

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 8 January 1997**

**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.

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 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, O.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 LEE CHEUK-YAN

THE HONOURABLE CHAN KAM-LAM

THE HONOURABLE CHAN WING-CHAN

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THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHENG YIU-TONG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

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

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

DR THE HONOURABLE JOHN TSE WING-LING

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

THE HONOURABLE LAWRENCE YUM SIN-LING

**MEMBERS ABSENT:**

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

THE HONOURABLE FREDERICK FUNG KIN-KEE

DR THE HONOURABLE PHILIP WONG YU-HONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LEE KAI-MING

**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

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MR GORDON SIU KWING-CHUE, J.P.  
SECRETARY FOR TRANSPORT

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 KEITH KWOK KA-KEUNG, J.P.  
SECRETARY FOR HOUSING

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

## **CLERKS IN ATTENDANCE:**

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, 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.*

Tramway Ordinance (Alteration of Fares) (Amendment) (No. 2) Notice 1996 .....	537/96
Dangerous Goods (Consignment by Air) (Safety) Regulations (Amendment of Schedule) Order 1996	542/96
Official Languages (Alteration of Text) (Merchant Shipping Ordinance) Order 1996 .....	543/96
Travel Industry Compensation Fund (Amount of Ex Gratia Payments and Financial Penalty) (Amendment) (No. 2) Rules 1996 .....	544/96
Food Business (Urban Council) (Amendment) (No. 4) Bylaw 1996 .....	545/96
Official Languages (Amendment) Ordinance 1995 (51 of 1995) (Commencement) Notice 1996 .....	546/96
Intellectual Property (World Trade Organization Amendments) Ordinance 1996 (11 of 1996) (Commencement) (No. 2) Notice 1996 .....	547/96
Employees' Compensation (Amendment) (No. 2) Ordinance 1996 (67 of 1996) (Commencement) Notice 1996 .....	548/96

Post-Release Supervision of Prisoners (Amendment) Ordinance 1996 (73 of 1996) (Commencement) Notice 1996.....	549/96
Labour Tribunal (General) (Amendment) Rules 1996 (L.N. 237 of 1996) (Commencement) Notice 1996 .....	550/96
Trade Marks (Amendment) Rules 1996 (L.N. 299 of 1996) (Commencement) Notice 1996 .....	551/96
Copyright (Application to Other Countries, Territories or Areas) Regulation (L.N. 312 of 1996) (Commencement) Notice 1996 .....	552/96
Copyright (Designation of Qualifying Countries, Territories or Areas) Regulation (L.N. 313 of 1996) (Commencement) Notice 1996 .....	553/96
Trade Marks Ordinance (Amendment of Schedule) Order 1996 (L.N. 314 of 1996) (Commencement) Notice 1996 .....	554/96
Layout-Design (Topography) of Integrated Circuits (Designation of Qualifying Countries, Territories or Areas) Regulation (L.N. 315 of 1996) (Commencement) Notice 1996 .....	555/96
Sex Discrimination Ordinance (Cap. 480) (Commencement) (No. 3) Notice 1996 .....	556/96
Sex Discrimination (Proceedings by Equal Opportunities Commission) Regulation (L.N. 539 of 1996) (Commencement) Notice 1996 .....	557/96
Disability Discrimination Ordinance (Cap. 487) (Commencement) (No. 3) Notice 1996 .....	558/96

Official Languages (Authentic Chinese Text) (Merchant Shipping (Liability and Compensation for Oil Pollution) (Compulsory Insurance) Regulations) Order .....	(C) 131/96
Official Languages (Authentic Chinese Text) (Merchant Shipping (Registration) (Fees and Charges) Regulations, Merchant Shipping (Registration) (Ships' Names) Regulations and Merchant Shipping (Registration) (Tonnage) Regulations) Order .....	(C) 132/96
Official Languages (Authentic Chinese Text) (Merchant Shipping (Prevention of Oil Pollution) Regulations, Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations, Merchant Shipping (Reporting of Pollution Incidents) Regulations, Merchant Shipping (BCH Code) Regulations, Merchant Shipping (IBC Code) Regulations and Merchant Shipping (Prevention of Oil Pollution) Regulations (Exemption) Notice) Order .....	(C) 133/96
Official Languages (Authentic Chinese Text) (Merchant Shipping Ordinance) Order .....	(C) 134/96
Official Languages (Alteration of Text Under Section 4D) (No. 3) Order 1996 .....	559/96
Public Health and Municipal Services Ordinance (Public Pleasure Grounds) (Amendment of Fourth Schedule) (No. 8) Order 1996 .....	560/96
Food Business (Regional Council) (Amendment) (No. 2) Bylaw 1996 .....	561/96



The Orthodox Metropolitanate of Hong Kong and South East Asia Ordinance (64 of 1996) (Commencement) Notice 1996.....	562/96
Medical Laboratory Technologists (Registration and Disciplinary Procedure) (Amendment) (No. 2) Regulation 1996 (L.N. 435 of 1996) (Commencement) Notice 1996 .....	563/96
Occupational Therapists (Registration and Disciplinary Procedure) (Amendment) (No. 2) Regulation 1996 (L.N. 436 of 1996) (Commencement) Notice 1996.....	564/96
Import and Export (Fees) (Amendment) (No. 2) Regulation 1996 (L.N. 484 of 1996) (Commencement) Notice 1996.....	565/96
Official Languages (Authentic Chinese Text) (Hong Kong Airport (Control of Obstructions) Ordinance) Order .....	(C) 135/96
Official Languages (Authentic Chinese Text) (Kowloon-Canton Railway Corporation Ordinance) Order .....	(C) 136/96
Boilers and Pressure Vessels (Amendment) Regulation 1997.....	1/97
Supplementary Medical Professions Ordinance (Application to Physiotherapists) Order 1997 .....	2/97
Immigration (Vietnamese Migrants) (Detention Centres) (Designation) (Amendment) Order 1997 ..	3/97
Immigration (Vietnamese Migrants) (Tai A Chau Detention Centre) (Repeal) Rules 1997 .....	4/97

Copyright (Performing Right Tribunal) (Amendment) Rules 1997 .....	5/97
Buildings (Amendment) Ordinance 1996 (54 of 1996) (Commencement) Notice 1997 .....	6/97
Physiotherapists (Registration and Disciplinary Procedure) Regulation (L.N. 437 of 1996) (Commencement) Notice 1997.....	7/97

#### Sessional Papers 1996-97

- No. 58 — Report by the Controller, Government Flying Service on the Administration of the Government Flying Service Welfare Fund for the year ended 31 March 1996
- No. 59 — Report of changes to the approved Estimates of Expenditure approved during the second quarter of 1996-97  
Public Finance Ordinance: Section 8

#### ADDRESS

**PRESIDENT** (in Cantonese): We will start the sitting with an address.

I have given permission for Mr Ronald ARCULLI to address the Council on 10 items of subsidiary legislation which were gazetted on 29 November 1996 and tabled in this Council on 4 December 1996. Mr ARCULLI was elected Chairman of the Subcommittee formed by the House Committee to study the subsidiary legislation.

Under Standing Order 14(5), no debate may arise on the address, but I may allow short questions seeking elucidation on matters raised in the address.

**MR RONALD ARCULLI:** Mr President, with your permission, I rise to speak on 10 items of subsidiary legislation gazetted on 29 November 1996 and laid on the table of this Council on 4 December 1996 regarding fee increase proposals.

All the 10 items of subsidiary legislation seek to increase fees by different percentages with effect from 10 January 1997. A Subcommittee was formed under the House Committee of which I was elected Chairman. The Subcommittee has met with the Administration to examine the various fee increase proposals, and we understand that all the proposed fee increases are intended to achieve cost recovery at different levels. Members, nevertheless, are concerned whether there is any standard on cost recovery rates. In this respect, the Administration's explanation is that the fees charged under different ordinances are introduced at different times and they vary greatly in money terms. If a standardized cost recovery rate is applied across the board in a fee revision exercise, some fees may have to be increased drastically. The government policy is to recover the full cost of providing a service, although the lead time for achieving this varies from fee to fee.

Members welcome that notwithstanding the Administration's intention to recover full cost, it has proposed to spread out full cost recovery over a period for some fees in order not to over-burden fee payers. This arrangement will be applied to those fees the current cost recovery levels of which are low.

However, members of the Subcommittee expressed concern about the Environmental Protection Department (EPD)'s efficiency and cost-effectiveness in handling licence applications, variation and transfer of licences under the Air Pollution Control (Specified Processes) Regulation. Although the proposed increases under this Regulation will only result in achieving 10% of the cost, the increase in absolute terms is over \$2,000 for application of a licence and over \$1,000 for variation and transfer of a licence. Given that the validity period of a licence has been extended from two to five years and only about 60 licences are issued on an average each year, members of the Subcommittee consider that there is much room for improvement.

In this regard, the Administration has explained to members that all the 250 plants required to obtain a licence to conduct specified processes under the Air Pollution Ordinance are large factories or companies, for example, electricity company. The proposed fee increases represent an insignificant portion of their operating costs. Although the number of licences issued per year is limited, the

staff of the EPD have to undertake a lot of work before a licence can be issued. These include inspecting the premises in which the specified processes will be conducted, advising on means to prevent or mitigate discharge of air pollutants and determining on terms or conditions to be imposed on a licence. After the issue of a licence, the EPD staff normally inspect the premises six times per year to ensure compliance with the licensing conditions.

Whilst the Subcommittee expresses support for all the fee increase proposals, members are of the view that since staff cost constitutes the major portion of the cost of providing a service, the EPD should make every effort to contain staff cost and to deploy staff in the most effective manner. The Subcommittee has also suggested that this issue be followed up by the Legislative Council Panel on Environmental Affairs.

With these remarks, Mr President, I seek Members' support for the Regulations.

## ORAL ANSWERS TO QUESTIONS

### Highway Accidents Caused by Dropping Objects

1. **MR TSANG KIN-SHING** asked (in Cantonese): *Mr President, it is reported that in a recent highway accident, a boulder was suspected of falling from a dump truck or goods vehicle and striking through the windscreen of a vehicle travelling behind, causing serious injury to the driver of the vehicle concerned. In this connection, will the Government inform this Council:*

- (a) *of the total number of similar accidents in the past three years and the number of persons injured or killed in such accidents;*
- (b) *whether such accidents are caused by rubbles falling from moving dump trucks or good vehicles carrying sand and gravel; if so, of the number of drivers or owners of such vehicles who have been successfully prosecuted; and*
- (c) *whether the Government has considered adopting measures to prevent the occurrence of traffic accidents resulting from rubbles falling from moving dump trucks and goods vehicles?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, in respect of part (a) of the question, during the three years between January 1994 and December 1996, there were a total of 28 accidents in the territory suspected of being caused by rubbles or other materials falling out from dump trucks or goods vehicles. One person was killed, seven were hospitalized for more than 12 hours and 29 were slightly injured.

As regards part (b) of the question, the major contributory cause of these accidents was incomplete or insecure covering/fastening of loads. Among the 28 accidents, eight involved dumpers or lorries carrying sand or stone. The remaining 20 accidents involved other objects like metal bars, spare tyres, machines, wooden planks or boxes and so on falling from good vehicles while travelling. The number of successful prosecutions was 12, another two cases are still under investigation.

As regards part (c) of the question, the Administration adopts a two-pronged approach to combat the problem of objects falling from moving vehicles, the first approach is law enforcement while the second one is education.

On the enforcement side, the police prosecute drivers of vehicles with insecure loads under the Road Traffic (Traffic Control) Regulations. Particular attention is given to major highways frequently used by goods vehicles. Any suspected insecurely loaded vehicles are directed to police check points or weigh-stations for checking.

Apart from being issued fixed penalty tickets, drivers with insecure loads on vehicles may also be prosecuted by summons. Upon first conviction, the penalty is a maximum fine of \$5,000 and imprisonment for three months, and on second or subsequent conviction, the penalty is a fine of \$10,000 and imprisonment for six months.

On the education side, a booklet named Road Users Code is issued to all learner drivers. It gives instructions on what should and should not be done in carrying loads on goods vehicles, the guidelines for carrying overhanging loads, and what to do if a load falls from the goods vehicle.

In addition, Transport Department has published a Code of Practice for the Loading of Vehicles (Code of Practice). All goods vehicle owners were given a copy on first issue in 1994. Thereafter, the Code of Practice is issued to vehicle

owner when his goods vehicle is first registered in Hong Kong and every person who applies for goods vehicle skill test are given a copy. Copies of the Code of Practice are also made available free at the Transport Department to other drivers. The Code of Practice provides detailed advice, with the aid of diagrams, the legal provisions for the safe transport of goods, the types of goods vehicles, general guidelines on how loads should be arranged on vehicles and guidelines for the loading of loose bulk loads (such as sand and gravels), metal, bamboo, timber, pallets, engineering plants, liquid loads and other goods.

Furthermore, pamphlets and posters on safe loading of vehicles are also disseminated to members of the trucking industry.

Apart from the above educational measures, the Administration has a number of ongoing programmes to address this problem of material falling from goods vehicles:

- (i) Transport Department holds quarterly meetings with goods vehicle operators, owners and drivers. The need for safe and secure loading of vehicles is emphasized at these meetings;
- (ii) Ongoing publicity on the need for safe loading of vehicles is made through the Road Safety Council and voluntary motoring organizations. The correct ways of carrying loads on vehicles and the penalties for insecure loading and overloading offences are addressed; and
- (iii) Transport Department will publish a simplified pamphlet highlighting the main points of the Code of Practice for the Loading of Vehicles. It is hope that goods vehicle drivers will put it in the vehicles at all times for reference. This will be issued to all new goods vehicle learner drivers and existing goods vehicle drivers.

**MR TSANG KIN-SHING** (in Cantonese): *Mr President, the third paragraph of the main reply given by the Secretary for Transport did not say enough about education. In my opinion, the occurrence of such traffic accidents could be prevented through annual inspection of all vehicles concerned. At present, many goods vehicles have two tyres on each side of their rear axles and rubbles can usually be found between the two tyres, such rubbles would be thrown out*

*like bullets and hit the vehicle travelling behind. However, we do not have any law to regulate such situation, nor do we have any proper guidance instructing the drivers of dump trucks or goods vehicles how to install mud guards or how to prevent rubbles from getting trapped in the gap between the two tyres. I think the Secretary should conduct studies in this respect and instruct the drivers of goods vehicles how to better equip their vehicles.*

*On the other hand, regarding those vehicles with goods compartments, they are allowed to run on roads after undergoing a very lax inspection. I hope that .....*

**PRESIDENT** (in Cantonese): Mr TSANG Kin-shing, perhaps you can put that in a separate question?

**SECRETARY FOR TRANSPORT** (in Cantonese): The Honourable TSANG Kin-shing is indeed very familiar with the operation of the trade, and I must thank him for his opinions. In fact, among the laws concerning road traffic, there is a by-law requiring all goods vehicles to install the mud guards as referred to by Mr TSANG. The question is should we conduct a study concerning the size of such mud guards. Mr President, I will consider the opinion provided by Mr TSANG Kin-shing. As for the rubbles thrown out from the space between two tyres, this is a rather tough problem. It seems that one solution is to use one tyre instead of two tyres. However, the purpose of the original design with two tyres is that if one of the tyres becomes flat, the other one could enable the vehicles to move to the side of the road. Nevertheless, I will relate this idea to the vehicle designer to see if this is feasible or not.

**MR TSANG KIN-SHING** (in Cantonese): *Mr President, the problem in relation to two tyres could in fact be resolved very easily. By adding an iron strip between the tyres, rubbles can be prevented from getting trapped in there. As for my second supplementary question .....*

**PRESIDENT** (in Cantonese): Mr TSANG Kin-shing, this is not the time for discussion. As for the second supplementary question, could you wait until other Members have raised theirs? I will then invite you to raise your second supplementary.

**MRS MIRIAM LAU** (in Cantonese): *The Secretary mentioned in his main reply that in the period between 1994 and 1996, there were a total of 28 accidents caused by rubbles falling from vehicles. Among those 28 accidents, prosecutions were instituted successfully against 12 cases only. Could the Secretary inform this Council why the rate of prosecution was as low as less than 50%; and whether the Government has any measures to increase the rate of prosecution so as to enhance the deterrent effect?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, there are two reasons. Firstly, the Government might not be able to gather enough evidence. Secondly, there might be other factors in the circumstances that hindered the police from instituting any prosecution. However, the police did study carefully each and every case. As to what measures could enhance the rate of successful prosecution, I think it is rather important to have more frequent beat patrols as well as to tighten up law enforcement actions.

**MR BRUCE LIU** (in Cantonese): *Mr President, if a driver involved in such kind of accident violates the Road Traffic Ordinance, will he get any driving-offence points after he is convicted? If so, how many points will he get? If not, will the Government consider strengthening the punishment in this respect? In addition, in view of the minimal amount of fine, will the Government conduct a review to see if the existing amount of fine and prison terms need to be increased in order to enhance the deterrent effect?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, at present, such offences are not yet included in the Driving-offence Points System. However, the Government is now considering whether such kind of criminal offences should be included in the Driving-offence Points System like other driving offences in future.

In addition, the Government has noted that the fines involved in some of the successful prosecutions are high enough. The Government is of the opinion that there is no need to raise the amount of fine or prison terms for the time being. Nevertheless, we will be keeping an eye on the situation closely in the next few years to see if the expected results could be achieved after our publicity work has been carried out. The Government will consider raising the amount of fine when necessary.



**MR HENRY TANG** (in Cantonese): *Mr President, will the Secretary inform this Council of the maximum penalty involved in those 12 successfully prosecuted cases; and whether the Government will study to see if the maximum penalty concerned had enough deterrent effect? Just now when the Secretary was giving his reply, he mentioned that the Government would take into consideration or observe the situation for a period of time. I would like to know how long will that period of time last?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, I have on hand only one figure regarding the maximum amount of fine ordered and that was \$3,000. However, I will provide the Honourable Henry TANG with the figures concerning the 12 cases (and perhaps there were other forms of punishment) in writing. (Annex I)

As for the second part of the question .....

**PRESIDENT** (in Cantonese): Mr Henry TANG, please repeat the second part of your question.

**MR HENRY TANG** (in Cantonese): *How long will the Secretary observe before he can decide whether the penalties need to be adjusted?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, part of the work that I have mentioned just now will continue to be carried out by the Government, for example, the production of a pamphlet that all drivers could keep a copy in their goods vehicles. We expect to publish and distribute one copy of the pamphlet to each driver and then observe for six to nine months. We will consider if there is any need for adjustment in the light of the situation then.

**MR WONG WAI-YIN** (in Cantonese): *Mr President, at present, most of such accidents are either caused by rubbles thrown up by the rear tyres of the vehicle ahead or by rubbles thrown up by vehicles on the adjacent lane or the opposite direction lane. Will the Government consider strengthening the cleaning of*

*road surface with regard to rubbles so as to prevent rubbles from being thrown up?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, the Highways Department has in fact been cleaning the road surface everyday. Besides, a telephone hotline has also been provided by the Department for people to lodge their complaints against any obstacles they see on the road. Perhaps what we need to do is to enhance the publicity work concerning this telephone hotline to allow more people to report such cases to the Highways Department.

**MR HOWARD YOUNG** (in Cantonese): *Mr President, the Secretary said in the seventh paragraph of his main reply that all goods vehicle owners were given a copy of the Code of Practice for the Loading of Vehicles (Code of Practice). However, I think most of the drivers are not the owners of the vehicles concerned. In view of the fact that the driving licence for heavy goods vehicles is different from that for private cars, and that there are less people holding this kind of driving licence, will the Secretary consider issuing through the Transport Department a copy of the Code of Practice to these drivers when they renew their driving licences every year (or at the most every three years)? In that case, it would only take three years at the most to ensure that all these drivers are issued a copy of the Code of Practice directly.*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, I have in fact mentioned in the seventh paragraph that apart from vehicle owners, every person, including drivers, who applied for goods vehicle skills test thereafter would also be given a copy of the Code of Practice. However, perhaps the problem has something to do with the fact that the Code of Practice is so thick that it is not very easy for the drivers to read. The Government is now considering issuing some comparatively smaller and more concise leaflets with pictures for the drivers to keep a copy in their vehicles.

**MR TSANG KIN-SHING** (in Cantonese): *Mr President, I would like to ask the Secretary for Transport: How can we prevent effectively rubbles and other materials from falling out from the goods compartment. Will the Secretary seek the co-operation of the Electrical and Mechanical Services Department to find out a feasible measure to resolve the problem, such as adding an extra requirement in this respect when the vehicles undergo its annual inspection?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, vehicle inspection will not be of much help in this respect. The crux of the matter lies in the kind of method employed to conceal effectively the sand and gravel in the goods compartment as well as in whether the Code of Practice has been observed. Instead of adding anything to vehicle inspection, I think what we need to do is to enhance publicity and to educate the drivers to observe the Code of Practice.

**MR TSANG KIN-SHING** (in Cantonese): *Mr President, what I want to say is that we can require the drivers to install a metal cover on the goods compartment to prevent rubbles from falling out. We could require the drivers to do this during the vehicle inspection exercise, the same should also apply to the installation of mud guards.*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, if the goods vehicles concerned have movable covers, they will actually be subject to the regulation of existing laws. Nevertheless, I will still discuss this with my colleagues in the vehicle inspection unit the suggestion of Mr TSANG, to see if we need to ensure that the vehicles concerned would still have such covers after they have been registered for several years.

**MRS MIRIAM LAU** (in Cantonese): *Mr President, the Road Users Code is for education purpose only. If the objective cannot be achieved through education, will the Government consider making it a mandatory requirement that drivers of goods vehicles carrying sand and gravel or other materials must use a safety net or canvass to cover those materials before driving the vehicles concerned?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, the existing legislation has already provided a general requirement under which all goods must be securely placed. I will study the suggestion made by the Honourable Mrs Miriam LAU to see if the relevant laws should be more strictly and precisely written.

### **Public Access to Police Manuals**

2. **MR LAW CHI-KWONG** asked (in Cantonese): *It is learnt that the Police Manual stipulates the standard procedures for police officers to follow when discharging their duties. In this connection, will the Government inform this Council:*

- (a) *of the reasons why the police has not released the Police Manual for public information following the implementation of the Code on Access to Information on 1 April 1996;*
- (b) *whether the procedures set out in the Police Manual are consistent with the provisions of the Hong Kong Bill of Rights Ordinance; and*
- (c) *given that certain groups such as battered spouses, handicapped persons and marginal youth have complained that police officers often do not respect their legal rights or neglect their special needs when handling cases involving them, whether the Government will consider consulting these groups with a view to making appropriate changes to the Police Manual so as to safeguard the interests of the groups concerned?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President,

- (a) The Code of Access to Information was only extended to the Police Force with effect from 23 December 1996, consistent with the Government's commitment to extend the Code to all branches and departments by the end of 1996. The Police Force is in the last batch of departments to join the Code as it was planned that this should coincide with the amendments to the Commissioner for Administrative Complaints Ordinance, recently passed on 18 December 1996, which empowers the Commissioner to investigate complaints against the police of non-compliance with the Code. Members of the public may apply for access to information, including police procedures, from the Access to Information Officer of the Police Force.

- (b) The existing police procedures are consistent with the provisions of the Hong Kong Bill of Rights Ordinance.
- (c) The Police Force has drawn up special procedures for handling cases involving battered spouses, juveniles/children and handicapped persons in an appropriate manner. There are established channels for the police to liaise closely with the relevant parties, such as the Social Welfare Department and non-government organizations, to exchange views on handling these cases. Front-line police officers are regularly trained to ensure that they are familiar with the relevant procedures so that vulnerable individuals are handled with care and sensitivity.

**MR LAW CHI-KWONG** (in Cantonese): *Mr President, I would like to ask a short follow-up question and, if you allow, I would raise another question later. My question is if I apply to the Access to Information Officer of the Police Force for access to the Police Manual, will the Police Force approve my application?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, all police information, such as the Police Manual and documents related to police action, including the Police General Orders, Force Procedures Manual and so on, is open for public access. In this respect, even members of the public who ask for access to the information will be able to acquire the information needed within the scope of the Code on Access to Information, let alone Legislative Council Members.

Nevertheless, to prevent jeopardizing or hindering the detection or investigation of criminal offences, a small part of the contents cannot be disclosed under the Code on Access to Information. If such information is disclosed, an adverse consequence may result. For instance, the procedures on investigating or handling of kidnap cases are set out in the Police General Orders. If the related content is disclosed to the public, the safety of future kidnap victims may be affected. It is for this reason that a small portion of information of this kind cannot be made public. Apart from this, if the public have such need, they may ask the Police for access to the Police General Orders and Force Procedures Manual. I would like to take this opportunity to inform Members of our plan (but not yet put into practice due to insufficient time) to deposit the

Force Procedures Manual — I am sorry, it should be the Police General Orders, in the report rooms of all police stations to facilitate direct access by the public.

**MR LEUNG YIU-CHUNG** (in Cantonese): *Mr President, part (c) of the question raised by the Honourable LAW Chi-kwong concerns mainly with the fact that in lodging complaints, handicapped persons or battered spouses often fail to receive due respect as far as their legal rights and positions are concerned. Such phenomena have been generally reflected in the complaints we received. In spite of this, the Secretary for Security, in answering part (c), pointed out that the Police Force has drawn up special procedures for handling cases involving battered spouses, juveniles/children and handicapped persons. In this respect, will the Secretary spell out the details of these special procedures? At the same time, will the police allow the complainants, before lodging their complaints, to be informed of these procedures? For instance, the related information can be included in the Force Procedures Manual to let the complainants know of their basic rights before they make their complaints.*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, those who wish to be informed of these procedures can ask the police for access in accordance with the Code of Access to Information. I believe they will definitely be given the relevant information. As far as the details of these special procedures are concerned, the cases involved can be divided into several categories such as battered spouses, juveniles/children or handicapped persons. Therefore, the procedures involved are in fact very lengthy. Of course, I am willing to inform Members of the relevant contents and I can even do it now. However, I will be wasting a lot of time if I do so. For this reason, I would like to present these special procedures in writing for Mr LEUNG's reference.

**PRESIDENT** (in Cantonese): Mr LEUNG Yiu-chung, are you claiming that your question has not been fully answered? Which part?

**MR LEUNG YIU-CHUNG** (in Cantonese): *Mr President, a minor part of the question has not been answered, and that is the part related to the special procedures. I would like to ask the Secretary for Security whether it is possible to ensure that the complainants know clearly beforehand these special procedures. For instance, when a person makes his complaint, can the police*

*officers ask him if he is aware of the police procedures as well as his own rights? In so doing, the complainant will be able to have the knowledge before he lodges his complaint.*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, if the victims have any queries as regards the handling procedures of their cases, I believe the police officers at the scene and the police will welcome their enquiries regarding the related handling procedures. In general, as I have pointed out just now, it will take a lot of time if I elaborate on how each type of cases is going to be handled. I do not want to waste our time here; I will present the information to Mr LEUNG in writing for his reference. However, we must bear in mind the underlying principle with regard to the handling of these cases. As far as some people who are helpless or in distress such as battered spouses, juveniles/children or handicapped persons are concerned, they are hurt both physically and mentally at such a sensitive moment. Therefore, our underlying principle must be to meet their needs and help them with more care and sensitivity as far as possible.

**MR ALBERT HO** (in Cantonese): *My question is: As the Police Manual has a direct bearing on the public and for the sake of ensuring that the public can really exercise their rights to know, I would like to ask if the police have any intention or plan to enable the public to acquire the Police Manual more easily so that the public can acquaint themselves with the contents in a more comprehensive manner? What I mean is the part which can be made public. I wonder if the Police Manual can be sold through the Government Publications Centres or deposited in libraries or even put on the Internet so that the public can get to know the contents. Can the Secretary for Security reply on behalf of the Police Force?*

**SECRETARY FOR SECURITY** (in Cantonese): As a matter of fact, we take the rights to know very seriously. But as we all know, both the Police General Orders and the Force Procedures Manual are quite detailed and thick, containing quite a lot of information. They are not just some 10 pages thick and cannot be reproduced at any time. Therefore, it is impossible for us to distribute them everywhere.

We are now planning to put a copy of the Police General Orders in each report room for direct access of the public who have such needs.

I am afraid we cannot put them in libraries for the time being as we have only taken our first step by putting them in report rooms. Furthermore, I would like to put forward some comments. As far as Legislative Council Members, academics or commentators are concerned, they will definitely refer to the whole set of the Police General Orders or the Force Procedures Manual if they wish to make an in-depth study of related problems. However, it is very difficult to tell if we can make the general public exercise their rights to know by giving them complete sets of the voluminous documents. Therefore, we have taken another approach in this respect. In carrying out their daily work, the police will encounter some people. We will sum up the circumstances those people encounter most frequently and have the important information compiled into leaflets and distributed through such places as the police stations. For instance, we will print warning cards about family violence incidents and other kinds of leaflets that can be understood by the public more easily.

**MR LAW CHI-KWONG** (in Cantonese): *Mr President, part (c) of my original question seeks to ask whether the Government will consider taking the initiative to consult certain groups such as battered spouses and handicapped persons with a view to making appropriate changes to the Police Manual. The Government only states in its reply that it will liaise with and consult the relevant authorities according to the circumstances of the cases. I would like to know whether the Government will take the initiative to consult the people concerned on the contents of the Manual to see if appropriate amendments are needed.*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, as a matter of fact, liaison work does not involve cases only. Some problems, such as those related to family violence and battered spouses, are very complicated. Law enforcing officers alone, or a single government department, are not able to handle all these cases. Sometimes, they also need the co-operation of, for instance, the Social Welfare Department or other relevant non-governmental welfare institutions. In maintaining close liaison and ensuring proper arrangements of co-ordination and referral services, the police, the Social Welfare Department as well as relevant social services organizations have all made great efforts. Apart from this, the police have also sent their representatives to attend meetings held by a number of working groups such as the Working Group on Battered Spouses and the Working Group on Services for Youth at Risk. If members of the public have any comments on the code of



conduct or handling practices of the police, they can propose a study through these working groups. I believe the police will be glad to consider their proposals. However, in actual practice, I think it is impossible to meet every youngster, youth at risk and battered spouse. Therefore, the best way is to hold consultations through these working groups because these groups are composed of government officers as well as representatives from the outside. This is also a more convenient and speedy way of handling such matters.

