats of Hong Kong, has been urging the Government to expeditiously introduce the Town Planning Bill into this Council over the past few years. But unfortunately, although the Government has been claiming in the past five years that it respects the decision of this Council and has promised several times to introduce a Blue Bill as soon as possible, it suddenly changed its attitude recently and only consulted the public in the form of a White Bill. The relevant government officials even said that they had no idea as to when the Blue Bill could be introduced into this Council. We really regret that the Government has gone back on its words.

Other Members of the Democratic Party will later speak on the rights of the public to participate in town planning and on such issue as the Comprehensive Development Area. I shall now elaborate on the Democratic Party's comments on various points of the Bill.

Reform of planning structure

Mr President, the Democratic Party regrets that the Bill states clearly that the existing planning structure will generally remain unchanged. In the past, the Democratic Party has pointed out many times that since the representativeness of the present Town Planning Board is inadequate, the interests of the general public may not be taken care of properly. In this respect, the Democratic Party proposes that the Government must reform the composition of the Town Planning Board in a comprehensive manner. Basically, the post of the Chairman should be taken up by a non-official member, that is to say, the Board should not continue to be chaired by a government official. One third of the Town Planning Board members should be elected among Legislative Councillors, one third should be professionals, whereas the remaining one third should be representatives from the public; and the membership of the Town Planning Board and that of the Town Planning Appeal Board should not overlap.

Mr President, the Bill stipulates that members of the Town Planning Board should declare their interests from time to time after they are appointed and during their terms of office. While the Democratic Party welcomes this proposal, we think that the Bill must specify the consequence of failing to declare interests by adding punitive clauses against non-compliance.

Moreover, the Democratic Party finds it unacceptable that the Bill still designates the Governor in Council as the approving body of development plans. Since the Governor in Council is the highest executive organ, the decisions it makes will tend to incline to the decisions made by government departments and the rulings it makes will thus be regarded as partial and unfair. In order to improve the situation, the Democratic Party proposes that a Planning Authority be set up separately or the present Town Planning Board be restructured in a comprehensive manner, so that the relevant body will take up the full responsibility of making decisions related to planning and even making final decisions. The components of this body should be able to represent the interests of the various strata of society and have to be separate from the executive departments of the Government, so that the decisions made will be seen as more impartial.

Increase the transparency of the decision-making process

Mr President, apart from drawing up outline zoning plans, the work of town planning also includes dealing with applications for change of land use and applications related to planning. All these applications are vetted by the Town Planning Board or the relevant government departments and the study, discussion and vetting concerned are all conducted behind closed doors. The public and the people affected simply have no means to know the reasons for the decisions made. To improve such clandestine operation, the Democratic Party proposes that when no sensitive commercial data are involved, the relevant meetings should be conducted in an open manner. Besides, district boards should first be consulted if the relevant plannings are related to district development, and such consultation should be stipulated as a statutory procedure to enable the public to express their opinions.

As for appealing to the Appeal Board concerning the result of review, we think that the appellant should be granted the right to demand a public hearing. In the meantime, to safeguard public interests, the Government should amend its decision related to applications for appeal to allow members of the public who object to planning issues to lodge their appeals.

Conduct statutory social impact assessment

Mr President, the Democratic Party considers that planning applications should be accompanied by various relevant reports, such as reports on the environment and transport. For large-scale development plans, "social impact assessment" should be given a statutory status. If district boards so demand, "social impact assessment" should be regarded as a topic for study in connection with the "outline zoning plans" and the assessment should be examined during the formulation of plans. The content of "social impact assessment" should include such questions as economic impact, population change, housing need and rehousing, rise and fall in job vacancies, as well as the need for social services. New development will meet the needs of the residents and the society in general only if the vetting and approval of plans are done properly.

Increase the efficiency in vetting and approving plans

The inefficiency in town planning and in the vetting and approval of planning applications has also been much criticized. Many people in the real estate business have noted that the current shortage of housing supply is attributed to the Government's delay in vetting. In this regard, the Government

must increase its efficiency and expedite land supply. With regard to the proposal concerning planning certificates, a lot of town planners and representatives from the engineering sector are concerned that if the public are allowed to comment on private and public development and planning, the planning process will become even longer and the progress of development will be hindered. The Democratic Party thinks that, in order to allay such concerns, the Government should clearly specify the deadline for each procedure so as to deter government departments from delaying unreasonably during the process of vetting. As for the planning certificates, the Government must formulate specific technical guidelines so that developers will know exactly what kind of information and how much time are needed when submitting their applications, thus avoiding unnecessary delay.

Mr President, after five years of preparation, the Government finally published the Consultation Paper on Town Planning Bill in July 1996. Although when compared with the comprehensive consultation paper published in July 1991, the content of the Paper shows improvement by, for instance, emphasizing that the Bill provides the public with more opportunities to convey their views on planning issues to the Government, and improving the transparency of planning work, the Democratic Party still finds the relevant work not adequate.

In fact, the pertinent amendments are just empty talks as long as the Government fails to introduce the Blue Bill into this Council. No matter how good they are, the public cannot genuinely benefit from them. Moreover, the proposals raised at present still lack transparency with regard to the composition of the Town Planning Board, the decision-making process in planning and the appeal procedures. There is a need for further amendment and improvement. The Democratic Party would like to reiterate that it is imperative for the Government to introduce the Bill in the form of a Blue Bill into this Council for scrutiny as soon as possible. The Government can introduce the Bill into this Council before March 1997 so that the Bill will be passed within this legislative session. This will enable the outdated Ordinance, which affects significant public interests, to be amended at an early date.

With these remarks, I beg to move.

Question on the motion proposed.

MR RONALD ARCULLI: Mr President, in July, the Planning Department released the Consultation Paper on Town Planning Bill which contained both the Town Planning White Bill and a consultation paper for public consultation. The stated purpose of this Bill is, and I quote: "To promote health, safety, convenience and general welfare of the community and the betterment of the environment", and is drawn up with seven objectives, namely, openness, fairness, certainty, efficiency, effectiveness, affordability and comprehensiveness. The bill also frankly admits that these objectives are sometimes in conflict.

The issue for the community is how to get the balance right. On my part, I will address my comments on how I see it may affect the property sector that I represent. However, in the time available, I will not be able to deal with all our concerns.

First, the planning structure. Under the Bill, the existing planning structure will remain largely unchanged. The Governor in Council will be the ultimate planning authority of statutory plans, and the Director of Planning will still be the principal executive of the Town Planning Board. It is plain that plan-making within this planning structure will still be Government-biased and the Board would not be able to perform or function independently of the Government. I do not see how this planning structure can be a fair one. One solution could be the formation of a planning commission as a statutory plan approval authority and the appellate body for appeals against decisions of the Board. This commission obviously should be widely and fairly representative.

Second, the plan-making process. The Bill proposed that the planning study would be published for consultation for three months. After that, the draft plan will be published and will have immediate statutory effect but at the same time be open to the public for comments. If there is any, adverse representation after the Board's preliminary comments will be invited to attend. After the enquiry, the Board will submit the draft plan to the Executive Council within nine months from the expiry of the planned publication period.

What an incredibly cumbersome and unfair planning process! The public will have two chances to make representations; first, at the planning study and second, at the publication of the draft plan. Is this really fair and reasonable? Moreover, should the draft plan be given statutory effect whilst it is still under public consultation? In order to achieve a fair and efficient process, could not the two stages of consultation be reduced to one by combining the planning study

and the draft plan as one consultation process? The adverse representation should be heard by the proposed planning commission which will decide whether or not to amend the draft plan.

Under the Bill, the Board and the planning authority will withhold granting planning permission and planning certificate respectively during the planning publication period or, if the application site is subject to an adverse representation, until a final decision on the representation is made by the Executive Council. If this is adopted, the building development process will be substantially lengthened with two serious consequences: one, the delay in bringing much-needed homes to the community; and two, development costs will increase significantly. This will fly in the face of the Administration's efforts to increase housing supply at reasonable and stable prices.

Third, the status of explanatory policy statement and planning certificate. It is well known that the Board and the Planning Department invariably seek to rely on the explanatory statement in determining a planning application. Since it is expressly declared to be not part of the plan, objections to the statement are not entertained by the Board although the statement contains matters which may adversely affect the interest of land owners. Under the Bill, the Board is required in considering an application to have regard to any statement of government policy or any other matter which, in the opinion of the Board, is relevant to the application. Why is the Administration bent on creating so many uncertainties in the system? The applicant would have to play "hide and seek" not just with the Board, but with government policies as well. Is this in fact the best use of our resources?

The Bill also introduces a concept of a planning certificate which is said to be devised principally to ensure that all new planning works comply with the relevant statutory plan and the conditions of planning permission. However, this rationale is not justified. Indeed, no problem has been identified in the consultation paper.

Fourth, the Development Permission Area (DPA) plan to replace an Outline Zoning Plan (OZP) or another DPA plan. The Bill provides that the Board may prepare a DPA plan to replace an OZP or another DPA plan. As such, a residential Group A area may turn into an unspecified use area overnight. Property owners and developers will be subject to a high degree of uncertainty as to the existing or the future development rights of their property. The need for

the DPA plan arises from a situation where there is no statutory plan or no statutory control in the area. The DPA plan provides an immediate statutory planning control measure to allow time for preparing an OZP. If an area already has an OZP or a DPA plan, there is already statutory planning control whilst the Board reviews existing plans. There is no justification for this proposal.

Fifth, the review and appeal. Under the Bill, if an application is submitted under a DPA plan and the DPA plan is replaced by an OZP at the stage of review or appeal, the Board or the Appeal Board shall consider the application on the basis of the OZP where the process may take more than six months' time. This would definitely undermine the certainty of the current planning system in Hong Kong. It is also unfair to the applicant because, whilst the law provides for a review and appeal, his right to obtain such redress would be affected by a later publication of another OZP. It is indeed, Mr President, a mockery of the review and appeal system.

Next, compensation. Our planning law has long usurped property rights without any compensation. Recommendations made by the special Committee on Compensation and Betterment appointed by the Governor in 1991 are conspicuously absent in the consultation paper. Is this yet another fruitless exercise or are we going to be given an explanation?

Mr President, in conclusion, I believe the Administration must alter proposals which would work against the needs of the community and must find the right balance to meet such needs.

MR CHOY KAN-PUI (in Cantonese): Mr President, the Government put forward a Town Planning (Amendment) Bill in 1991 to move a comprehensive amendment to the Town Planning Ordinance, which had been in effect since 1939. A comprehensive consultation paper was also published to consult the public of their views. In view of the great controversy aroused at that time, the Government practically shelved the Bill and only introduced some individual amendments to extend the scope of statutory controlled areas to include areas beyond the urban areas as well as to establish an independent appeal board. With a lapse of five years, great changes have taken place in the social, economic and political aspects of Hong Kong. As such, the Government's decision to consult the public in the form of a White Bill before tabling the Town Planning Bill is understandable.

Over the past few decades, Hong Kong has seen great changes in its development. The people's aspiration to environmental protection as well as to better quality of life has kept rising. There is an actual need for Hong Kong to review and amend the existing Town Planning Ordinance so that planning control can be more effectively implemented and the interests of the public can be better protected.

Mr President, I agree very much to the new proposal of the Bill to enlarge the scope of public involvement. According to this proposal, the public will have a chance to express their views in the early plan-making stage and this chance is not limited to those who are directly affected by the plan but is also available to any member of the public. With the introduction of this system of public involvement, the whole planning process will certainly be lengthened. As such, the Administration must follow the statutory schedule strictly in the plan-making process to ensure the efficiency in approving the plans. While actively encouraging public involvement, the Administration must at the same time take note of various unreasonable obstructions laid in the way out of individual economic, communal and regional interests and even political purposes. Moreover, as most members of the public have little or no professional knowledge, I suggest that the Administration consider the establishment of a planning assistance system to help the public to express their views regarding the making of the relevant plans.

I also agree that members of the Town Planning Board (TPB) and the Town Planning Appeal Board (TPAB) should continue to be appointed by the Governor because they both belong to the administration framework. However, I also suggest that when appointing members to the Boards, the Government should, other than ensuring that suitable professionals with adequate experience are appointed, study the establishment of a mechanism to ensure that the members also have certain social representativeness so that the interests of all strata of the society could equally be fully reflected. When appointing members, in addition to taking into account their economic interests, the Government should also consider the appointees' social and political interests to ensure that members will make impartial decisions and put the overall interests of Hong Kong on top of everything else. To enhance the transparency of the planning decisions and to ensure that decisions are made according to the principle of fairness and openness, I suggest that meetings of the TPB and the TPAB be open to the public and monitored by the public.

According to the recommendations put forward in the Bill, the Director of Planning will still be the principal executive of the TPB and continue to give professional advice to the TPB on planning matters. However, to enhance the efficiency and independence of the TPB, I suggest the TPB set up its own secretariat to tie in with the enhanced responsibilities and increased workload after the enactment of the new Ordinance.

Mr President, I so submit.

MR ALBERT HO (in Cantonese): Thank you, Mr President. Today I will mainly speak from the angle of the rights of participation in town planning by the general public and the underprivileged in our society. Mr President, it can be said that there are two aspects in the present planning system which are widely denounced.

First, the present system is not only absolutely executive-led but the design of the whole mechanism is also biased towards the Government, the public utility organizations and the property developers. From the point of participation of the general public and the protection of the rights of the underprivileged, this is very unfair. The Governor in Council is the highest decision-making body and it is in charge of all matters ranging from giving out orders in the beginning, working out the plans to making the final decisions. Besides, all members of both the Town Planning Board (TPB) and the Appeal Board are appointed by the Governor. We can see from the membership of the Boards in the past that the Boards have a strong tendency towards attaching importance to the interests of the business sector and property developers. In terms of procedures, we can also see some drawbacks. Take for instance the outline zoning development plan, if the general public or ordinary groups raise any objections, their views will only be heard by the TPB and they do not have the right to appeal to an independent body. On the other hand, if a property developer applies for or hopes to obtain the right of development but his application is turned down, he can appeal to an independent appeal board. That is why I said that we can find unfairness exists.

Second, at present the whole process is neither fair nor open enough. Besides a lack of the right to appeal that I referred to earlier on, that is, the lack of the right to object to the so-called outline zoning development plan, the Administration has not set a specific time limit for dealing with objections and

the like. In other words, the TPB can left the cases untouched for one or two years without dealing with them. We have dealt with some cases where after the contents of the relevant plans had been implemented and the Government had even resumed the land by applying the Crown Lands Resumption Ordinance, the objections raised by the parties concerned were still not dealt with. This makes people feel that the entire objection hearing system is useless. As far as the outline zoning plan is concerned, very often inadequate information is provided. For example, regarding the so-called GIC, meaning government or communal facilities which we often see, the Administration seldom states clearly what these facilities are. Insufficient information results in insufficient consultation and insufficient consultation will create many social conflicts at a later stage. The most obvious example is the recent conflict in the Richland Gardens. The cause of the conflict was exactly insufficient consultation at an early stage. The reasons for insufficient consultation was that the GIC (Government, Institution or Communal Facilites) in the plan was not specified. It could be a school or a hospital, and the building could be several storeys high or it could also be 20 or 30 storeys high. Many conflicts have thus arisen.

Mr President, in view of that, I must indicate many improvements that have to be made in the Bill introduced by the Government. The Democratic Party welcomes the improvements proposed in the Bill, particularly those on consultation. Although we are still not very satisfied with the composition of the TPB and some appeal procedures, I have to say that the consultation procedure has apparently been improved. We suggest that the Government should carefully consider and adopt the following recommendations so that the new Bill will benefit the general public and the underprivileged in our community more. The first point is to consult certain organizations, such as the district boards and the two municipal councils at an earlier stage after the introduction of the draft plan and to make this a statutory procedure. This is very important as district boards are composed of elected members who are very familiar with their districts. The second point is that many facilities and a lot of land of the Regional and Urban Councils could be affected by the draft plans and hence I suggest that when the two municipal councils are affected, it should be stipulated that the two municipal councils ought to be consulted while the district boards should voice their views at an earlier stage. We think that when the Government receives representations, including adverse representations or comments, and is going to have open hearings, it should provide adequate information, state clearly the relevant procedures and ensure that complainants will receive adequate assistance, that is, planning assistance as mentioned by

some Members earlier on. The information I just mentioned should include an assessment of social and environmental impacts as well as information on government and communal facilities that I have just talked about. Most importantly, the outline zoning development plan should list out in detail all the relevant information on the government and communal facilities as well as the types of facilities. If the information is not clear, then when the Administration applies for changes in the future, it must file another planning application with the TPB and let the case be heard so that the public can participate. I hope that these two recommendations will ensure that the public can enjoy the right to fair participation. Thank you, Mr President.

PRESIDENT (in Cantonese): Mr Albert HO, time is up.

MR IP KWOK-HIM (in Cantonese): Mr President, as mentioned in the Consultation Paper on the Bill, "Town planning is concerned with guiding and controlling development and use of land. It attempts to bring about a better organized, more efficient and more pleasant place in which to live and to work."

With society becoming increasingly open, public demand for participation in what are happening around them has also increased. Although the Town Planning Ordinance underwent a major amendment in 1991 when an appeal mechanism and punitive measures against unauthorized development were introduced, public involvement has so far remained very limited. What is more, in the case of some individual development projects, the development works concerned are allowed to proceed on an "action-before-explanation" basis while the Town Planning Board (TPB) is still dealing with objections from the people. In this way, public objections are totally disregarded. Moreover, there is no mechanism for the submission of adverse representations before the publication of the Government's internal plans, and TPB members are not required to declare their interests. Such mechanisms, which are both unreasonable and in lack of any transparency, have turned the planning process into something like "making plans behind closed doors", with total disregard for the people's rights.

Mr President, in order to rectify the problem related to the failure of the existing Town Planning Ordinance to keep up with the times, the Government published a comprehensive consultation paper on the Town Planning Ordinance in 1991. The public reacted very strongly at that time and the Government was

demanded to move the Bill as soon as possible for examination. Then, in July this year, the Government published the White Bill on the Town Planning Ordinance to widely consult the people. A number of innovative recommendations are put forward in the paper, such as the introduction of public consultation in the initial study stage of making or amending statutory plans. In order to prevent developers from proceeding with development works on an "action-before-explanation" basis, the Bill recommends that the TPB and the Planning Authority should be empowered to withhold their consideration of applications for planning permission and planning certificates while public representations are still being processed. Moreover, the system of declaration of interests is also introduced. In order to take account of the efficiency in planning work, the Bill also requires the TPB to complete its consideration of statutory plans and planning applications within a specified period of time.

Mr President, although the recommendations contained in the Consultation Paper can rectify some of the problems related to the existing Town Planning Ordinance, the contents still fall short of perfection.

First, the Bill has not mentioned how the representativeness of the TPB can be enhanced. The Democratic Alliance for Betterment of Hong Kong (DAB) thinks that operating in an open society, the TPB should include members from various districts and representatives of public opinions so as to take account of the people's rights. As for the professional sectors, they can conduct their own elections to select their respective representatives for appointment to the Board. In addition, the chairmanship and vice chairmanship of the TPB should be taken up by non-government members so as to enhance the TPB's representativeness.

Second, the TPB now draws on the professional expertise of the Planning Department for support. In this way, the TPB's work and decisions are, to a certain extent, influenced by the Government. Furthermore, with the introduction of public input as suggested by the Bill, the workload of the TPB will inevitably become much heavier. Therefore, the DAB considers that there is a need for the TPB to establish an independent secretariat to ensure its neutrality and quality of service.

Third, the paper only emphasizes that applications for private developments should be open. However development applications submitted by the Government and public utilities corporations such as the Mass Transit

Railway Corporation and the Kowloon-Canton Railway Corporation are not subject to this requirement. The DAB thinks that the Administration should deal with all development applications, both from private developers and public utilities corporations, on a fair basis and the same handling procedures should apply to all applications.

Fourth, the Government should consider the establishment of a "planning assistance scheme" to help the general public voice their opinions on planning and development.

Fifth, the DAB also hopes that the Bill would empower the TPB to consider strategic planning work so that the existing lack of monitoring for strategic planning work can be improved.

Mr President, I believe that no one wishes to see a repetition of the unhappy incident relating to the primary health care centre in Kowloon Bay. The DAB does agree to the direction of improvement as suggested in the Bill and thinks that the transparency of and efficiency in plan-making and approval can thus be enhanced. However, the DAB regrets that the Government is consulting the public only in the form of a White Bill instead of submitting the Bill to this Council for consideration. The DAB urges the Government to submit the Town Planning Bill to this Council for consideration as soon as possible.

Mr President, these are my remarks.

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS (in Cantonese): Mr President, I must first of all thank Members for their views on the Town Planning White Bill. As Members are aware, the Administration is consulting the public on the White Bill. The views of Members and their political parties collected during the period of public consultation will be very useful to us when we draw up future plans or decide what steps to take next. That is why when we draw up the finalized version of the Town Planning Bill, we will certainly consider Members' views thoroughly, and we will also thoroughly consider the public comments which we have received or expect to receive in the coming two weeks. Since public consultation in still in progress, it is inappropriate for me today to respond to the views expressed by individual Members, but I shall speak on the motion.

The existing Town Planning Ordinance was enacted in 1939. Until the enactment of the Town Planning (Amendment) Ordinance 1991, there had been no fundamental changes to the Ordinance apart from a number of piecemeal amendments. I agree with Members that with the significant changes in Hong Kong's political, social and economic circumstances in recent decades, the existing Ordinance is no longer able to provide the necessary degree of guidance and control for planning and development in Hong Kong. The existing system of statutory plans and planning applications is regarded as generally flexible and efficient, but there is plenty of room for improvement, particularly in its working procedures. Besides, no time limit has been imposed on the processing of objection to the statutory plans by the Town Planning Board. This shows that there are some problems.

It has long been the established goal of planning legislation in Hong Kong to promote the health, safety, convenience and general welfare of the community and the betterment of the environment. With a view to achieving this goal and to improve the existing statutory planning system, proposals in the White Bill were drawn up with the intention to make the planning system more open, fair and accountable to the public; to streamline statutory planning procedures and improve efficiency; to enhance planning control and add certainty to building development; to give more emphasis to environmental and urban design consideration; and to enhance effectiveness in enforcement action against unauthorized development. Moreover, by imposing statutory time limits in various stages of the planning process, we anticipate that the time taken to process representation to statutory plans by the Town Planning Board will be significantly reduced from the current average of nearly four years to around 20 months. The time required for processing planning applications will also be reduced by two months (from 17 months to 15 months).

Today's motion expresses regret on the Administration for publishing the White Bill for public consultation, instead of taking action to enact the Bill. I think the speeches made by some Members earlier have themselves explained to Members why the Administration has to take such a course of action. Town planning affects a wide range of interests, and the comments we received in the past were divergent and at times in conflict with one another, as was also reflected by some Members just now. So, we considered it only prudent to do a final round of consultation in the form of a White Bill so as to enable the

Administration and the community to identify common ground and public consensus in shaping the final recommendations to be contained in the Bill. The current Town Planning Ordinance has been in its existing form for decades. To rewrite the whole Ordinance to meet present expectations as well as cater for the needs of the future is a complex exercise, involving very often controversial issues. I hope Members will appreciate that the Administration has to proceed carefully.

But, as pointed out by some Members just now, over the last few years, we have brought forward some less controversial but more urgent proposals in the form of interim amendments to the existing Ordinance. They have provided us with some immediate improvements to the existing planning system. For example, as a result of an amendment enacted in May 1996, we have improved the operation of the Town Planning Appeal Board and quickened up the processing of appeal cases.

The primary objectives of the White Bill are to make the planning system more open and accountable to the public, to streamline procedures and improve efficiency. However, I hope Members would understand that although accountability and efficiency may not be mutually exclusive, very often they are not complementary to each other. Obviously it would take longer time to complete all necessary procedures under a more open and fairer statutory planning system. The intention of the Administration is to strike a balance among these objectives.

With the growing affluence and increasing social aspirations of the community, the Administration is fully aware that our decision-making system should be made more open, including more public participation in the planning process. We have made a number of proposals in the White Bill to achieve this objective. These include, for example, requiring Town Planning Board members to declare their interests and making such declarations public, consulting the public on planning studies before preparing new town plans, enabling the public to make representations on gazetted draft plans, and publishing all planning applications for public comments.

We have also proposed a number of measures to streamline procedures and improve efficiency. To speed up the processing of representations to statutory plans, it is proposed that the Board, after preliminary consideration of the representations, may appoint a special committee amongst its members to hold an

inquiry on those representations which have not been withdrawn. Those who have made their views on the plan will be invited to attend the inquiry. Representations on the same site or of similar nature can also be considered collectively. To avoid undue delay to development, a statutory time limit of nine months is set for the Board to consider and hold the inquiry into adverse representations and submit the draft plan to the Governor in Council for consideration. Compared to the existing situation in which the process can drag on indefinitely, the proposed new system provides a greater measure of certainty in the time required for processing town plans.

To enhance efficiency in the planning application system, a fast track approach is proposed to process applications for minor amendments to planning permission and for temporary developments, which will be dealt wit within 45 days by the Planning Authority. A one-month statutory time limit is also stipulated for notification of the Board's decision.