**MR JAMES TO** (in Cantonese): *Mr President, I would like to follow up the Honourable Albert HO's question. Just now the Secretary for Security said in his reply that a copy of the Police General Orders or Force Procedures Manual would be kept in each police station for access by the public.*

*I would like to ask the Secretary for Security if he expects that some people in special circumstances, such as the battered spouses, handicapped persons or youth at risk mentioned just now, will sit in the report rooms and read for a couple of hours. I wonder if the Government can act more proactively by considering depositing appropriate parts of the Police Manual in some supporting institutions such as the Harmony House Limited that helps battered spouses, interests clubs for women, rehabilitation institutions for handicapped persons and voluntary organizations that provide social services for youths at risk, as well as sending them directly to the people concerned to enable them to understand the contents.*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, I think the aim of depositing the Police General Orders in police stations is not to ask every youth at risk to go to the police stations to read the whole set of the Orders. The original aim of this arrangement is to provide a tool. By putting the document in a certain place, a person can go and look up a certain part of the document, a Member may go to inspect another part, while some other people may probably go through the whole document. Just as I have said earlier, we need to provide those members of the public who have the most frequent contacts with the police with some simple and easily understood information. We will publish some leaflets for distribution to these people. These leaflets will include the Victim's Charter published by the Legal Department, procedures of handling crime victims as well as services provided to witnesses or victims of family violence. We will also publish warning cards for persons victimized in family violence

incidents. These leaflets can in fact be distributed to the victims by the police. Nevertheless, I will consider Mr TO's suggestion of distributing the existing leaflets or other leaflets to be published to interested members of the public through the relevant social service organizations.

**Access Facilities for Wheelchair Users**

3. **DR JOHN TSE** asked (in Cantonese): *Mr President, regarding the provision of facilities to wheelchair users, will the Government inform this Council:*

- (a) of the percentage of public places in the territory such as restaurants and cinemas which are provided with access facilities for wheelchair users;*
- (b) of the current number of at-grade crossings provided with dropped kerbs to facilitate crossing by wheelchair users;*
- (c) of the Government's plans to improve access facilities for wheelchair users; and whether the Government has considered introducing legislation requiring the provision of such facilities in non-domestic premises built before 1984; and*
- (d) how the Government ensures that the access facilities originally designed for wheelchair users in privately-owned premises are actually made available for use by wheelchair users upon occupation of the premises?*

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

- (a) We do not have the statistics on the number of public places (such as restaurants and cinemas) that have installed facilities for access by persons with a disability. Generally speaking, for public places constructed or having undergone major alterations after 1985, the Buildings Department would require the provision of such facilities as far as possible and reasonable.
- (b) Again we do not have the statistics on the number of pedestrian

crossings that are provided with dropped kerbs. The policy since 1981 is that the provision of dropped kerbs has become standard for all newly constructed or reconstructed pedestrian crossings.

- (c) Buildings and pedestrian crossings constructed or undergone major alteration since 1985 and 1981 respectively have to provide facilities to enable access by persons with a disability. The requirements are promulgated in a Design Manual available to building professionals. The Manual has just been updated and extended to designated common parts of domestic buildings. We are preparing legislative amendments to the Buildings Ordinance and the Codes of Practice issued by the Fire Services Department and the Electrical and Mechanical Services Department to enforce the obligatory requirements stated in the Manual. These policies would gradually enlarge the activity areas for disabled persons.

In addition, section 25 of the Disability Discrimination Ordinance stipulates that it is unlawful to discriminate against a person with a disability in relation to the provision of access to premises that the public or a section of the public is entitled or allowed to enter or use. It makes no reference to their years of construction. The section does not apply if the premises are so designed or constructed as to be inaccessible to a person with a disability and any alteration to the premises to provide for the access would impose unjustifiable hardship on the person who so discriminates the person with a disability. Upon receiving complaints from the public, the Equal Opportunities Commission would assist the parties concerned to determine, on a case by case basis, whether and what access should be provided. On the other hand, if a person feels he has been discriminated against, he may institute legal proceedings against such discrimination.

- (d) The reply to the question is two-fold. First, the Buildings Authority is empowered under section 24 of the Buildings Ordinance to take action against unauthorized alteration to approved building works. The alteration of facilities provided for disabled persons falls into this category. The public can report to the Buildings Department such unauthorized alterations through the complaint hotline or in writing. The Buildings Authority can serve

an order to require the owners to rectify the unauthorized alteration. Immediate enforcement actions will be taken where appropriate.

Second, there may be cases where the owner or the management agent of premises ceases the usage of certain facilities designed for disabled persons. A complaint may be lodged with the Equal Opportunities Commission which will then investigate the case and endeavour to assist the relevant parties to reach a settlement by conciliation.

**DR JOHN TSE** (in Cantonese): *Mr President, the current situation is that disabled persons can have tea but not go to the toilet at some public places such as restaurants. It is because most toilets are not suitable for their use. At present, even many churches and temples are discriminating against disabled persons as their passages basically do not allow disabled persons access. My question is concerned with part (c) regarding the Disability Discrimination Ordinance. I know that many schools in Hong Kong may now be breaching the law in this regard and they are probably discriminating against disabled persons. It is because the entrances and exits of many schools are not fit for access by wheelchair users at all. Does the Administration have any plans to make improvements to the entrances and exits of the schools in Hong Kong as soon as possible, in order to comply with the Disability Discrimination Ordinance?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I think my reply will be the same as part (c) of my original reply, that is, if a person with a disability is entitled or allowed to enter certain premises but he is not provided with facilities to allow him access, this is discrimination and is a breach of the law.

On the other hand, if any person with a disability finds that he can actually enter certain premises but is not able to enjoy the use of the facilities and he feels he has been discriminated against, he can lodge a complaint with the Equal Opportunities Commission for it to decide how it is going to assist him in instituting legal proceedings.

**MR FRED LI** (in Cantonese): *Mr President, I do not know whether the Secretary for Planning, Environment and Lands can reply to my question. Recently, I have discussed with some disabled persons about their access to public places such as restaurants, cinemas or arcade. They find that disabled persons on wheelchairs are unable to use the existing public telephone booths and the electronic teller machines of banks because of their heights. Is this a kind of discrimination? How can the situation be improved?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): *Mr President, I think Mr LI is referring to the survey recently conducted by the Hong Kong Rehabilitation Force and its report entitled "Through Roads for Abled and Disabled Persons". The Administration received the report around Christmas and we have distributed copies of the report to the relevant government departments and units for examination. The report touches upon such facilities as automatic teller machines and telephone booths. The relevant government departments will conduct studies on the basis of these suggestions and we hope that improvements could be made.*

**MR LEE WING-TAT** (in Cantonese): *The Secretary for Planning, Environment and Lands said in his original reply that if the public or users find that any facilities are discriminating against disabled persons or wheelchair users, they can lodge a complaint with the Equal Opportunities Commission. However, I think this is not very satisfactory. Is there a particular department or person within the Administration responsible for monitoring whether all the new buildings, in particular government buildings, comply with the provisions of the Disability Discrimination Ordinance? As far as I know, even the new government buildings, for instance, the No. 3 and No. 4 piers for ferries to the outlying islands which will be put into operation soon, are only provided with stairs but no passages for wheelchair users. I find it strange that there are still such buildings here and now.*

*The focus of my question is whether there is a particular department to ensure that all new government buildings comply with the provisions in the legislation?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in

Cantonese): Mr President, I would like to reply to this question from several perspectives. I just said that we actually have a Design Manual. The contents of this Design Manual have recently been updated. Both the new and old Manuals and even the latest updates are applicable to all government departments. The Disability Discrimination Ordinance are also applicable to all government departments. Therefore, public facilities or government buildings are subject to the jurisdiction of this Ordinance and the Administration will do its best to comply with the requirements of the Manual, the Buildings Ordinance and even the Disability Discrimination Ordinance when designing such facilities or buildings. On the other hand, if a person with a disability finds that the facilities of the Government are discriminating against him, he can lodge a complaint through similar channels.

In general, as the Government has a wide range of facilities, a single department cannot be responsible for all the buildings or facilities of the Government. Therefore, we can only rely on the government departments to comply with the Design Manual and the relevant legislation and we can hardly designate any single government department to be responsible for the implementation of the requirements in the Disability Discrimination Ordinance by the Administration as a whole.

**PRESIDENT** (in Cantonese): Mr LEE Wing-tat, are you claiming that your question has not been fully answered? Which part?

**MR LEE WING-TAT** (in Cantonese): *Mr President, I wonder whether the relevant government departments are aware that the implementation of the legislation at present is such that when buildings are constructed, they are not equipped with such facilities. These facilities may only be installed six months or a year after their completion. The departments concerned believe that the provisions in the legislation have already been complied with. However, it seems to me that this fails to comply with the provisions in the legislation. When the Administration explains the case to the departments, do the staff of these departments fully understand the provisions and requirements of the legislation that, when the buildings are inaugurated, ordinary people and wheelchair users alike should be able to use the buildings? Wheelchair users should not have to wait for six months or a year before they can use the buildings.*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, in respect of the buildings or designs, government buildings basically have to comply with the Design Manual I just mentioned. Therefore, the buildings should have complied with the relevant provisions in their designs. However, I have also raised the question of time. We are now talking about facilities constructed or reconstructed after 1985. If there is any omission, improvements could be made in accordance with the Disability Discrimination Ordinance.

**MR CHOY KAN-PUI** (in Cantonese): *Mr President, does the Administration know that some elevators and passages have some iron posts or railings specially installed in order to prevent the loading of goods or hawking by unlicensed vendors, making it very inconvenient for wheelchair users? What is the attitude of the Administration towards such facilities?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I have actually touched upon this question at the end of part (d) of my original reply. There may be cases where the owners or the management agents of some premises cease the usage of certain facilities originally designed for disabled persons. As Mr CHOY has pointed out, in some cases, iron posts are used to disallow the entry of goods but they have indirectly obstructed the access of disabled persons on wheelchairs. If such cases are found, the public can lodge complaints with the Equal Opportunities Commission for it to carry out investigation or mediation or look for solutions.

**MR JAMES TO** (in Cantonese): *Mr President, I am surprised to find in part (b) of the reply of the Administration that the policy concerning wheelchair users requires the provision of dropped kerbs for all newly constructed or reconstructed pedestrian crossings. I would like to ask the Administration whether this policy should be changed to: In the long run, it is planned that all pedestrian crossings will be provided with dropped kerbs. No matter whether this plan will take 10 years or 20 years to realize, it is still better than only providing newly constructed or reconstructed pedestrian crossings with such kerbs. It is because otherwise some crossings may never have dropped kerbs.*

*Is this absolutely not in line with the spirit of the Disability Discrimination Ordinance referred to in part (c)? I am very surprised that the Administration can give us such a reply.*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I am only explaining the existing policy of the Administration. The policy is that since 1981, we have been doing so with newly constructed or reconstructed pedestrian crossings. In fact, many pavements have started to be reconstructed since 1981 as the pavements cannot be used for too long. Therefore, this method has gradually spread to most pedestrian crossings.

On the other hand, I would like to point out that, as I just said, the survey conducted by the Hong Kong Rehabilitation Force has found that some pavements are not suitable for use by wheelchair users. They have found a total of several dozen such places and we have passed on the report to the Highways Department. The Highways Department has immediately started to investigate and make improvements. They anticipate that all those places would be located within three months. They would also make improvements to those pedestrian crossings frequently used by wheelchair users.

**MR JAMES TO** (in Cantonese): *Mr President, it seems that the reply given by the Administration just now does not tally much with the policy referred to in part (b) of the main reply. Does it mean that the Administration would not take the initiative to provide such kerbs unless the pedestrian crossings are newly constructed or reconstructed, or that there is an omission in part (b) of the reply?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I do not think there is any omission. Since 1981, many pedestrian crossings have frequently been repaired, maintained or reconstructed, and all the crossings have already been provided with dropped kerbs at that time.

Certainly, the pedestrian crossings in some places such as the peak at Tai



Mo Shan may not yet need repairs as they are too remote or rarely used by people, and they have possibly been omitted. However, all reconstructed pedestrian crossings have already been provided with dropped kerbs.

**DR JOHN TSE** (in Cantonese): *Mr President, my question is almost the same as the one raised by the Honourable James TO. In my opinion, we are now focusing too much on the buildings and have not paid attention to the pavements because you would not be using those crossings anyway.*

**PRESIDENT** (in Cantonese): Dr TSE, please raise your question.

**DR JOHN TSE** (in Cantonese): *My question is: Does the Administration have plans to make comprehensive improvements to the pavements in Hong Kong to make them suitable for use by wheelchair users?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, it seems that I am going to reply to this question on behalf of the Secretary for Transport. However, I can say for sure that reconstruction plans are needed for pavements. When carrying out such reconstruction plans, we would provide all reconstructed pavements with dropped kerbs. In other words, we have plans to provide all pavements with such facilities during reconstruction.

**PRESIDENT** (in Cantonese): I believe Members would like the Secretary for Transport to reply to this question as well.

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, I can say that, just like the Secretary for Planning, Environment and Lands, I am also following up the report concerning disabled persons. I think that improvements are not

only needed in respect of the dozens of locations. I think it is also necessary for us to consider under what circumstances can we provide dropped kerbs when reconstructing or repairing the pavements.

**MR LEE WING-TAT** (in Cantonese): *Mr President, I still want to follow up my question on passages in newly constructed buildings. As far as I know, in respect of newly constructed buildings, the Administration has actually provided that all buildings should have adequate passages for disabled persons when construction is completed. My question is: When such facilities are not available when the first phase of a building is inaugurated for use and will only be available in the second or third phase, is this kind of practice in keeping with the provisions in the Disability Discrimination Ordinance and would the Administration do this? In fact does the Administration think that this is a good practice? There are really such cases, Mr President!*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I agree with Mr LEE that when public buildings or public facilities are inaugurated and opened to disabled persons but facilities for their convenience are not available, this is not right. However, I do not quite understand what Mr LEE meant when he talked about the first, second and third phases. If we issue permits for occupation of buildings in three phases, each phase would be dealt with independently and each of the phases should comply with the requirements of the Buildings Ordinance.

**MR LEE WING-TAT** (in Cantonese): *Mr President, perhaps my explanation in Cantonese is not clear enough. What I am saying is that in the permanent design of the building, there are such passages. However, the construction of the passages for use by disabled persons have not yet been completed when the building is inaugurated, but the Administration still opens the building for use by the public. Is this in line with the provisions in the Disability Discrimination Ordinance and is this a bit discriminatory?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in

Cantonese): Mr President, as regards whether this is in line with the provisions in the Disability Discrimination Ordinance or is discriminatory against disabled persons, as I am not an expert in interpreting the law, it would be best if this can be handled by the Equal Opportunities Commission. However, if Mr LEE can give us an actual example, we will be glad to conduct further investigation.

### **Ex-gratia Zonal Compensation System**

4. **MR NGAN KAM-CHUEN** asked (in Cantonese): *Under the ex-gratia zonal compensation system in the New Territories, a uniform rate will be applied across different compensation zones in the resumption of land for a single project. In this connection, will the Government inform this Council:*

- (a) *of the reasons for not applying a uniform rate for land resumption in the Route 3 project, which is a large-scale road project stretching across several compensation zones;*
- (b) *given that the Western Corridor Railway project requires the resumption of vast stretches of land in the New Territories, whether the Government will apply a uniform rate across different compensation zones in the resumption of land for this project; if not, why not; and*
- (c) *having regard to the latest amendment to the ex-gratia zonal compensation system classifying "those areas that are affected by essential projects with territory-wide significance" as "Zone A", whether the different compensation zones covered by the Western Corridor Railway project will be upgraded to "Zone A" as a result of this amendment; if so, of the additional amount of compensation that the Government has to pay for land resumption; if not, why not?*

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

- (a) Under the existing *ex-gratia* zonal compensation system, a uniform rate is generally applied to land resumption for a single project

which covers different compensation zones. However, as Members were informed in the Finance Committee on 6 December 1996, we consider that under certain circumstances, there are some projects where an exception to this practice is justified. Examples include long stretches of a road across different compensation zones such as Route 3 where different zonal rates were applied. The Committee on Planning and Land Development has to look at the merits and specific situations of each case.

- (b) At present, a firm decision has not yet been taken regarding the resumption of land and compensation arrangements for the Western Corridor Railway.
- (c) In fact, I have more or less answered this part of the question in my replies to parts (a) and (b) of the main question. The Committee on Planning and Land Development will need to consider in detail the *ex-gratia* zonal compensation for the Western Corridor Railway. In doing so, the Committee will make reference to precedent cases such as the new airport at Chek Lap Kok, the container terminals at Kwai Chung and Black Point Power Station and seek the advice of the relevant policy branch.

**MR NGAN KAM-CHUEN** (in Cantonese): *In part (a) of his main reply, the Secretary for Planning, Environment and Lands has indicated that there are some projects where an exception to the existing practice can be justified. Will the Secretary inform this Council of the criteria in the light of which the Committee on Planning and Land Development (CPLD) can make such exceptional compensation arrangement?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I think the most important factor lies in the project itself. The *ex-gratia* zonal compensation system simplifies the calculation of the rate of compensation as well as the method of compensation. In this respect, the potential for future development as well as the future value of the resumed land would be taken into account. Some projects might stretch across different compensation zones. The construction of a new road, in particular, might begin from a developing new town and stretch across to a zone with very limited potential for future development. If one single zonal rate is to be applied, the

rate of which compensation zone should we adopt then? Should we base on the developing new town or the zone without any potential for development? In view of such, we need to adopt different compensation arrangements for projects that stretch across different compensation zones. We have already explained the case in the papers submitted to the Legislative Council Finance Committee and it has accepted our explanation.

**MR IP KWOK-HIM** (in Cantonese): *Mr President, according to the existing project plans, the Western Corridor Railway will be constructed in two phases. If the zones involved in the first phase project will not be upgraded to "Zone A", does it imply that the second phase project will also be adopting the same compensation arrangement?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, the supplementary raised by the Honourable IP Kwok-him just now has in fact been touched on in my main reply. Since a firm decision has not yet been taken, it is very difficult to answer this supplementary which assumes that the zones concerned will not be upgraded to "Zone A". After we have received information concerning the actual area which require land resumption and the route alignment of the railway, the CPLD will consider which kind of compensation arrangement and which zonal rate should be applied.

**MR ALBERT HO** (in Cantonese): *Mr President, the CPLD is an important decision-making body; and to the land owners, the decisions made by the CPLD would certainly have grave impact on them. In view of such, I think the affected parties should have the right to be informed of the criteria according to which the CPLD makes its decisions. Will the Secretary inform this Council whether the Government will publish a comprehensive set of criteria for decision making in this respect? In addition, after a decision has been made, such as which project would adopt the uniform rate for compensation and which will be handled as an exceptional case, can relevant statistics be provided? On the other hand, if the CPLD decides not to make any compensation, would reasons behind such decision be published? Will there be any mechanism for appeal?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, this supplementary question could largely be divided into three parts. The first part concerns the zoning method. Honourable Members of this Council have in fact been informed of the zoning method because we have already explained the zoning method concerning the four compensation zones in the papers we submitted to the Finance Committee earlier on. For instance, "Zone A" refers to new town development or projects which are essential and with territory-wide significance; "Zone B" refers to areas which will soon be included in the urban development projects and so on. As such, we have already explained the actual practice in the papers we submitted to the Finance Committee. Under most circumstances, we would apply uniform *ex-gratia* zonal compensation rate to all zones involved in the same project. Only in some very exceptional cases that we will apply different zonal rates. In fact, so far we have only one single case and that is the Route 3 project. Since Route 3 stretches from Tai Mo Shan across a country park to Yuen Long, it will therefore pass through different compensation zones, including zones with no potential for further development as well as zones with potential for future development. As such, we have to apply different zonal rates.

Thirdly, we do have an appeal mechanism. Should anybody find the compensation unsatisfactory, he or she may appeal to the Lands Tribunal.

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

**MR ALBERT HO** (in Cantonese): *Yes, Mr President. Will the Secretary inform this Council of the criteria according to which the Government decides to apply a uniform rate instead of different zonal rates? It seems to me that there is no criteria at all at present. Will the Secretary inform this Council whether there is a set of criteria that could be published for our information or that decisions are made dependent on each individual case?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I have in fact answered this supplementary earlier on. According to our experience, with the exception of the Route 3 project, all other large-scale projects are applying a uniform compensation rate for land resumption.

**MR CHAN WING-CHAN** (in Cantonese): *Mr President, I would like to raise a supplementary question with regard to part (c) of the question asked by the Honourable NGAN Kam-chuen. It has been noted that the Government will conduct a review on the zone boundary every year, will the Secretary inform this Council whether the Government is going to conduct a consultation exercise with regard to the amendment to the zoning plan so as to keep in line with the planning and development of the Western Corridor Railway?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, we will conduct a review on the zonal compensation system once we have received information concerning the land resumption and route alignment of the Western Corridor Railway project. Since we have not received any information in this respect yet, we cannot commence any of such work for the time being.

### **Redevelopment of Kwun Lung Lau and Tanner Hill Estate**

5. **MR IP KWOK HIM** asked (in Cantonese): *It is reported that over 10 000 residents will be affected by the Housing Society's redevelopment programmes at Kwun Lung Lau and Tanner Hill Estate. In this connection, will the Government inform this Council:*

- (a) *whether the Housing Branch will provide assistance to the residents affected by the above redevelopment programmes; if so, what the details are; and*
- (b) *given that a number of the affected residents had been on the*

*Housing Authority's Waiting List before moving into the above estates, whether the Government knows if the Housing Authority will consider allocating public housing units to these residents as a resettlement option?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, the planned redevelopment of Kwun Lung Lau Phase I and Tanner Hill Estate will affect 1 119 families currently living in these estates. According to the present plan, these families will be rehoused by 1999 to enable the redevelopment to go ahead. Phase II of the redevelopment of Kwun Lung Lau will affect another 1 354 families, who will be rehoused by 2003. The total number of residents affected is 8 804. The Housing Society has carefully considered the rehousing needs of these families and has been able to offer them a variety of choices to match their affordability levels and personal preferences.

The Housing Society has drawn up plans which would cater for the rehousing needs of all families affected, although some of the families are likely to make their own arrangements as past experience has shown. We estimate that about 80% of the families will choose rental housing in flats in other estates of the Housing Society on Hong Kong Island and 20% will prefer to purchase flats under the Housing Society's Flats for Sale Scheme. The Society will make available sufficient flats in both categories to meet the likely demand. In line with the Government's policy of encouraging home ownership, it has accorded first priority to these families to purchase flats under the Flats for Sale Scheme. Additionally, all families affected are offered a removal assistance package to facilitate their relocation.

The Housing Society's current rehousing arrangements ensure that the needs of families affected by the planned redevelopment are met. Nevertheless, those families who wish to apply for the purchase of Home Ownership Scheme or Private Sector Participation Scheme flats built by the Housing Authority or loans under the Authority's Home Purchase Loan Scheme may do so as Green Form applicants.

**MR IP KWOK-HIM** (in Cantonese): *Mr President, I am extremely dissatisfied with this reply because it fails to answer my question. That said, I would not blame Mr KWOK because he is Deputy Secretary for Works, and I do not know*



*why he has been assigned to answer on behalf of the Housing Branch. Since part (b) of my question has clearly pointed out that many of the affected tenants were once on the Housing Authority's Waiting List and they are now offered public housing by the Housing Society because of the redevelopment programmes, I would like to ask again: Will the Government consider whether or not the Housing Authority should be requested to offer its public housing units to these tenants as an option?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, although some of the tenants affected by the redevelopment programmes were once applicants on the Housing Authority's Waiting List, they are now tenants served by the Housing Society. When carrying out this planned redevelopment, the Society will have adequate resources to cope with the removal arrangements required. As a result, there is no need for the Authority to provide services to these tenants. Another reason is that the Waiting List of the Housing Authority itself is already very long, indicating that it has its own problems to deal with. So, since the Housing Society can handle the matter alone, we do not believe that it is necessary to hand over the affected tenants to the Housing Authority.

**MR BRUCE LIU** (in Cantonese): *Neighbourhood rehousing is an important principle adopted in the redevelopment plans undertaken by the Housing Authority. Will the Housing Society also adopt the same good principle of neighbourhood rehousing in this planned redevelopment? If not, what are the difficulties and reasons?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, when carrying out this planned redevelopment, the Housing Society will be able to rehouse the affected tenants on Hong Kong Island, and the new accommodation provided will be superior in terms of locations and quality. If "neighbourhood" is taken to mean a particular place which is very small in area, there will indeed be some practical difficulties because it is simply impossible to rehouse people literally in situ. However, as far as possible, the Housing Society has made arrangements for the affected tenants to move into housing units in the same neighbourhoods. For example, 300 public rental housing units have been reserved in Healthy Village near Tanner Hill Estate to cater for the applications from the affected tenants.

**MR BRUCE LIU** (in Cantonese): *Mr President, the Secretary for Housing has not answered whether the principle of neighbourhood rehousing will be adopted in this case. Or, has he already given an affirmative answer, only that Hong Kong as a whole is regarded as one single neighbourhood? Does he thus think that the principle has been adhered to?*

**PRESIDENT** (in Cantonese): The interpreter used the term "Hong Kong Island". Do you mean "the territory of Hong Kong" or just "Hong Kong Island"?

**MR BRUCE LIU** (in Cantonese): *What I mean is Hong Kong Island as a whole, and the Secretary for Housing also means the same.*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, the most that the Housing Society can do for the tenants affected by this planned redevelopment is to provide them with enough housing units on Hong Kong Island. And, it will be difficult to provide housing units to all affected residents within the small neighbourhoods in question. Having said that, I must point out that this is already done to a certain extent by reserving housing units in Healthy Village. However, it must be noted that it will be practically impossible to allocate each and every affected tenant a housing unit within the small neighbourhoods concerned.

**DR YEUNG SUM** (in Cantonese): *Mr President, I am very disappointed with this reply from the Government because it assumes that all the tenants of Kwun Lung Lau will totally accept the arrangements currently proposed by the Housing Society, and this assumption is borne out, for example, by the claim that 20% of the affected tenants will choose to purchase housing units constructed by the Society. But, is the Government aware that the HOS flats constructed by the Housing Society are much more expensive than those constructed by the Housing Authority? The Government also claims that 80% of the affected tenants will be rehoused in the rental housing units of the Society on Hong Kong Island. However, when I enquired with the Society, I was told that it could only provide some 100 rental units on Hong Kong Island for the several hundred Kung Lung*

*Lau tenants. The Government does not seem to notice any problems. Actually, the Society can have enough housing units for implementing neighbourhood rehousing provided that it does not sell the housing estates which it will construct in the future, but reserve them for rent instead. That way, it can implement neighbourhood rehousing. Will the Government inform this Council whether it intends to discuss with the Housing Society now with the aim of halting this planned redevelopment until the Society agrees to rehouse all the affected tenants in their original neighbourhoods?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, our estimation that 20% of the affected tenants will choose to buy their own housing units is made on the basis of our past experience. And, we now have some statistics which show that so far, more than 10% of the affected tenants have already chosen to purchase units under the Housing Society's Flats for Sale Scheme. Regarding neighbourhood rehousing, as I have just pointed out, the Society has already made arrangements for it where it is possible to do so. However, it will be difficult in practice for us to halt all development plans until we have made arrangements for neighbourhood rehousing, and such an approach will also hinder the progress of urban renewal. I must emphasize that urban renewal projects are carried out for the benefit of the people, and that it is not the aim of the Housing Society to sell housing units for profits.

**PRESIDENT** (in Cantonese): Dr YEUNG Sum, do you have another question, or are you claiming that your question has not been fully answered?

**DR YEUNG SUM** (in Cantonese): *Mr President, according to the Secretary for Housing, this planned redevelopment is intended to work for the benefit of the people. However, the findings of our own survey indicate that 80% of the tenants of Kwun Lung Lau do not support the planned redevelopment in the absence of adequate rehousing arrangements. I hope that the Government will discuss with the Housing Society and request it to halt this planned redevelopment.*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, the Housing Society has planned to redevelop these two housing estates mainly because they are rather time-worn. Tanner Hill Estate, with an age of 36 years, is one of the

oldest housing estates under the Society, and Kwun Lung Lau, which is already 30 years old, is not very much welcomed by tenants. Since the conditions in these two housing estates are relatively poor, and the development potentials of the sites they occupy have not been fully exploited, there is a need to carry out renewal works, to redevelop them, so as to improve the quality of the housing units provided by the Society in this particular neighbourhood. As for the affected tenants, the rehousing scheme will also enable them to move to housing accommodation with better conditions.

**MR NGAN KAM-CHUEN** (in Cantonese): *Mr President, it is mentioned in the written complaints lodged by Tanner Hill Estate residents that the affected tenants actually do not want to move to new homes because a lot of expensive improvement works have been carried out in their Estate and they are thus satisfied with the existing conditions. In view of this, what are the justifications for this planned redevelopment, which will only serve to disturb the peaceful life of the residents?*

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

**MR LEE WING-TAT** (in Cantonese): *Mr President, 10 years ago, the Housing Authority encountered strong public objection to its redevelopment plans. But, the Housing Society has failed to learn from this experience. As far as I know, the Society has not constructed any new rental housing units over the past five years. In the case of the Housing Authority, a notification period of five years is given for its redevelopment plans. And during the three years following a notification, the affected tenants will be informed that they have a choice to purchase HOS flats. Once they have made their decisions, they can move into their new homes within 18 months. In contrast, this planned redevelopment was announced just one month ago, but clearance and demolition works will be carried out four months later, with the result that the affected tenants do not have much time to make their decisions. I am surprised that the Housing Branch has given its consent to this project (though the formal approval of the Branch is not required). Does the Secretary for Housing think that this project is being implemented in too hasty a manner? Why is it that the affected tenants are required to decide where they would move to within only four or five months after the notification? In the case of Housing Authority, a five-year notification*

*period is given for its redevelopment plans and the affected tenants are offered an adequate range of housing units to choose from. Regrettably, this planned redevelopment is lacking in both.*

**PRESIDENT** (in Cantonese): The original question asks whether or not the Housing Branch will render assistance to those tenants affected by the planned redevelopment. Part (b) of the question seeks clarification on whether or not the authorities concerned will provide public housing units to the affected tenants who were on the Housing Authority's Waiting List before moving into the two housing estates in question. The question just asked by Mr NGAN Kam-chuen seemed to be requesting the Secretary for Housing to account for the need to redevelop Tanner Hill Estate, and I believe that the question asked by Mr LEE Wing-tat is similar in essence. As such, I am afraid that the scope of this question will become much too wide. Mr LEE Wing-tat, could you rephrase your question?

**MR LEE WING-TAT** (in Cantonese): *Mr President, let me rephrase my question. How is the Housing Branch going to help the affected tenants? In the absence of enough housing units, will the Housing Society reconsider this redevelopment project?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, the Housing Branch has been liaising closely with the Housing Society in an attempt to explore ways of coping with the rehousing problems of the affected tenants. In the case of this planned removal, the affected tenants will be notified 24 months before the start of clearance and demolition works. So, the notification period should be long enough. Moreover, this planned redevelopment is not being implemented in a hasty manner. Rather, before deciding to go ahead with this project, we have carefully considered the various problems I discussed just now and come to the conclusion that it will be of immense benefits to the affected tenants.

**MR CHAN WING-CHAN** (in Cantonese): *Mr President, the redevelopment of Kwun Lung Lau and Tanner Hill Estate by the Housing Society will affect a large number of people. Will the Government monitor the Housing Society in*

*its implementation of this redevelopment project? And what monitoring mechanisms is put in place?*

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

**DR HUANG CHEN-YA** (in Cantonese): *Mr president, the affected tenants are asking for neighbourhood rehousing, and we have been discussing with the Housing Society on this over the past few weeks. The data supplied by the Society actually indicate that not enough housing units are available, and as a result, an overwhelming majority of the affected tenants will have to move to the New Territories or Kowloon. But then, the Government told this Council just now that the Society will have sufficient resources to handle the problem of rehousing, and the assistance of the Housing Authority is not required. Is the Government telling us that the Society has been misleading the tenants and us, or that the Society is still trying to mislead the Government? Can the Government produce sufficient information to prove that the Society does have the resources required to rehouse the affected tenants in their original neighbourhoods on Hong Kong Island? If the Government cannot produce such information, will it halt the entire project as requested by the affected tenants?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr president, I assume that the term "original neighbourhoods" mentioned by Dr HUANG refers to Hong Kong Island in general, not Western District in particular. On this, I have made special efforts to discuss with the Housing Society. There are sufficient data which indicate that the Society does have enough housing units on Hong Kong Island to cope with the rehousing needs of the tenants.

**DR HUANG CHEN-YA** (in Cantonese): *Mr President, I hope that the Government can give us some concrete figures because it is pointless to give such a general statement. The assertion of the Government simply does not tally with the information which has been provided by the Housing Society.*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, I am prepared to

contact the Housing Society and provide the relevant information to Members.

**DR HUANG CHEN-YA** (in Cantonese): *Will the Government be honest enough to tell us that at this moment, it simply does not know whether or not the Housing Society has sufficient resources for the purpose? Does the Government in fact have any related data which it can supply to us?*

**PRESIDENT** (in Cantonese): Dr HUANG, this is not a time for debate. Secretary for Housing, are you prepared to submit the said data to this Council in writing after you have obtained them?

**SECRETARY FOR HOUSING** (in Cantonese): Mr president, we are prepared to submit the relevant data to the Legislative Council when we obtain them. (Annex II)

**DR HUANG CHEN-YA** (in Cantonese): *Mr President, regarding the second part of my supplementary question, which is on whether or not the Government will assist the tenants and request the Housing Society to halt the project in case sufficient resources are not available, the Secretary for Housing has not given any reply. Can he answer this question?*

**PRESIDENT** (in Cantonese): Secretary for Housing, will you regard this as a hypothetical question? You have said that there will be sufficient resources, but Dr HUANG is not convinced and wants you to provide further information.

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, as I have pointed out, we have sufficient data which indicate that the Housing Society does have enough housing units to cater for the needs of the tenants. The problem simply does not exist and so I am unable to answer.

**MR CHEUNG HON-CHUNG** (in Cantonese): *Mr President, the redevelopment of old districts is meant to serve a number of purposes, the most important of which is the improvement to the people's quality of living. However, in the case of the planned redevelopment of the two housing estates, the affected tenants are to be moved to some older housing estates with poorer conditions so as to vacate the sites for redevelopment and subsequent sale. Obviously, this will deprive the affected tenants of their rights and interests, or better say, sacrifice their rights and interests. The affected tenants also fear that once they have moved to other housing estates under the Housing Society, they may have to face the problem of redevelopment again in the near future. In this connection, will the Government request the Society to release the full details of all its redevelopment plans, so as to let the tenants know that they will not be affected by clearance again in the near future and that they can live in peace and contentment?*

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

**MR IP KWOK-HIM** (in Cantonese): *Mr President, the Secretary for Housing said a moment ago that this project could improve the living conditions of the tenants. However, in case a sufficient number of public housing units really cannot be provided to those tenants who have to move to new homes, will the Government formulate any policy to ask the Housing Society to withdraw this planned development?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, as I have attempted to explain just now, since we already have enough information to indicate that the Housing Society does have enough housing units to meet the needs of the affected tenants, the problem simply does not exist and I am answer the question.

**MISS EMILY LAU** (in Cantonese): *Mr President, I strongly support the Government's view that the Housing Society should be left to deal with its own problems. The Housing Authority should not be dragged into this because many people are waiting for the allocation of the Authority's public housing units. That said, Mr President, I do not think that the Secretary for Housing should*



*reply to our questions later. It is mentioned in the main reply that if 80% of the affected tenants choose rental flats, there will be enough supply for them. On the other hand, some affected tenants have twice approached the Complaints Division of the Legislative Council, expressing the worry that their quality of living may deteriorate as they could be rehoused to some time-worn public housing estates. This worry contrasts sharply with the remarks of the Secretary for Housing, who has asserted that the living conditions of the tenants will improve as a result. Since he has made such an assertion, I really think that he should be able to name, this afternoon, the housing estates to which the tenants are to be moved. Just now, he referred to Healthy Village, where the flats are relatively new. But, will the tenants have to pay a monthly rent of \$5,000 to \$6,000, which is five or six times higher than the current rents of some \$1,000 paid by them? The Secretary for Housing should really give the tenants an explanation this afternoon because they are all very eager to learn about the current situation. If it is really true that 80% of the affected tenants can be allocated rental flats, and such flats are located on Hong Kong Island and of good quality, the tenants' reaction will not be so strong. I hope that the Secretary for Housing can reply to my question.*

**PRESIDENT** (in Cantonese): What question?

**MISS EMILY LAU** (in Cantonese): *Is it really true that 80% of the tenants can be allocated rental flats of the Housing Society? Are these flats of a better quality? Are the rents not too high? Will the tenants be allowed to choose the flats they want? Where, in which housing estates, are these flats located? According to Dr HUANG Chen-ya, only a very small number of flats, about 100 in total, will be available.*

**PRESIDENT** (in Cantonese): If you expand the question in this manner, you might also forget what the question is originally about.

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, this time, as far as rehousing arrangements are concerned, the Housing Society is able to provide sufficient housing units in four housing estates on Hong Kong Island, namely, Healthy Village Phase III, Lai Tak Tsuen, Ming Wa Dai Ha and Yue Kwong

Chuen. The living conditions in these housing estates are definitely better than those pertaining to the housing units currently occupied by the tenants. For example, many units in Tanner Hill Estate are not equipped with pedestal toilets. There are no community facilities, and the Estate is not very accessible. In contrast, the new rental flats offered for rehousing are definitely much better than the tenants' existing units in these respects. What is more, the tenants are given a choice to purchase housing units under the Society's Flats for Sale Scheme.

**MR NGAN KAM-CHUEN** (in Cantonese): *Mr President, in case the housing estates of the Housing Society do not have sufficient capacity to rehouse the affected tenants, does the Government have any means to monitor the Society in regard to its ratio between flats for sale and rental flats?*

**PRESIDENT** (in Cantonese): This question is also beyond the scope of the original question and reply.

**MR LEE WING-TAT** (in Cantonese): *Mr President, Mr KWOK says that there will be sufficient time to implement this project. The point is that in the case of redevelopment projects of the Housing Authority, the relevant clearance works and rehousing arrangements will only start three years after an announcement is made. For this planned redevelopment, however, the tenants have to make their decisions four to five months following the announcement, and the clearance works will start two years later. So, this project is actually being implemented very hastily. According to Mr KWOK, the affected tenants will be rehoused in four housing estates. Does Mr KWOK know when Yue Kwong Chuen was constructed? Are the conditions in Yue Kwong Chuen better than those in Kwun Lung Lau? Mr President, since he says that the flats offered for rehousing will be better than the flats currently occupied by the tenants, I want to ask Mr KWOK in what ways Yue Kwong Chuen is better than Kwun Lung Lau and Tanner Hill Estate.*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, I am not sure whether this is within the scope of the original question. Anyway, I will try to

answer it.

**PRESIDENT** (in Cantonese): This question is related to your reply.

**SECRETARY FOR HOUSING** (in Cantonese): Yue Kwong Chuen was completed between 1962 and 1983, and in terms of living conditions, it is better than Kwun Lung Lau and Tanner Hill Estate, which we have proposed to redevelop.

**MR LEE WING-TAT** (in Cantonese): *Mr President, let me clarify that most of the flats in Yue Kwong Chuen were constructed in 1962, and most of the flats there are not fitted with pedestal toilets. This housing estate is far more dilapidated than Kwun Lung Lau. I want to draw Mr KWOK's attention to this fact.*

**PRESIDENT** (in Cantonese): Mr LEE Wing-tat, please state your points in the form of a question.

**MR LEE WING-TAT** (in Cantonese): *Can I ask whether Mr KWOK knows in which year Yue Kwong Chuen was constructed? Does he know that those seven-storeyed buildings, with no lifts and pedestal toilets, are in fact much older than Kwun Lung Lau?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, Yue Kwong Chuen was completed between 1962 and 1983, with a total of 1 175 flats. However, only 20 flats can be vacated at this stage for the purpose of rehousing. So, it will not be the main housing estate to rehouse the tenants affected by clearance works.

**MR BRUCE LIU** (in Cantonese): *Mr President, paragraph 3 of the main reply refers to the assistance provided by the Housing Authority, saying that the affected tenants can apply for the purchase of the Authority's HOS and Private Sector Participation Scheme flats as Green Form applicants. Regarding the*

*"Green Form" in question, is it in fact the form which is known informally as the "Dark Green Form" within the Authority? It is not the ordinary Green Form, but the Green Form with first priority, is it? If it is the Green Form with first priority, the tenants will have priority in purchasing these flats. But, after selling these flats to the tenants, will the Authority construct additional HOS flats so as to ensure an unaffected supply of such flats to those tenants affected by the Authority's own redevelopment plans?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, the "Green Form" refers to the ordinary Green Form.

**PRESIDENT** (in Cantonese): No first priority?

**SECRETARY FOR HOUSING** (in Cantonese): No first priority.

**MISS EMILY LAU** (in Cantonese): *Mr President, the Secretary for Housing has not answered my question on the rents of those four housing estates. At present, the monthly rent paid by a Kwung Lung Lau tenant is about \$1,000. How much are the rents of those four housing estates mentioned by the Secretary for Housing, especially the new flats in Healthy Village Phase III? Will there be an increase of five or six times as noted by the affected tenants?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, I want to clarify that when the affected tenants move to the flats of the Housing Society, the rents which they are going to pay will be roughly the same as what they are paying now. There will not be any significant increase. Some people say that there will be an increase in rent by several times. This is just a misunderstanding because the case of higher rents applies only to some individual flats in Healthy Village Redevelopment Phase I. But these flats are of a different nature; they will not be used for the purpose of rehousing the affected tenants.

**PRESIDENT** (in Cantonese): I have two more names on my list to raise supplementary questions. I shall draw a line here.

**DR HUANG CHEN-YA** (in Cantonese): *Mr President, the information supplied by the Secretary for Housing just now contrasts sharply with that provided by the Housing Society. According to the information supplied by the Society to the affected tenants, the rents of those flats reserved for rehousing the affected tenants are considerably higher than those of Kwun Lung Lau and Tanner Hill Estate. I wonder how the Government has obtained the information that leads it to come to the conclusion that the rents will remain largely the same. Will the Government supply some detailed information to us — information which will enable us to know whether the Society has been misleading us; whether the Society has been misleading the Government; or whether the Government has been making "sheer fabrication" in the absence of detailed information?*

**PRESIDENT** (in Cantonese): You may wish to use the word "nonsense" instead. There may be a problem with your wording just now.

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, the Housing Branch has obtained solid information which can prove that there will not be any big difference between the rents currently paid by the affected tenants and the rents they will have to pay after removal. Let me give an example. The rents of Kwun Lung Lau now range from \$1,030 to \$1,795 per month, and those of Healthy Village Phase III are in the range of \$975 to \$1,560. We have sufficient information about the range of rents of each and every housing estate, and we know the situation perfectly well. The affected tenants need not worry that they will have to pay exceptionally high rents after removal.

**DR HUANG CHEN-YA** (in Cantonese): *If what the Secretary for Housing has said is correct, then I must say that the Housing Society has been misleading the tenants, thus making them .....*

**PRESIDENT** (in Cantonese): Dr HUANG, this is not a time for voicing opinions.

**DR HUANG CHEN-YA** (in Cantonese): *I hope that the Secretary for Housing can give us some detailed information instead of .....*

**PRESIDENT** (in Cantonese): Dr HUANG, you are only permitted to state which part of your question has not been answered and to ask a follow-up question.

**DR HUANG CHEN-YA** (in Cantonese): *I only hope that the Secretary for Housing will give us some detailed information. If there is not enough time now, he can give us a written reply later. It is not enough for him to cite only one single example because the statement by the Government contrasts with the information obtained by the tenants.*

**PRESIDENT** (in Cantonese): Secretary for Housing, what about the rents of the four housing estates? Can you provide the relevant information to Members?

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, I do have the information on the rents. If Members so desire, I am prepared to give it to them in writing. (Annex III)

**MR CHEUNG HON-CHUNG** (in Cantonese): *Mr President, the question I raised just now has reflected the tenants' worry that after they have moved to those four housing estates, they may have to face the problem of clearance again. It has much to do with whether or not the tenants will accept the proposed rehousing. I do not understand why you ruled that this question is beyond the scope of the original question, Mr President, not least because Yue Kwong Chuen, constructed in 1962, may be redeveloped at any time. Will the Government request the Housing Society to release a systematic account of all its redevelopment plans so as to convince the tenants to willingly move to other housing estates as proposed?*

**PRESIDENT** (in Cantonese): I am afraid that this is beyond the scope of the original question and reply because if we follow this line of reasoning, there will be a time when even a newly constructed housing estate has to be redeveloped.

**MR CHEUNG HON-CHUNG** (in Cantonese): *Mr President, just now some Members have pointed out that the rents constitute a factor which the tenants*

would consider when deciding whether or not to move to those four housing estates. Similarly, if some of those housing estates are to be demolished next year, the tenants may not choose to move there. So, this will greatly affect the success or otherwise of this proposed redevelopment. For example, will Yue Kwong Chuen be demolished in the near future? I think that there is a problem in your ruling because the question on rents and my question on demolition have been asked on the basis of the same logic. I hope you will reconsider this ruling, Mr President.

**PRESIDENT** (in Cantonese): Rents pose an immediate problem. Once people move there, they will have to pay the new rents. As for demolition, well, some people may say that Yue Kwong Chuen is indeed a bit old. Secretary for Housing, can you tell us whether there is any plan to demolish Yue Kwong Chuen in the near future?

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, the Housing Society regularly reviews the conditions of its housing estates for the purpose of determining whether there is any needs for redevelopment. According to their current plans, no other housing estates will be redeveloped in the coming five years.

## WRITTEN ANSWERS TO QUESTIONS

### Psychiatric Services in Public Hospitals

6. **DR HUANG CHEN-YA** asked (in Chinese): *Will the Government inform this Council:*

- (a) *which public hospitals have psychiatric wards and which public hospitals only provide psychiatric consultation service; and*
- (b) *of the number of non-psychiatric cases, as well as the categories of such cases, in public hospitals requiring psychiatric consultation in the past year; and the number of patients in these cases who had to wait for more than 24 hours before receiving psychiatric*

*consultation service?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): Mr President, a list of public hospitals with an established department of psychiatry and psychiatric in-patient facilities is set out in the Annex.

All patients seeking medical treatment in public hospitals can have access to psychiatric consultation service, where necessary. This is achieved through hospital clustering and service networking. The liaison psychiatry service offers hospitals without psychiatric units in each cluster with professional assistance ranging from telephone conversation between the psychiatrist and non-psychiatrist concerned to formal psychiatric assessment and consultation on the patient. Some 11 500 referrals were made through this service during the past year but data is not readily available to classify these cases by category.

Liaison psychiatry service has been rendered to about 85% of patients within two days of referral. There are established procedures whereby patients with urgent and complex psychiatric conditions are accorded priority for treatment within the same day as far as possible. Arrangements can also be made to transfer patients with propensity to violence or who are likely to harm themselves or others to psychiatric hospitals for immediate management.

Annex

*Public Hospitals with an Established Department  
of Psychiatry and Psychiatric In-patient Facilities*

Castle Peak Hospital

Kwai Chung Hospital

Lai Chi Kok Hospital

Kowloon Hospital

Pamela Youde Nethersole Eastern Hospital

Prince of Wales Hospital



Queen Mary Hospital

Shatin Hospital

Tuen Mun Hospital

United Christian Hospital

### **Gini Coefficient**

7. **MR LAU CHIN-SHEK** asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the current Gini coefficient reflecting the distribution of wealth in the territory according to the data obtained from the 1996 Population By-census;*
- (b) *assuming that all households in the territory are equally divided into 10 groups according to their income, of the respective ratios of the total income of the various groups to the territory's total household income; and*
- (c) *whether consideration will be given to publishing the median household income and the above ratios in the quarterly reports of the General Household Survey?*

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

- (a) Based on data on household income obtained from the 1996 Population By-census, a Gini coefficient can be compiled to reflect the distribution of household income in Hong Kong. Its value is 0.518. However, as no data are available on the wealth of households, it is not possible to compile a Gini coefficient on the distribution of wealth in the territory.

Also, because a Gini coefficient calculated on the above basis does not take into account various elements of "social wage" including the heavily subsidized public housing and services of public health, education, social welfare and so on, the coefficient itself does not fully reflect the effective distribution of the well-being of households in Hong Kong.

- (b) Based on the results of the 1996 Population By-census, the decile distribution of household income is shown below:

<i>Decile group</i>	<i>Percentage share of all household income</i>
1st (lowest)	1.1
2nd	2.6
3rd	3.6
4th	4.6
5th	5.7
6th	7.0
7th	8.5
8th	10.6
9th	14.5
10th (highest)	41.8
Total	100.0

Note: Each of the 10 decile groups contains the same number of households, ranked by income. The first decile group encloses those households falling below the first decile, the second decile group encloses those households falling between the first and second deciles, and so on.

- (c) As the Quarterly Report of the General Household Survey (GHS) produced by the Census and Statistics Department mainly aims at presenting the results of the survey in respect of the labour force characteristics of Hong Kong, it contains detailed statistics mostly on employment, unemployment and underemployment.

The contents of the report are nevertheless reviewed periodically to ensure that statistics frequently used by the public are included. The median monthly household income figure based on the survey is

currently available to the public upon request. Consideration will be given to including it in the report in the next round of review.

Regarding the decile distribution of household income, owing to the limited sample size of the GHS, the accuracy of the income information particularly at the two ends of the decile distribution is subject to sampling effects such that the income distribution, in overall terms, has not attained the necessary degree of reliability. Hence the current practice is that the decile distribution of household income is compiled on the basis of the results of a population census/by-census only.

### **School Triad Activities**

8. **MR CHEUNG MAN-KWONG** asked (in Chinese): *Regarding the infiltration of triad elements into schools and students committing criminal offences, will the Government inform this Council:*

- (a) *of the numbers of cases in which students were prosecuted and convicted respectively for involvement in triad activities in each district in the past three years, together with a breakdown of such cases by category of offence and number of students/schools involved;*
- (b) *how the authorities concerned handle cases of students involved in triad activities; and what measures are in place to curb the infiltration of triad elements into schools;*
- (c) *of the numbers of cases in which students were prosecuted and convicted respectively for criminal offences (other than involvement in triad activities) in each district in the past three years, together with a breakdown of such cases by category of offence, number of students/schools involved; and*
- (d) *how the authorities concerned handle cases of students committing the offences mentioned in (c) above; and what measures are in place to enhance the co-operation with schools in preventing commission of crimes by students?*

**SECRETARY FOR SECURITY** (in Chinese): Mr President,

- (a) We do not keep separate statistics on the number of students and schools involved in triad activities. We keep statistics on offenders for involvement in "unlawful society offences". Under the current education system, it can be assumed that most offenders aged seven to 16 are students. The total number of offenders in this age bracket prosecuted and convicted for "unlawful society offences" were 79 in 1994, 69 in 1995, and 32 in the first half of 1996 (statistics on the second half of 1996 are not yet available). A detailed breakdown on various types of "unlawful society offences" in each police district for 1994-1996 (up to June) is given in Annex A.
- (b) The Government accords high priority in the fight against triad influence in schools by adopting the following measures:

*Prevention*

- (i) the Police School Liaison Officer in each district visits schools regularly to liaise with Discipline Masters and delivers lectures to students on general law and order issues including triad influence;
- (ii) the Police Anti-Triad School Support Team in each district visits schools regularly to disseminate anti-triad messages. They also visit places frequented by students to deter them from being recruited by triads and formulate strategies to combat triads;
- (iii) to assist schools to deal with delinquent students, the Education Department has issued a guidance circular and provided teaching kits on anti-triad activities. It also regularly organizes training courses for Discipline Masters on ways to handle students involved in "unlawful society offences";
- (iv) the Social Welfare Department provided 44 additional social workers in the past two years to schools with more student problems and higher percentage of low academic achievers;

and

- (v) both the Social Welfare Department and the non-government organizations provide services for children and youth at risk, including outreaching social work service and children and youth centres.

### *Enforcement*

- (i) in 1995-96, we assigned 45 additional police officers to tackle triad-related and other serious crimes. In 1996-97, we have created 232 additional police posts to strengthen the anti-triad units at regional and district levels; and
- (ii) apart from prosecution in serious cases, the police could also caution the students concerned in minor cases under the Police Superintendents' Discretion Scheme (PSDS). The latter approach will provide an opportunity for young persons to have a new start without getting a criminal record.

### *Rehabilitation*

- (i) where the offenders are cautioned under the PSDS, referrals will be made as appropriate to the Education Department, the Social Welfare Department and agencies under the Community Support Service Scheme for follow up; and
  - (ii) where the offenders are prosecuted, the Correctional Services Department and the Social Welfare Department provide aftercare services to rehabilitate them through their programmes and probation order service.
- (c) The total number of offenders aged between seven to 16 prosecuted and convicted for criminal offences (other than involvement in "unlawful society offences") were 2 278 in 1994, 2 152 in 1995 and 909 in the first half of 1996. This compares to the total population figure for this age bracket of 828 400 in 1994, 831 900 in 1995 and 837 000 in 1996. A detailed breakdown on different categories of criminal offences in each police district is given in Annex B.

- (d) The measures mentioned in part (b) are also applicable to the handling of students committing offences in general. To enhance co-operation between government departments and schools in tackling delinquent students in schools, the Education Department organizes on a district basis annual seminar on "Unruly and Delinquent Behaviours of Students". These seminars are attended by School Heads, Discipline Masters and representatives of the Education Department, the police and the Social Welfare Department.



**Non-registered Patient Care Workers**

9. **MISS CHAN YUEN-HAN** asked (in Chinese): *Since the implementation of the Nurses Registration (Amendment) Ordinance in 1996, the use of the term "nurse" is restricted to registered nurses and enrolled nurses only. Does the Government know:*

- (a) of the number of persons without recognized nursing qualifications currently employed in patient care work in private hospitals;*
- (b) the number of persons employed in patient care work in private hospitals who have been dismissed for not possessing a recognized nursing qualification, since the enactment of the above Ordinance; and*
- (c) whether the Government will request the management of the private hospitals concerned to consider employing the persons mentioned in (a) above on a short-term contract basis, so as to enable them to continue with their patient care work until they have obtained a recognized nursing qualification?*

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

- (a) As far as we know, there are about 80 persons without recognized nursing qualification currently employed in patient care work in private hospitals.
- (b) The law does not prohibit the employment of persons not possessing a recognized nursing qualification to work in private hospitals under the supervision of registered nurses. The law does, however, prohibit such persons from using the title of "nurse". We do not know the reasons behind private hospitals' decisions to dismiss staff.
- (c) As terms of appointment are a matter between the employer and the employee, it would be inappropriate for us to interfere in the management of private hospitals by suggesting specific terms of appointment.



**Psychiatric Patients**

10. **DR HUANG CHEN-YA** asked (in Chinese): *Is the Government aware of:*

- (a) *the number of psychiatric patients, together with a breakdown of the categories of psychiatric illness of such patients, admitted into public hospitals in the past year; and*
- (b) *the respective numbers of new and known psychiatric patients admitted through the accident and emergency departments in public hospitals, together with a breakdown of the categories of psychiatric illness of such patients, in the same period?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): Mr President, a breakdown by major mental illnesses of the 9 181 in-patient admissions into public psychiatric hospitals and units in the past year is provided below:

<i>Category of Mental Illnesses</i>	<i>Number of Admissions</i>
Schizophrenic psychoses	5 269 (57.4%)
Affective psychoses	1 368 (14.9%)
Other psychoses	891 (9.7%)
Neurotic/personality disorders	395 (4.3%)
Senile/presenile organic psychotic conditions	248 (2.7%)
Alcohol dependence syndrome and drug dependence	239 (2.6%)
Other mental disorders	771 (8.4%)
Total	9 181 (100%)

A total of 3 329 admissions were made through the accident and emergency departments, including 1 092 new and 2 237 known cases. We do not have readily available data to break down further the disease categories involved but the Hospital Authority is planning to start a new Psychiatric Clinical Information System to enhance the access of information in this regard.

### **Organ Donation**

11. **DR DAVID LI** asked: *It is reported that the number of registered new organ donors is drastically below the number of people in need of kidney transplant, and that doctors fear a slowdown in the number of registered organ donors may have serious repercussions over the next five years. In this connection, will the Government inform this Council:*

- (a) of the number of registered new organ donors in each of the past three years;*
- (b) of the reasons for the public's reluctance to register as organ donors; and*
- (c) whether additional resources will be provided for the launching of publicity campaigns to enhance the public's awareness of the importance of organ donation?*

**SECRETARY FOR HEALTH AND WELFARE:** Mr President, the Department of Health does not have a registration system for organ donors. To promote organ donation, the Department distributes voluntary organ donation cards for members of the public to take, fill in and carry with them. The card is an acceptable legal document for the purpose of authorizing organ donation and further consent by next of kin is not required. Between 1994 and mid-1996, a total of over 1.5 million cards were distributed.

The Hong Kong Medical Association (HKMA) keeps an Organ Donation Register. According to information provided by them, the Register contained 170 101 entries as at 24 December 1996. This represents the total number of organ pledges, including 26 025 people pledging their kidneys. A breakdown is given in the Appendix. The number of entries is not the same as the number of organs or organ donors, since a person can choose to donate multiple organs. The HKMA does not maintain a yearly breakdown.

The reluctance of people to donate organs can be attributed to several reasons. The main reason is the traditional belief that the body should be buried intact after death. Another reason is the fear that once their willingness to donate organs is made known to the doctor, the doctor will not make the greatest effort to save their lives.

To rectify misconceptions and to change people's traditional thinking, the Department of Health has been actively promoting organ donation through health talks, audio-visual resource material production and loan-out service, telephone hotlines and mass media interviews. It has also organized out-reaching promotion programmes such as road-shows at strategic locations as well as for specific target groups.

The Department also collaborates regularly with other agencies. In August to September 1996, it co-organized with the Hospital Authority, Metro Broadcast and TVB to launch a function called "New Life" Organ Donation Campaign which incorporated a press conference, an opening concert, road-shows, hospital visits and a closing TV show.

Programmes in progress include a series of organ donation exhibitions held at various Kowloon-Canton Railway Corporation stations until June 1997. Starting in early 1997, a mobile health education centre will be operated by the Department using a "Donormobile" funded by a grant of \$4.4 million from the Hong Kong Jockey Club Trust Fund.