To provide certainty to land owners on permitted development, a planning certificate system is proposed. Such a certificate will be issued by the Planning Authority if a development conforms to the statutory plan or complies with planning permission granted by the Board. The certificate will have effect for two years, during which period the Building Authority may grant approval to building plans irrespective of any subsequent amendments to the relevant statutory plan. This is not another layer of bureaucracy. The planning certificate in fact provides certainty and firm planning permission to a site.

Mr President, since the publication of the Town Planning White Bill in July this year, we have held discussions with more than 30 institutions or organizations. So far, we have received 14 sets of comments and look forward to more in the remainder of the consultation period. We would endeavour to finalize the proposals in the light of the comments received and to introduce the Bill as early as possible.

Thank you, Mr President.

MR EDWARD HO: Mr President, I moved a motion debate on the Town Planning Ordinance Review on 15 January 1992, and is now almost four years ago. Although I share the Honourable Albert CHAN's frustration that the Administration took far too long to formulate its proposals on the revision of the Town Planning Ordinance, any fundamental changes to the planning procedure is

a matter that has wide implications. As such, I recognize the appropriateness of the introduction of a White Bill.

Openness vs efficiency

Although there are strong aspirations to achieve the objectives of increasing public involvement in the planning process; and that of maintaining and improving efficiency in the planning process, clearly the two objectives can be conflicting, and a balance has to be struck. I do not believe that such a balance has been achieved in the Bill.

I welcome the proposal to involve the public at an earlier stage of the planning process, that is, during the publication of a planning study. I would recommend that there should be even earlier public involvement, that is, during planning at the territorial level. This can be achieved through institutional changes in the plan making process. By restructuring the planning institutional framework, we can increase not only openness, but also improve efficiency.

Institutional changes

The present Town Planning Board is burdened with both plan making as well as planning applications. In plan making, it is only able to decide on land use zoning after strategic plans at the territorial level have been made. It is rather like the tailor whose task is merely to cut the cloth when the design of the dress has already been done.

To involve the public more in the planning process, I recommend that a "Planning Authority" should be instituted whose remit would be to prepare plans on the territorial strategic level as well as Outline Zoning Plans (OZP). The final plan approval can still rest with the Governor in Council.

In order to improve efficiency, there should be a number of Regional Town Planning Boards. These regional boards will be delegated with the authority of implementing plans, and to deal with planning applications.

The "Planning Authority" and the "Regional Town Planning Boards" should be chaired by non-government members. I proposed in 1992 that membership of the boards should be by means of nominations from the Legislative Council, the municipal councils, district boards, professional institutions as well as appointed individuals in their own rights. The Authority

and the Boards should be served by an independent secretariat.

Given that the public is less likely to object if they have been involved in the process, I strongly believe that the institutional changes that I proposed will enhance public participation as well as improve efficiency.

The planning certificate

More than anything in the Bill, the proposed planning certificate has created very major objections from practising professionals. The current Central Processing System of the Buildings Department which co-ordinates approvals and comments from many government departments is a well-tried and tested procedure. Section 16(1)(d) of the Buildings Ordinance provides the necessary procedural link between the Buildings Ordinance and the Town Planning Ordinance.

OZP identify land uses and intensity of development, and contain two columns: Column 1, "As of Rights Entitlements" and Column 2: "Uses which may or may not be approved by the Town Planning Board on submission of a section 16 application". It is clear that in both cases, there would be sufficient evidence on status of planning approval without the need to add more bureaucratic red tape to an already long and complicated building development process.

Other comments

Other comments that I wish to make briefly are:

(i) The White Bill should stipulate the time limit for the preparation of OZP after the publication of a planning study for public comment so as to reflect current needs.

(ii) I support the provisions in the Bill for the Board to delegate its authority to special committees under section 21 in order to improve its operational efficiency but those committees' decisions must be consistent with each other, and with the Board.

(iii) The Bill now provides for zoning such as environmental sensitive area (ESA), special design area (SDA) and comprehensive development area (CDA). Such matters as architectural, historical and special urban design interests as in SDAs should be dealt with

by members of a Special Committee who are architects, urban planners and from the relevant fields.

(iv) When an environmental report is required for designated developments, the detailed Environmental Impact Assessment (EIA) should be dealt with under the future EIA Ordinance to avoid any overlap of authority and work between the Planning Authority and the Environmental Protection Department.

(v) The interim development control before a draft plan is approved will add to the development period, and there should be sufficient safeguards against frivolous or vaxatious representations, so that development is not unnecessarily frustrated.

Finally, Mr President, the Town Planning Ordinance must cater for Hong Kong's rapid economic growth which has, among other problems, seen demand for housing far exceeding supply. Our top priority therefore is to streamline our planning approval procedure whilst we strive for more public involvement. In my opinion, the Bill must be improved to achieve that vital objective.

MR JAMES TO (in Cantonese): Mr President, in view of the slow progress of the redevelopment of old districts, the Government set up the Land Development Corporation (LDC) under the Land Development Corporation Ordinance (Cap. 15) in 1987 to expedite urban renewal. The Housing Society and the LDC are the current statutory bodies in charge of redevelopment matters.

Nevertheless, the progress of urban renewal is apparently unsatisfactory and this is mainly due to the fact that a private developer must acquire the full title of the whole development project in order to carry out redevelopment in a certain district. Otherwise, the developer will be unable to embark on the redevelopment plan. On the other hand, if a statutory body wishes to carry out redevelopment, it can propose to the Government that the Crown Lands Resumption Ordinance be applied for land resumption purpose. However, although some old districts have already been designated as "comprehensive development areas" and a statutory body has already been authorized as the developer, redevelopment works are still pending after long delays. Consequently, the residents and individual property owners in these old districts are at a loss as to what to do. The seven streets in Tsuen Wan and five streets in

Kennedy Town are striking examples.

When a statutory body has applied to the Town Planning Board for redevelopment and approval has been granted under section 16 of the Town Planning Ordinance, there is little chance, if not none, for other developers or title holders who also wish to apply for developing the same district to have their applications approved. The chance for the title holders in the district to develop their own property and improve the environment is thus almost completely frozen and it is absolutely impossible for the losses incurred by the title holders to be compensated. The longer the redevelopment plan drags on, the greater the loss the title holders will incur. And the property will be even more dilapidated and the impact on the residents will also be greater.

When the Town Planning Board examines the relevant planning application, it usually gives no consideration to the compensation and rehousing arrangements provided by the applicants, that is, the statutory bodies, to the sitting tenants and flat owners. Instead, it only aims at objectively considering the planning design put forward by the applicants, thus rendering the flat owners and tenants in redevelopment areas, particularly the comprehensive development areas, completely unprotected.

The Democratic Party suggests that when the Government — the Government I refer to has a broader meaning and should also include the Town Planning Board or any future approving bodies — grants approval to applications relating to comprehensive development areas, it should require the developers to observe the deadline for completion in order to protect the interests of the residents and flat owners in the relevant districts. If the developers fail to meet the deadline, appropriate compensation should be made to the title holders and persons affected.

Having observed the present development situation and the various projects as well as their needs, the Democratic Party tentatively proposes that the Administration should set a completion deadline, say five to 10 years, for different redevelopment projects. And the time allowed shall depend on the scale and complexity of each project. If no such deadline is set, it will be impossible to assess the plight of the title holders and affected residents once the title or development right of the land in question is frozen. Therefore, I hope that the Government will take these views into account when considering the

Town Planning Bill.

MRS MIRIAM LAU (in Cantonese): Mr President, the objective of the Government to introduce the Town Planning (Amendment) Bill in 1991 was to bring sites of different usages under its control so as to create a better organized, more environment-friendly and more efficient society for the people. However, very unfortunately, we have not seen a well-planned society since the existing Ordinance came into effect. Instead, because of misplanning and the enforcement of harsh rules, some industries that have been making contributions to our economy are being stifled, with the container transportation and automobile industries being the most obvious examples. Hence, I hope that when revising the Town Planning Bill, the Government must tie in with the overall development of our economy and balance the interests of all sectors so as to avoid suppressing and stifling the development of Hong Kong's container transportation and automobile industries as a result of land planning.

Mr President, there is a severe shortage of land in Hong Kong but the White Bill has not mentioned any measures that could efficiently increase land supply, especially the supply of land for open storage and port back-up purposes. In August 1993, the Planning Department made a forecast that the demand for open storage areas and for port back-up sites by 1995 would be 677 hectares, and it also promised to set aside 560 hectares for these purposes. Regrettably, the 1995 statistics provided by the Planning Department showed that only 330 hectares of land was set aside for open storage and port back-up purposes in the statutory plans. Yet in reality, out of these planned sites, only 110 hectares were used as open storage and working areas and only 11 hectares as container yards. In other words, the total area of land that had really been turned into open storage and port back-up sites could only met about one sixth of the demand, falling far short of the need of the industries. Very obviously, the Government has never provided sufficient land for the container transportation and automobile industries. On the other hand, before the plan-making process, the Government has never considered whether the relevant sites are really suitable for the planned purposes. In fact, the Government knew it very well that most of these sites set aside for open storage and port back-up purposes are either fish ponds or ancestral halls of the local villages. Some tenants have refused to move out while some landlords were unwilling to lease out their property. Besides, some could not be leased out because of the complicated land titles. Worse still, as pointed out by those in the industries, some of the

planned sites such as the open storage area in Lung Tsuen in Mai Po simply do not have any corresponding road facilities for connection to the New Territories Circular Road. As a result, the sites set aside are not suitable for the planned purposes.

The Bill suggests the Town Planning Board (TPB) to incorporate a public consultation period in the plan-making process. This suggestion is very much worth our support. More importantly, the TPB must fully consult the industries and the villagers concerned when revising the plans so as to make a clear estimation of how many sites can really be put to the planned usage. On the other hand, the TPB should also reserve a certain plots of land for provisional usages. Once the allocated land cannot be put to the planned usage, the TPB can consider allowing the applicant to use the land for provisional usages on a short-term lease basis. Such proposal can hopefully alleviate the pressure of those industries' demand for land in the short run.

As shown by the 1994 statistics, transportation, godowns and telecommunications industries represented 9.7% of our Gross Domestic Product, with land transportation alone representing 2.7%. Since 1992, Hong Kong has ranked first among the world's container ports for four consecutive years. The Government also estimates that the throughput of our ports will reach 90 million tonnes in the next five years. The existing open storage and port logistic lands will be even more overloaded. Yet, before it can provide adequate land for the container transportation and automobile industries, the Government has proposed to impose heavy punishment to crack down on unauthorized development in the White Bill. In addition to raising the maximum fines and prison terms substantially, it also empowers the Planning Authority to enter the unauthorized development areas to take possession of, remove, detain and dispose of any movable property on the sites. I think these severe punitive measures will only further drive the container transportation and automobile industries out of business, thus undermining directly the economic growth of Hong Kong.

I support the proposal to include open storage and port back-up sites in the regulatory system. However, apart from imposing heavy punishment to crack down on unauthorized developments, I think that the best way to really resolve the problem is to provide sufficient land for suitable usage. Meanwhile, before sufficient land can be provided, to enhance the flexibility of the applications for planning permission might well be another short-term solution that is worth considering. I think if the landlord is willing to attach additional conditions such as to improve the sewage and environmental protection facilities when

submitting a planning application, the TPB can certainly consider permitting the applicant to go ahead with the development on the land for provisional usage. Even when planning control is enforced, the TPB must also give clear guidance, such as listing out for each open storage area and port back-up site the maximum number of containers, the height of stacked containers and the number of container lorries and vehicles for maintenance and repairs and so on, so that the operators can know what they should follow. In addition, I believe that the concerned planning permission must also specify the ancillary facilities such as toilets, canteens and a certain number of vehicle maintenance and tire mending facilities that should be included in the open storage and port back-up sites.

Finally, I hope that the Government will take the overall economic development of Hong Kong as the foremost factor for consideration when revising the Town Planning Bill, increase land supply and efficiently include sites for various purposes in the regulatory system rather than simply imposing severe punishment to crack down on the offences.

Mr President, these are my remarks.

PRESIDENT (in Cantonese): Mr Albert CHAN, you may now give your final reply. You have four minutes 53 seconds out of your original 15 minutes.

MR ALBERT CHAN (in Cantonese): First of all, Mr President, I would like to thank you for giving me the opportunity to speak. I also want to thank the seven Honourable colleagues who have spoken on this issue. Town planning is a wide topic and we can talk about practically everything we want to. And, most of the colleagues who have spoken have touched upon the Town Planning Ordinance. The Town Planning Ordinance, which was enacted 57 years ago, has become outdated and reform is necessary. This is a consensus among us. In this Council, especially in this year, it is indeed a rare achievement to reach a consensus on a common direction over such a controversial question. Although Members hold different positions with regard to different parts of the Bill, we have reached a consensus in many aspects, in particular, the independence of the secretariat of the Town Planning Board, the enhancement of its transparency and its representativeness.