## Appendix

Hong Kong Medical Association  
Image System — Analysis of Donated Organs

<i>Organ Donated</i>	<i>Count On Female</i>	<i>Percentage Of Female</i>	<i>Count On Male</i>	<i>Percentage Of Male</i>	<i>Count On Total</i>
Bones	13 838	13.63%	9 357	13.65%	23 195
Corena	15 142	14.91%	10 422	15.20%	25 564
Heart	14 391	14.17%	9 643	14.07%	24 034
Kidney	15 514	15.28%	10 511	15.33%	26 025
Liver	14 526	14.31%	9 731	14.19%	24 257
Lung	14 256	14.04%	9 534	13.91%	23 790
Any Organ	13 877	13.67%	9 359	13.65%	23 236
Total	101 544	100.00%	68 557	100.00%	170 101

**Labour Tribunal**

12. **MR LEUNG YIU-CHUNG** asked (in Chinese): *Will the Government inform this Council of:*

- (a) *the number of cases heard before the Labour Tribunal involving the award of costs to either party in each of the past three years, together with the details of such cases relating to the following:*
  - (i) *the numbers of cases in which costs were awarded to employers and employees respectively;*
  - (ii) *a breakdown of such cases by different ranges of costs awarded; and*
  - (iii) *the largest and smallest amounts of costs awarded; and*
- (b) *the numbers of cases adjudicated by each presiding officer in the past three years involving the award of costs to employers and employees respectively?*

**CHIEF SECRETARY** (in Chinese): Mr President, we have consulted the Judiciary Administrator who has advised that the Judiciary does not keep a record of the decisions made by the courts and tribunals, including the Labour Tribunal. To compile the requested information would involve a disproportionate amount of time, effort and cost.

### **Third Party Liability Insurance Premiums for Motor Vehicles**

13. **DR LAW CHEUNG-KWOK** asked (in Chinese): *It is reported that the Accident Insurance Association of Hong Kong has advised motor insurance companies of its proposed increases in premiums for motor insurance cover for 1997, with the premiums for third party liability insurance cover for various categories of private motor vehicles increasing by 50%. In this connection, will the Government inform this Council:*

- (a) *whether the Government has any mechanism to monitor the adjustment of third party liability insurance premiums for motor vehicles; if not, why not; and*
- (b) *whether it has any knowledge of the mechanism adopted in the United Kingdom, the United States, Japan and Singapore in monitoring the level of third party liability insurance premiums for motor vehicles?*

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

- (a) There is no mechanism for the Government to control the premium fixing of third party liability insurance for motor vehicles.

The Government's aim in regulating insurance companies is to ensure that such companies are controlled and managed by fit and proper persons and are financially capable of meeting their liabilities. As regards the level of insurance premiums, the Government believes that these should best be achieved through market forces.

The recommended rates by the Accident Insurance Association are advisory in nature and its members are not obliged to follow. In practice, it is common for insurers to offer premium discounts in order to be competitive. Presently, Hong Kong has 93 insurers authorized to carry on motor vehicles insurance, thus providing a competitive market. Motorists may compare the policies and terms offered by these companies before choosing the one that is best suited to their needs.

- (b) Based on available information, the situations in the United Kingdom, the United States of America, Japan and Singapore are as follows:

*The United Kingdom*

The United Kingdom Government, as well as the governments in other European Community (EC) countries, are subject to an EC Directive not to play any role in the fixing of premiums or vetting of the terms of the policies. Therefore, there is no mechanism for the government to control the level of motor vehicle insurance premiums.

*United States of America*

In the United States America, insurance legislation varies significantly among different states and accordingly the laws and practices relating to fixing of premiums differ. We therefore do not have any comprehensive information in this regard.

*Japan*

Motor vehicle insurance premium rates are fixed by the Automobile Insurance Rating Association of Japan. They must be approved by the Ministry of Finance and are binding on all insurers. However, Japan has recently agreed to liberalize the fixing of premiums on a gradual basis.

*Singapore*

There is no mechanism for the Singapore Government to control premium rates. Similar to Hong Kong, motor vehicle insurance premium rates are recommended by the trade association and are advisory in nature. Insurers are not obliged to follow the recommended rates.

**Non-franchised Bus Services**

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

- (a) *of the total number of non-franchised bus routes awarded by the Transport Department in the past three years;*
- (b) *of the number of applications for the operation of non-franchised bus routes rejected by the Transport Department in the past three years and the reasons for rejection;*
- (c) *of the average time taken by the Transport Department to process applications for the operation of non-franchised bus routes, as well as the present number of non-franchised bus routes pending approval;*
- (d) *of the total number of non-franchised bus routes known to be operating illegally in the past three years, and the major districts in which these bus routes were operated; and*
- (e) *whether the problem of illegal operation of non-franchised bus routes is worsening; if so, what the reasons are?*

**SECRETARY FOR TRANSPORT** (in Chinese): Mr President, in the past three years (1994-1996), Transport Department approved 89 applications for the operation of non-franchised bus routes, that is, residents' services.

During this period, 47 applications were rejected, mainly for the following reasons:

- (a) the routing of the proposed residents' services substantially duplicated the existing ones of franchised bus services or green minibus services and duplication of service was undesirable on these routes; and/or
- (b) the terminating points and stopping places proposed by applicants were not acceptable from a traffic management point of view.

The average time taken to process and approve a residents' service application is three months. Cases which require a more detailed examination of routing and terminal points take a slightly longer time. At the end of December 1996, 36 applications were being processed.

During the past three years, a total of 32 cases of illegal operation of non-franchised bus routes were identified, and a breakdown is annexed. The numbers of illegal bus routes operated in Tuen Mun and Sha Tin were higher than those in other districts.

The problem of illegal operation of non-franchised bus routes is not deteriorating. The number of illegal bus routes declined from 19 in 1995 to 9 in 1996. All the nine illegal bus routes have ceased operation at the end of December 1996.

#### Annex

	<i>No. of identified cases</i>
1994	4
1995	19
1996	9
Total	32



**Sha Tin and Tai Po Sewage Pumps**

15. **MISS EMILY LAU** asked: *The Government informed the Advisory Council on the Environment on 28 October last year that the two pumps at the Sha Tin and Tai Po sewage treatment plants, which were designed to transport industrial and farm waste from Tolo Harbour to Victoria Harbour, have failed to function properly and this has resulted in the two sewage treatment plants functioning at below half of its capacity. In this connection, will the Government inform this Council of:*

- (a) the reasons for the two pumps failing to function properly;*
- (b) the magnitude of the problem arising from such failure and its effects on the residents in the neighbourhood of the two sewage treatment plants;*
- (c) the name of the contractor who was responsible for building the two sewage treatment plants; and*
- (d) the remedial actions which have been taken by the authority concerned, and the party which will pay for the cost of the repair works?*

**SECRETARY FOR WORKS:** Mr President, the two sewage treatment plants in Sha Tin and Tai Po were built and commissioned in stages in the early 1980s. They treat sewage including domestic, industrial and farm waste collected from their respective districts. The treated effluent used to be discharged into Tolo Harbour before the Tolo Harbour Effluent Export Scheme (THEES) was introduced and implemented.

Under the THEES commissioned in 1996, fully-treated effluent from the two sewage treatment plants are transported to a new pumping station at Sha Tin, and are exported to Victoria Harbour for discharge through a series of sewer pipes and tunnel.

I wish to clarify, therefore, that the THEES is not designed "to transport industrial and farm waste" from Tolo Harbour to Victoria Harbour and no such information has ever been conveyed to the Advisory Council on the Environment. The purpose of the Scheme is to export fully-treated effluent from the Sha Tin and Tai Po sewage treatment plants to Victoria Harbour in order to reduce the risk of red tides in Tolo Harbour caused by excessive nutrients in the treated effluent.

The answers to the various parts of the question are as follows:

- (a) The two pumps (out of a total of four) of the new pumping station at Sha Tin were found during commissioning to be damaged due to installation defects.
- (b) The above problem arising from the defective pumps does not affect the sewage treatment function of the Sha Tin and Tai Po treatment plants and it does not affect the residents in the neighbourhood of these two plants either. The problem with the two pumps and other technical difficulties encountered in the present commissioning phase do interrupt the operation of the pumping station such that not all treated effluent is pumped to Victoria Harbour. However, it should be emphasized that the THEES is aimed at long-term improvement to protect the waters of Tolo Harbour from excessive nutrients enrichment. The current problem with the newly installed pumps is of a short-term nature which will be rectified in the near future, and therefore should have no long-term effects.
- (c) The contractor who was responsible for the supply and installation of the two pumps in question is Jebesen and Company Limited.
- (d) Jebesen has been instructed to replace the damaged parts. At the moment, the replacement parts for the two pumps are being manufactured by the German manufacturer. Repair work will be carried out when these parts are delivered to Hong Kong. The contractor is contractually responsible for rectifying the problems of the two pumps in question and will bear the costs of the repair.

### 1997-led Tourism Boom

16. **MR HOWARD YOUNG** asked: *Will the Government inform this Council whether it has an estimate of the extra benefits which will be brought to the tourism industry as a result of an upsurge in the number of visitors arriving in the territory in the period immediately before the transfer of sovereignty on 1 July this year; if so, what the details are?*

**SECRETARY FOR ECONOMIC SERVICES:** Mr President, the number of visitors coming to Hong Kong in the period immediately before the transfer of sovereignty on 1 July 1997 will be constrained mainly by the capacity of the hotel industry. All the hotel rooms in Hong Kong are expected to be occupied during that period. Assuming that the current room sharing rate of 1.7 persons per room will remain applicable, the maximum number of additional visitors which the hotel industry can accommodate will be in the region of 8 300.

Assuming that 8 300 additional visitors will stay in Hong Kong for an average of 10 days and these visitors will spend, on average, \$3,000 per day (which is approximately the average spending of visitors staying in four-star hotels), their total net additional spending is estimated at around \$250 million.

The above estimate may nevertheless turn out to be conservative for the following reasons. Firstly, some of the visitors may stay in guesthouses or with friends and relatives, thereby enabling visitors to be accommodated beyond the hotel room capacity constraint. Secondly, with such an upsurge in demand, hotels may charge higher room tariff for all visitors, thus generating a higher revenue. Thirdly, if some of the visitors opt to stay longer than 10 days, their spending will correspondingly increase.

### Decline in Insurance Business

17. **MR CHIM PUI-CHUNG** asked (in Chinese): *In view of the significant decline in the business of the insurance industry in the past year, will the Government inform this Council:*

- (a) *whether the above situation is caused by vicious competition within the industry; and*
- (b) *whether it has assessed the impact of any serious incident (such as the closing down of an insurance company) on the entire insurance industry and the reasonable protection of the insured will be ensured?*

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

- (a) We believe that the decrease in gross insurance premiums written in the past year is mainly attributable to the slowing down of economic growth during that period. For instance, the poor car sales in 1996 has led to a drastic fall in motor premiums. Keen competition has been a regular feature of the industry for a long time. Cyclical downturns from time to time cannot be directly attributable to competition, "vicious" or otherwise.
- (b) Our insurance regulatory framework aims at ensuring the financial soundness of authorized insurers. The Insurance Companies Ordinance prescribes, among other things, financial requirements such as minimum capital and solvency margin requirements and asset valuation method to be complied with by insurers, thus protecting the insuring public. In addition, general business insurers are required to maintain assets in Hong Kong to match the liabilities pertaining to their Hong Kong business, and long term business insurers are required to segregate the assets and liabilities attributable to long term business to form a separate life fund. The assets within the life fund are protected by law against any claim by third parties outside the life fund. The law also empowers the Insurance Authority to take actions to safeguard the interests of the policy holders where he considers appropriate, for example, to appoint a manager to manage the affairs, business and property of an insurer where there appears to be a risk of the insurer's insolvency.

With proper and prudential supervision of the insurance industry, we believe that the likelihood of major mishaps affecting the entire industry or of the closure of an individual insurance company having a knock-on effect on the entire industry is remote.

In the event of insolvency of an insurer, the insuring public are protected in a number of ways. For a long term business insurer, the Insurance Companies Ordinance provides that the liquidator shall, unless the court otherwise orders, carry on the business with a view to transferring it, as a going concern, to another insurer. Failing this, the Insurance Companies Ordinance specifically provides that the assets representing the life fund shall only be available for meeting the liabilities within the same fund.

For a general business insurer, although the liquidator is not mandated to carry on the business, liquidators in the past had always attempted to transfer the business to another insurer to minimize the loss to policy holders. If the attempt fails, Hong Kong policy holders are given statutory priority, after liquidation expenses, wages and crown debts, over other creditors, including overseas creditors, under section 265(1)(e) of the Companies Ordinance.

Claimants for compensation in respect of bodily injuries caused by motor vehicles or for employees' compensation are further protected by the Insolvency Fund and the Employees Compensation Assistance Fund financed by levies on the relevant insurance premium and maintained by the Motor Insurers' Bureau of Hong Kong and the Employees' Compensation Assistance Fund Board respectively. Where there are claims which remain unsettled due to the insolvency of an insurer, the claims will be met from the appropriate Fund(s).

### **No Smoking Legislation**

18. **DR JOHN TSE** asked (in Chinese): *Will the Government inform this Council whether it has considered introducing legislation requiring the designation of non-smoking areas in public places such as offices, restaurants and department stores; if not, what the reasons are?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): The Smoking (Public Health) Ordinance (Cap. 371) already designates some public places as statutory no smoking areas. This includes all public transport carriers, cinemas, theatres, concert halls, public lifts and amusement game centres. Smoking inside these areas is an offence attracting a maximum fine of \$5,000.

The Ordinance also empowers the principal officer of any government department or other organization specified in Schedule 3 to the Ordinance to designate any area under his control as a statutory no smoking area. At present, five government departments are in the process of designating public parts of their premises as statutory no smoking areas.

We are now considering to amend the Ordinance to provide a mechanism for managers of restaurants, department stores, supermarkets, banks and shopping malls to designate all or part of the places under their control as statutory no smoking areas if they so wish.

We do not intend to make it compulsory for such places to be designated statutory no smoking areas because enforcement will initially rest with the managers themselves. They are in the best position to determine whether or not their premises should be no smoking, and how to enforce the prohibition if imposed.

While offices cannot be regarded as "public areas", we are still encouraging private organizations to provide a healthy working environment for their staff by making their offices smoke free. This can be done administratively. To set an example, all government premises have been smoke free since 1 April 1996. The Hong Kong Council on Smoking and Health has also been promoting the concept of a smoke free workplace among private organizations. It has invited private organizations to sign its "Smokefree Workplace Charter" to signify their pledge to make their organization a smoke free workplace. Up to November 1996, a total of 73 organizations have signed the Charter. We believe that with the gradual building up of a smoke free culture through legislation and education, more and more organizations will voluntarily provide a smoke free environment for their staff and customers.

### **Control on Private Tutorial Schools**

19. **MR CHEUNG MAN-KWONG** asked (in Chinese): *Regarding the operation of private schools for specialized subjects or private tutorial centres ("private tutorial schools") and the safety facilities in the premises of these schools, will the Government inform this Council:*

- (a) *of the number of complaints lodged with the Education Department in the 1995-96 school year regarding private tutorial schools operating without registration, and how such complaints were handled by the Education Department;*
- (b) *of the number of Inspectors of Schools deployed to inspect private tutorial schools periodically to check whether they have been registered, together with the number of schools found to be unregistered and the number of warning letters issued, in the corresponding period, as well as the reaction of the private tutorial schools concerned;*
- (c) *whether any prosecutions were instituted against unregistered private tutorial schools in the corresponding period; if so, of the number of successful prosecutions and the highest and lowest penalties imposed by the court;*
- (d) *how the authorities concerned ensure that the premises of private tutorial schools are in conformity with the provisions in the relevant legislation regarding fire escape, sanitary condition and enrolment limit, so as to protect the students' personal safety; and*
- (e) *whether consideration will be given to stepping up inspections and increasing the penalties prescribed in the relevant legislation so as to achieve a deterrent effect and protect the interests of consumers?*

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

- (a) In the 1995-96 school year, the Education Department received 126 complaints concerning unregistered private tutorial schools. On receiving the complaints, the relevant District Education Officers would initiate site inspections to establish the facts. A verbal warning would be given to the operators if the complaints were substantiated. The operators would also be advised of the registration procedures and the case would be referred to the Registration Office for follow-up action. Further inspection visits would be made to monitor the situation. Should an operator continue to contravene the relevant legal provision upon further inspections, warning letter will be issued and, where appropriate, the case will be referred to the Attorney General's Chambers for prosecution.
- (b) There are 112 Inspectors of Schools who are responsible for the supervision of all schools within their districts including monitoring of operation standards, vetting of funding requests, provision of staff resources and placement assistance. As part of their duties, they also undertake inspections to private tutorial schools when required. In the 1995-96 school year, they undertook 200 inspections to private tutorial schools and found 91 of them falling within the definition of "schools" under the Education Ordinance but operating without registration. Altogether, 19 warning letters were issued to operators and teachers who persistently contravened the legal requirements. Upon Education Department's verbal and/or written warnings, 38 private tutorial school operators either applied for registration or cut down the enrolment to a level below the registration requirements and 51 ceased operation.
- (c) In the 1995-96 school year, prosecutions were instituted against three unregistered schools, but the charge against one of them was withdrawn after the school agreed to cease operation. Proceedings against the other two are still underway. A person convicted of the



offence of operating an unregistered school would be subject to a maximum fine of \$25,000 and imprisonment for two years.

- (d) All private tutorial schools, being registered under the Education Ordinance, are subject to the same level of supervision by the Education Department as any other schools. They are required to comply with the laws and regulations concerned, including the provisions on approved accommodation and requirements on hygiene and fire prevention. To ensure continued compliance by all private tutorial schools, site inspections are frequently carried out. Warnings will be issued if irregularities are found and further follow-up inspections will be conducted. Legal action will be taken against persistent offenders.
- (e) School operators are made aware of the registration requirements through existing guidelines. The Education Department, in consultation with relevant authorities, has recently reviewed the procedures of applications for registration with a view to speeding up the process. To further enhance the deterrent effect and to reduce irregularities, the Department will step up its monitoring and prosecution actions against persistent offenders. The level of penalties is currently under review to preserve its deterrent effect.

## GOVERNMENT MOTION

### COSTS IN CRIMINAL CASES ORDINANCE

#### *THE ATTORNEY GENERAL to move the following motion:*

"That the Costs in Criminal Cases Rules, made by the Acting Chief Justice on 25 November 1996, be approved."

He said: Mr President, I move the resolution standing in my name in the Order Paper. The resolution is to the effect that the Costs in Criminal Cases Rules, made by the Acting Chief Justice on 25 November 1996, be approved.

The Costs in Criminal Cases Ordinance was enacted in July last year. It reforms the existing law governing the award of costs in criminal cases by

removing anomalies and by providing a clear set of principles applicable to all levels of criminal courts. It also provides that in circumstances where costs are wasted as a result of any failure to appear or lateness (without reasonable cause) on the part of any legal or other representative, the court may make an order that the wasted costs be borne by that lawyer or representative. The Ordinance has not yet been brought into operation, since there is a need for rules providing for the practice and procedure under the Ordinance.

The Acting Chief Justice has now made rules setting out the procedure relating to the making of wasted costs orders; the procedure on appeal against an award of costs; the details to be provided in a claim for costs; the manner in which an application for taxation of costs is to be determined; the procedure on a review of taxed costs; and the court fees payable upon such appeals and taxation.

The approval of the rules today will complete the necessary preparations for the reforms contained in the Ordinance. If the rules are approved, I intend to bring the Ordinance into operation later this month.

Mr President, I beg to move.

*Question on the motion proposed, put and agreed to.*

## **GOVERNMENT BILLS**

### **First Reading of Bills**

#### **LEGAL AID (AMENDMENT) BILL 1996**

#### **ENDURING POWERS OF ATTORNEY BILL**

#### **POWERS OF ATTORNEY (AMENDMENT) BILL 1996**

#### **FREIGHT CONTAINERS (SAFETY 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

### LEGAL AID (AMENDMENT) BILL 1996

***THE CHIEF SECRETARY to move the Second Reading of: "A Bill to amend the Legal Aid Ordinance."***

She said: Mr President, I move that the Legal Aid (Amendment) Bill 1996 be read a Second time. The Bill primarily aims to increase the financial eligibility limits for the legal aid schemes operated by the Legal Aid Department.

As stated in our Policy Commitments published with the Governor's 1995 policy address, we are committed to reviewing the financial eligibility limits for the standard legal aid scheme and the self-financing Supplementary Legal Aid Scheme operated by the Legal Aid Department every two years to take account of inflation.

We have recently completed a review of the financial eligibility limits and propose that they be revised in line with inflation. We have also taken the opportunity to review the monetary amounts that may be waived by the Director of Legal Aid under the Ordinance, and propose that they be also revised in line with inflation. I now outline briefly the major elements of the Bill.

Clauses 2 and 3 of the Bill provide for increases in the financial eligibility limits for both the standard legal aid scheme and the Supplementary Legal Aid Scheme. The increases are in line with the accumulated inflation rate of 17.9% for the period from July 1994, when the amounts were last reviewed, to June 1996. This will mean that the financial eligibility limit for applicants under the standard legal aid scheme will be increased from \$144,000 to \$169,700 and the lower and upper financial eligibility limits for the Supplementary Legal Aid Scheme will be increased from the present \$144,000 and \$400,000 to \$169,700 and \$471,600 respectively.

Clause 4 provides that the amount of payment of maintenance for a spouse or former spouse that may be exempted from the Director's first charge be revised from \$4,100 per month to \$4,800 per month.

Clause 5 provides that the maximum amount that may be reduced by the Director under section 19B(1)(a) be increased from \$30,000 to \$57,400. This is in line with the accumulated inflation rate of 91.4% for the period from July 1989, when the amount was last reviewed, to June 1996.

At present, this Council may, by resolution, amend the amounts of financial resources specified in section 5, the amounts of income and financial resources specified in section 5A, and Schedules 2 and 3 to the Ordinance. However, the maximum amount of maintenance payment that may be exempted from the Director's first charge specified in section 18A(5) and the maximum amount that may be reduced by the Director under section 19B(1)(a) cannot be amended by resolution of this Council. As the amounts specified in these two sections have to be reviewed regularly to bring them in line with inflation, it would be more appropriate if they could also be amended by resolution of this Council rather than requiring primary legislation as at present. Clause 6 of the Bill empowers this Council to make amendments to the monetary amounts specified in section 18A(5) and section 19B(1)(a) by subsidiary legislation rather than primary legislation.

Mr President, this Bill represents merely an updating of the Legal Aid Ordinance and an immediate improvement to the legal aid scheme in Hong Kong, and I commend it to this Council for early passage into law.

Lastly, I should also like to mention that we are conducting a comprehensive review of the criteria used to assess the financial eligibility of legal aid applicants for legal aid services provided by the Legal Aid Department in accordance with our Policy Commitments. We will also take this opportunity to consider carefully proposals to extend the scope of civil legal aid and possible improvements to the operation of the Legal Aid Ordinance.

*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).*

## ENDURING POWERS OF ATTORNEY BILL

*THE ATTORNEY GENERAL to move the Second Reading of: "A Bill to provide for the creation of enduring powers of attorney and matters related thereto."*

He said: Mr President, I move that the Enduring Powers of Attorney Bill be read a Second time.

The purpose of the Bill is to make provision for a new kind of power of attorney, which will be effective after the person who gave it has become mentally incapable of managing his or her own affairs.

A power of attorney is an arrangement whereby one person empowers another to act on his behalf and in his name. Unfortunately, as the law now stands, a power of attorney is automatically revoked when the donor of the power loses the mental capacity to enter into contracts or exercise his or her legal rights in other ways. Thus, the holder of a power of attorney loses the power to act in the management of a person's affairs at the very time when his or her assistance is perhaps most needed.

The need for a power of attorney which is capable of surviving the onset of mental incapacity has been felt for some time. Many countries in the common law world have already introduced legislation to provide for a mechanism of this kind, which is known as an enduring power of attorney. We have been able to draw on such legislation in preparing our own proposals for dealing with the problem.

Mr President, the proposals contained in the Bill have been the subject of consultation with the legal profession and other interested organizations such as the Hong Kong Council of Social Service and the Hospital Authority. The need for some kind of enduring power of attorney was evident from the responses to that consultation.

**PRESIDENT** (in Cantonese): Mrs Elizabeth WONG, is there a point of order?

**MRS ELIZABETH WONG:** Yes, there is no quorum, Mr President.

**PRESIDENT** (in Cantonese): I now order that a head count be made.

**PRESIDENT** (in Cantonese): As a quorum is not present, I am to order that Members be summoned.

A quorum was then formed.

**PRESIDENT** (in Cantonese): As a quorum is now present, the Council will now resume the Second Reading of the Enduring Powers of Attorney Bill. I shall now call upon the Attorney General to continue with his speech.

**ATTORNEY GENERAL:** Mr President, would you like me to start again from the beginning?

**PRESIDENT:** It would not be necessary as I assume that there was a quorum prior to my attention being called by Mrs Elizabeth WONG to the fact that there was no quorum .

**ATTORNEY GENERAL:** Thank you, Mr President, I would, with your permission though, just start that paragraph again.

The proposals contained in the Bill have been the subject of consultation with the legal profession and other interested organizations such as the Hong

Kong Council of Social Service and the Hospital Authority. The need for some kind of enduring power of attorney was evident from the responses to that consultation. With substantial numbers of Hong Kong people emigrating in recent years, there has been a growing need for owners of property to create powers of attorney for the administration of property which they are no longer able to manage personally. At the same time, chronic and degenerative illnesses affecting mental capacity have become more common in the community, as the proportion of old people increases.

Existing legal procedures for managing the affairs of a mentally disordered person are cumbersome, time-consuming and costly. They require an application to the High Court for the appointment of a receiver to manage that person's property and affairs. Such an application is normally made by a close relative or friend. But the serious drawbacks of the present system are likely to deter most people from seeking the assistance of the court when this is called for.

There can be little doubt that there is a need for a less complicated means of dealing with the problem. This Bill is designed to meet that need by providing a simple, straight forward and inexpensive legal mechanism. I will now describe the main provisions in the Bill.

Under clause 3, an enduring power of attorney must be executed in a form which will be prescribed by regulations and which contains certain prescribed explanatory information. Clause 5 provides that the instrument creating the power must be signed by the proposed attorney, and must be executed by the donor in the presence of both a solicitor and a registered medical practitioner. The solicitor is required to certify that the donor of the power appears to be mentally capable, whilst the medical practitioner must be satisfied that the donor is mentally capable. For these purposes, the Bill adopts a new definition of mental incapacity, which I will explain when introducing the Powers of Attorney (Amendment) Bill later this afternoon.

Clause 4 of the Bill provides that a power of attorney which is executed in accordance with the formalities I have just described will not be revoked if the donor subsequently becomes mentally incapable. But before the attorney becomes competent to act under the power conferred on him or her, the document must be registered at the Supreme Court. This must be done as soon

as the attorney has reason to believe that the donor is or is becoming mentally incapable.

The mechanics of registration are provided for in clause 9. Registration is not a guarantee of the validity of the document — it will not validate a document which is otherwise invalid. The purpose of registration is that it will enable third parties to inspect the powers of attorney on the register, on the payment of a fee. In this way, enduring powers of attorney will be made a matter of public record. A further measure of publicity for the protection of the donor's interests is provided by clauses 18 and 19, which allows the donor to nominate persons who must be notified before the attorney applies for registration. In any legal proceedings relating to an enduring power, the court may draw an adverse inference from a failure to notify such persons.

A person who has created an enduring power of attorney and who subsequently becomes mentally incapacitated will be in a position of considerable vulnerability. The Bill therefore contains provisions which are designed to protect the donor both from malpractice and lesser shortcomings on the part of the attorney. Clause 12 places an attorney under a legal duty of utmost good faith towards the donor, and requires the attorney to exercise his or her powers honestly and diligently, to keep proper accounts and records, to avoid conflicts of interest and to keep the donor's property separate from any other property. Provision is made in clause 11 for any interested party to apply to the court for a variety of remedial orders. The court will have power to require an attorney to produce records and accounts, to revoke an enduring power and to remove the attorney. The circumstances in which an enduring power is revoked are set out in clause 13. Clause 16 of the Bill invalidates any attempt to dispense with the requirements of the Bill, while clause 17 ensures that an attorney cannot disclaim his or her responsibility at any time when the donor is mentally incapable or after the enduring powers has been registered, except with the consent of the court.

Mr President, this Bill offers a useful and needed reform. The recognition of enduring powers of attorney has the support of those who were consulted on this issue and I believe that these instruments will generally be welcomed by the community. I commend the Bill to the Council. Thank you.



*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).*

## **POWERS OF ATTORNEY (AMENDMENT) BILL 1996**

***THE ATTORNEY GENERAL to move the Second Reading of: "A Bill to amend the Powers of Attorney Ordinance."***

He said: Mr President, I move that the Powers of Attorney (Amendment) Bill 1996 be read a Second time.

The purpose of this Bill is to introduce a uniform definition of mental incapacity, which will be applicable to any purpose relating to a power of attorney.

Mental capacity is a crucial issue in relation to powers of attorney for two main reasons. Firstly, the person granting a power of attorney ("the donor") must possess the requisite capacity at the time he or she creates the power. Secondly, the subsequent onset of mental incapacity in the donor has the effect of revoking the attorney's authority to act on behalf of the donor under the power. That principle would not apply to enduring powers of attorney that could be made if the Enduring Powers of Attorney Bill is enacted, but it would still apply to ordinary powers of attorney.

Mr President, much difficulty and confusion has resulted from the fact that there are different tests to determine, on the one hand, whether a donor was mentally capable of creating a valid power of attorney and, on the other, whether the donor's mental capacity had subsequently declined to the point that his attorney was no longer permitted to act for him.

The present position is that, while it is sufficient for the creation of a valid power that the donor should understand the nature and effect of the power, the power can no longer be validly exercised once the donor loses the capacity to manage his property and affairs. The second of these tests of mental capacity is more stringent than the first.

The Bill proposes to eliminate this difference, and the uncertainty it causes, by adopting a single definition which is applicable for all purposes. The proposal is in line with a recommendation of the English Law Commission and is generally supported by the legal profession and other interested organizations.

The new definition is contained in clause 2 of the Bill. This provides that a person is regarded as suffering from mental incapacity for any purpose relating to a power of attorney in two situations. The first is where he or she is suffering from mental disorder and is either unable to understand the effect of a power of attorney or is unable, because of that disorder, to make a decision to grant such a power. The second situation is where a person is unable to communicate an intention or wish to grant a power of attorney.

For the purposes of the definition, "mental disorder" is given the same meaning as under the Mental Health Ordinance. This covers mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind. I should mention, Mr President, the Administration is currently re-examining this definition in the context of a review of the Mental Health Ordinance, and subject to the approval of the Executive Council, a Bill to amend that Ordinance will be introduced into this Council in the near future.

The Bill is not intended to affect any question as to the validity or revocation of a power of attorney created before the Bill comes into operation as law. Clause 3 therefore specifically provides that such questions would continue to be decided in accordance with the existing law.

The desirability of the proposed new definition of mental incapacity became evident in the course of preparing the Enduring Powers of Attorney Bill, which I have just introduced. However, since the new definition should apply to all types of powers of attorney, it is appropriate to place it in the Powers of Attorney Ordinance.

Thank you, Mr President.

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

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

## **FREIGHT CONTAINERS (SAFETY) BILL**

***THE SECRETARY FOR ECONOMIC SERVICES to move the Second Reading of: "A Bill to make provision regarding the safety of freight containers in use in Hong Kong, and for connected purposes."***

**SECRETARY FOR ECONOMIC SERVICES** (in Cantonese): Mr President, I move that the Freight Containers (Safety) Bill be read a Second time.

The purpose of this Bill is to implement in Hong Kong the International Convention for Safe Containers 1972. The main objective of this Convention is to ensure the safe and efficient transport of containers. It standardizes requirements for the testing, inspection and approval of containers, and prescribes procedures for their maintenance, examination and control. It applies to containers used for international transport by sea and on land, but excluding containers specially designed for air transport.

Though the Convention only covers containers used for international transport, we propose that our local legislation should also apply to containers used for domestic transport, as we are of the view that the same safety standard should apply to containers used for international transport and local transport.

The main objective of the Bill is to safeguard the construction and safety of containers used in Hong Kong. Specifically, the Bill requires the owner of, or the person responsible for, a container to ensure that the container being handled is approved by recognized authorities, fixed with a safety approval plate, properly maintained, examined according to the approved procedures and that markings on it are consistent with information on the safety approval plate.

The Bill also provides that containers used in Hong Kong shall be subject to control by the Director of Marine and inspectors appointed by him. Random checks on containers will be conducted by the Marine Department, with the assistance of other government departments as necessary, to ensure compliance

with the requirements set out in the legislation. If any of the requirements are not met, the Director of Marine is empowered to prohibit the use of or detain the container in question.

Mr President, with these words, I commend the Bill to this Council.

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

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

### **Resumption of Second Reading Debate on Bills**

#### **ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL 1996**

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

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

Bill read the Second time.

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

### **TSING MA CONTROL AREA BILL**

#### **Resumption of debate on Second Reading which was moved on 30 October 1996**

**MR ALBERT CHAN** (in Cantonese): Mr President, the Council formed a Bills Committee chaired by me on 1 November 1996 to study the Tsing Ma Control Area Bill. The Bills Committee has held two meetings with the Administration.

During its careful scrutiny of the Bill, the Bills Committee has expressed concern about a number of areas. Here I will just highlight the major points.

First of all, the Bills Committee is concerned about the measures to be taken in the event of a traffic accident in the Control Area. The Administration noted that in the event of an accident involving casualties occurring in the Control Area, the operator would initially play a commanding role in rescue and road management. This commanding role would be taken over by the police upon the latter's arrival. The Administration is devising a contingency plan for the Control Area. It will brief the Council's Transport Panel on the contingency plan in March 1997.

Members queried if clause 6 would be giving too much power to the Administration to decide on the boundaries and plans of the Tsing Ma Control Area (TMCA) under the Bill. The Administration stresses that changes are envisaged for technical, operational or maintenance reasons. Changes will not involve private property. Similar provisions are also found in other legislation on tunnels. Any change in the boundaries of the TMCA will be published in the Gazette but will not be introduced in the form of a subsidiary legislation.

Mr President, Members are also concerned that misuse of image records for the intended purpose of tracking speeding in the Control Area might infringe the privacy of road users in the TMCA. The Administration assures Members that there has not been any privacy problem with image recording in other tunnels governed by similar provisions in this respect. However, it has agreed to examine the issue outside the context of the Bill.

Last but not least, the Bills Committee sought clarification on whether the provisions for the imposition and collection of tolls for the use of Lantau Link are the same as those for Tate's Cairn Tunnel and Eastern Harbour Crossing, which do not require vetting by the Legislative Council. The Administration confirms that all regulations made under clause 27(1), including the provision on the imposition and collection of tolls payable for the use of Lantau Link (that is, clause 27(1)(a)) are subsidiary legislation which will be subject to the negative vetting procedure provided in section 34 of Chapter 1 of the Laws of Hong Kong.

The Bills Committee also has concerns over two issues outside the scope of the Bill.

The major concern is about the proposed staffing level of the Government Monitoring Team (GMT) for TMCA comprising 72 representatives from the

Transport Department, the Highways Department, the Electrical and Mechanical Services Department and the Architectural Services Department. Members are particularly concerned over the proposed establishment of 17 engineering posts as the infrastructure project should not require too much maintenance and repair initially.

After a review, the Administration decides that the six additional posts proposed for the Architectural Services Department are no longer required, but confirms that the remaining 66 posts are the bare minimum required. They will be created in phases. Most of them are to be created before the operation of the TMCA, with about 10 posts in September/October 1997.

After comparing the proposed staffing level of the GMT for the TMCA with the staffing levels of other government and private tunnels and for the maintenance of Tuen Mun Road, the Bills Committee still has reservation about the proposed establishment of the GMT. However, as this is outside the scope of the Bill, it is decided that this issue should be referred to the Council's Transport Panel for in-depth study.

The other concern is about the decision not to issue a franchise for the TMCA or Lantau Link. We are of the view that the Administration has not fulfilled its commitment made in 1991 of issuing a franchise for Tsing Ma Bridge. The Administration considers that the decision not to issue a franchise for the TMCA or Lantau Link, but to award a management, operation and maintenance contract to the private sector on a competitive basis, is the right one. Toll levels under a franchise would be higher. Basing on the estimated construction cost of Tsing Ma Bridge at \$2.1 million, the estimated toll level under a franchise would be 47% higher than that under the option of contracting out, which is generally the most cost-effective option for public revenue. Moreover, it is not technically feasible to issue a franchise for Lantau Link separately. Although Members are not convinced of the figures provided by the Administration, the Bills Committee accepts that the option of contracting out the management, operation and maintenance of the TMCA to an operator is the best of the three options, namely government operation, contracting out and issue of franchise, to maintain the tolls at a reasonable level.

Mr President, the Administration has proposed some amendments to the Bill and these amendments are supported by the Bills Committee.

Mr President, I mentioned \$2.1 million in regard to the construction cost of Tsing Ma Bridge. If I remember correctly, the Government's estimated cost of the whole jurisdiction of the Control Area is \$21 billion. After consideration, the Bills Committee supports the contents of the whole Bill.

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

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, first of all I would like to thank the Honourable Albert CHAN and other members of the Bills Committee for completing the examination of the Tsing Ma Control Area Bill within such a short period of time. I would like to supplement two points regarding the work of the Bills Committee before giving a brief account of the main reasons for the amendments to be moved at the Committee stage later on. The first is on the boundaries of the Tsing Ma Control Area (the Control Area).

When studying the Bill, the Bills Committee has shown their concern over clause 6. The clause provides that the Commissioner for Transport in consultation with the Director of Lands shall determine the boundaries of the Control Area and may from time to time vary the boundaries. This clause is similar to an existing provision in the Road Tunnels (Government) Ordinance. Should there be any need to vary the boundaries, the Transport Department has to consult the departments concerned first. We envisage that the boundaries will only be varied for technical, operational as well as maintenance reasons and the variations will neither be substantial nor frequent. We expect that the need to vary the boundaries, in most cases, will not involve any resumption of private land. Nevertheless, in such a case where resumption of land is really required, the resumption will be governed by the Roads (Works, Uses and Compensation) Ordinance (Cap. 370) and the affected parties will be compensated according to the approved standard compensation rate.

Just now Mr Albert CHAN referred to the staffing level of the Government Monitoring Team (GMT). We are aware that the Bills Committee is very much concerned about whether the GMT will be over-staffed. In fact, the Area is an integrated expressway system that comprises four bridges, one expressway, two viaducts and one tunnel. Various kinds of electrical and mechanical systems will be installed in the Control Area, some of which will be the most sophisticated to be used in the Asia Pacific region. Besides, as the Control Area is the only road link between North Lantau and the new Airport, the Government considers that the GMT must have sufficient manpower resources to monitor

closely the performance of the operators to ensure that safe and congestion-free traffic is maintained at all times in this only artery leading to the new Airport.

The Government will always review with a critical eye the manpower demands of various departments. The existing posts established in the GMT are only to meet the minimum need. I will request Members to study the manpower establishment more carefully at the meeting of the Legislative Council Panel on Transport to be held the day after tomorrow and I will make a simple promise today. All departments concerned will, according to the experience gained in the operation, review the staffing level of the GMT every year to ensure that an appropriate level is maintained. Whenever the situation allows, we will reduce the staffing level to cut down on expenditure.

Mr President, I will move several amendments at the Committee stage. These amendments have been agreed to by the Bills Committee. One of these is concerned with clause 13, in which the powers of the authorized officers are specified. The Privacy Commissioner for Personal Data has advised the authorized officers that although it may be necessary for them to collect personal data in handling toll payment evasions and in preventing or investigating other offences, such powers may not be needed in directing and regulating vehicular and pedestrian traffic. The Government agreed with the Commissioner and has proposed to amend the Bill at meetings of the Bills Committee. The Bills Committee has agreed to the amendment to clause 13 that I am going to move, and the details have already been set out in the papers circulated among Members. Since clause 13 of the Bill was drafted with reference to the Road Tunnels (Government) Ordinance, I proposed and the Bills Committee has agreed to amend section 11 of the Road Tunnels (Government) Ordinance along the same line. In fact, the new clause 32 added to the Bill is meant to amend section 11 of that Ordinance.

In addition, the Bills Committee has also put forward other proposed amendments after its examination of the Bill. Those are amendments to improve the wording of the Bill with a view to further clarifying the relevant clauses.

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

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



Bill read the Second time.

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

## **COMPANIES (AMENDMENT) BILL 1996**

### **Resumption of debate on Second Reading which was moved on 8 May 1996**

**MRS MIRIAM LAU:** Mr President, as Chairman of the Bills Committee on the Companies (Amendment) Bill 1996, I wish to report to Honourable Members the deliberations of the Bills Committee on the Bill. During the course of our deliberations, we have received some valuable comments on the Bill from the Hong Kong Society of Accountants, the Hong Kong Association of Banks, The Law Society of Hong Kong, the Hong Kong Institute of Company Secretaries and the Hong Kong General Chamber of Commerce as well as a number of professional firms.

This Bill mainly seeks to amend the Companies Ordinance (the Ordinance) to implement recommendations of the Standing Committee on Company Law Reform to abolish the doctrine of *ultra vires* and in connection therewith, the related doctrine of constructive notice. The Bill also seeks to empower the Registrar of Companies to specify forms necessary for the purposes of the Ordinance, that is, the deregulation of forms.

Under the doctrine of *ultra vires*, a company's contractual capacity is limited by the objects and powers clauses contained in its memorandum of association. A contract entered into by a company which is not authorized by its objects is regarded as *ultra vires* and unenforceable. Furthermore, under the related doctrine of constructive notice, a person is deemed to have knowledge of the contents of any documents concerning a company (for example, its memorandum and articles of association) that have been filed in the Companies Registry and are available for public inspection. The application of these doctrines was intended to protect a company's members and creditors. However, it has since become an obstacle for companies, which may commence new businesses without realizing that a change in objects is necessary, and a trap for

unwary innocent third parties as their contractual dealings with a company may turn out to be void and unenforceable.

While members of the Bills Committee agree with the principle of removing the doctrines, detailed discussions have taken place in respect of a number of issues. One such issue is that there are contradictions in the proposed provisions related to the removal of *ultra vires*. While it is provided that a company other than not-for-profit companies can opt not to have an objects clause in its memorandum of association, it is also provided that a company should not carry on any business or exercise any power that it is not authorized by its memorandum to carry on or exercise. This would render a company which has not specified its objects unable to carry on any activity at all. The Administration's attention has been drawn to the inconsistency in this respect and it has agreed to move a Committee stage amendment to rectify the situation.

Members of the Bills Committee share the concern expressed by deputations that the doctrine of *ultra vires* is not completely abolished under the Bill. Since the proposed section 5B(1) provides that a company having objects in its memorandum shall not carry on business that it is not authorized by its memorandum to do, this means that transactions can still be challenged on the ground that the directors or officers representing the company had exceeded the powers set out in the memorandum. Hence, prudent third parties dealing with a company may still find it necessary to check the objects of the company and it would still be desirable for a company to specify its objects in the memorandum. The Administration anticipates that this situation would diminish and be largely eliminated in the long run as newly incorporated companies would not be required to state their objects and existing companies could choose to repeal their objects clause. Members however consider that it would be a long time before this would happen.

As regards the proposed abolition of the doctrine of constructive notice, third parties would not be regarded as having any knowledge of the restrictive effect of a company's objects contained in its memorandum, hence transactions entered into in contravention of such restriction would not be at risk. However, this does not cover the situation where the person does have or is deemed to have actual knowledge of the memorandum and articles of association (M & A). In this respect, members share the concern of some deputations that the protection for third parties under this provision is insufficient. A third party dealing with a company would, under many circumstances, have come into possession of a copy

of the M & A and would be forced, as a matter of prudence, to review the objects clause in order to avoid litigation. The drafting of the Bill is unclear as regards what circumstances would be considered as constructive knowledge and this ambiguity may defeat the whole purpose of abolition of the doctrines of *ultra vires* and constructive notice because third parties would, in order to play safe, continue to check out the company's M & A in detail.

The Administration maintains that with the new provisions, better protection is afforded to third parties dealing with company directors and officers because in the absence of any actual knowledge or constructive notice of breach of corporate authority, a third party can deal freely with a company and would only need to check the M & A if there are circumstances causing a reasonable person to become suspicious. The Administration, however, acknowledges that on entering into substantial transactions, such as joint ventures or financial institutions making large loans, third parties would still require professional advice on a company's corporate authority. But in the vast majority of everyday transactions, third parties would be relieved of the present possible adverse consequence of not having done so. In view of the uncertainties regarding the circumstances under which a third party would need to check the M & A of a company before entering into a transaction, members urged the Administration to make an effort, as a long-term objective, to remove these uncertainties.

Members concur with the Hong Kong Society of Accountants' suggestion that the proposed provision to abolish the doctrine of constructive notice should not be restricted to matters disclosed in the memorandum or articles, but should include all documents filed with the Registrar of Companies since even for a company without any objects clause in its memorandum, there may still be filed resolutions of shareholders prohibiting certain activities of the company. In response to the request of the Bills Committee, the Administration agrees to move a Committee stage amendment to amend the provision in this respect.

Members of the Bills Committee have noticed strong opposition from deputations to the deregulation of the statutory forms under the Ordinance. The Administration contends that the proposal is put forth with the objective of avoiding the time-consuming and cumbersome legislative procedure for making even very minute changes in the forms. Members however take the view that it would be undesirable to give the Registrar of Companies such wide discretionary powers in specifying the forms. In order to give the Registrar of Companies the

flexibility to cope with technology changes in information gathering on the one hand, and to have adequate monitoring on the Registrar of Companies' power on the other, members agree that the Registrar of Companies' power to revise forms should be restricted to the form only, but not the substance, of the statutory forms. This is accepted by the Administration and Committee Stage amendments to the relevant clauses of the Bill will be moved accordingly.

Mr President, on behalf of the Bills Committee, I ask this Council to support the Bill and the Committee stage amendments to be moved by the Secretary for Financial Services.

**SECRETARY FOR FINANCIAL SERVICES:** Mr President, may I first of all express my gratitude for the work of the Bills Committee, and in particular its Chairman, the Honourable Mrs Miriam LAU, on the Bill that encompasses certain highly complex legal concepts and issues. The Companies (Amendment) Bill 1996 contains two main proposals; firstly, the abolition of the outmoded principle of *ultra vires* and revision of the related doctrine of constructive notice, and secondly, the deregulation of company forms.

There has been considerable discussion by the Bills Committee on the question of the abolition of *ultra vires*. Members of the Committee and also the wider business community expressed support for the principles involved, but at the same time were interested to examine the different approaches to the problem taken in different common law jurisdictions. Certain positive and constructive suggestions arose from this process and these have resulted in technical improvements to the Bill. I shall be moving the resulting amendments at the Committee stage.

On the deregulation of forms, the Bills Committee and professional associations were again in support of the principle, but were concerned that any discretion given to the Registrar of Companies to amend the forms administratively should not be too wide. The Committee suggested that the powers of the Registrar to make alterations should be limited to form and not substance. I shall, therefore, be moving amendments to define the limits within which the Registrar of Companies may exercise his powers in determining the contents of the forms.

Members of the Committee felt that any proposals for substantial change to the type of information sought in the forms should still be required to go through the existing legislative procedures. This arrangement is acceptable to the Registrar of Companies, who is primarily seeking the flexibility to be able to respond to changes such as developments in information technology that may make revisions in the format of the forms desirable.

Having said this, I understand that the providers of business services would not welcome frequent changes given the time required to gear up for revisions to company forms. We will endeavour to be sensitive to this when considering the need for change.

Mr President, with these remarks, I commend the Companies (Amendment) Bill 1996 to Members.

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

Bill read the Second time.

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

## **BANKING (AMENDMENT) BILL 1996**

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

**DR HUANG CHEN-YA** (in Cantonese): Mr President, as Chairman of the Bills Committee on the Banking (Amendment) Bill 1996, I wish to report to Honourable Members the deliberations of the Bills Committee on the Bill. While considering the Bill, we have consulted interested parties such as the Consumer Council and the Hong Kong Foreign Exchange and Deposit Brokers Association (HKFEDBA). We have also looked into the special features of the two major multi-purpose stored-value card (MPC) schemes being developed in Hong Kong, they are the Mondex system and the Visa/MasterCard system.

The Banking (Amendment) Bill 1996 aims primarily at introducing two separate and distinct regulatory frameworks. Firstly, it seeks to regulate the

issue or the facilitation of the issue of MPCs in Hong Kong. Secondly, it proposes to provide a legal framework for the authorization and regulation of foreign exchange and deposit brokers.

With regard to the regulatory framework for the issue of MPCs, the principal concern of the Bills Committee is that the proposed regulation should not stifle market development on the one hand and should be able to afford adequate protection to consumers and the financial system on the other.

First of all, should MPCs be regulated?

The Administration proposes that only licensed banks and institutions approved by the Hong Kong Monetary Authority (HKMA) may issue or facilitate the issue of MPCs. The Administration considers that the operation of MPCs represents a new payment system which, if allowed to proliferate, may have significant implications on the system. It is therefore necessary to restrict the issue of MPCs to authorized institutions. After studying the situations in other regions and considered the explanation given by the Administration, Members agreed with the Administration that the MPC schemes should be regulated. We are concerned, however, that to ensure fair competition and to prevent the market from being monopolized by licensed banks, there should not be any unreasonable restriction on non-bank entities with regard to the issue of MPCs.

In order to deal flexibly with the MPC schemes operated by non-bank entities, the Administration initially proposed that special purpose vehicles may, for the purpose of issuing or facilitating the issue of MPCs, apply for authorization as restricted licence banks or deposit-taking companies. Considering that a general term of this kind may cause confusion to the public, the Bills Committee had reservation about the arrangement. After discussion, the Administration has revised the proposal so that special purpose vehicles will only be authorized as deposit-taking companies but not restricted licence banks. The Administration is of the opinion that the scope of business of the existing deposit-taking companies is already very diverse, as such, no confusion would be caused to the public even if these companies are involved in a new type of business such as the issue of MPCs. The Administration will move an amendment to reflect the new arrangement at the Committee stage.

Regarding the criteria for approval, the Administration has assured Members that all entities, banks and non-banks alike, if approved to issue MPCs, will be subject to the same requirements in respect of card security, card issuing

procedures and fund management, and so on. To ensure that all potential issuers are aware of the criteria for approval, the Administration has agreed to the Bills Committee's suggestion that the conditions should be clearly spelt out in the "Guideline to Applicants". The Bill also provides that any person aggrieved by a decision of or any condition specified by the Monetary Authority, may appeal to the Governor in Council. Members are of the view that unreasonable anti-competition practices among card issuers should be prohibited so as to prevent the emergence of a monopolized market. The Administration has promised that it will prevent any anti-competition practices, and will further discuss with the card issuers the relevant measures.

The Administration has decided not to include the single-purpose cards in the proposed regulatory framework because such kind of cards is similar to pre-payment of goods or services and has nothing to do with the conventional banking activities. To deal flexibly with some limited-purpose cards such as those issued by public transport service operators, the HKMA will be given power to exempt certain stored-value cards from regulation. To qualify for exemption, the issuers need to demonstrate that the card schemes concerned are financially sound. The Administration has already proposed that the value that can be stored on these cards should have a maximum limit, and that such cards should only be used for a limited range of purposes and the core use of such cards must be related to the business of the issuer. If the cards are to be extended to other ancillary uses, there must be a business synergy between the core uses and the ancillary uses. The Bills Committee has mixed views on the exemption criteria proposed, considering chiefly that there may be practical difficulties in defining the core uses and ancillary uses of such cards.

To simplify the exemption procedures, some Members have suggested that stored-value cards below a certain maximum value should be automatically exempted from regulation. The Administration argues, however, that automatic exemption based solely on the value of the card will not be in the interest of the public, as the risk of bankruptcy exists irrespective of the value of the card. While Members do not object to the Administration's approach, we have asked the Administration to ensure that the exemption criteria can be reasonably applied to different non-bank entities, as there may be other schemes going to be introduced into the market. The HKMA has agreed to further discuss this aspect with the prospective issuers.

The Bills Committee has also discussed the protection afforded to

consumers, in particular the redemption of unused value of the cards. The Administration has clarified that stored-card of the Mondex scheme is similar to banknotes and the originator will redeem any unused value. The HKMA will also require the Mondex scheme to have investments in high quality assets so as to ensure that it has the ability to redeem such value. As regards the cards originated and issued by a bank such as the Visa/MasterCard, the nature of the stored value is similar to deposits and will be accorded priority treatment in case of liquidation. To remove any uncertainty in this respect, the Administration has accepted the views of the Bills Committee and will introduce an amendment to include a deeming provision at the Committee stage, so that such stored value will be given priority payment in the case of the bank's liquidation under section 265(1)(b) of the Companies Ordinance.

The Bills Committee has also noted that electronic money under the Mondex scheme is similar to the issuing of banknotes and therefore might have significant impacts on the amount of money in circulation and the pegged exchange rate. Once the majority part of the local currency has become electronic money that is not supported by any foreign currency, it would be more difficult to tackle the speculators and to maintain the pegged exchange rate at the same time. The Government should therefore monitor closely its development and, if necessary, require the card issuers to pay the HKMA foreign exchange as support just like the banknote issuers do.

The Bills Committee has sought clarification from the Administration regarding the security arrangements of the multi-purpose card schemes, and is assured that elaborated security measures will be put in place by the card operators to prevent fraud and forgery. The Bills Committee also notes that counterfeiting of electronic value and fraudulent uses of such value are offences under the Crimes Ordinance and the Theft Ordinance.

With regard to the introduction of a legal framework to regulate money brokers, the Administration has explained that the legal framework was proposed in response to the request made by the industry itself. The HKFEDBA has found self-regulation difficult because of the lack of statutory protection for it to exercise disciplinary actions.

The Bills Committee is concerned that there should not be any unnecessary barriers that might restrict entry of newcomers as money brokers. In this connection, the Administration has accepted our views and will move an



amendment at the Committee stage to withdraw the original proposal that requires all money brokers to join the HKFEDBA.

On the definition of money brokers, Members have agreed that it should be revised to cover both voice brokers and electronic brokers, including those operating overseas for clients in Hong Kong.

Concerning the issue that over-regulation may inhibit the trade, Members consider that there should not be excessive restrictions on the operation of money brokers. The Administration stresses that the proposed authorization criteria are only general and minimum requirements to ensure that the management is fit and proper and that the business is being operated prudently.

This sums up the main issues discussed by the Bills Committee. Mr President, on behalf of the Bills Committee, I ask this Council to support the Bill and the Committee stage amendments to be moved by the Secretary for Financial Services, including the Chinese text of the Bill.

Thank you.

**DR DAVID LI:** Mr President, on behalf of the Finance Constituency, which I represent, I welcome the Banking (Amendment) Bill 1996.

The Hong Kong Monetary Authority (HKMA) has consulted widely with members of the Finance Constituency, including the Hong Kong Association of Banks. We are pleased to note that the views of the industry have been taken into account.

As a result, I believe the Bill is beneficial to the industry. It offers timely provisions in two particular areas — the regulation of so-called "smart cards", and improved regulation of money brokers.

Multi-purpose stored-value cards, or "smart cards", represent purchasing power, and they therefore provide an alternative payment instrument to cash or current accounts.

We need to ensure widespread confidence in the functionality and the

integrity of the smart card system. We also need to ensure that the system is secure, and cannot be used for illegal purposes, such as money laundering.

The Bill also contains provisions for the regulation of money brokers providing broking services for foreign exchange and deposit transactions.

The activities concerned are currently supervised by the Hong Kong Foreign Exchange and Deposit Brokers Association and the Hong Kong Association of Banks.

The regulatory framework provided by this Bill is, in my view, more appropriate. The Bill empowers the HKMA to approve applications from persons wishing to establish money broking businesses in Hong Kong.

The Authority will also have the power to monitor brokers' compliance with the existing code of conduct and guidelines on market practices.

These provisions will help to ensure a high standard of integrity and fair dealing in the market, in accordance with the spirit of the Banking Ordinance and the wishes of the whole banking industry.

Mr President, the stability and integrity of our monetary and financial system are essential to the continued success of Hong Kong.

In its consultations with the banking industry, the HKMA has, once again, demonstrated a constructive and co-operative approach to maintaining and furthering the quality of our regulatory environment.

It is my opinion that this Bill serves the interests of the banking industry and our community.

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

**SECRETARY FOR FINANCIAL SERVICES:** Mr President, the Banking

(Amendment) Bill 1996 seeks to provide a legal framework for the regulation of the issue of multi-purpose stored-value cards and of foreign exchange and deposit brokers operating in the wholesale market. The Bill also streamlines the appeal and penalty provisions.

I am very grateful to the Chairman of the Bills Committee, Dr the Honourable HUANG Chen-ya, and members of the Committee for their careful and meticulous consideration of the Bill. I would also like to thank the Hong Kong Association of Banks and the Hong Kong Foreign Exchange and Deposit Brokers Association for their useful comments on the Bill. The amendments to be moved at the Committee stage are the product of dialogue in a series of meetings between the Administration, the Bills Committee, the banking and money-broking industries and prospective issuers of stored-value cards over the past few months.

When the Bill was introduced into this Council last year, I said that the Administration would study Members' suggestion of limiting the maximum value that can be stored on single-purpose stored-value cards as a means to protect cardholders. We have concluded that the regulation of single-purpose stored-value cards, which is in fact similar to pre-payment for goods and services, is outside the scope of the Banking Ordinance. It has little to do with the traditional banking supervisory concern of protecting the stability of the banking and payment system. With the agreement of the Bills Committee, we have decided not to include the regulation of this kind of card in the Bill.

The Bills Committee considered that there should be adequate protection for the funds pre-paid by cardholders in the event of the liquidation of a bank issuer of stored-value cards. In fact, in the case of cards where the value is originated and issued by the bank itself, the nature of the stored value issued is similar to deposits. We agree with the Bills Committee that such stored value should be given similar protection to deposits and should thus receive priority payment in the case of the bank's liquidation. I will be moving an amendment to include a new deeming provision to remove any uncertainty in this regard.

Under the existing Bill, special purpose vehicles, the principal business of

which, consists of issuing or facilitating the issue of multi-purpose stored-value cards may apply for authorization as a restricted licence bank or deposit-taking company. The Bills Committee was concerned that such an arrangement might cause confusion. To address this concern, I will move an amendment to provide that a special purpose vehicle should only be authorized as a deposit-taking company.

Another point raised by the Bills Committee was that there should be fair competition among issuers of stored-value cards, and that issuers should be prohibited from unreasonable anti-competition practices. The Administration fully endorses this principle. It has been our policy to support healthy competition and to maintain a level playing field for market participants. The Monetary Authority will formally bring this to the attention of the banking industry and all authorized or exempt issuers of multi-purpose stored-value cards.

The existing Bill provides for the Monetary Authority to exempt certain issuers from authorization. The Bills Committee emphasized the importance of allowing non-bank entities to issue stored-value cards and to improve the efficiency of their services without compromising the integrity of the payment system. We fully agree with this principle. The Monetary Authority is now formulating the detailed exemption criteria in the light of the principle and will consult potential non-bank issuers. The criteria will be published in the form of guidelines to applicants. We will review the exemption policy from time to time in the light of prevailing circumstances.