Just now the Secretary for Planning, Environment and Lands has admitted

in his reply that this outdated Ordinance is not conducive to and cannot cater for the needs of social development. He also admitted that this Ordinance ought to be amended. Yet he raised a lot of excuses. He said that there were still a lot of controversies and these controversies would produce far-reaching impact on our development work. His comment is the same as what the Administration said when the Comprehensive Review of the Town Planning Ordinance was published in July 1991. But these controversies are mainly due to the demands of different sectors in Hong Kong with respect to the various aspects of the Bill. In particular, obvious differences are found in respect of the procedures of town planning and the approval process. The public will inevitably ask for more involvement in the planning process and more transparency. On the other hand, groups with vested interests, including developers and some professional bodies, may ask for higher efficiency in order to minimize the adverse impact on their interests. Should the discussion of this issue be put off for another six years, these conflicting views will still exist. Obviously, this has nothing to do with an inadequate understanding of the Bill, nor is it related to the needs of society. Rather, this is due to the people's different standpoints which lead them to make different decisions and adopt different approaches with respect to the Bill. So, if the Secretary argues that this is a controversial and complicated issue and that further public consultation is needed, we must say that such a reason is neither acceptable nor valid. I hope he can appreciate that such controversies will still exist even though the issue is put off for another six years.

The current Legislative Council is to a certain degree representative of the public opinion. I hope that the attempt made by the Government to delay the Town Planning Bill has not stemmed from a fear of such representativeness. The Secretary for Planning, Environment and Lands has just clearly pointed out that if the Bill is submitted to this Council for scrutiny in the form of this White Bill, quite a number of political parties may move amendments to it. We too do not want to see the occurrence of the scenario once described by the Chief Secretary: in case Members make any amendments, the Government would withdraw the Bill concerned. This is because if the matter is further delayed, it will be impossible to scrutinize the relevant amendments in this session. I do not know whether it is the intention of the Secretary for Planning, Environment and Lands to let the provisional legislature amend the Ordinance, nor do I know whether he wants to defer the matter until after 1998. As consultation was already conducted in 1991, the opinions of all sectors should be quite clear. Now we have only a short period of six months left. As soon as consultation is finished in late December, I am sure that with its "high efficiency" of collating

views and making amendments, the Government will be able to submit the Bill to this Council for First Reading in March 1997. As Members of the Legislative Council, we will then do our utmost. We are prepared to work overnight or to have meetings on Saturdays. I will do my utmost to help complete the scrutiny of this Bill and facilitate its Second and Third Readings before the end of June. I hope the Secretary, after hearing Members' views, will introduce amendments to this 57-year-old Ordinance as soon as possible.

Thank you, Mr President.

Question on the motion put and agreed to.

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

REGULATING CREDIT CARD BUSINESS

DR LAW CHEUNG-KWOK to move the following motion:

> "That , as the interest rates charged on the credit cards in Hong Kong are continually on the high side and numerous terms and conditions in the credit card agreements are ambiguous, and coupled with the controversial operational tactics adopted by quite a number of credit card issuing companies, the interests of consumers have been undermined, this Council urges that the Government must suitably regulate the credit card market, so as to ensure the market's healthy development and safeguard the rights and interests of consumers."

DR LAW CHEUNG-KWOK (in Cantonese): Mr Deputy, I move the motion standing in my name on the Order Paper.

Nowadays, the use of credit cards has become prevalent. Credit cards have become one of the most frequently patronized banking services. Credit card charges, the calculation of interests and the mode of operation of card issuing companies have a direct impact on the interests of the general public.

Unlike the situation in advanced countries in the West, the credit card business in Hong Kong is not regulated. The Consumer Council published two

reports on this issue in 1996. The reports highlighted first the relatively high interest rates charged on credit cards in Hong Kong and then pointed out that the terms and conditions of credit card agreements favoured the card issuing companies at the expense of the interests of consumers. Moreover, in the absence of an organization such as a central credit bureau in Hong Kong, the card issuing companies, in an attempt to attract more customers, will easily issue credit cards indiscriminately. To ensure the healthy development of the credit card market and safeguard the interests of consumers, I urge the Government to adopt appropriate measures to regulate the credit card business as soon as possible.

In April 1996, the Consumer Council published a report, pointing out that the interest rates charged on credit cards have long been on the high side, far higher than those charged in Europe, the United States of America and Japan. At present, the annual interest rates charged on credit cards in Hong Kong range from 20% to 42%, which are in general 40% to more than 100% higher than those charged in the United States and Japan. In fact, the prime rate in Hong Kong is similar to that in the United States. Although there have been fluctuations in recent years, the interest rates charged on credit cards have been very stable for a long period of time and remained constant at a certain level. In terms of administrative costs, credit cards issued in Hong Kong are similar to those in the United States and Japan. In terms of risk, the rate of bad debts in Hong Kong is around 1.5%, much lower than that in the United States. However, the interest rates charged on credit cards in Hong Kong exceed those in the United States by 40%. It is difficult to provide a reasonable explanation for such a phenomenon.

Superficially, competition among credit cards in Hong Kong has been quite keen. All card issuing companies, no matter whether they are large or small institutions, are making every effort to win customers by advertising and promotional activities, as well as premium offers such as gifts and lucky draws. However, despite the keen competition in the local credit card market, the interest rates on credit cards have long been on the high side. After the publication of the Consumer Council's report, some card issuing companies have adjusted their interest rates downward. This is perhaps a coincidence but such acts are isolated. In view of the fact that competition has failed to cause a downward adjustment of interest rates on credit cards across the board, one cannot help suspecting that a tacit agreement may have been reached among major credit card issuing companies that they should not compete among

themselves by adjusting the interest rates.

Apart from the generally high interest rates, most of the terms and conditions of credit card agreements are very ambiguous. First of all, the determination of various charges and the method of calculation of interest rates are very unclear. Under various pretexts, the card issuing companies have imposed exorbitant miscellaneous charges. I have read the terms and conditions of the credit card agreement of a major bank in the United Kingdom which clearly set out that only three kinds of fees are payable for the use of its credit cards, namely the annual fee, interests and handling charges. I have also checked the terms and conditions of the credit card agreement of a major bank in Hong Kong. In the agreement, a total of nine types of charges are listed, namely, legal and debt collection fees, finance charges, cash advance charges, late payment charges, service charges, bounced cheques or autopay return charges, fee for replacement cards, handling charges and fixed charges (annual fees). There are all kinds of charges in different names. However, it is not clearly set out in the agreement the amount of each item of charges. The consumers are completely in the dark and is not able to understand why they have been charged or fined.

Secondly, the credit card agreements are full of "penalty traps". The consumers must be particularly cautious when advancing cash with credit cards or deferring the settlement of credit card balances as the card issuing companies often set many collateral conditions for these services. Before any previous outstanding balances or advances are repaid in full, the original 20 or 30 days of interest-free period will be waived and interests will be charged on all new credit card transactions immediately. In regard to such a significant arrangement of disguised charges, the banks have only made some vague provisions. The banks are thus suspected of misleading the consumers.

Thirdly, the provisions of the credit card agreements are closely printed in small fonts. No matter how discerning people are, they can hardly comprehend such provisions. Moreover, the contents of the agreements are complicated, and contain very difficult wording and precise legal jargon. Even if the average customers are willing to spend some time reading the agreements upon receipt, they can hardly comprehend the contents of the terms and conditions.

In this regard, the Government should make reference to the Consumer Credit Act 1974 implemented in the United Kingdom and issue a guideline to the

banks, requesting the banks to amend the terms and conditions of credit card agreements. These amendments should include providing clear calculation and disclosure of the "total borrowing costs" of using credit cards, directly setting out the "annual compound interest rates" and the "real interest rates" for early repayment in a lump sum. They should also set out clearly other restrictions on the conditions of service.

The mode of operation of some card issuing companies in Hong Kong has also been controversial. Not long ago, it was suspected that a person had committed suicide for owing a huge amount of credit card debts, and this aroused the concern of the general public. At present, the banks, in order to increase their profits, have over-simplified their credit card approval procedures and become lax in approving applications. The Government should really conduct a review of the situation and issue a guideline on this. The practice of some banks of hiring debt collecting agents to collect debts from cardholders is really spine-chilling.

Besides, in the credit card application forms and the advertisements, the card issuing companies mostly elaborate on the benefits and convenience provided by the credit cards and only slightly touched upon the arrangements for charges. They even mention nothing about the various finance charges and penalties. Moreover, the cardholders do not enjoy sufficient protection from liability in the event of loss of credit cards. In the United Kingdom, the law provides that the cardholders only have to bear a maximum liability of £50 in the case of unauthorized use of a lost card before the loss of the card is reported. In Hong Kong, there is no similar legal provision or guideline requiring the card issuing companies of banks to set an appropriate limit of the maximum liability to be borne by the customers.

In addition, some banks have unnecessarily combined the customers' credit card accounts with other accounts they have opened with the banks in order that their deposits may be used to offset their outstanding credit card payments. Problems also exist in the business tactics of the card issuing companies such as the disclosure of information to credit card applicants, the procedures of handling disputed amounts, the alteration of the terms and conditions of the agreements, and the renewal and cancellation of credit cards. The interests of the consumers are not properly protected.

In the first quarter of 1996, the credit card loans extended by licensed companies amounted to $20.36 billion, an increase of 37% as compared with the

same period in 1995. On average, every person in Hong Kong is now holding 1.8 credit cards. The figure is low compared with four to five cards per person in Europe, the United States and Japan. So there is still ample space for the expansion of the credit card market in Hong Kong. More than a decade ago when credit cards were not so popular, they were considered to be a status symbol exclusively to the upper class in society. Nowadays, credit cards have become a means of consumption for the general public. However, in the absence of regulation, more and more problems associated with the credit card business have emerged. The Government should change its existing attitude of absolute non-intervention in the credit card market and should adopt effective measures to properly regulate the credit card business.

With these remarks, I move the motion.

The Honourable Bruce LIU of the Hong Kong Association for Democracy and People's Livelihood will speak on our specific recommendations for the regulation of the credit card business later on. Thank you, Mr Deputy.

Question on the motion proposed.

THE PRESIDENT resumed the Chair.

PRESIDENT (in Cantonese): Members have been informed by circular on 16 December that Dr HUANG Chen-ya and Mr NGAN Kam-chuen have separately given notices to move an amendment to this motion. As there are two amendments to the motion, I propose to have the motion and the amendments debated together in a joint debate.

Council shall now debate the motion and the two amendments together in a joint debate. I will call upon Dr HUANG Chen-ya to speak first, to be followed by Mr NGAN Kam-chuen; but no amendments are to be moved at this stage. Members may then express their views on the main motion as well as on the two proposed amendments to the motion.

DR HUANG CHEN-YA (in Cantonese): Mr President, although many people in Hong Kong use credit cards, the credit card market in Hong Kong can still be described as a "no-man's land". The Hong Kong Monetary Authority (HKMA)

has almost no regulation on the credit card business of the banking sector and it has no jurisdiction on non-bank card issuers at all. The business exercises self-regulation in name only but not in reality. It is not surprising that some card issuing companies can do anything they like by formulating unfair credit card agreements entirely in their favour and selectively disclose information to deceive consumers.

The amendment I move this time seeks to urge the Government to conduct a comprehensive review of the irregularities in the credit card market and formulate specific measures in order to establish criteria for card issuing companies and to safeguard the interests of consumers. Perhaps government officials may answer that the Code of Good Banking Practices drafted by the HKMA will cover some credit card business and a separate review is therefore unnecessary. However, the Code of Good Banking Practice is only a beginning for it has no binding effect and does not cover non-bank card issuing companies. At the same time, when the Code of Good Banking Practice was drafted by the HKMA and the working group, there was a lack of transparency and public consultation. Moreover, the working group was entirely comprised of people from the industry and thus the voices of consumers would easily be suppressed. Therefore, it is imperative for the Government to set up an independent working group to conduct a comprehensive review of the credit card issue in a fair and open manner.