The Bill proposes that all money brokers will be required to take up membership of the Hong Kong Foreign Exchange and Deposit Brokers Association so that all money brokers will be subject to the Code of Conduct to be issued by the Association. The Bills Committee considered that this arrangement might restrict entry of newcomers as money brokers. I will be moving an amendment to provide that a money broker approved by the Monetary Authority need not be a member of the Association and the Monetary Authority will issue a guideline on the Code of Conduct which will apply to all money brokers approved by the Monetary Authority.

Mr President, I will also move a number of other detailed amendments of a more technical nature to improve the provisions of the Bill. With these remarks,

I commend the Bill to Members.

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

Bill read the Second time.

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

## **EMPLOYEES RETRAINING (AMENDMENT) BILL 1996**

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

**MISS CHAN YUEN-HAN** (in Cantonese): Mr President, today we have the resumption of debate on the Second Reading of the Employees Retraining (Amendment) Bill 1996. This Bill seeks to amend the present Employees Retraining Ordinance to enable new immigrants to take part in the retraining programme. This is also the objective which the Hong Kong Federation of Trade Unions (FTU) and the Democratic Alliance for the Betterment of Hong Kong (DAB) have been trying to achieve. We believe that the proposed amendments are both correct and appropriate. The reason is very simple. In the past, the FTU and the DAB have made a lot of proposals on how to enable new immigrants to give full play to their abilities and how to help them turn negative factors into positive factors in time of adversities. All these require the Government to draw up plans to assist them in social integration and securing employment.

In mid-1996, the DAB conducted a survey on new immigrants and the findings revealed that they faced a lot of difficulties when trying to seek employment. These difficulties include their unfamiliarity with the Hong Kong environment and their lack of local working experience. We also noted that while they found the skills they possessed not needed in Hong Kong, they also found no mechanism which could help them in their adaptation. I also notice that language poses yet another barrier when they are seeking employment. What is more, when new immigrants arrive in Hong Kong, they are but total strangers who do not know what opportunities there are, so it is very difficult for them to get any jobs. As a result, the DAB and the FTU have repeatedly asked the Government to accommodate new immigrants in our existing systems so that

they can learn some vocational skills, adapt themselves to the circumstances of Hong Kong and become psychologically prepared for a new life. That is why I have always hoped that the institutions concerned can give them retraining opportunities.

Today, the Government has responded to the community's demands by seeking to amend the relevant parts of the Ordinance. This we welcome very much. However, Mr President, I would like to say something more. I hope that the Government's amendments today have not come as a result of the repeated requests by some organizations. We hope that the Government will cease to adopt a stop-gap approach to the problem. Why do I say so? The reason is simple: As reflected in the consultation paper today or the relevant consultancy study, whenever the Government discusses the Employees Retraining Ordinance or the work of employees retraining, it will invariably establish a premise first before it conducts a comprehensive study. So I am afraid that the Government's response is only due to the strong urge of the people. When the people's urge is not strong enough, however, the Government may defer handling the issue.

Why do I say so? According to a recent consultancy report on retraining and the Government's consultation paper today, the Government intends to grant only an additional \$500 million to the existing retraining programme. This sum of money is far smaller than what the people have asked for. There are now more than a million workers in Hong Kong, new immigrants included. At a time when Hong Kong is undergoing economic restructuring, they really need a forward-looking programme which can restore the distorted manpower situation and labour market in Hong Kong to normal. This requires the Government to draw up an integrated, comprehensive and systematic retraining programme.

However, the Government intends to grant an extra \$500 million only, behaving as if this is already an act of great benevolence representing a major reform. But in fact, this sum lags far behind the need of society. This is the first point I want to make. Second, the unemployed people in Hong Kong, or those who only manage to get jobs once in a while during this period of economic restructuring, are really in need of Government assistance. If the Government can give them a helping hand, they will certainly be able to tide over their difficulties.

The existing Comprehensive Social Security Assistance Scheme (CSSA)

run by the Government does not provide unemployment assistance to these people. That is precisely the reason why the Government has granted a weekly allowance of \$1,000 each to job seekers or unemployed workers enrolled in retraining courses so as to enable them to receive retraining without any financial worries.

Regrettably, the Government has suggested in the recent consultation paper that this allowance should be substituted by a "travel allowance", and that the amount should be reduced from \$1,000 to \$500 per week. Frankly speaking, the Government is simply trying to evade the problem by brushing aside the difficulties faced by the unemployed or underemployed people. This is our second comment on retraining.

Apart from the above, we can also see that the Government is adopting a short-term mentality. Given the current manpower situation in Hong Kong, we need an enterprising government. However, just how enterprising is the Government? The fact is that the Government wants to put all the responsibilities on the retraining organizations, and require them to find jobs for the trainees after providing retraining. If they fail to do so, the Government will reduce the funds granted to them in the future. What kind of logic is this?

Mr President, training organizations are after all just training organizations. Job placement service should be provided by other organizations, such as the Employment Services Division of the Labour Department. Why should the responsibility of providing job placement service be forced upon the retraining organizations? The recent actions of the Government all show that it has no intention to help the one million or so manufacturing and grassroots workers who are caught in a distorted labour market and human resources situation.

I hope that the Government will accept our advice and requests by including new immigrants in the retraining programme. We will greatly appreciate such action. We further hope that the Government will be more enterprising in really helping workers to get jobs when Hong Kong is experiencing structural unemployment.

Mr President, based on the above reasons, we hope that the Government will formulate a forward-looking and long-term plan. Although the Government is only taking some remedial measures, I will still support them and I also look forward to a more comprehensive plan.

Thank you, Mr President.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr President, the information provided by the Government shows that during the seven years from October 1989 to September 1996, over 250 000 new immigrants from China had come to Hong Kong on a one-way exit permit and settled down here. With all the differences in social and economic development between China and Hong Kong, most new immigrants encounter difficulties in integrating into our society and securing employment. In fact, these problems already surfaced years ago, and quite a number of front-line social workers have pointed out long time ago that the support measures provided by the Government for new immigrants are seriously insufficient. In spite of that, the Government still adopts an indifferent attitude and has not come up with any principle to solve these problems after much delay.

In the last one to two years, the difficulties faced by new immigrants from China are getting and more severe. And only after the general public have become more and more concerned about these problems does the Government slowly start to gather data and study solutions. This shows a lack of foresight which is characteristic of the Administration on social problems and problems relating to people's livelihood.

From 31 January last year when the Honourable LAW Chi-kwong moved the motion debate on the policy on new immigrants till now, almost a whole year has passed before the debate on the Second Reading of the Employees Retraining (Amendment) Bill 1996 is resumed. Only now do new immigrants from China have the opportunity to take retraining courses. It can be seen from this what the efficiency of the Government is like. However, "it is always better late than never". Therefore, I welcome and support this Bill.

However, I must also point out that relaxing the requirements to allow new immigrants to take retraining courses is only a first step to overcome the difficulties of new immigrants to find jobs. At present, there are still a lot of work to be dealt with. They include:

Firstly, the retraining courses must cater for the practical needs of new immigrants, especially the needs arising from the differences in language and



cultural background. I hope that the Administration will not take these adaptation courses as psychological counselling and turn the purpose of these courses into persuading new immigrants to accept their roles as second class citizens and second class labourers;

Secondly, the retraining courses must be tailored to the needs of their work, otherwise, it will only result in mismatching and a waste of resources, and what new immigrants have learnt would not be applied, leaving their difficulties in finding jobs untackled;

Thirdly, the Administration should draw up other complementary measures to enable new immigrants who have completed the courses to find suitable jobs earlier, so that they will not be left in a situation like that in the past where workers still could not find any job after completing the courses, wasting our resources and making those who have completed the courses disappointed.

Mr President, I appeal to the Administration that it should stop using the pretext of "the demand is great but the resources are limited" to shirk its responsibility in regard to the difficulties of new immigrants in finding jobs. What is more, we should not regard new immigrants as second class labourers. We must not think that providing them with the minimum support and assigning them to some lowly positions would solve the problems of new immigrants. In fact, if new immigrants are in the lowest and most unfavourable positions for long, this would lead to extremely serious structural division in our society, and sow the seeds of social instability. I hope that the Administration can earnestly review the situation and work out a long-term strategy, so that new immigrants can really integrate into our society and get jobs.

Mr President, these are my remarks.

**MR LEE CHEUK-YAN** (in Cantonese): Thank you, Mr President. The labour sector has long been fighting for the inclusion of new immigrants in the retraining programme. Thus, the Confederation of Trade Unions (CTU) welcomes this proposal by the Government. However, due to some unknown reasons, every time the Government does something good, it will just do something bad to offset it, turning the good thing into something bad. Why do I say so? The good thing done by the Government this time is that it has

extended the scope of the retraining programme, giving the new immigrants a chance to receive retraining.

As far as I know, the Employees Retraining Board will hold a meeting next week to design some curricula to help new immigrants to adapt to the job market in Hong Kong. It is hoped that as much investment can be made on them as possible so that they can be incorporated into the work force. Why then do I say that a good thing is turned into something bad? This is because the Government has at the same time done something bad to divide our society. What I am most dissatisfied with is that while making this programme available to new immigrants, the Government is saying to local workers, "In future, your allowance for retraining will be halved." Apart from this remark, the Government is also telling local workers that their evening and half-day training courses in basic skills will be transferred to the Vocational Training Council, without specifying whether the Council will accept this or not, not to mention in what way the Council is going to accept it.

In so doing, it gives people the impression that while on the one hand the Government is cutting the allowance, it is also cutting the number of courses on the other. Local workers will say, "Oh! You are giving the resources to new immigrants!" In an open forum which I attended, some workers approached me and said, "We have been in Hong Kong for so many years. Why is the Government cutting our allowance and courses and giving them to the new immigrants instead?" I feel very sad: They all are workers, human beings, and they all have their needs. Why do we have to create a confrontation between local workers and new immigrants? I think that is not necessary at all. They all have to look for jobs and they all wish to continue to contribute to society. They hope that society will be prosperous and they can all have a share of it. The situation however turns out to be that the Government is making local workers feel that all the resources have been transferred to the new immigrants and so resources for local workers have to be cut.

In fact, the new immigrants will also need to have retraining allowance in future and they also will be victimized. So, be the new immigrants or local workers, they are still workers who will be affected by suggestions contained in another part of the consultative document on retraining and be victimized. I am therefore of the opinion that while the Government has in this consultative document extended the scope to benefit the new immigrants, it has cut retraining for local workers. I find this very disappointing as it undoubtedly divides society and brings about confrontation.

On the other hand, however, I somehow feel that the Government is trying to tell the community that it is committed in this respect: "We are now making a one-off grant of \$500 million." I remember the Deputy Secretary for Education and Manpower once said at a meeting, "Afterall, you people in the CTU are only suggesting \$500 million." However, the \$500 million I talked about is an annual figure whereas their \$500 million is a one-off grant. There is in fact a big difference between the two. If we are looking at a one-off grant of \$500 million for up to the year 2001, the annual figure will only stand at \$270 million, which is just \$20 million more than the present \$250 million. There is actually no increase in resources. Notwithstanding this, we have to take on extra work to help the new immigrants.

Given the limited resources, the Government is giving people the impression that resources are being transferred from local workers to the new immigrants. I would like to emphasize once again that I do not think it is right for us to refer to them either as local workers or new immigrants. New immigrants are also local workers and they all belong to the same family. I do not want to see them being divided. I further hope that the Government will not make just a one-off grant in respect of resources, giving people the feeling that it does not have a long-term commitment. What I want from the Government is that it will tell me the next time that it is accepting CTU's suggestion of spending \$500 million annually instead of making a one-off grant of \$500 million.

Thank you, Mr President.

**MR LAW CHI-KWONG** (in Cantonese): Mr President, the Democratic Party has all along supported and longed for the extension of the scope of the employees retraining scheme to include new immigrants. Moreover, the Democratic Party strongly supports the Bill this time. Recently, the Employees Retraining Board expressed that it would consider extending the scope of the retraining scheme to enable new immigrants below the age of 30 to receive retraining. In principle, we consider that this proposal greatly deserves our consideration as many of the new immigrants, after their arrival, are faced with the problem of lacking the skill they need in order to work here instead of the problem of age. In the past, they might be engaged in farming or some trades that do not exist in Hong Kong anymore. For this reason, retraining is of great

importance to them. On the other hand, I concur with the Honourable LEE Cheuk-yan that our fundamental concept still rests with a distinction between new immigrants and non-new immigrants in our system, thus resulting in division. Therefore, after the passage of the Bill today, we still need to review the whole retraining scheme to avoid, as far as possible, distinguishing between new immigrants and non-new immigrants again. We should instead regard all workers as local workers as the new immigrants, after arriving here, should all become local workers. Without such a distinction, the only problem remained will be the setting of priority. If age is a problem, it should then be seen as a factor for deciding the order of priority. It should not be regarded as a qualification for new immigrants to receive retraining. I hope the spirit of this Bill is to regard all new immigrants who have arrived in Hong Kong as Hong Kong residents. If they need retraining in the acquisition of vocational skill, they should be allowed to join the retraining programme regardless of the number of years they have lived in Hong Kong. Moreover, as far as priority is concerned, they should also be treated equally. I hope that the spirit of this Bill will permeate the whole retraining scheme in its improvements and reviews in the future.

Thank you, Mr President.

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Mr President, first of all, I would like to thank Members for supporting the Employees Retraining (Amendment) Bill 1996.

Many Members have spoken on this Government Bill and each of them supports it very strongly. This is indeed rare in this Council, and I hope that this will continue as a fine tradition. First, I want to assure the Honourable LAW Chi-kwong that both this Bill and our future retraining work are underpinned by the same spirit of according equal treatment to all eligible employees. That is why, if Members are observant, they will have noticed that we have actually avoided the use of the expression "new immigrants" in this Bill. Instead, the Bill has adopted a standardized term of "eligible employees", which refers to both local employees and all those people who are legally permitted to live and freely accept employment by any employers in Hong Kong. Immigrants from China who have come to settle down in Hong Kong are of

course included, and they can also apply for admission to retraining courses. In addition, all employees who take retraining courses or receive other retraining services in future will be accorded equal treatment, and this will also apply to the issue of "travel allowance," which was queried by some Members just now.

Just now, I listened to the many comments made by the Honourable Miss CHAN Yuen-han and the Honourable LEE Cheuk-yan on the consultation paper recently published by the Government on the review conducted by the Employees Retraining Board (ERB). I do not intend to engage myself in a lengthy debate here because all the government officials concerned, including myself, have already clearly explained our stance to Members both inside and outside the Legislative Council, and we will still have many opportunities to do so in future, both inside and outside this Council. Actually, our consultation period has just been extended for one month. So, the consultation period is not yet over. However, since many Members have still made so many comments today, I would like to assure Members that when the Government completes the consultation work in the near future, it will not consider the views on retraining only; but will also consider the opinions about the recent review conducted by the Vocational Training Council (VTC). We will consider these views all at the same time because we believe and fully agree that we should consider the policy direction of manpower training and retraining for Hong Kong as a whole, and that we must consider whether the ERB and the VTC are in fact performing any distinctive and separate roles. I can now assure Members that after the Government has considered all these views, it will certainly make a decision which it deems to be conducive to the overall and long-term interests of Hong Kong.

Therefore, I would like to reiterate that if the Bill is enacted, the ERB and related training institutions will immediately start to examine how to cope with the demand of new immigrants by introducing new contents to existing courses or organizing new courses under the retraining programme. Is an injection of \$500 million enough? I do not want to argue about this issue here, but I hope that when the Government applies for funding from the Finance Committee next month, Members will be as prepared as they are today to support the request of the Government.

Thank you, Mr President.

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

Bill read the Second time.

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

## **OZONE LAYER PROTECTION (AMENDMENT) BILL 1996**

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

**DR JOHN TSE** (in Cantonese): Mr President, the Democratic Party is in support of the Ozone Layer Protection (Amendment) Bill 1996.

Hong Kong has an international obligation to legislate, and even use more resources, to protect the ozone layer. The Democratic Party is in support of plugging the existing loophole in the legislation for the handling of anything seized without an owner.

The Democratic Party considers that the streamlining of administrative procedures and the setting up of the Administrative Appeals Board as mentioned in the amendments will help improve the protection of the ozone layer, particularly as the Government is also regulated. The Democratic Party is of the opinion that this is worth supporting.

All in all, the Democratic Party supports this amendment Bill that seeks to protect the ozone layer. Thank you, Mr President.

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

Bill read the Second time.

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

### **Committee Stage of Bills**

Council went into Committee.

### **ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL 1996**

Clauses 1 to 27 were agreed to.

Schedule was agreed to.

### **TSING MA CONTROL AREA BILL**

Clauses 1, 3 to 12, 16 to 26, 29, 30 and 31 were agreed to.

Clauses 2, 13, 14, 15, 27 and 28

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr Chairman, I move that the clauses specified be amended as set out in the paper circulated to Members.

I have already explained the reason for the proposed amendment to section 13 of this Bill in my speech during the resumption of Second Reading debate, and the other amendments are only technical and textual in nature, intended to make the clauses clearer.

Mr Chairman, I beg to move.

*Proposed amendments***Clause 2**

That clause 2 be amended, in the definition of "road" by adding at the end —

", and includes the road surface and adjacent pedestrian access (if any) of any viaduct, bridge (whether comprising one or more levels or decks) or tunnel".

That clause 2 be amended, in paragraph (b) of the definition of "裝置", by deleting "信號儀器" and substituting "訊號".

**Clause 13**

That clause 13(1) be amended —

- (a) by deleting paragraph (a).
- (b) by deleting "(a)".

That clause 13(2) be amended —

- (a) in paragraph (b) by deleting ", address and proof of his identity" and substituting "and address".
- (b) in paragraph (c)(ii) adding "where that information is within his knowledge" at the end.

That clause 13(2)(a) be amended, by deleting "信號" wherever it appears and substituting "訊號".



That clause 13(3) be amended, by deleting "信號" wherever it appears and substituting "訊號".

That clause 13 be amended, by adding —

"(2A) For the purpose of regulating vehicular and pedestrian traffic, an authorized officer may within the Area order, direct or signal the driver of a vehicle -

(a) to stop the vehicle forthwith; or

(b) to proceed to any place within the Area so ordered, directed or signalled and to stop thereat."

That clause 13(2)(e) be amended, by adding "或保管" after "羈押".

That clause 13(3) be amended, by adding "or (2A)" after "(a)".

## **Clause 14**

That clause 14(1) be amended —

(a) in paragraph (a) by adding "of" after "83".

(b) in paragraph (d) by adding "an" before "authorized officer".

That clause 14(2)(a) be amended, by deleting ", address and proof of his identity" and substituting "and address".

## **Clause 15**

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

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

### **Clause 27**

That clause 27(2)(a) be amended, by deleting "信號" wherever it appears and substituting "訊號".

That clause 27(2)(b) be amended, by deleting "信號" wherever it appears and substituting "訊號".

That clause 27(2)(i) be amended, by deleting "thereof" and substituting "with that road".

That clause 27(2)(u) be amended, by deleting "信號" wherever it appears and substituting "訊號".

That clause 27(2)(v) be amended, by deleting "信號" wherever it appears and substituting "訊號".

### **Clause 28**

That clause 28(1) be amended, by deleting "關乎" where it twice appears and substituting "涉及".

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 2, 13, 14, 15, 27 and 28, as amended, put and agreed to.*

New clause 32

Amendment to Road Tunnels  
(Government) Ordinance

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

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr Chairman, I move that the new clause 32 as set out in the paper circulated to Members be read the Second time.

The purpose of this new clause is to amend section 11 of the Road Tunnels (Government) Ordinance. This section is the blueprint of clause 13 of the Bill, and I have already explained the reason for the amendment in my earlier speech.

Mr Chairman, I beg to move.

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

Clause read the Second time.

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr Chairman, I move that the new clause 32 be added to the Bill.

*Proposed addition*

**New clause 32**

That the Bill be amended, by adding —

**"32. Amendment to Road Tunnels  
(Government) Ordinance**

Section 11 of the Road Tunnels (Government) Ordinance (Cap. 368)  
is amended -

(a) by repealing subsection (1)(a);

(b) in subsection (1) by adding at the end -

"as may be appropriate in respect of the particular purposes or circumstances described in paragraph (b) or (c)";

(c) in subsection (2)(c)(ii) by adding "where that information is within his knowledge" at the end;

(d) by adding -

"(2A) For the purpose of regulating vehicular and pedestrian traffic, an authorized officer at any tunnel may order, direct or signal the driver of a vehicle -

(a) to stop the vehicle forthwith;  
or

(b) to proceed to any place at the tunnel so ordered, directed or signalled and to stop thereat.";

(e) in subsection (3) by adding -

(i) "or (2A)" after "(a)";

(ii) "(b) or" before "(c)".

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

Schedule was agreed to.

Long title

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr Chairman, I move that the long title of the Bill be amended as set out in the paper circulated to Members.

The purpose of the amendment is to modify the long title so as to reflect the amendment I previously proposed to clause 11 of the Road Tunnels (Government) Ordinance.

*Proposed amendment*

**Long title**

That the long title be amended, by adding at the end —

"and to make a related amendment to the Road Tunnels (Government) Ordinance".

*Question on the amendment proposed, put and agreed to.*

## **COMPANIES (AMENDMENT) BILL 1996**

Clauses 1, 2, 3, 5, 7 to 30, 32 to 42, 44 to 55 and 57 to 67 were agreed to.

Clauses 4, 6, 31, 43 and 56

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

The amendments to clauses 4 and 31 relate to the deregulation of forms.

Clause 4 provides that the Registrar may specify a form in relation to any purpose of the Ordinance. The amendment to clause 4 limits the power of the Registrar to specify additional particulars contained in a form to those that are ancillary or incidental to the purpose for which the form is to be used.

Similarly, the amendments to clause 31 prevent the Registrar from seeking information outside a specified form and, in response to certain representations made on the Bill, also clarify that the exemption from the need to file their accounts with their annual returns currently enjoyed by private companies under section 109 of the Ordinance, will not be affected by the Bill.

Clause 6 is amended to clarify that if a company chooses to have objects or to specify restrictions upon its actions in its memorandum or articles of association, then it may not act contrary to these. It further provides that a member of a company may bring proceedings to restrain acts in contravention of the limitations imposed by the memorandum or articles. However, in order to ensure that third parties dealing with a company are protected, it is also made clear that such proceedings may not prevent a company from fulfilling its legal obligations.

The amendment to the new section 5C widens the scope of the provision that excludes the application of constructive notice to cover returns or resolutions lodged with the Registrar of Companies in addition to the contents of memoranda and articles of association. The amendments to clause 56 are consequential to the amendments made to clause 6.

The amendment to clause 43 helps to remove an apparent inconsistency in the definition of the term "commencement of the winding up of the company" under sections 264A and 264B of the Ordinance and section 184. In the event of there being a surplus after all debts have been paid off, the calculation of interest on these debts will instead be tied to the occurrence of certain specific events in relation to the winding up of the company.

Mr Chairman, I beg to move.

### *Proposed amendments*

#### **Clause 4**

That clause 4 be amended, in the proposed section 2A —

- (a) in subsection (1) -
  - (i) in paragraph (b) by deleting the full stop and substituting a comma;
  - (ii) by adding "and any such form may contain any particulars ancillary or incidental to that purpose." after paragraph (b);
- (b) by deleting subsection (3).

## Clause 6

That clause 6 be amended —

- (a) by deleting the proposed section 5B(1) and substituting -

"(1) A company -

- (a) whose objects are stated in its memorandum shall not carry on any business or do anything that it is not authorized by its memorandum to carry on or do; and
- (b) shall not exercise any power which is expressly excluded or modified by its memorandum or articles, contrary to such exclusion or modification.

(1A) A member of a company may bring proceedings to restrain the doing of an act in contravention of subsection (1); but no such proceedings shall lie in respect of an act to be done in fulfilment of any legal obligation arising under a

previous act of the company."

- (b) in the proposed section 5C by adding "or a return or resolution lodged with him" after "Registrar".

### **Clause 31**

That clause 31 be amended, in the proposed section 107 —

- (a) in subsection (1) -
  - (i) by adding "and section 109" after "section";
  - (ii) by deleting ", matters or information as the Registrar may specify" and substituting "as specified therein";
- (b) by deleting subsection (2);
- (c) in subsection (3) by deleting "powers of the Registrar under subsection (1) and the generality of that subsection" and substituting "generality of subsection (1)";
- (d) in subsection (8) by deleting ", particulars or information" and substituting "or particulars".

### **Clause 43**

That clause 43 be amended —

- (a) in the proposed section 264A -
  - (i) in subsection (2) by deleting "since the commencement of the winding up of the company" and substituting -

", in the case of -

    - (a) a winding up by court -



- (i) where the company has by special resolution resolved that the company be wound up, since the date of the resolution; and
  - (ii) in any other case, since the date of the winding-up order; and
- (b) a voluntary winding up, since the commencement of the winding up (which must be construed having regard to section 228A(3)(a) or 230, as may be appropriate)";
- (ii) by deleting subsection (5).
- (b) in the proposed section 264B(2) by deleting "the commencement of the winding up of the company" and substituting -
  - ", in the case of -
    - (a) a winding up by court -
      - (i) where the company has by special resolution resolved that the company be wound up, the date of the resolution; and
      - (ii) in any other case, the date of the winding-up order; and
    - (b) a voluntary winding up, the commencement of the winding up (which must be construed having regard to section 228A(3)(a) or 230, as may be appropriate)".

## Clause 56

That clause 56(a)(ii) be amended, in the "Note" by adding "but that paragraph

can be adapted or modified to contain any statement restricting or excluding objects" after "stated".

That clause 56(c)(ii) be amended, in the "Note" by adding "but that paragraph can be adapted or modified to contain any statement restricting or excluding objects" after "stated".

That clause 56(d)(ii) be amended, in the "Note" by adding "but that paragraph can be adapted or modified to contain any statement restricting or excluding objects" after "stated".

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 4, 6, 31, 43 and 56, as amended, put and agreed to.*

#### **BANKING (AMENDMENT) BILL 1996**

Clauses 1 to 25

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

The definition of "dealing service" is added to capture the mode of operation of electronic brokers. This puts it beyond doubt that the legal framework for regulating money brokers applies to both voice brokers operating in Hong Kong and electronic brokers who provide services to persons in Hong Kong. Comments received from market participants suggested that the current definition of "money broker" may not cover electronic brokers. To remove the uncertainty that electronic brokers who operate from overseas may not be covered by the current definition of "money broker" on the ground that they are not carrying on a business in or from Hong Kong, appropriate amendments are made to expand the definition of "money broker" to include persons who operate from overseas but provide money broking services to persons in Hong Kong. That relates to clause 3(b).

As regards clause 3(c), at the suggestion of the Bills Committee a new deeming provision is added to section 2(15) to put it beyond doubt that the stored value originated and issued by a bank will be accorded priority payment in

liquidation under section 265(1)(db) of the Companies Ordinance. In fact the effect of issuing stored value is simply to cause a shift from the liability of the bank as demand deposits to its liability for stored value. We considered that such stored value should be given similar protection as with deposits.

#### *Clause 6*

As I mentioned earlier, the Bills Committee considered that the arrangement for special purpose vehicles to apply for authorization as either a restricted licensed bank or deposit-taking company might cause confusion. To address this concern, section 15(3)(a) is amended to provide that a special purpose vehicle for issuing or facilitating the issue of multi-purpose cards should only be authorized as a deposit-taking company. As the scope of business of existing deposit-taking companies is diverse, there will not be confusion if certain deposit-taking companies are involved principally in the issue of multi-purpose stored-value cards.

#### *Clause 20*

Section 134B(1)(a) is amended to reflect the decision not to require electronic brokers to take up membership of the Hong Kong Foreign Exchange and Deposit Brokers Association, in the light of the Bills Committee's comment. The reason for requiring electronic brokers to take up membership with the Association was to ensure that they would conduct their business to high standards by complying with the Association's Code of Conduct. As this objective can be achieved by imposing a condition on all approved money brokers that they should adhere to a code of conduct specified by the Monetary Authority, we consider it unnecessary to require them to join the Association.

#### *Clause 24*

A provision is added to the Eleventh Schedule to provide that the Monetary Authority may rely on the opinion of a relevant overseas supervisor of a money broker in determining whether the money broker has satisfied any of the criteria set out in that Schedule. It mirrors the same provision in the Seventh Schedule which applies to authorized institutions under the Banking Ordinance.

#### *Clause 25*

Clause 25 makes a consequential amendment to section 2(2)(d) of the

Leveraged Foreign Exchange Trading Ordinance which exempts money brokers from licensing requirements. The amendment replaces the reference to "a member of the Hong Kong Foreign Exchange and Deposit Brokers Association" with "an approved money broker within the meaning of section 2 of the Banking Ordinance" to make the exemption logically linked to the approved status of money brokers under the Bill.

Amendments are also moved to introduce a Chinese text of all the 25 clauses in the Bill. Following gazettal of the authentic Chinese text of the Banking Ordinance on 4 October 1996, the Bill thereafter should be enacted bilingually and therefore providing the Chinese text for the Bill by way of Committee stage amendments is necessary.

The other amendments proposed are either technical or textual in nature. All the amendments have been agreed by the Bills Committee. Mr Chairman, I beg to move.