Mr President, I think the scope of the review must include the enactment of legislation on credit services, the establishment of a licensing system, terms and conditions of agreements, operational tactics, disclosure of information and means of recovering debts. From the Consumer Council's reports, the complaints received by the office of the Democratic Party, media coverage and complaints lodged by readers as well as information just provided by Dr the Honourable LAW Cheung-kwok, we can see the seriousness of these problems. For instance, the card issuing companies can arbitrarily alter the credit card agreements without giving prior notice to the cardholders; the cardholders are not entitled to reject the new terms and have their annual fee refunded; the cardholders are left with no choice but to sign agreements, allowing the indiscriminate disclosure of their information by card issuing companies; the cardholders have no means to know how the annual interest rates and fees and charges are calculated; the closely printed texts of the agreements are hardly intelligible; and finally, debt collectors may use outrageous means in recovering debts. Other Honourable colleagues from the Democratic Party will elaborate on these problems later.

It is imperative for the Government to conduct a comprehensive review of the credit card market in Hong Kong expeditiously. The consumer credit legislation of overseas countries are indeed worthwhile reference materials which will help resolve the above problems. Let me take the United Kingdom, the United States and Australia as examples. Their legislation seeks, on the one hand, to safeguard the consumers' interests and, on the other, to facilitate the development of the card issuers' products as well as the continuance of competition. In regard to the protection of consumers' interests, the legislation of these three countries share some common features. For instance, the card issuing companies are required, before the customers sign the credit card agreements, to disclose such important information as the annual interest rates, the calculation of interests and other fees and charges, to ensure that the consumers are accurately informed before they make a decision to secure a credit. Besides, advertising materials and the terms and conditions of agreements are also subject to regulation.

In the past, the card issuing companies have failed to exercise self-regulation, which has resulted in an impairment of the consumers' interests. It is therefore inevitable that the Government should intervene and suitably regulate the card issuing companies. Here I must emphasize that I am not advocating intervention in the credit card market by legislative means. The deletion of the words "the interest rates charged on the credit cards in Hong Kong are continually on the high side" from Dr LAW's motion shows my strict adherence to this principle. The continual high interest rates of credit cards should be dealt with by a fair and open market mechanism. Interest rates should not be curbed by legislative means. The credit services legislation of the countries I mentioned above do not impose ceilings on interest rates. This is obviously intended to allow the consumers to make their choices in a reasonable manner rather than to restrict market competition.

Furthermore, I am of the opinion that card issuing companies should be licensed. This proposal is not intended to impose harsh restrictions on card issuing companies and set up barriers to the market. Rather, it is aimed at facilitating the acquisition of information on the card issuing companies so as to ensure that they will abide by the basic code of practice.

Mr President, I am very disappointed with Mr NGAN Kam-chuen's amendment for it entirely seeks to protect card issuing companies at the expense

of the consumers' interests. Nevertheless, this is what we have expected because the Democratic Alliance for the Betterment of Hong Kong has, in the past, repeatedly supported fare increases by public utilities. It is not surprising that it does not support a motion which aims at improving the consumers' interests. Although Mr NGAN understands that the terms and conditions of credit card agreements are ambiguous and the calculation methods of interest rates charged on credit cards are unreasonable, he still considers it unnecessary to regulate the card issuing companies and urges the banking sector to improve instead. Firstly, the banks are at present not the only credit card issuing companies. Therefore, Mr NGAN's amendment will only lead to plenty of loopholes. Secondly, and more importantly, his urge for the banking sector to improve obviously means that we can only depend on the banks' self-regulation. If the banks refuse to make improvement for the sake of safeguarding their own interests, what else can we do apart from helplessly watching the existing unfair phenomenon to persist? For this reason, Mr NGAN's amendment is absolutely undesirable as it will only further reinforce the privileges of the existing unscrupulous card issuing companies and continue to trample on the rights and interests of the consumers.

I hope Members can support my amendment so as to make Dr LAW's motion more substantial and effective.

MR NGAN KAM-CHUEN (in Cantonese): Mr President, the banking and financial sector is a customer demand oriented industry. New products and services must be introduced from time to time to meet the demand of the customers and the market. Only by doing so will they be able to attract new customers, maintain their relations with old customers and make a profit. The emergence of credit card business is a response of the banks to cope with the customers' demand.

Competition within the credit card market in Hong Kong has been keen and intense. Sales and promotion strategies employed by different card issuing companies develop one after another. As a result, customers are offered a wide range of choices. In the meantime, however, irregularities exist in the credit card market. For instance, many terms and conditions of credit card agreements are vague and ambiguous and the interest rate calculation methods of some card issuing companies are unreasonable. What is even worse, the operational tactics of some card issuing companies are often criticized. Specifically, even

though all kinds of fees and charges are listed in the credit card agreements, the exact amounts are rarely mentioned. The customers could usually get information regarding the amount of annual fee and initial joining fee from the application forms, but for other charges or the actual annual interest rates, they would have no idea at all. Secondly, although most of the credit card issuing companies will allow the cardholders to check and verify the monthly statements within a certain number of days, there is no mention in the agreements that the cardholders are entitled to defer payment of disputable transaction amounts when the card issuing companies are investigating the cases. Different card issuing companies have laid down different provisos regarding how customers can raise objection and the time limit for investigation in the event of disputable transactions. In addition, in some cases, the card agreements even allow arbitrary alteration of the terms and conditions of the agreements by the card issuing companies without prior notice to the customers.

Regarding the computation of finance charges, some card issuing companies will start to charge interest as early as the dates of the relevant transactions. In some cases, new transactions will start to incur interest from the transaction dates onwards and the interest-free repayment period is waived if the cardholders have failed to settle a previously outstanding balance. In regard to operational tactics, problems include promoting vigorously the credit cards to target customers such as students without considering their consumption power and repayment ability. In order to collect debts, some credit card issuing companies have resorted to hiring debt collecting agencies that somehow even harass the referees.

Mr President, the phenomena noted above should serve to remind the card issuing companies that they have to actively improve their mode of operation to safeguard the consumers' interests. The banking sector should set a good example because any unfair treatment to the credit card customers would indirectly shatter their confidence in the banks. Eventually this will adversely affect the stability of the banking system. We should never try to save a little only to lose a lot. An agreed standard for various services should be laid down and observed by all banks, and customers should be provided with information concerning the rules and regulations of banking services, terms and conditions, fees and charges, as well as procedures for handling complaints. These will help to establish an open and fair relationship between the banks and the consumers in regard to the terms and conditions of various services as well as their charges.

The Government, on the other hand, should adopt active and effective measures under the existing regulation framework so as to stimulate the incentive for self-improvement among the card issuing companies. More importantly, the Government should step up publicity and education on consumers' interests so as to enable the consumers to understand better their own rights and obligations. This in turn will become an effective check and balance in the market in relation to the operational tactics of the card issuing companies.

Mr President, based on the above rationale, I move my amendment to Dr the Honourable LAW Cheung-kwok's motion. The first reason suggested by the original motion which urges the Government to regulate the credit card market is that "the interest rates charged on the credit cards in Hong Kong are continually on the high side". I find such a logic unacceptable as credit card interest rate is a kind of interest rate charged on credit facilities provided to customers. Interest rates should be determined by the banks and the card issuing companies and the rates should be directly proportional to the risks. Owing to the product nature of credit cards, the interest rates will be higher than other products as no security is required from the customers. Nevertheless, they are still determined by demand and supply in the free market. Recently a card issuing company is trying to attract new customers by claiming that the interest rate it charges is the lowest in the territory. This shows that the customers' choice will ultimately have an important bearing on the interest rates.

To ask the Government to intervene in the credit card market may not result in any significant impact on the revenue of the banks, yet it will bring out a dangerous signal that regulation is imposed for the sake of regulation. This will undoubtedly cuff the invisible hand of the market and undermine the foundation of the economic prosperity of Hong Kong. According to the Index of Economic Freedom jointly published by the Heritage Foundation and The Wall Street Journal on Monday, 16 December 1996, Hong Kong continues to occupy the top spot among all other economies in the world for the third year in a row. One of the criteria for evaluating economic freedom is the banking policy. The prudent management of banking products has all along been the responsibility of the boards of directors and senior managers of the banks. The objective of government regulation should be confined to the enhancement of the self-regulation and control at the management level of the banks in order to prevent any bank from taking action that may undermine the interests of its customers, as well as to allow flexibility in making commercial decisions by the management. The same principle should be adopted in the development of the

credit card market.

With these remarks, Mr President, I move my amendment to Dr LAW Cheung-kwok's motion and oppose Dr the Honourable HUANG Chen-ya's amendment.

DR DAVID LI: Mr President, first of all, may I declare my interest as Chief Executive of the Bank of East Asia, which provides a credit card system for consumers. As we all well know, Hong Kong has been the home of free enterprise for over 150 years. The principle of *caveat emptor*, let the buyer beware, has worked very successfully for us. Why tamper now with a winning formula?

Against this Hong Kong backdrop, it would be both inappropriate and unwarranted for the Government to muscle in market pricing through legislation. In fact, the Hong Kong Monetary Authority has drafted and is about to issue the incoming Code of Good Banking Practice which is expected to be in place by the end of this year, and this will offer very adequate protection to consumers. The Code sets out clear guidelines for banks to draft the terms and conditions and to provide details of the fees and charges payable by customers.

In addition, sections dealing with issues such as liability for loss, personal referees, recovery of loans and advances and so on, are all included. Also, the institutions are required to a separate procedure to handle customer complaints.

All in all, with the old open-market competition and implementation of the Code of Good Banking Practice in the industry, the rights and interests of credit card customers would be sufficiently and adequately safeguarded.

From my point of view, it is not necessary to introduce legislation to regulate credit card business, and in this respect, I object the motion.

MR FRED LI (in Cantonese): Mr President, it is the most basic right of consumers to be provided with adequate and accurate information. The consumer will only be able to make an informed choice this way. However, from the existing credit card application forms and advertisements of credit cards,

we can find that the card issuing companies in Hong Kong often fail to provide comprehensive information to the consumers and some information provided is even misleading.

Let me give some examples. Some card issuing companies may try to attract customers by telling them the monthly interest rates instead of the actual annual interest rates. What is more often criticized is that the words on the application forms regarding the liabilities of the cardholders and the annual interest rates are in small print and the contents are not easily comprehensible. People suffering from presbyopia will not be able to read them at all. This applies to all credit card agreements including those of the Bank of East Asia. There is a big contrast between the design of the credit card agreements and the advertisements inviting customers to apply for the cards which are colourful and use nice fonts (but the interest rates or the liabilities of the cardholders are still not set out). I am of the opinion that the agreements should at least be printed in larger and more conspicuous fonts with easily comprehensible contents. I hope all card issuing companies will improve the design of these credit card agreements.

Apart from improvements in this respect, the information contained in the monthly statement of credit cards is also vague and unclear. For instance, only the total amount of cash advance and overdue payment is listed out while the various charges and the calculation of interest are not specified. The card issuing companies are also not responsible for explaining to the cardholders clearly in respect of other matters. For instance, the terms and conditions of credit card agreements can be altered without prior notice to the cardholders. Even if notice is served, there is no specified time limit and the cardholders cannot choose to refuse to accept the new terms and conditions.

From the above examples, we can see that the existing cardholder agreements mainly protect the interests of the card issuing companies and will not give sufficient information. As a result, the consumers' interests are seriously impaired. In August 1996, the Hong Kong Monetary Authority (HKMA) issued a guideline concerning the means of debt collection by banks and the handling of information on referees. I think the response of the HKMA will only make trivial improvement in the credit card market and it can actually be regarded as better than nothing. Take the guideline concerning the referees as an example. The Democratic Party has made three recommendations: Firstly, the banks must either ask the applicants to submit written consent of the referees

before filing their applications or verify by telephone call whether the referees are willing to be the referees of the applicants; secondly, the banks must inform the referees in writing of their responsibilities and widely publicize such responsibilities; and thirdly, the banks should not try to recover from the referees the outstanding debts or release the referees' information to the debt collecting agents. Among these three recommendations, the HKMA has only accepted the third one as a guideline. The HKMA has modified our first two recommendations and stated that the banks should require their customers to obtain the prior consent of the referees before putting their names on the applications. We are of the opinion that the working group comprised of representatives from the banking industry will tend to protect the interests of the industry. So, in our opinion, the recommendation they have accepted would relieve the banks of their duties and responsibilities of verifying the referees. In fact, the Democratic Party has come up with a better proposal and that is no referees should be named so as to ensure that no referees will be harassed.

We do not cherish much hope in having a working group which is solely comprised of representatives from the banking industry to set guidelines for the protection of consumers' interests. Such a code of practice will only serve as a guide for self-regulation for the industry and will not have legal effects. In other words, the banks are not obliged to abide by it. Unless complaints are received, the HKMA will not strictly conduct examination. In view of this, the Democratic Party suggests that a working group having more than a mere voice should be set up with the duty of conducting a comprehensive review of the credit card market instead of giving piecemeal response to offset the external pressure by means of window-dressing.