*Proposed amendments*

**Clause 1**

That clause 1 be amended, by adding the following as the Chinese text of the clause —

"1. 簡稱及生效日期

- (1) 本條例可引稱為《1996年銀行業（修訂）條例》。
- (2) 本條例自財經事務司以憲報公告指定的日期起實施。"

**Clause 2**

That clause 2 be amended, by adding the following as the Chinese text of the clause —

"2. 修訂詳題

《銀行業條例》（第155章）的詳題現予修訂 —

- (a) 廢除 “，並就” 而代以 “；就” ；
- (b) 廢除 “存款人和” 而代以 “存款人；” ；
- (c) 廢除 “運作” 而代以 “運作；就貨幣經紀的監管訂定條文；” 。

### Clause 3

That clause 3(a) be amended, by deleting "Schedule or at" and substituting "Schedule or with a period of".

That clause 3(b) be amended —

- (a) in the proposed definition of "money broker" -
  - (i) in paragraph (a), by deleting "of negotiating or arranging" and substituting ", or provides to persons in Hong Kong the service, of negotiating, arranging or facilitating";
  - (ii) in paragraph (a)(i)(B), by adding "or" at the end;
  - (iii) by deleting paragraph (a)(i)(C);
  - (iv) in paragraph (a)(iii), by adding ", or as the provider of a dealing service to," after "for";
  - (v) by deleting paragraph (b)(i) and substituting -
    - "(i) subject to paragraph (c), a person acting as a money broker where the person is so acting wholly ancillary or incidentally to a business carried on by the person which, if the business is, or were to be, carried on in or from Hong Kong, is not, or would not be, as the case

may be, the business of acting as a money broker; or".

(b) by adding -

""dealing service" means a service, whether or not offered in person or by electronic means or otherwise, whereby the persons to whom the service is provided are given the ability to quote bid or offer prices or rates -

(a) for the purpose of effecting an agreement of any type referred to in paragraph (a) of the definition of "money broker" (and whether or not any such agreement is effected); and

(b) which may be -

(i) accepted by any of those other persons to whom they are quoted; or

(ii) matched pursuant to the service;".

That clause 3(c) be amended —

(a) in the proposed section 2(15)(a) -

(i) by deleting "machine -" and substituting "machine or other device; and";

(ii) by deleting subparagraph (i).

(b) in the proposed section 2(15), by adding -

"(aa) where the issuer of a multi-purpose card is or was a bank, then any obligation -

(i) on the issuer to redeem or refund, or otherwise give

value for, any value which is or was stored on that card;  
and

- (ii) which is recorded, or which is required to be recorded,  
as a liability on the balance sheet of the issuer,

shall be deemed to be a deposit for the purposes of section  
265(1)(db) of the Companies Ordinance (Cap. 32);".

That clause 3 be amended, by adding the following as the Chinese text of the  
clause —

"3. 釋義

第 2 條現予修訂 -

- (a) 在第(1)款中，在“銀行業務”定義的(a)段中，廢除  
在“須在少於”之後的所有字句而代以“附表 1 第 1  
項指明的期間內付還，或須按短於該期間的短期通知  
期間或通知期間付還；”；
- (b) 在第(1)款中，加入 -

““多用途儲值卡”(multit-purpose card) -

- (a) 除(b)段另有規定外，指不屬  
單用途儲值卡的儲值卡；
- (b) 不包括根據第(14)(d)款在公  
告內宣布為不屬就本定義而  
言的儲值卡，亦不包括屬如  
此宣布為不屬就本定義而言  
的某類別儲值卡的儲值卡；

“交易服務”(dealing service)指不論是親身或  
藉電子方式或其他方式提供予某人的服  
務，而該人藉該服務具有能力出價投標或

提出價格或匯率 -

- (a) 以達成“貨幣經紀”的定義  
(a)段提述的任何類型協議  
(而不論任何該等協議是否  
達成)；及
- (b) 該投標、價格或匯率 -
  - (i) 可被屬報價對象的任何  
其他人接受；或
  - (ii) 可依據該服務而配  
對；

“核准”(approval) -

- (a) 就擬以貨幣經紀身分行事的  
公司而言，指根據第  
118C(1)(a)條核准公司以貨  
幣經紀身分行事；
- (b) 就貨幣經紀而言，指該貨幣  
經紀所持有的核准證明書；

“核准貨幣經紀”(approved money broker)指  
持有有效核准證明書的貨幣經紀；

“核准證明書”(certificate of approval)指根據  
第 118C(1)(a)條附於送達某公司的通知  
書的核准證明書；

“貨幣經紀”(money broker) -

- (a) 除(b)段另有規定外，指符合  
以下說明的人：該人為酬賞



(不論是以佣金、費用或其他方式)在香港或香港經營洽談、安排或促進(不論是以藉電子或其他方式)在其他人之間達成協議的業務，或向在香港的人士提供洽談、安排或促進(不論是以藉電子或其他方式)在其他人之間達成協議的服務，而 —

(i) 該等協議是關乎 —

(A) 作出任何貨幣存款；

(B) 購買或出售任何貨幣，而不論所購買或出售的貨幣是否將會立即予以收取或交付，或於未來任何時間或於發生任何未來事件後予以收取或交付；或

(C) 購買或出售任何票據或屬於某類別票據的任何票據，而該票據或該類別票據是根據第(14)(a)款在公告內宣布屬就本定義而言的

票據或某類別  
票據（視屬何情  
況而定）；

(ii) 上述其他人之一屬一  
間認可機構；及

(iii) 該人是作為不少於一  
名上述其他人的代理  
人或作為提供予不少  
於一名上述其他人的  
交易服務的提供者，  
而經營該業務或提供  
該服務；

(b) 不包括任何認可機構，而 -

(i) 除(c)段另有規定外，  
亦不包括任何以貨幣  
經紀身分行事的人，  
該人如此行事須是完  
全附屬或附帶於其所  
經營的業務，而該業  
務（如是在香港或從  
香港經營的話）不屬  
或（假若該業務在香  
港或從香港經營的  
話）不會屬以貨幣經  
紀身分行事的業務；  
或

(ii) 亦不包括根據第  
(14)(b)款在公告內宣  
布為不屬就本定義而  
言的人，以及屬如此  
宣布為不屬就本定義  
而言的某類別人士的

人；

- (c) 包括根據第(14)(c)款在公告內宣布為本定義(b)(i)段不適用的人，亦包括屬如此宣布為本定義(b)(i)段不適用的某類別人士的人；

“單用途儲值卡” (single-purpose card)指“儲值卡”定義(a)及(b)(i)段所提述的儲值卡；

“儲值卡” (stored value card) 指可以電子、磁力或光學形式儲存（或記錄）資料的任何卡（或相同的東西），而任何人為或就該卡向該卡的發卡人直接或間接支付一筆款項，以交換 -

- (a) 在該卡上該筆款項的價值的全部或部分儲存；及

- (b) (i) 該發卡人的承諾（不論是明示或默示的），承諾內容為在向該發卡人出示該卡時（不論是否還須作出某其他行動），該發卡人會提供貨品或服務（但不得包括金錢或金錢的等值）；或

- (ii) 該發卡人的承諾（不論是明示或默示的），承諾內容為在向該發卡人或某第三者出示該卡時（不論是否還須作出某其他行動），該發卡人或該第三者（視屬何情

況而定)會提供貨品或服務(可包括金錢或金錢的等值);”;

(c) 加入 -

“(11) 凡本條例提述某人(“促進人”)促進多用途儲值卡的發行(或意思相同的措詞),即指 -

(a) 促進由另一人(“發卡人”)發行該卡;及

(b) 藉由該促進人直接或間接或以電子或其他方式,向該發卡人提供有值代價而促進該卡的發行,而該代價的價值決定(不論是全部或部分)該發卡人就該多用途儲值卡而提供“儲值卡”定義所提述的承諾的範圍。

(12) 凡本條例提述任何認可機構(包括前認可機構)的事務、業務及財產,就根據第16(3A)(a)條獲批准或曾根據該條獲批准發行或促進發行多用途儲值卡的機構而言,該等提述須包括不論直接或間接產生自或可歸因於該項批准的該機構的任何事務、業務及財產。

(13) 凡金融管理專員已根據第22(1)條行使其權力提議撤銷某認可機構的認可,或所提議的某認可機構的認可的撤銷已按照第22(3)條生效,如該機構屬根據第16(3A)(a)條獲批准或曾根據該條獲批准發行或促進發行多用途儲值卡的機構,則第22(4)條經所有必需的變通後,須就任何下述款項實施 -

(a) 如屬由該認可機構或前認可機構(視屬何情況而定)發

行的多用途儲值卡的儲值卡，在“儲值卡”定義中提述的款項；或

- (b) 為促進多用途儲值卡的發行而支付給該認可機構或前認可機構（視屬何情況而定）的款項，

猶如任何該等款項為第 22(4)條提述的存款，而金融管理專員可就該筆存款行使根據第 22(4)條賦予他的權力（而該權力可據此行使）一樣。

(14) 金融管理專員可藉憲報公告並在該公告指明的條件（如有的話）規限下 -

- (a) 宣布某票據或某類別票據屬就“貨幣經紀”定義而言的票據或某類別票據（視屬何情況而定）；
- (b) 宣布某人或某類別人士不屬就“貨幣經紀”定義而言的貨幣經紀或某類別貨幣經紀（視屬何情況而定）；
- (c) 宣布某人或某類別人士屬“貨幣經紀”定義(b)(i)段不適用的人或某類別人士（視屬何情況而定）；
- (d) 宣布某儲值卡或某類別儲值卡不屬就“多用途儲值卡”定義而言的儲值卡或某類別儲值卡”定義而言的儲值卡或某類別儲值卡（視屬何情況而定）。

(15) 現宣布 -

(a) 在“儲值卡”定義中凡提述“出示”，即包括為以下目的使用儲值卡以操作機器或其他裝置 -

(i) 直接或間接取得由發卡人或第三者提供的貨品或服務或其任何組合，或直接或間接為該項提供付款；或

(ii) 直接或間接將金錢或金錢的等值轉移給另一人；

(ab) 凡多用途儲值卡的發卡人現時或以往是一間銀行，則符合以下說明的任何義務 -

(i) 該發卡人贖回、退還或以其他方式給予任何現時或曾經儲存於該卡上的價值的義務；而

(ii) 該義務是在該發卡人的資產負債表上記錄或須記錄為債務的，

須當作為就《公司條例》（第32章）第265(1)(db)條而言的存款；

(b) 凡本條例提述某人以貨幣經紀身分行事（或意思相同的措詞），即包括某人顯示自己為貨幣經紀；

- (c) 第(14)款所指的公告是附屬法例。

(16) 凡本條例提述任何持續的罪行，即指由某人的持續失責、拒絕或其他違反本條例的規定（不論如何描述）所構成的罪行，即使由或根據本條例指明的遵從該規定的期限已屆滿。”。

#### Clause 4

That clause 4 be amended, by adding the following as the Chinese text of the clause —

"4. 金融管理專員的職能

第 7(2)(c)條現予修訂，在“機構”之後加入“及貨幣經紀”。

#### Clause 5

That clause 5 be amended —

- (a) in the proposed section 14A(1), by deleting "16(9)(aa)" and substituting "16(9)".
- (b) by deleting the proposed section 14A(2) and substituting -

"(2) The provisions of sections 11, 12 and 14 shall not apply to or in relation to a sum of money -

- (a) referred to in the definition of "stored value card" in the case of a stored value card which -

(i) is a multi-purpose card; or

(ii) but for a declaration under section 2(14)(d), would be a multi-purpose card; or

- (b) paid for facilitating the issue of -

- (i) a multi-purpose card; or
- (ii) a stored value card which, but for a declaration under section 2(14)(d), would be a multi-purpose card,

if, but only if, the sum is paid, whether directly or indirectly, to -

- (i) an authorized institution which has the relevant approval referred to in subsection (1); or
- (ii) an issuer of a stored value card which, but for a declaration under section 2(14)(d), would be a multi-purpose card."

That clause 5 be amended, by adding the following as the Chinese text of the clause —

"5. 加入條文

現加入 -

“14A. 多用途儲值卡只可由  
認可機構發行等

(1) 除在連同第 16(9)條一併理解的第 16(5)條的規限下而根據第 16(3A)(a)條獲批准如此行事的認可機構(不屬當其時其認可已根據第 24 或 25 條暫停的認可機構)外,任何人不得 -

- (a) 發行多用途儲值卡;或
- (b) 促進多用途儲值卡的發行。

(2) 第 11、12 及 14 條不適用於符合以下說明的款項,亦不就符合以下說明的款項而適用 -



- (a) 就屬以下性質的卡而言，在“儲值卡”的定義中提述的款項 -
  - (i) 屬多用途儲值卡的儲值卡；或
  - (ii) 若非因第 2(14)(d)條所作的宣布本會屬多用途儲值卡的儲值卡；或
- (b) 為促進屬以下性質的卡的發行而支付的款項 -
  - (i) 多用途儲值卡；或
  - (ii) 若非因第 2(14)(d)條所作的宣布本會屬多用途儲值卡的儲值卡，

上述規定在以下情況下（並僅在以下情況下）適用 -

- (i) 該等款項已直接或間接支付予任何已獲第(1)款提述的有關批准的認可機構；或
- (ii) 該等款項已直接或間接支付予儲值卡的發卡人，而該儲值卡若非因第 2(14)(d)條所作的宣布本會屬多用途儲值卡。

(3) 任何人違反第(1)款，即屬犯罪；任何公司違反第(1)款，其每名董事及每名經理均屬犯罪 -

- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(4) 任何人訂立合約或安排或採用任何方法或計劃，其作用或所設計的作用是規避第(1)款的限制的，該人即屬犯罪 -

- (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。”。

### **Clause 6**

That clause 6 be amended, in the proposed section 15(3)(a), by deleting "or (c)".

That clause 6 be amended, by adding the following as the Chinese text of the clause —

"6. 認可的申請等

第 15 條現予修訂，加入 —

“(3) 如任何公司申請認可而 —

- (a) 第(1)(b)款適用；及
- (b) 其主要業務是或將會是發行或促進發行多用途儲值卡，

則可將該公司根據第 16(3A)(a)條獲批准發行或促進發行該等儲值卡的申請包括在內。”。

### **Clause 7**

That clause 7 be amended —

(a) in paragraph (f)(iii), by deleting "concerned;" and substituting "concerned;";

(b) by adding -

"(g) in subsection (10), by adding "this section and" after "imposed by".

That clause 7 be amended, by adding the following as the Chinese text of the clause —

"7. 認可的批給或拒絕等

第 16 條現予修訂 -

(a) 加入 -

“(3A) 凡金融管理專員已根據第 (1)(a)款認可任何公司，而第 15(3)條適用於該款提述的該公司的申請，則金融管理專員 -

(a) 可批准該公司發行或促進發行多用途儲值卡，但須受他認為於個別情況下附加於該公司的認可屬恰當的條件（如有的話）所規限；

(b) 在符合第(6)款的規定下，可拒絕如此批准該公司。

(3B) 任何銀行須當作根據第 (3A)(a)款獲批准發行或促進發行多用途儲值卡，而本條例其他條文須據此解釋（但不得損害第(9)(ac)款的實施。”；

(b) 在第(4)款中，在“任何公司”之後加入“或根據第

(3A)(b)款拒絕批准任何公司”；

(c) 在第(5)款中，在“第(1)(a)”之後加入“或(3A)(a)”；

(d) 在第(6)款中，在“某公司”之後加入“或根據第(3A)(b)款行使其權力而拒絕批准某公司”；

(e) 在第(8)款中，在“第(1)(a)”之後加入“、(3A)(a)”；

(f) 在第(9)款中 -

(i) 在“第(1)(a)”之後加入“、(3A)(a)”；

(ii) 在(a)段中，在“(視屬)”之前加入“，或經營發行或促進發行多用途儲值卡的業務”；

(iii) 加入 -

“(aa) 可就任何下述款項的掌管、維持、管理、使用及規管施加規定 -

(i) 如屬與該項認可有關的認可機構發行的多用途儲值卡的儲值卡，在“儲值卡”定義中提述的款項；或

(ii) 為促進多用途儲值卡的發行而支付給與該項認可有關的認可機構；

(ab) 就將(aa)段提述的款項從支付給該段提述的機構或由該機構收取的其他款項中分開而施加規定；

(ac) 如屬第(5)款的情況，可規定與該項認可有關的認可機構自該款所指的有關通知指明的日期起，停止任何以下作為

-

- (i) 發行或促進發行多用途儲值卡；
- (ii) (A) 就由其發行的任何多用途儲值卡而進一步取得在“儲值卡”定義中提述的任何款項；或
- (B) 為促進多用途儲值卡的發行而進一步取得款項；”；
- (g) 在第(10)款中，在“行使”之後加入“本條及”。”。

## Clause 8

That clause 8 be amended, by adding the following as the Chinese text of the clause —

### "8. 撤銷認可之程序及效力

第 23 條現予修訂 -

- (a) 在第(2)款中，廢除在“該機構”之後的所有字句而代以 -

“-

- (a) 須立即停止經營屬其被撤銷認可的標的之業務；及
- (b) 如根據第 16(3A)(a)條獲批准或曾根據該條獲批准發行或促進發行多用途儲值卡，須立即停止 -

- (i) (如是屬多用途儲值卡的儲值卡) 進一步取得在“儲值卡”定義中提述的任何款項；
  - (ii) 為促進該等多用途儲值卡的發行而進一步取得款項。”；
- (b) 加入 -

“(4) 凡有關認可機構的認可被撤銷的理由是該機構以書面要求金融管理專員撤銷其認可，則第(1)款不適用。”。

## Clause 9

That clause 9 be amended, by adding the following as the Chinese text of the clause —

"9. 暫停認可的效力

第 27(1)條現予修訂，廢除在“該日期起”之後的所有字句而代以 -

“ -

- (a) 停止經營屬其認可的標的之業務；及
- (b) 如根據第 16(3A)(a)條獲批准或曾根據該條獲批准發行或促進發行多用途儲值卡，停止 -
  - (i) (如是屬多用途儲值卡的儲值卡) 進一步取得在“儲值卡”定義中提述的任何款項；
  - (ii) 為促進該等多用途儲值卡的發行而進一步取得

款項，

除非與直至暫停認可期終止而沒有撤銷該項認可，亦沒有根據本部另延展暫停期。”。

## Clause 10

That clause 10 be amended, by adding the following as the Chinese text of the clause —

"10. 金融管理專員的權力

第 52(1)條現予修訂 -

(a) 廢除(c)段而代以 -

“(c) 金融管理專員認為 -

(i) 任何認可機構正以有損以下人士的利益的方式經營其業務 -

(A) 該機構的存款人或潛在存款人；

(B) 該機構的債權人；或

(C) 由該機構發行或促進發行的多用途儲值卡的持卡人或潛在持卡人；

(ii) 任何認可機構無力償債、相當可能會無能力履行它的義務或即將中止付款；

(iii) 任何認可機構已違反或沒有遵從本條例的任何條文；

- (iv) 任何認可機構已違反或沒有遵從根據第 16 條附加於該機構的認可或批准的任何條件、第 49(1)條指明的條件、第 50(1)條指明的條件、第 50(2)條指明的條件或第 51A(2)條指明的條件；或
  - (v) 他根據第 22(1)條提議撤銷某認可機構的認可的權力可予行使（而不論第 23(1)條是否已獲遵從）；或”；
- (b) 在(A)段中，在“（視屬”之前加入“，或經營發行或促進發行多用途儲值卡的業務”。”。

## Clause 11

That clause 11 be amended, by adding the following as the Chinese text of the clause —

"11. 認可機構的審查及調查等

第 55 條現予修訂，加入 -

“(4) 第(1)款在經必需的變通後，適用於任何核准貨幣經紀和就該貨幣經紀而適用，一如該款適用於任何認可機構和就該認可機構而適用一樣，而本條例其他條文須據此解釋。”。

## Clause 12

That clause 12 be amended, by adding the following as the Chinese text of the clause —



"12. 認可機構簿冊的交出等

第 56 條現予修訂，加入 -

“(4) 本條在經必需的變通後，適用於任何核准貨幣經紀和就該核准貨幣經紀而適用，一如本條適用於任何認可機構和就該任何機構而適用一樣，而本條例其他條文須據此解釋。”。

**Clause 13**

That clause 13 be amended, by adding the following as the Chinese text of the clause —

"13. 須向金融管理專員呈交的申報表及資料

第 63 條現予修訂 -

- (a) 在第(2)款中，在“進一步資料”之後加入“，或規定核准貨幣經紀呈交（包括定期呈交）他為根據本條例行使他的職能而合理規定的資料；
- (b) 在第(6)款中，在首度出現的“任何認可機構”之後加入“或任何核准貨幣經紀”。

**Clause 14**

That clause 14 be amended, in the proposed section 118C(7), by adding "this section and" after "imposed by".

That clause 14 be amended, by adding the following as the Chinese text of the clause —

"14. 加入第 XXA 部

現加入 -

“第 XXA 部

貨幣經紀

118A. 只有核准貨幣經紀可以貨幣經紀身分行事

- (1) 除核准貨幣經紀外，任何人不得以貨幣經紀身分行事。
- (2) 任何人違反第(1)款，即屬犯罪；任何公司違反第(1)款，其每名董事及每名經理均屬犯罪 -
  - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
  - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。
- (3) 任何人訂立合約或安排或採用任何方法或計劃，其作用或所設計的作用是規避第(1)款的限制的，該人即屬犯罪 -
  - (a) 一經循公訴程序定罪，可處第 8 級罰款及監禁 5 年；或
  - (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

118B. 核准的申請

任何公司擬以貨幣經紀身分行事，須向金融管理專員申請核准。

118C. 核准申請的決定

- (1) 在符合第(2)及(5)款的規定下，金融管理專員收到任何公司根據第 118B 條提交的申請後，可藉向該公司送達書面通

知 -

(a) 核准該公司以貨幣經紀身分行事 -

(i) 自按指明格式發出的附於該通知書的核准證明書所指明的日期（如有的話）起生效；及

(ii) 但須受他認為於個別情況下附加於該證明書屬恰當的條件（如有的話）所規限；或

(b) 拒絕如此核准該公司。

(2) 在不限第(1)(b)款的一般性的原則下，如在附表 11 指明的準則中，就該公司有任何一項或多於一項適用於或關於該公司的準則未予符合，則金融管理專員須根據該款拒絕核准該公司。

(3) 金融管理專員如根據第(1)(b)款拒絕核准任何公司，須以書面通知該公司 -

(a) 該項拒絕；及

(b) 拒絕的理由。

(4) 在不限第(1)(a)款的一般性的原則下，金融管理專員可於任何時間，藉向某核准貨幣經紀送達的書面通知，對該貨幣經紀的核准證明書附加他認為恰當的條件（包括藉修訂已附加於該證明書的條件而附加者），或按他認為恰當，取消任何已附加於該證明書的條件。

(5) 金融管理專員在根據第(1)(b)款行使其權力而拒絕核准某公司前，須給予該公司在金融管理專員以書面指明的期限內陳詞的機會，而該期限有所有情況下均屬合理的。

(6) 任何核准貨幣經紀違反根據第(1)(a)或(4)款對其核准證明書附加的任何條件，其每名董事及每名經理均屬犯罪 -

(a) 一經循公訴程序定罪，可處第 7 級罰款；或

(b) 一經循簡易程序定罪，可處第 5 級罰款，

如屬持續的罪行，可就罪行持續期間的每一日，另加第 2 級罰款。

(7) 為使謀求核准的公司有所遵循，金融管理專員可不時安排擬備並藉憲報公告刊登不抵觸本條例的指引，表明他擬行使本條及附表 11 向他授予或委予的職能的方式。

#### 118D. 核准的撤銷

(1) 在符合第(2)款及第 118E 條的規定下，金融管理專員可在諮詢財政司後，提議 -

(a) 以附表 12 指明而適用於某核准貨幣經紀或與該經紀有關的任何一項或多於一項理由；及

(b) 藉向該經紀送達的書面通知，

撤銷該經紀的核准。

(2) 如 -

(a) 任何核准貨幣經紀向金融管理專員送達書面通知，述明它不擬根據第 132A(5)條就其核准根據第(1)款被提議撤銷一事而提出上訴；

(b) 任何核准貨幣經紀就其核准根據第(1)款被提議撤銷一事在《行政上訴規則》（第 1 章，附屬法例）所指明的可根據第 132A(5)條提出上訴的期限已屆滿，但該經紀並沒有提出上訴；或

(c) 任何核准貨幣經紀根據第 132A(5)條就其核准

根據第(1)款被提議撤銷一事而提出的上訴並不成功，

金融管理專員須於其後在合理切實可行的範圍內，盡快藉向該經紀送達的書面通知，指明該項撤銷的生效日期（而該項核准即據此於該日期及由該日期起予以撤銷）。

#### 118E. 撤銷核准的程序及效力

(1) 除第(4)款另有規定外，金融管理專員在根據第 118D 條行使其權力而提議撤銷某核准貨幣經紀的核准前，須將提議撤銷核准的一項或多於一項理由通知該經紀，並須給予該經紀在金融管理專員以書面指明的期限內陳詞的機會，而該期限在所有情況下均須屬合理的。

(2) 如有提議撤銷某核准貨幣經紀的核准，則該項撤銷一經按照第 118D(2)條生效，該經紀須立即停止以貨幣經紀身分行事。

(3) 第(2)款的施行並不損害任何人向該款所提述的核准貨幣經紀（或前核准貨幣經紀）強制執行或以其他方式維護任何權利或權益，亦不損害該經紀向任何人強制執行或以其他方式維護任何權利或權益。

(4) 凡有關核准貨幣經紀的核准被撤銷的理由是該經紀以書面要求金融管理專員撤銷其核准，則第(1)款不適用。

#### 118F. 核准貨幣經紀須繳付的費用

(1) 核准貨幣經紀須在其獲核准日期後 14 天內，向庫務署署長繳付附表 2 指明的核准貨幣經紀的費用。

(2) 核准貨幣經紀須每年在其獲核准日期的周年日，向庫

務署署長繳付附表 2 指明的核准貨幣經紀續期費。”。

### Clause 15

That clause 15 be amended, by adding the following as the Chinese text of the clause —

"15. 公事保密

第 120 條現予修訂，加入 -

“(7) 第(5)(a)、(e)及(g)款適用於核准貨幣經紀及前核准貨幣經紀和就該等經紀而適用，一如其分別適用於認可機構及前認可機構和就該等機構而適用一樣，而本條例其他條文須據此解釋。”。

### Clause 16

That clause 16 be amended, by adding the following as the Chinese text of the clause —

"16. 認可機構的清盤

第 122(3)條現予修訂，廢除“第 271(1)條(d)、(e)、(h)、(i)、(j)、(k)、(l)及(o)段”而代以“第 271(1)(d)、(e)、(h)、(i)、(j)、(k)、(l)及(o)條”。

### Clause 17

That clause 17 be amended, by adding the following as the Chinese text of the clause —

"17. 費用、開支等的追討

第 131(1)(a)條現予修訂，廢除“或 51”而代以“、51 或

118F” 。 ”.

### Clause 18

That clause 18 be amended, by adding the following as the Chinese text of the clause —

"18. 須付予外匯基金的費用

第 131A 條現予修訂，在 “51” 之後加入 “、118F” 。 ”.

### Clause 19

That clause 19 be amended, in the proposed section 132A(1), by adding "withdrawal," after "refusal," where it twice appears.

That clause 19 be amended, by adding the following as the Chinese text of the clause —

"19. 加入條文

現加入 -

“132A. 上訴

(1) 任何人(不論如何描述)因以下事宜感到受屈 -

(a) 金融管理專員根據第 16(1)(b) 或 (3A)(b)、25(1)或(2)、44(5)、46(5)、49(5)、51A(5)、52(1)(A)、(B)或(C)或 (3A)、53G(7)或 118C(1)(b)條作出的決定；

(b) 金融管理專員根據第 16(1)(a)、(3A)(a)或(5)條附加於該人的認可的任何條件或根據第 118C(1)(a)或(4)條附加於該人的

核准證明書的任何條件；

- (c) 第 18(4)(c) 或 (5)、22(4)(c) 或 (5)、24(5)(c) 或 (6) 或 25(3)(c) 或 (4) 條所提述的附加於依據第 18(4)、22(4)、24(5) 或 25(3) 條（視屬何情況而定）給予該人的某項同意的任何條件；
- (d) 金融管理專員拒絕根據第 44(1)、46(1)、49(1)、51A(2) 或 69(1) 條批給批准；
- (e) 金融管理專員根據第 44(4)、46(4)、49(4) 或 51A(4) 條（視屬何情況而定）附加於根據第 44(1)、46(1)、49(1) 或 51A(2) 條作出的批准的任何規限條件；
- (f) 拒絕根據第 71(1) 或 73(1) 或 (1A) 條給予同意、根據第 71(1) 條附加於某項同意的條件、根據第 71(3) 條撤回同意或根據第 71(3) 條修訂附加於某項同意的條件；
- (g) 根據第 100(2) 或 104(2) 條送達予該人的通知書內的規定；
- (h) 根據第 101(1) 或 105(1) 條送達予該人的通知書內所載的資本充足比率或流動資金比率（視屬何情況而定）的更改，

可向總督會同行政局上訴，反對該項決定、條件、拒絕、撤回、規定或更改，但即使已經或可根據本款提出上訴，該項決定、條件、拒絕、撤回、規定或更改（視屬何種情況而定）仍即時生效。

(2) 任何認可機構因其認可根據第 22(1) 條被提議撤銷而感到屈，可向總督會同行政局上訴，反對所提議的該項撤銷。



(3) 任何人因金融管理專員決定向他送達 -

(a) 第 70 條所指的有條件同意通知書或反對通知書；

(b) 第 70A 條所指的反對通知書，

而感到受屈，可向總督會同行政局上訴，反對該項決定，但即使已經或可根據本款提出上訴，該項決定仍即時生效。

(4) 任何認可機構因第 95(1)條所指的通知書內的規定而感到受屈，可向財政司上訴，反對該項規定，但即使已經或可根據本款提出上訴，該項規定仍即時生效。

(5) 任何核准貨幣經紀因其核准根據第 118D(1)條被提議撤銷而感到受屈，可向總督會同行政局上訴，反對所提議的該項撤銷。

#### 132B. 本條例所訂罪行的罰款等級

凡本條例就某罪行（包括持續的罪行）藉提述某級罰款而訂定罰款，適用於該罪行的罰款即為附表 13 中就該級罰款而顯示的款額。”。

### Clause 20

That clause 20 be amended, by deleting the proposed section 134B(1)(a) and substituting —

"(a) each approved money broker which is a member of the Hong Kong Foreign Exchange & Deposit Brokers' Association, consult with that Association;".