Mr President, I would like to emphasize one point: The HKMA, after issuing the guideline on the credit card business of banks, should step up publicity, otherwise the consumers will not understand their rights and they will find that they do not have any channel to file their complaints when they are unfairly treated. At the same time, the HKMA can monitor how the guideline is being observed by the banks.

Finally, I would like to comment on the Honourable NGAN Kam-chuen's amendment. Mr NGAN holds a senior post in the banking sector, and his amendment proposes to delete the most important wording, "the Government must suitably regulate the credit card market", from Dr LAW's motion. This somehow gives us an impression that he is doing so because there is conflict

between his roles and interests.

PRESIDENT (in Cantonese): Mr Fred LI, is it a point of order? Is it because Mr NGAN Kam-chuen did not declare his interest just now?

MR FRED LI (in Cantonese): Mr President, it is up to you to rule whether he should declare interest. I am not suggesting that he has to declare interest.

I hope Members from the Democratic Alliance for the Betterment of Hong Kong (DAB) will live up to their slogan: "Work sincerely for Hong Kong, bearing in mind the people's livelihood". The people's livelihood is concerned with safeguarding the consumers' interests. Therefore, there is no ground for deleting these important words. I hope Members from the DAB will reconsider this point. Today, we should support Dr LAW's motion and Dr HUANG's amendment, and we should not delete the most important wording from the motion.

With these remarks, I support Dr HUANG Chen-ya's amendment and the original motion.

MR BRUCE LIU (in Cantonese): Mr President, on behalf of the Association for Democracy and People's Livelihood (ADPL), I would like to put forward some specific suggestions with regard to the monitoring of the credit card market.

First, the Government should model on advanced countries by enacting legislation regarding credit services so as to include the credit card business in the regulatory system. For example, it should introduce the Consumer Credit Act 1974, the Control of Misleading Advertisement Act 1988 and the Consumer Credit Information Act 1989 of the United Kingdom to protect consumers from being unreasonably charged. Credit card issuing companies should clearly indicate the various charges, interest rates, penalties and the amount of hidden charges as well as how they are determined on the application forms and contracts so as to provide consumers with sufficient information for their consideration and allow them to compare different credit cards and make their own choices.

Second, the Government needs to provide more information to consumers. It should, for instance, provide additional funds for studying and analyzing the credit card market and enhance publicity to educate the consumers.

Third, legislation on fair competition should be enacted to stop the banks from reaching any possible agreements, tacit agreements or consensus on maintaining the high interest rates charged on credit cards so as to ensure that there is fair competition in the credit card market.

Lastly, the ADPL suggests that a Central Credit Bureau should be established.

Recently, some media reports have pointed out that the banks are issuing cards in an "indiscriminate" manner. Not long ago, several people were suspected of committing suicide because of their failure to repay huge credit card loans. These incidents have triggered concerns about whether the banks, as a result of keen competition, are too lax and simplistic in approving credit card applications, thus leading to the indiscriminate issuing of credit cards. However, the banks will assume greater risks of incurring bad debts for the indiscriminate issuing of cards and this may not be in the interest of the banks. Moreover, the banks are not issuing cards indiscriminately as long as they are able to make a profit out of it. The point is, because there is no such organization as a "Central Credit Bureau" in Hong Kong, the banks are unable to acquire sufficient information in relation to whether an applicant has obtained credit cards from other banks, his outstanding loans and bad debts, as well as information about his financial position and his ability to repay. Because of insufficient information, it is difficult for the banks to vet and approve credit card applications. It will also be difficult for the banks to find out if an applicant deliberately withholds his record of liabilities. It is therefore not unusual for someone with a bad repayment record to successfully obtain new credit cards.

The establishment of a "Central Credit Bureau" and a mechanism for local banks to exchange client information for the purpose of integrating individual credit information is vital to the healthy development of the credit card market. In so doing, the banks may be able to find out the applicants' records of liabilities. In effect, this is tantamount to putting those clients with bad credit records on a black list. The banks will naturally take exceptional care in considering the application from an applicant who still has outstanding loans in other banks. With sufficient information, lower risks and less chance for bad debts, the

operating costs of credit cards can be lowered and the operating efficiency of the market will increase. As a result, the interest rates can also be adjusted downward.

These are my remarks.

MR ANDREW CHENG (in Cantonese): Mr President, only a few Members are taking part in this motion debate today. Just now the Honourable David LI said that our credit card system has been working quite well over the years. Why should there be a debate on the matter? That we are taking up the debate is evidence that the democrats care about people's livelihood. Just now, I met the Secretary for Financial Services outside this Chamber. He asked whether it was at all necessary for four Members from the Democratic Party to speak on the motion. I think if it is not for these four speakers, there would be no one speaking. This marks the democrats off from those appointed Legislative Council Members in the past. The latter may not be raising debates on these questions because they are unrelated to their own interests. I am glad that Dr the Honourable LAW Cheung-kwok has proposed a debate on the issue.

Mr President, I have in my hands some partly burnt paper money for the dead. It was given to me by some people who complained to me that they were given such paper money together with letters sent to them by the debt collecting agents. The letters said debtors should go to hell. If they did not repay, they would receive burnt offering of such paper money. Mr President, it is shocking that debt collecting agents should use such base tactics to collect debts for banks in a free economy. We feel that as representatives of the people, we would not be living up to their expectations if we do not raise the issue for discussion.

I will be focussing my discussion on debt collection methods, disclosure of information of bank customers, and the indiscriminate issue of credit cards. At he beginning of this year, a number of banks notified their customers of changes in the terms and conditions of agreements whereby banks are allowed to disclose information to third parties. The Democratic Party raised an objection with the Hong Kong Monetary Authority (HKMA) and pointed out that the terms in these agreements are unfair to the customers. The agreements drafted by the banks empower the banks to disclose customers' information as they wish, thus causing

serious infringement of the customers' privacy. Let me read a paragraph from the application: "allow the Company to use the information for administrative and promotional purposes and to contact the applicant's employer, bank, credit information company or other credit information or information source." These words are in small print but carry a broad meaning. To get the credit card, the applicant has no choice but to sign. We feel that under these circumstances, the consumers are at a disadvantageous position and is absolutely vulnerable.

The Democratic Party has on a number of occasions made suggestions about these unreasonable terms. Firstly, the agreement must state clearly under what circumstances can information be disclosed to a third party. Secondly, the identity of the third party must be clearly defined to prevent card issuing companies from disclosing information to anybody or any organization. Thirdly, the scope of disclosure must be defined to prevent card issuing institutions from disclosing any personal and financial information of the customers to a third party. Without these three items of protection, even after the enactment of the Personal Data (Privacy) Ordinance, banks will not be prevented from disclosing information to third parties as the card issuing company and the applicant has reached an agreement by way of a contract.

As regards debt collection, what I said just now was only the tip of the iceberg. There are also strange telephone calls in the middle of the night, paint spraying, big-character posters and the like used for the purpose of debt collection. In August this year the HKMA issued a guideline on the hiring of debt collecting agents by banks. The gist of the guideline is that the banks must forbid in writing prohibit the use of threats or violence, verbal or physical, against anyone in the process of debt collection. The banks are also required to monitor the performance of the debt collecting agents. In the face of the illegal means adopted by debt collecting agents, the banks usually pretend that they see nothing. Such kind of action is far from being responsible. We doubt whether these very mild guidelines of the HKMA will be effective at all.

Mr President, I understand that in Australia banks are not allowed to hire debt collecting agents. They can only collect debts through their own departments. The reason for this is that banks have reaped huge profits and therefore they should recruit more staff to collect debts. If the banks collect debts by themselves, they have to bear the full responsibility. At present, many banks are saying that what debt collecting agents do is not related to them and is

out of their control, they, therefore, should not be held responsible.

In the United States, there is a Fair Debt Collection Practices Act that prohibits debt collecting agents from using certain means to collect debts so as to ensure that debtors are reasonably treated. The Act provides that the debt collector must not contact a third party more than once and such contacts should be restricted to making inquiries about the office address and residential address of the debtor. It would be an offence if the debt collector uses violence, threat, foul language, repeated calls, anonymous calls and announcement of liability to collect the debts. So, we think that the Government should set up a working group as soon as possible and include means of debt collection as an essential item on the agenda regarding the review of the credit card market. The Government should not use the guideline issued by the HKMA as a guise for finding a solution to the present problem on debt collection methods.

Lastly, I want to talk about the problem of the ease of obtaining credit cards by students. Since students do not have financial means, banks should not issue credit cards to them so indiscriminately. Banks or card issuing companies should request their guardians or parents to be the guarantors before issuing cards to them. Only in this way can problems relating to inability to make repayment be solved.

DR JOHN TSE (in Cantonese): Mr President, I believe that everyone must have heard of the slogan "Do not leave home without it". If we think about this slogan more carefully, we may conclude that it should be changed to read "You get into immense trouble with it". This is because many people do not use their credit cards properly, and hence become up to the neck in credit card debts. Some may even commit suicide in the end because they are unable to settle their debts.

Actually, the operation of local credit card companies is different from that of their overseas counterparts in at least two aspects. Local credit card companies issue cards indiscriminately, and they issue cards to their clients all too easily. In addition, they seem to have connections with debt collecting agents or even triad organizations.

Why can local card companies absorb a relatively large amount of bad debts? There are two main reasons. First, card companies charge extremely

high interests, ranging from 24% to 40%. Second, cases of real bad debts are not that many because card companies often hire debt collection collecting agents, and most of the time, these agents are able to collect those debts which their overseas counterparts will deem it necessary to write off. Other Members have spoken about the indiscriminate issue of credit cards and I do not want to repeat that. I only want to talk about card thefts and propose a solution to the problem.

A member of the public complained to me that his credit card was stolen and tens of thousands of dollars was withdrawn from his credit card account. Since he was pressed by a debt collecting agent, he was forced to repay the money to the bank. I do not think this is an isolated case. Credit cards can easily be stolen because there are loopholes. One of the loopholes is that cards can easily be stolen upon their first issue, and particularly where there is a change of correspondence address.

Some time ago, the Democratic Party conducted a survey in which enquiries were made with 15 major bank credit card centres. The findings revealed that in 40% of the cases, it was very easy to steal credit cards by making use of the loopholes in reporting changes of addresses. One needs only to ring up the card centres and tell them one's identity card number and credit card number in order to have one's address changed. This is a serious loophole because one's identity card number is no secret information, and can often be obtained by others on a number of occasions.

It can thus be seen that the credit card services in Hong Kong leave much to be desired. More protection is needed to protect innocent customers who have to bear rather considerable financial losses because of these loopholes. The Democratic Party suggests that customers should each be assigned a personal identification number (PIN) for them to contact the card centres concerned when calling their service hotlines. If a customer uses a key telephone set, he or she can key in his or her PIN. This is safer. If a rotary dial telephone set is used and the PIN cannot be keyed in, he or she should quote the PIN verbally to the operator for verification.

I think what is most important is that the procedures for changing addresses should be neither too simple nor too complicated. So the services provided by credit card centres in this respect should include the verification of

information supplied by customers. As far as I know, overseas institutions usually ask some simple questions on, for example, the names of the customer's relatives, and some particular personal information supplied by the customer beforehand, such as special childhood experiences. Such information will facilitate the verification of identity. Regrettably, this is not done in Hong Kong, with the result that innocent customers are forced to make repayments after their credit cards have been stolen and used in unauthorized transactions.

These are my remarks.

MISS CHRISTINE LOH: Mr President, I would just like to start off by making a comment on Dr the Honourable David LI's comment that *caveat emptor* is a key principle in a commercial transaction. I agree wholly with that. However, regulation is appropriate in areas where there is a public interest involved which is why, Mr President, we have regulations on monopolies, minimum safety standards, anti-discrimination, pollution and then of course, not leaving out what we are talking about today, the interests of consumers.

What we are worried about today is that banks which are issuing credit cards seem to adopt certain unethical practices that are widely discussed in the community. I have certainly had members of the public coming to me complaining about some of these practices. Also I have had a number of parents coming to me complaining about banks' over-enthusiasm to increase their customer pool and be willing to grant credit to very young customers who are perhaps not yet able to handle financial issues.

To the extent that these allegations are justified, I wonder whether this is an example to show the failure of the Hong Kong Monetary Authority and it may lead to the conclusion that the Hong Kong Monetary Authority's interest is perhaps to protect banks rather than to protect customers of banking services. So, I am obviously happy to hear from Dr the Honourable David LI that the Hong Kong Monetary Authority is about to issue an ethical code of practice some time towards the end of this year. But surely these practices that we have been talking about have been around for some time. So, I still want to raise the question as to whether the Hong Kong Monetary Authority has been doing its job properly?

Now, since this is going to be a voluntary code it will not have any statutory backing. Again, I wonder whether the Secretary, when he speaks can explain to us a little bit about how this code is going to substantially improve the situation for consumers of banking services.

Lastly, Mr President, I just want to say a few words about the two amendments and the original motion. I personally prefer the original motion because it is really the most straightforward, and the words "suitably regulate" really covers everything that Dr HUANG and Mr NGAN really have to say. But I suppose in voting, whether I support the amendments or not, I will have to see how the voting goes. So, on the first one, I will vote against it, and on the second one, if it gets through, I obviously will have to support it, otherwise we run the risk of the original motion being voted down. So, thank you, Mr President.

MR SIN CHUNG-KAI (in Cantonese): Mr President, it is now past eight o'clock. Mr Rapael HUI said he should not be allowed to leave before nine. So, there is plenty of time and many Members have not yet spoken. In that case, let me say a few words.

In fact, I agree with Dr the Honourable David LI that the credit card business in Hong Kong is doing quite well. This can be seen from several aspects. First, the rate of bad debts in Hong Kong is not high when compared with the rest of the world. Second, the credit card business has enjoyed a rapid growth in the last decade or so and Hong Kong has reached the international level in terms of both technological development and resources. Yet, despite the fairly good performance, there are still some problems. My Honourable colleagues have mentioned these problems this evening and they are precisely what we are worried about.

We are not advocating the idea of a pervasive government, as the Secretary for Financial Services put it, or the attitude of having a finger in every pie. To start with, at least the Democratic Party does not propose today a regulation of the exceedingly high interest rates charged on credit cards by suppressing the interest rates. This is because we think the so-called competition has already existed in the market although the competition is not very keen. However, the interest rates should be set at a proportionately higher level *vis-a-vis* unsecured loans. In the last decade, the credit card market in Hong Kong has developed very rapidly. So far, card issuing companies have been competing only in all sorts of gimmicks such as bonus point schemes, giving handsome gifts to attract clients and so on. The competition has not yet hit the area of interest rates. But I believe card issuing companies will compete in terms of interest rates sooner or later when the credit card market develops to a certain stage. The

Democratic Party is, however, not calling for a control of interest rates today. It is only that we saw something actually happen when examining the whole issue.

Just now, Dr the Honourable John TSE, the Honourable Andrew CHENG, and the Honourable Fred LI talked about several issues such as the role and responsibility of the referees, and the harassment by debt collecting agents of the referees and cardholders. These problems exist in an objective manner. The Government should not just sit back and watch. The amendment moved by the Democratic Party is in fact taking a middle-of-the-road approach. First, we want the Government to conduct a comprehensive study. Indeed, nearly two months ago, we already held discussions at meetings of the Panel on Financial Affairs and the Government has undertaken to work on a number of aspects. We feel, however, that the undertaking should include a comprehensive review and, apart from drawing up some guidelines, the Government should explain to us in great detail what it will do and what it will not, in areas such as information disclosure, licensing system or operational tactics. This is what we are hoping for.

As regards the Honourable NGAN Kam-chuen's amendment, I have comparatively strong reservation about one point. This is because at present, card issuing companies are actually not restricted to the banks. I think the most important point to be considered by the Hong Kong Monetary Authority (HKMA) is that the role of the HKMA here is not to protect the banks, and I think the Secretary for Financial Services will respond to this point later. The HKMA should mainly focus on whether there is excessive bad debts that may lead to the crippling of banks by the credit card business. However, the issues we raise today are focused on the consumers. If the focus is only on the card issuing banks, we feel there is a need to pay attention to the operational tactics of non-bank card issuing companies as well. These companies will have enormous power for disclosing client information in defiance of the law if they hire debt collecting agents to recover debts. Therefore, as far as the role of managing banks is concerned, the existing banking system may have improved a lot compared to 10 years ago. However, as far as the problem of credit cards is concerned, some customers are harassed not only by card issuing companies of banks but also by non-bank card issuing companies. In this respect, there are problems in Mr NGAN Kam-chuen's amendment *per se* because I cannot find any rationale in it. Mr NGAN stated in his speech that the terms and conditions of credit card agreements contain numerous ambiguities. However, this happens to cards issued by both banks and non-bank card issuing companies. If

he feels supervision is required, why does he not call for supervision of non-bank card issuing companies at the same time? Mr NGAN also comes from the banking sector. There is no reason why he should call for supervision of the banking sector only. The non-banking sector should be supervised as well.

In this regard, the Democratic Party's motion is in fact more moderate. I hope the Secretary for Financial Services can find solutions to the problems we mentioned earlier on.

We are not saying the entire credit card market should be vigorously intervened but I feel that while we point out that these problems really exist, there are certain areas which call for the Government's action. The Government should not just sit back and watch. I hope the Secretary for Financial Services can study carefully the issues raised by the Democratic Party in the speeches delivered just now. We also hope that he can explain to us in detail today or at future meetings of the Panel on Financial Affairs.

Thank you!

DR LAW CHEUNG-KWOK (in Cantonese): Mr President, I refer to Dr the Honourable HUANG Chen-ya's amendment. Although I do not really understand why Dr HUANG stressed that the wording "the interest rates charged on the credit cards in Hong Kong are continually on the high side" should be deleted — I hope I will be able to convince him in future that this is actually an objective fact. However, he agreed that it is necessary to study ways to regulate the credit card market as soon as possible. The Association for Democracy and People's Livelihood (ADPL) welcomes this, especially that he agreed to the formulation of legislation on credit services.

On the other hand, although the Honourable NGAN Kam-chuen agreed that there are unfair terms and conditions and unfair dealing methods in the credit card market, he proposed to delete the wording "must suitably regulate the credit card market" from my original motion and substitute it with "to urge and supervise the banking sector to improve the existing operational tactics of its

credit card business." We cannot support this stance. This is because ambiguous and unfair terms and conditions have existed in the credit card market over a long period of time. Added to this are numerous means of unfair dealings. All these show that self-regulation in the market alone is not enough to protect the interests of consumers or to enhance the healthy development of the market. The ADPL opines that the Government should follow some advanced countries and enact laws relating to credit services so as to regulate directly the credit card business. Let me repeat: laws such as the Consumer Credit Act 1974 and the Consumer Credit Information Act 1989 of the United Kingdom should be introduced.

Therefore, I will support Dr HUANG's amendment but oppose Mr NGAN Kam-chuen's amendment.

Thank you, Mr President.

SECRETARY FOR FINANCIAL SERVICES (in Cantonese): Mr President, the financial services policy of the Government has always aimed at promoting the development of Hong Kong into a major financial centre in the world. For the purpose of achieving this aim, the Government has drawn up appropriate laws and put in place a monitoring and administrative framework.

The primary aim of the Government in its regulation of the financial market is to ensure a stable and sound financial system. In addition, in order to create a financial market characterized by openness and opportunities of free competition, the Government has been refraining from intervening in the operation of market mechanisms as far as possible. Under these aforesaid premises, we have established a sound monitoring system to protect the interests of depositors, bank customers, investors, holders of stocks and shares and the insured. And, regarding the regulation of the credit card market and the protection of consumer interests, we also have a concrete scheme of measures. The Government has always supported the maintenance of a fair and transparent relationship between banks and their customers. We believe that only such a relationship can enhance customers' trust in banks, thus making our banking system more stable.

Late last year, the Hong Kong Monetary Authority (HKMA) and the banking sector set up a working group to draw up a Code of Good Banking Practices. The aim of the Code is to promote good trade practices among local banks and an equitable relationship between banks and their customers. The scope of the Code covers the information on the terms and conditions for the provision of banking services and the procedures for handling customer complaints. The greater part of the draft Code has been completed, and we will soon release it to the banking sector and the Consumer Council for consultation. If Members are interested, we can also submit the draft Code to the Legislative Council Panel on Financial Services under the chairmanship of Dr the Honourable HUANG Chen-ya so that it can conduct relevant discussions. The contents of the Code addresses precisely the concerns of Members, and I will explain in greater detail later. However, I must point out that the Code is not yet finalized, and it may be subject to further amendments after we have consulted the various parties involved. Although the Code is not a statutory document, the HKMA expects all approved institutions to abide by it because it is drawn up by joint efforts of the HKMA and banking associations. In addition, the HKMA will monitor the compliance of the Code by approved institutions while it exercises the power of monitoring the day-to-day operation of these institutions under the Banking Ordinance. As a result, it cannot be argued that the Code will produce no practical effects.

Here, I want to respond, all at the same time, to the original motion of Dr the Honourable LAW Cheung-kwok, and the respective amendments moved by Dr HUANG Chen-ya and the Honourable NGAN Kam-chuen.

These three Members all say that the existing credit card agreements contain many ambiguous areas: items of charges are not listed clearly; cardholder agreements are printed in minute font types; provisions are complicated; and credit card companies can alter provisions in the agreements whenever they like. I fully agree that card-issuing institutions should provide sufficient information to their customers so that they can understand the provisions in their agreements and their rights and obligations listed therein. The draft Code recommends that credit card agreements should be written in simple language, with special emphasis on all fees and charges as well as the responsibilities and obligations to be borne by customers once they use the cards issued to them. In case a bank wants to introduce any amendments to provisions in the agreements, and if such amendments will affect the responsibilities and obligations of its customers, it must give them an advance notice of 30 days before such amendments take effect.

If a cardholder refuses to accept the amended provisions and wants to cancel his card account, the card-issuing institution concerned should refund part of the annual fee to the customer on a pro-rata basis. In addition, it is also recommended that whenever interest rates are quoted, they should also be quoted on an annual basis so that customers can compare different ways of interest computations. The implementation of these recommendations should be able to address Members' concerns.

Another concern of Members is the practices adopted by card-issuing institutions. We maintain that in order to increase customers' confidence in banks, a fair relationship based on mutual trust should be established between them. To address the related problems, the draft Code puts forward the following recommendations:

1. Liability for card loss — the draft Code recommends that if there is no evidence of any elements of fraud or serious negligence on the part of a cardholder, his liability for any unauthorized transactions made before he reports the loss of his card should be limited to a fixed amount specified by the bank beforehand, and the specified amount should be reasonable. In addition, card-issuing institutions should issue clear notices to cardholders in which the specified amount is clearly stated.

2. Unauthorized transactions — the draft Code recommends that cardholders should be given a period of 60 days from the billing date to report to card-issuing institutions on any unauthorized transactions. Once a cardholder has made a report, he should have the right to withhold the repayments of the amounts under dispute. In case no reports on unauthorized transactions are received by card-issuing institutions during the 60-day period, the monthly statements concerned should then be deemed correct. We think that 60 days is a suitable length of time, and this is in line with the notification period adopted in the United States.

3. The right of setting-off — the draft Code recommends that card-issuing institutions should explain to principal cardholders and supplementary cardholders whether they, as card-issuing institutions, have the right to set off outstanding debts against the other accounts held by cardholders. After a card-issuing institution has exercised

the right of setting-off, it should promptly inform the cardholder concerned.

4. Renewal of credit card accounts — the draft Code recommends that card-issuing institutions should issue renewal notices to cardholders, and the latter should be allowed to refuse any renewal offers without paying any renewal fees within a minimum of 30 days from the dates of renewal notification.

5. Handling of credit balance — the draft Code recommends that card-issuing institutions should promptly return all credit balance to the cardholders concerned, and card-issuing institutions should not, under any circumstances, confiscate any unclaimed credit balance belonging to cardholders.

Dr HUANG Chen-ya's amendment recommends that the Government should set up a working group to study appropriate ways of monitoring card-issuing companies, and the amendment also urges the Government to consult the public on the relevant findings around mid-1997. The Government does not support this amendment for the following reasons:

First, Dr HUANG Chen-ya suggests that the working group should consider the introduction of a credit lending ordinance and a licensing system. Dr LAW Cheung-kwok also suggests that the Government should make reference to the consumer credit legislation in other countries and draw up similar laws in Hong Kong. We believe that the Code of Good Banking Practices due to be completed soon has already adopted most of the recommendations by Members and the Consumer Council. Its implementation should be able to solve the problems related to Members' concern and credit card services will thus see further improvements. As for non-bank card-issuing institutions, their estimated market share is just less than 1%. As pointed out by the Consumer Council earlier, complaints directed at these institutions have not reached any serious proportions. When the Code comes into effect, all card-issuing banks will have to abide by it. That being the case, we believe that non-bank card-issuing companies will also follow the Code when they try to attract customers in the highly competitive credit card market. For the reasons just mentioned, the Government believes that there is no need to legislate on the matter or to set up a licensing system.

The second proposed area of study involves the confidentiality of

customers' personal data handled in credit card business. Some Members say that some cardholder agreements permit card-issuing companies to disclose cardholders' personal data to other financial institutions, card-issuing institutions and credit intelligence/investigation agencies, or to receive such personal data from them. As we all know, the Personal Data (Privacy) Ordinance will come into effect on 20 December. This Ordinance aims to safeguard privacy in respect of personal data, and sets out the principles of protecting the confidentiality of personal data. The HKMA has reminded all approved institutions that they must follow the provisions of this Ordinance, in particular those regarding the collection, use and holding of customer information. The Code of Good Banking Practices will set out further guidelines on protecting the confidentiality of customer information. One example of these guidelines is that approved institutions must define very clearly under what specific circumstances and to whom the confidential information of their customers is to be disclosed. If a cardholder suspects that the card-issuing company has disclosed his personal data illegally, he can complain to the Privacy Commissioner for Personal Data.

The third proposed area of study involves the debt collection practices adopted by card-issuing institutions. To tackle this problem, the HKMA already set up a hotline in April this year to monitor whether or not the debt collection agencies employed by approved institutions are adopting appropriate dunning practices. In the past eight months, the HKMA received a total of 259 complaints and it has started to take up these cases with individual institutions. It is estimated that as many as 5 million credit cards have been issued. Against this backdrop, the number of complaints received can show that the situation may not be as serious as have been depicted by Members such as the Honourable Andrew CHENG. On the other hand, in view of the public concern about the problems of personal references and the dunning actions directed at them, we have prepared a leaflet on what the Code says on these two problems, and copies of this leaflets were already distributed to all approved institutions in August this year. The leaflet stipulates that unless a person has signed a formal contract, agreeing to serve as the guarantor for the money borrowed by another personal from an approved institution, he has no legal or moral obligation to repay the debt. The leaflet also requires that approved institutions should request their customers to obtain others' prior consent before putting down their names as personal references. Approved institutions are not permitted to disclose the personal data of personal references to debt collection agencies.

In regard to the employment of debt collection agencies, the leaflet

requires that approved institutions should instruct their debt collection agencies that they must not resort to any verbal or physical intimidation or violence when trying to collect debts from any persons, and such an instruction should be stated in the relevant employment contracts or given in writing. The leaflet also sets out the general rules to be followed by approved institutions in regard to the employment of debt collection agencies. These rules cover the setting up of effective procedures for the purposes of monitoring the performance of debt collection agencies and of responding promptly to complaints against these agencies. We believe that the measures just mentioned can already provide satisfactory solutions to the problems of debt collection and nuisances suffered by personal references. The fact is that over the past two months following the release of the Code, the HKMA has not received any complaints about collection agencies employing violent and abusive practices in their work. And, there has been only one complaint related to personal references.

Dr LAW Cheung-kwok's speech made reference to a possible agreement among banks on the setting of credit card interest rates, and he suspected that this might be a reason for the high credit card interest rates over the years. I must point out that as a matter of policy, the Government has always refrained from intervening in the making of commercial decisions such as the setting of lending interest rates. In countries such as the United States or others, credit card interest rates are lower because the credit card markets there are more developed. In contrast, the credit card market of Hong Kong is still a developing one, and despite its rapid development in recent years, the accounts receivable of credit cards in Hong Kong are still representing a mere 1.4% of the total loan portfolio of Hong Kong. Since the market is undergoing constant development, we expect interest rates to go down as a result of competition. In fact, we have already observed that some individual credit card companies have started to lower their interest rates as a means of attracting customers. So, when consumers are choosing which credit card companies to patronize, they should make more comparisons in order to make the wisest decision.

Some Members have criticized banks for being too lenient when approving credit card applications and setting credit limits, and they urge the banks to tighten their policies on card-issuing and lending. According to some Members, the wide variety of promotion efforts made by banks have conveyed a wrong message to the people, inducing them to apply for credit cards and making them up the neck in debt in the end. We believe that given the keen competition in the market, there is indeed nothing wrong for card-issuing institutions to step up their promotion efforts. What is most important is that card-issuing institutions

do not issue card indiscriminately for the purpose of getting a larger market share. In this respect, the HKMA once surveyed major card-issuing institutions on their credit card lending policies. The findings reveal that card-issuing institutions do in general follow a prudent lending policy. Basically, a bank will first examine an applicant's income proof and his existing financial liabilities which are known to it. Then, a credit limit will be set in the light of his repayment ability. A survey conducted by the Consumer Council reveals that the rate of credit card bad debts is just about 1.58% in Hong Kong. The corresponding rate in the United States is two times that of Hong Kong, and for Japan, its rate is similar to that of Hong Kong. The survey done by the HKMA also indicates that the annual write-off rate of accounts receivable of credit cards in Hong Kong is just 2%, while that in the United States is 4%. Our own survey also confirms that the quality of accounts receivable of Hong Kong credit cards has been good.

Another important principle which should be followed is that while promoting their credit card services, card-issuing institutions should provide sufficient information to consumers, including interest rates applicable to outstanding balance and methods of computations. Regarding this principle, the draft Code will lay down some relevant requirements. So, once cardholders are made fully aware of their obligations and the charges involved, they should be able to make appropriate use of their credit cards having regard to their own financial situation. The HKMA will continue to ensure that competition in the credit card market will not lead to any relaxation in the banks' prudent lending policies.

One or two Members have talked about the problem of issuing credit cards to students. Since most students are not financially independent, the draft Code recommends that before card-issuing institutions issue credit cards to students under the age of 25 who cannot produce proof of financial independence, they should notify the parents concerned, and disclose to them all detailed particulars about the cards to be issued, including credit limits.

Some Members have asserted that credit intelligence agencies should be set up in Hong Kong so as to prevent individuals from owing different card companies large sums of money. The Government supports this proposal in principle. However, it will not play a direct role in the setting up of such institutions. In other countries, credit intelligence agencies are mostly privately-run, and we do not think that Hong Kong should be an exception. Actually, some credit intelligence agencies are already operating in the local

market although their scope of business is limited. Of these agencies, at least one is currently planning to develop itself into a full-scale credit intelligence institution, and it looks likely that its plan will receive adequate market support. The HKMA is now considering the matter of issuing some relevant guidelines to approved institutions to encourage them to use the services of credit intelligence agencies, and to provide information to them. Of course, the HKMA will co-operate with the Privacy Commissioner for Personal Data in order to ensure that customer information can receive adequate protection.

However, the measures just mentioned can cure the symptoms only. We believe that we cannot possibly root out the problem of huge credit card debts solely by asking banks to tighten their lending policies or by setting up credit intelligence agencies. The point is that consumers have the responsibility to consider how much spending they can afford, and, of course, they must remember that they have the responsibility to repay their debts. Before they spend on credit, they must carefully consider their income and repayment ability. This is the only ultimate solution.

Mr President, for the reasons just mentioned, we do not support Dr HUANG Chen-ya's proposal that a working group should be set up to study ways of further monitoring the credit card market. Excessive monitoring will only lead to reduced efficiency and increasing operating costs, and may possibly thwart normal market development and reduce competition. Since there are no inherent problems with the market itself and since the Government has implemented some measures to improve the trade practices of the credit card market, we do not think that the Government should intervene any further in the market by enacting legislation and introducing a licensing system. What is more, with respect to the problems arising from the use of credit cards, we simply should not lay all the blame on the lending and card-issuing policies of banking institutions. When consumers apply for credit cards and when they use their cards, they should consider their own income and financial ability. As a responsible government, we must strike a right balance between the protection of consumer interests and the maintenance of a business-friendly environment. We should not step up our monitoring of card-issuing institutions incessantly. When consumers use the lending facilities of credit cards, they must at the same time remember that they have to repay the debts.

We believe that with the implementation of the series of measures mentioned just now, in particular the Code of Good Banking Practices now being

drafted, we should be able to further improve local credit card services and their transparency and address the problems raised by Members and the Consumer Council. We will finalize, release and implement the Code as soon as possible, and we will also consult the Consumer Council and Members of this Council.

Finally, let me just reiterate that the Government totally supports the maintenance of an equitable and transparent relationship between banks and their customers. We undertake to continue our efforts in this direction.

Thank you, Mr President.

DR HUANG CHEN-YA's amendment to DR LAW CHEUNG-KWOK motion:

"To delete "the interest rates charged on the credit cards in Hong Kong are continually on the high side and"; to insert "in Hong Kong" before "are ambiguous"; to delete "coupled"; to delete "have been" and substitute with "are seriously"; to delete "suitably regulate the credit card market" and substitute with "set up a working group to study the suitable regulation of credit card issuing companies, with the scope of study covering the formulation of legislation on credit services, the establishment of a licensing system, the terms and conditions of agreements, the operational tactics adopted, the disclosure of information, the means of recovering debt, and so on", to delete "ensure the market's healthy development and"; and to add ", and that the working group must complete its report in mid-1997 for public consultation" after "safeguard the rights and interests of consumers"."

DR HUANG CHEN-YA (in Cantonese): Mr President, I move that Dr LAW Cheung-kwok's motion be amended as set out under my name on the Order Paper.

Question on Dr HUANG Chen-ya's amendment proposed and put.

While the President was declaring the "ayes" have it, Dr LAW Cheung-kwok claimed a division.

PRESIDENT (in Cantonese): Council will now proceed to a division.

MISS EMILY LAU (in Cantonese): Mr President, you have already declared the result. How can you withdraw it?

PRESIDENT (in Cantonese): You would not mind spending three more minutes, would you? It was because I did not look in the direction of Dr LAW.

MR SZETO WAH (in Cantonese): Whether we mind or not is not the question. The question is whether or not Standing Orders are to be enforced. This also involves whether or not your words are to be taken as they are.

PRESIDENT (in Cantonese): Mr SZETO Wah, I inadvertently overlooked, and Members on my left also indicated that I failed to notice them.

PRESIDENT (in Cantonese): I would like to remind Members that they are called upon to vote on the question that the amendment moved by Dr HUANG Chen-ya be made to Dr LAW Cheung-kwok's motion.

Will Members please register their presence by pressing the top button and then proceed to vote by pressing one of the three buttons below?

PRESIDENT (in Cantonese): Before I declare the result, Members may wish to check their votes. Are there any queries? The result will now be displayed.

Mr Martin LEE, Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Dr YEUNG Sum, Mr WONG Wai-Yin, Mr Andrew CHENG, Mr Albert HO, Mr LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr

LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE and Mr YUM Sin-ling voted for the amendment.

Mrs Selina CHOW, Dr David LI, Mr Edward HO, Mr Henry TANG, Mr Howard YOUNG, Miss Christine LOH, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHOY Kan-pui, Mr IP Kwok-him and Mr NGAN Kam-chuen voted against the amendment.

THE PRESIDENT announced that there were 23 votes in favour of Dr HUANG Chen-ya's amendment and 12 votes against it. He therefore declared that the amendment was carried.

DR LAW CHEUNG-KWOK (in Cantonese): Mr President, I would like to thank the nine Members, including three Members from the banking sector, for their enthusiastic and inspiring speeches. Today, I have proposed a motion which will affect many members of the public, but which is conceptually rather simple.

After examining the two amendments in detail and listening to the speeches of individual Members, we can see that the proposal to regulate the credit card market is a highly controversial matter. Quite a number of Members consider that the interest rates charged on credit cards at present are brought about by free market competition. These interest rates and are by no means on the high side, and there is no element of artificial control. However, it seems that this is not an appropriate time for us to discuss this matter in depth today.

On the other hand, I am very glad that Members and the Administration agree that the terms and conditions currently set by credit card issuing companies are "unequal treaties". Many operational practices are fairly controversial and that there is much room for improvement.

Finally, the Administration revealed just now that it is currently working on a Code of Good Banking Practices together with the Hong Kong Association of Banks. I have mixed feelings about this document. The reason is, if the document is too thin, there might be inadequate protection for the consumers. However, if it is too thick, it would reflect that banks have been adopting many "bad banking practices" which are unfavourable to consumers for a long time. I am very uneasy about this.

Thank you, Mr President.

Question on Dr LAW Cheung-kwok's motion as amended by Dr HUANG Chen-ya put and agreed to.

PRESIDENT (in Cantonese): Just now I admitted an inadvertent omission. I would like to explain. If I committed an omission, even if I have declared the "ayes" have it, I would still have to rectify the matter immediately. Another thing is, in respect of this voting, a Member mentioned during the debate that a certain Member had not declared interest. If we had not proceeded to a division, Members who wished to challenge another Member's right to vote would have had no opportunity to do so. Therefore, I had to set the matter right. However, in the end, no Member moved to annul another Member's vote on the ground of a conflict of interest.

Before adjourning the Council, I wish all Members a good rest during the Christmas and New Year holiday.

ADJOURNMENT AND NEXT SITTING

PRESIDENT (in Cantonese): In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 8 January 1997.

Adjourned accordingly at seven minutes past nine o'clock.