That clause 20 be amended, by adding the following as the Chinese text of the clause —

"20. 加入條文

現加入 -

“134B. 金融管理專員對核准證明書  
附加條件前須作諮詢等

(1) 在行使根據第 118C 條對核准貨幣經紀的核准證明書附加任何條件（包括藉修訂已附加於該證明書的條件而附加者）的權力前，金融管理專員須作諮詢；如他提議將該條件附加於 -

(a) 屬香港外匯及存款經紀公會成員的每名核准貨幣經紀的證明書，則須諮詢該公會；

(b) 個別核准貨幣經紀的證明書，則須給予該經紀在金融管理專員指明的期限內陳詞的機會，而該期限在所有情況下均須屬合理的。

(2) 為免生疑問，現宣布根據第(1)款金融管理專員就該款提述的事情諮詢該款所提述的人士的任何規定的施行，不得阻止金融管理專員就該事情諮詢他認為適當的其他人士。”。

**Clause 21**

That clause 21 be amended, by adding the following as the Chinese text of the clause —

"21. 修訂附表的權力

第 135 條現予修訂 -

- (a) 在第(2)款中，在“附表 2”之後加入“或 13”；
- (b) 在第(3)款中，廢除“或 10”而代以“、10、11 或 12”。

## Clause 22

That clause 22 be amended, by adding the following as the Chinese text of the clause —

"22. 加入條文

現加入 -

“153. 與《1996 年銀行業（修訂）條例》  
有關的過渡條文

(1) 在本條中 -

“有關日期” (relevant day)指《1996 年銀行業( 條訂 )條例》( 1996  
年第 號 ) 的生效日期；

“有關期限” (relevant period)指緊接有關日期後的 3 個月期限。

(2) 凡任何人（如非有本條的規定）本可因沒有根據第 16(3A)(a)條獲批准發行或促進發行多用途儲值卡而被檢控犯第 14A(3)條所訂的罪行 -

(a) 在任何情況下，該人不得被如此檢控，直至 -

(i) 有關期限屆滿為止；或

(ii) 金融管理專員應該人於有關期限屆滿前向其提出的申請而藉書面通知所容許的延長期限屆滿為止；

- (b) 在該人於有關期限屆滿前根據第 15 條提出該條第(3)款適用的申請的情況下，該人不得被如此檢控，直至該人根據第 16(3A)(a)條獲批准發行或促進發行多用途儲值卡為止；
- (c) 在該人於有關期屆滿前提出(b)段所提述的申請而金融管理專員根據第 16(1)(b)或(3A)(b)條拒絕認可該人或拒絕批准該人發行或促進發行多用途儲值卡(視屬何情況而定)的情況下，該人不得被如此檢控，直至緊接該項拒絕後的 14 天期限屆滿為止；
- (d) 如(c)段適用，該人不得被如此檢控，直至金融管理專員應該人於該 14 天期限屆滿前向其提出的申請而藉書面通知所容許的延長期限屆滿為止。

(3) 金融管理專員可藉向第(2)款適用的任何人送達書面通知，規定該人按照符合以下說明的條件經營其發行或促進發行多用途儲值卡的業務 -

- (a) 金融管理專員根據本條例對任何根據第 16(3A)(a)條批准發行或促進發行多用途儲值卡的認可機構的認可所能附加的；
- (b) 與業務有關的；及
- (c) 在該通知書中指明的。

(4) 凡任何人(如非有本條的規定)本會因並非身為核准貨幣經紀但以貨幣經紀身分行事而被檢控犯第 118A(2)條所訂的罪行 -

- (a) 在任何情況下，該人不得被如此檢控，直至 -
  - (i) 有關期限屆滿為止；或

- (ii) 金融管理專員應該人於有關期限屆滿前向其提出的申請而藉書面通知所容許的延長期限屆滿為止；
  - (b) 在該人於有關期限屆滿前根據第 118B 條提出核准的申請的情況下，該人不得被如此檢控，直至該人根據第 118C(1)(a)條獲核准開始以貨幣經紀身分行事的日期為止；
  - (c) 在該人於有關期限屆滿前根據第 118B 條提出核准的申請而金融管理專員根據第 118C(1)(b)條拒絕核准該人以貨幣經紀身分行事的情況下，該人不得被如此檢控，直至緊接該項拒絕後的 14 天期限屆滿為止；
  - (d) 如(c)段適用，該人不得被如此檢控，直至金融管理專員應該人於該 14 天期限屆滿前向其提出的申請而藉書面通知所容許的延長期限屆滿為止。
- (5) 金融管理專員可藉向第(4)款適用的任何人送達書面通知，規定該人按照符合以下說明的條件以貨幣經紀身分行事 -
- (a) 金融管理專員根據本條例能附加於任何核准貨幣經紀的核准證明書上的；及
  - (b) 在該通知書中指明的。
- (6) 任何人違反根據第(3)或(5)款向其送達的通知書內所指明的規定，即屬犯罪；如該人為一間公司，則其每名董事及每名經理，均屬犯罪 -
- (a) 一經循公訴程序定罪，可處第 8 級罰款及

監禁 5 年；或

- (b) 一經循簡易程序定罪，可處第 5 級罰款及監禁 6 個月。

(7) 為免生疑問，現宣布 -

- (a) 根據第 132A 條提出的上訴不得影響本條的實施；
- (b) 凡任何人憑藉第(2)或(4)款的實施不須就某罪行負法律責任，他不得被檢控犯該罪行。“。”.

### Clause 23

That clause 23(b) be amended, in the right hand column opposite each of the proposed items 22 and 23, by adding "44,800".

That clause 23 be amended, by adding the following as the Chinese text of the clause —

"23. 費用

附表 2 現予修訂 -

- (a) 在開首的方括號內，在“109、”之後加入“118F、”；
- (b) 加入 -

“22. 核准貨幣經紀的費用  
(第 118F(1)條) . . . . . 44, 800

23. 核准貨幣經紀續期費  
(第 118F(2)條) . . . . . 44,800” 。

## Clause 24

That clause 24 be amended, in the proposed Eleventh Schedule, in paragraph 1, by adding —

"(4) Without prejudice to the generality of subparagraph (3), the Monetary Authority may regard himself as being satisfied in relation to any matter in respect of which he may be satisfied pursuant to the provisions of this Schedule where -

- (a) the matter directly or indirectly relates to a company incorporated outside Hong Kong;
- (b) the relevant money broker supervisory authority informs the Monetary Authority that it is satisfied in relation to that matter; and
- (c) the Monetary Authority is satisfied as to the scope and nature of the supervision exercised by that authority.

(5) For the avoidance of doubt, it is hereby declared that subparagraph (4) shall operate before, on and after the approval, if any, of the company to which any matter referred to in that subparagraph directly or indirectly relates."

That clause 24 be amended, by adding the following as the Chinese text of the clause —

"24. 加入附表

現加入 -

“附表 11

[第 118C(2)及(7)及  
135(3)條]

核准為貨幣經紀的最低準則

1. (1) 在本表中 –

“足夠”(adequate)就管控制度而言，包括有效運作；

“借方淨差額”(net debit balance)就公司而言，指就該公司最近經審計的帳目而在損益表上所披露的累積虧損超逾累積利潤的數目，以及資產負債表上分別披露的其他儲備的數目，二者合計所得的數額；

“控權人”(controller)包括小股東控權人；

“管控制度”(systems of control)包括程序。

(2) 為計算本附表規定的公司繳足款股本，須從該繳足款股本中扣除任何借方淨差額。

(3) 為免生疑問，現宣布凡金融管理專員依據本附表條文而就任何事宜持有意見或信納任何事宜，他的該項意見或他如此信納一事（視屬何情況而定）本身對他並無約束力以使他 –

(a) 繼續就該事宜持有該項意見或如此信納（視屬何情況而定），不論是在與該事宜直接或間接有關的公司獲核准（如有的話）之前、之時或之後；或

(b) 對任何其他正在謀求或已獲與該公司相同或不同的核准的公司直接或間接有關的任何類似的事宜，持有任何類似的意見或類似地信納（視屬何情況而定）。

(4) 在不損害第(3)節的一般性的原則下，凡屬以下情況，金融管理專員對於依據本附表他可信納的任何事宜，可視自



已為已予以信納 -

- (a) 該事宜直接或間接與一間在香港以外成立為法團的公司有關；
- (b) 有關貨幣經紀業監管當局通知金融管理專員，表示它信納該事宜；及
- (c) 金融管理專員對該監管當局進行監管的範圍與性質，予以信納。

(5) 為免生疑問，現宣布在任何與第(4)節所提述的任何事宜直接或間接有關的公司獲准(如有的話)之前、之時及之後，該節均有法律效力。

2. 金融管理專員信納自己知道公司每名控權人的身分。

3. 如公司是在香港成立為法團的，則金融管理專員信納每名現時或將會是該公司董事、控權人或行政總裁的人士，均為擔任該名人士現時擔任或將會擔任的特定職位的適當的人。

4. 如公司是在香港以外成立為法團的，則金融管理專員信納每名現時或將會是 -

- (a) 該公司在香港的業務行政總裁的人士；
- (b) 在該公司成立為法團的地方的業務的董事、控權人或行政總裁的人士，

均為擔任該名人士現時擔任或將會擔任的特定職位的適當的人。

5. 金融管理專員信納公司在目前有並在獲得核准後亦會繼續有足夠的財政資源(不論是實際的或是或有的)，足以應付其業務運作的性質及規模，並在不損害上文的一般性的原則下，其繳

足款股本不少於\$5,000,000 或以任何其他核准貨幣計算的同等款額。

6. 金融管理專員信納公司現時備有並在獲得核准後亦會繼續備有足夠的會計制度和足夠的管控制度。

7. 金融管理專員信納公司的業務現時以並在獲得核准後亦會繼續以持正和審慎的方式以及適度的專業能力經營。

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附表 12

[第 118D(1)(A)及  
135(3)條]

撤銷貨幣經紀核准的理由

1. 金融管理專員信納假若核准貨幣經紀並未獲得核准而根據第 118B 條申請核准，第 118C(2)條會禁止金融管理專員核准該經紀。

2. 金融管理專員信納核准貨幣經紀不論在獲得核准之前或之後，沒有依本條例的規定，將關於該經紀的重要資料，以及關於任何相當可能影響其營業方法的情況的重要資料，向金融管理專員提供。

3. 金融管理專員信納核准貨幣經紀在獲得核准之前或之後向金融管理專員所提供的資料，不論是否依據本條例的規定而提供的，在很大程度上是虛假、具誤導性或不準確的。

4. 金融管理專員信納核准貨幣經紀已違反根據第 118C 條附加於其核准證明書的條件。

5. 金融管理專員信納核准貨幣經紀已停止以貨幣經紀身分行事。
6. 核准貨幣經紀獲金融管理專員書面告知他正違反第 118F 條的規定後，仍沒有繳付該條規定他繳付的任何費用。
7. 核准貨幣經紀以書面要求金融管理專員撤銷其核准。
8. 金融管理專員信納核准貨幣經紀採取的營業手法，相當可能會有損香港作為國際金融中心的利益。

## 附表 13

[第 132B 及 135(2)條]

## 罪行的罰款等級

第 1 級	\$4,000
第 2 級	\$10,000
第 3 級	\$20,000
第 4 級	\$50,000
第 5 級	\$100,000
第 6 級	\$200,000
第 7 級	\$400,000
第 8 級	\$1,000,000
第 9 級	\$2,000,000” 。

**Clause 25**

That clause 25 be amended —

- (a) by adding -

"(1A) The provisions of the principal Ordinance specified in column 2 of Part 1A of the Schedule are amended in the manner set out in column 3 of that Part."

(b) by adding -

"(3) Section 2(2)(d) of the Leveraged Foreign Exchange Trading Ordinance (Cap. 451) is amended by repealing "a member of the Hong Kong Foreign Exchange and Deposit Brokers Association" and substituting "an approved money broker within the meaning of section 2 of the Banking Ordinance (Cap. 155)".

That clause 25 be amended, by adding the following as the Chinese text of the clause —

"25. 相應修訂及廢除

(1) 附表第 1 部第 2 欄所指明的主體條例的條文，現按該部第 3 欄所列的方式予以修訂。

(1A) 附表第 1A 部第 2 欄所指明的主體條例的條文，現按該部第 3 欄所列的方式予以修訂。

(2) 附表第 2 部所指明的主體條例的條文現予廢除。

(3) 《槓桿式外匯買賣條例》(第 451 章)第 2(2)(d)條現予修訂，廢除“香港外匯經紀公會的會員”而代以“《銀行業條例》(第 155 章)第 2 條所指的核准貨幣經紀”。

*Question on the amendments proposed, put and agreed to.*

*Question on clauses 1 to 25, as amended, put and agreed to.*

New clause 12A                      Communication by auditor  
with Monetary Authority

New clause 13A                      False statements as to  
authorized status

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

**SECRETARY FOR FINANCIAL SERVICES:** I move that new clauses 12A and 13A as set out in the paper circulated to Members be read the Second time.

New clause 12A amends section 61 to provide statutory protection for the auditor or former auditor of a money broker or a former money broker to communicate in good faith to the Monetary Authority on matters such as the efficiencies in internal control or conduct of business on which the auditor becomes aware in his capacity as an auditor. It mirrors the same provision which applies to auditors of authorized institutions under the Banking Ordinance.

New clause 13(A) amends section 97(A)(1) by making it subject to section 97 to remove the inconsistency between section 97 and section 97(A)(1). Section 97 empowers the Monetary Authority to give consent for a non-bank to use the word "bank" in the description or name under which it is carrying on business in Hong Kong. This conflicts with section 97(A)(1) which prohibits any person from describing or holding himself to be a bank regardless of whether he has the approval of the Monetary Authority under section 97.

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 12A and 13A be added to the Bill.

*Proposed additions***New clause 12A**

That the Bill be amended, by adding —

**"12A.       Communication by auditor with  
Monetary Authority**

Section 61 is amended by adding -

"(3) This section shall, subject to such modifications as may be necessary, apply to and in relation to an auditor of an approved money broker, an auditor of a former approved money broker and a former money broker auditor as it applies, respectively, to an auditor of an authorized institution, an auditor of a former authorized institution and a former auditor, and the other provisions of this Ordinance shall be construed accordingly.

(4) In subsection (3) -

"former approved money broker" means a person who was formerly an approved money broker;

"former money broker auditor" means a person who was formerly the auditor of an approved money broker or former approved money broker."."

That the Bill be amended, by adding the following as the Chinese text of the clause 12A —

"12A.       核數師向金融管理專員傳達資料

第 61 條現予修訂，加入 —

“(3)本條在經必需的變通後，適用於任何核准貨幣經紀的核數師、任何前核准貨幣經紀的核數師及任何前貨幣經紀核數師和就該等核數師而適用，一如本條分別適用於任何認可機構的核數師、任何前認可機構的核數師及前核數師一樣，而本條例其他條文須據此解釋。

(4) 在第(3)款中 —

“前核准貨幣經紀”(former approved money broker)指以前是核准貨幣經紀的人；

“前貨幣經紀核數師”(former money broker auditor)指以前是核准貨幣經紀或前核准貨幣經紀的核數師的人；

### **New clause 13A**

That the Bill be amended, by adding —

#### **"13A. False statements as to authorized status**

Section 97A(1) is amended by repealing "No" and substituting "Subject to section 97, no".

That the Bill be amended, by adding the following as the Chinese text of the clause 13A —

#### **"13A. 關於認可身分的虛假陳述**

第 97A(1)現予修訂，在“任何”之前加入“除第 97 條另有規定外，”。

*Question on the addition of the new clauses put and agreed to.*

## Schedule

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

The amendments are minor refinements to the Bill which have all been agreed by the Bills Committee. Amendments are also moved to introduce a Chinese text of the Schedule. Following gazettal of the authentic Chinese text of the Banking Ordinance on 4 October 1996, the Bill thereafter shall be enacted bilingually and therefore providing the Chinese text for the Bill by way of Committee stage amendments is necessary.

Mr Chairman, I beg to move.

### *Proposed amendment*

## **Schedule**

That the Schedule be amended —

- (a) in part 1 -
  - (i) in item 2, by deleting "63(6)(b)" and substituting "63(5),(6)(b)";
  - (ii) in item 4 -
    - (A) by deleting "20(7)(a)" and substituting "20(7)(b)";
    - (B) by deleting "63(6)(b)" and substituting "63(5) and (6)(b)".
- (b) by adding -

"PART 1A



OTHER PROVISIONS OF PRINCIPAL  
ORDINANCE AMENDED

Item	Provision of principal Ordinance	Amendment
1.	Section 53(1)(b)	By repealing "section 52(3I)" and substituting "section 132A(1) against a decision of the Monetary Authority under section 52(1)(a), (b) or (c) or (3A)".
2.	Section 70(4)(c)	By repealing "subsection (15)" and substituting "section 132A(3)".
3.	Sections 70B(2)(a)(iii)(A) and (B) and (8)(b)(ii) and 70C(1)(a)(i) and (ii)	By repealing "section 70(15)" and substituting "section 132A(3)".
4.	Sections 70B(2)(b)(i) and (ii) and 70C(1)(b)(i) and (ii)	By repealing "section 70A(8)" and substituting "section 132A(3)".

That the Schedule be amended, by adding the following as the Chinese text of the Schedule —

"附表

[第 25 條]

相應修訂及廢除

第 1 部

予以修訂的主體條例的條文

項	主體條例的條文	修訂
1.	第 11(2)(a)、12(6)(a)及(7)(a)、 14(5)(a)、(6)(a)及(7)(a)、18(11)(a)、 20(8)(a)、22(12)(a)、24(12)(a)、 25(10)(a)、47(3)(a)及(4)(a)、50(5)(a) 及(6)(a)、53C(14)(a)及(15)(a)、 56(3)(a)、63(7)(a)、64(5)(a)及(6)(a)、 69(6)(a)、70(18)(a)、70C(4)(a)、 72A(4)(a)及(5)(a)、99(3)、100(5)、 103(3)、104(5)、120(6)(i)及 123(i)條	廢除“罰款\$500,000”而 代以“第 8 級罰款”。
2.	第 11(2)(b)、12(6)(b)及(7)(b)、 14(5)(b)、(6)(b)及(7)(b)、16(8)(b)、 18(9)(b)、(10)(b)及(11)(b)、20(7)(b) 及(8)(b)、22(10)(b)、(11)(b)及 (12)(b)、24(10)(b)、(11)(b)及 (12)(b)、25(8)(b)、(9)(b)及(10)(b)、 44(8)(b)、46(8)(b)、47(2)(b)、(3)(b) 及(4)(b)、49(8)(b)、50(4)(b)、(5)(b) 及(6)(b)、51A(8)(b)、52(4)(a)及(b)、 53B(9)(b)、53C(13)(b)、14(b)及 (15)(b)、53H(i)及(ii)、56(2)(b)及 (3)(b)、59(5)(b)、59A(3)(b)、60(9)(b) 及(10)、63(5)、(6)(b)及(7)(b)、 64(4)(b)、(5)(b)及(6)(b)、65(2)、 67(2)(b)、69(4)(b)、(5)及(6)(b)、 70(18)(b)、(20)(b)及(21)(b)、 70C(4)(b)及(5)(b)、70D(1)(ii)及 (2)(b)、71(5)(b)、72A(3)(b)、(4)(b)、 (5)(b)及(6)(b)、73(2)(b)、74(2)、 80(3)(b)、81(9)(b)、83(7)(b)、 85(3)(b)、86(5)(b)、87(3)(b)、 88(6)(b)、90(3)(b)、91(3)(b)、 95(3)(b)、96(3)(b)、97(1)(ii)、 97A(2)(b)、106(4)(b)、120(6)(ii)、 123(ii)、124(b)、125(4)及 132(3)條	廢除“罰款\$50,000”而代 以“第 5 級罰款”。
3.	第 16(8)(a)、18(9)(a)及(10)(a)、	廢除“罰款\$200,000”而

20(7)(a)、22(10)(a)及(11)(a)、  
24(10)(a)及(11)(a)、25(8)(a)及  
(9)(a)、44(8)(a)、46(8)(a)、47(2)(a)、  
49(8)(a)、50(4)(a)、51A(8)(a)、  
53B(9)(a)、53C(13)(a)、59(5)(a)、  
59A(3)(a)、60(9)(a)、63(6)(a)、  
64(4)(a)、67(2)(a)、69(4)(a)、70(20)(a)  
及(21)(a)、70C(5)(a)、70D(1)(i)及  
(2)(a)、71(5)(a)、72A(3)(a)及(6)(a)、  
81(9)(a)、83(7)(a)、86(5)(a)、  
87(3)(a)、88(6)(a)、90(3)(a)、  
91(3)(a)、95(3)(a)、96(3)(a)、  
97(1)(i)、97A(2)(a)及106(4)(a)條

代以“第7級罰款”。

4. 第16(8)、18(9)及(10)(b)、20(7)(b)、  
22(10)、22(11)(b)、24(10)及(11)(b)、  
25(8)及(9)(b)、44(8)、46(8)、47(2)、  
49(8)、50(4)、51A(8)、52(4)(b)、  
53B(9)、53C(13)(b)、53H(ii)、56(2)、  
59(5)(b)、59A(3)(b)、60(9)、63(5)  
及(6)(b)、64(4)(b)、65(2)、67(2)(b)、  
69(5)、70(20)及(21)、70C(4)及(5)、  
71(5)、72A(3)(b)及(6)、74(2)、  
81(9)(b)、83(7)(b)、85(3)、86(5)(b)、  
87(3)(b)、88(6)(b)、90(3)(b)、  
91(3)(b)、95(3)(b)、106(4)(b)及  
132(3)條

廢除“罰款\$5,000”而代  
以“第2級罰款”。

5. 第18(10)(a)、20(7)(a)、22(11)(a)、  
24(11)(a)、25(9)(a)、53C(13)(a)、  
59(5)(a)、59A(3)(a)、63(6)(a)、  
64(4)(a)、66(2)、67(2)(a)、72A(3)(a)、  
81(9)(a)、83(7)(a)、86(5)(a)、  
87(3)(a)、88(6)(a)、90(3)(a)、  
91(3)(a)、92(2)、95(3)(a)、99(3)、  
100(5)、103(3)、104(5)及106(4)(a)  
條

廢除“罰款\$10,000”而代  
以“第3級罰款”。

- |     |  |                                |
|-----|--|--------------------------------|
| 6.  | 第 52(4)(a)、53H(i)及 93(1)條                      | 廢除“罰款\$1,000,000”而代以“第 9 級罰款”。 |
| 7.  | 第 56(2)(a)、73(2)(a)、80(3)(a)、85(3)(a)及 124(a)條 | 廢除“罰款\$100,000”而代以“第 6 級罰款”。   |
| 8.  | 第 60(10)條                                      | 廢除“罰款\$2,500”而代以“第 2 級罰款”。     |
| 9.  | 第 117(7)及 118(5)條                              | 廢除“罰款\$20,000”而代以“第 4 級罰款”。    |
| 10. | 第 22(3)(a)、(b)及(c)條                            | 廢除“第(2)款”而代以“第 132A(2)條”。      |

#### 第 1A 部

#### 予以修訂的主體條例的其他條文

- | 項  | 主體條例的條文   | 修訂   |
|----|---|--|
| 1. | 53(1)(b)  | 廢除在“根據”之後的所有字句而代以“第 132A(1)條向總督會同行政局上訴,反對金融管理專員根據第 52(1)(a)、(b)或(c)或(3A)條作出的決定；或”。 |
| 2. | 70(4)(c)  | 廢除“第(15)款”而代以“第 132A(3)條”。   |
| 3. | 70B(2)(a)(iii)(A)及(B)與(8)(b)(ii)及 70C(1)(a)(i)及(ii) | 廢除“70(15)”而代以“132A(3)”。  |
| 4. | 70B(2)(b)(i)及(ii)及 70C(1)(b)(i)及(ii)                | 廢除“70A(8)”而代以“132A(3)”。  |

#### 第 2 部

予以廢除的主體條例的條文

第 16(7)、18(8)、22(2)及(8)、24(9)、25(7)、44(7)、46(7)、49(7)、51A(7)、52(3I)、53G(9)、69(3)、70(15)、70A(8)、71(4)、73(1C)、95(2)、100(3)、101(3)、104(3)及 105(3)條。".

*Question on the amendment put and agreed to.*

*Question on the schedule, as amended, put and agreed to.*

Long title and enactment formula

**SECRETARY FOR FINANCIAL SERVICES:** Mr Chairman, I move that the long title be amended as set out in the paper circulated to Members. The amendment is to add the Chinese text of the long title and enactment formula to the Bill.

Mr Chairman, I beg to move.

*Proposed amendment*

**Long title and enactment formula**

That the long title and enactment formula be amended, by adding the following as the Chinese text of the long title and enactment formula —

"本條例草案

旨在

修訂《銀行業條例》。

由香港總督參照立法局意見並得該局同意而制定。".

*Question on the amendment put and agreed to.*

*Question on the long title and enactment formula, as amended, put and agreed to.*

### **EMPLOYEES RETRAINING (AMENDMENT) BILL 1996**

Clauses 1 to 7 were agreed to.

### **OZONE LAYER PROTECTION (AMENDMENT) BILL 1996**

Clauses 1 to 10 were agreed to.

Council then resumed.

### **Third Reading of Bills**

THE ATTORNEY GENERAL reported that the

### **ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) 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 TRANSPORT reported that the

### **TSING MA CONTROL AREA BILL**

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

*Question on the Third Reading of the Bill proposed, put and agreed to.*

Bill read the Third time and passed.

THE SECRETARY FOR FINANCIAL SERVICES reported that the

**COMPANIES (AMENDMENT) BILL 1996** and

**BANKING (AMENDMENT) BILL 1996**

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

*Question on the Third Reading of the Bills proposed, put and agreed to.*

Bills read the Third time and passed.

THE SECRETARY FOR EDUCATION AND MANPOWER reported that the

**EMPLOYEES RETRAINING (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

**OZONE LAYER 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.

## MEMBERS' MOTIONS

**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 6 January. 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 mover of the amendment, 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.

## IMPROVEMENT TO BUILDING MANAGEMENT

*Mr IP Kwok-him to move the following motion:*

"That, in view of the fact that at present a lot of commercial/residential buildings and private buildings encounter severe difficulties in dealing with maintenance co-ordination and management matters, this Council urges the Home Affairs Branch to consider enhancing the existing power given to Owners' Corporations so as to improve the efficiency in building management, and requests the Home Affairs Branch to provide substantial and active support to enable the setting up of Owners' Corporations in all buildings in the territory as early as possible."

**MR IP KWOK-HIM** (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

Mr President, the tragedy that happened at Garley Building last November resulted in 30 deaths and many people injured. A few months ago, multiple burglaries occurred in a residential building in Causeway Bay because there was no watchman late at night. These unfortunate incidents have not occurred by coincidence. Instead, they are only the tip of the iceberg. Such incidents have exposed the problem of poor management of buildings in general. These poorly



managed "problem buildings" are just like ticking time bombs that are about to explode any minute. I am sure that no one in Hong Kong would like to see so many hidden dangers in their homes. Actually, the solution to this problem is quite simple and that is, "to improve and enhance the quality of building management". In 1970, the Hong Kong Government enacted the Multi-storey Buildings (Owners Incorporation) Ordinance, which was amended and renamed the Building Management Ordinance in 1993. The loopholes in previous legislation were plugged and the grey area concerning Deeds of Mutual Covenant was removed. In addition, the management of buildings was enhanced through the establishment of Owners' Corporations (OCs). Since OCs have the legal status of a body corporate, this effectively resolves the previous problem in relation to the legal status of mutual aid committees in managing the communal parts and facilities of buildings. Nevertheless, the number of OCs established in the past few years was far from satisfactory. According to statistics, out of the 30 000-odd private buildings in Hong Kong, only over 4 000 have their OCs set up. Even if OCs are established, they are not "wonder drugs" that can instantly effect a miraculous cure, and it does not mean that the management of buildings will be properly improved immediately. The tragedy at Garley Building should be an example.

Mr President, I am sure that a lot of the people in charge of OCs or members of the Management Committees would like to improve the communal facilities and living environment of their buildings. However, the operation of OCs is often restrained by the powers which they can exercise and by inadequate support and assistance, so that they cannot do anything even though they want to do something. As there are no specific provisions in the existing legislation and Deeds of Mutual Covenant for owners to carry out improvement works in respect of buildings, OCs often encounter difficulties in considering the improvement of communal facilities such as fire safety and security systems. For example, they might be forced to abort their maintenance works due to difficulty in raising funds. The problem is compounded as such improvement works require the consent of all owners of the buildings concerned. This is not a simple task at all! The legal precedent in respect of the Bay View Mansion in Causeway Bay has made the public confused about the concepts of "maintenance" and "beautification". As a result, many improvement works of buildings have been aborted and the active participation of OCs in building management has been directly affected. In this respect, the Administration should consider amending the law to the effect that when a resolution approving

improvement works has been passed by a certain percentage of owners to improve the facilities of buildings, it would be binding on all owners, no matter whether such works are for maintenance or beautification purpose.

Another thorny problem that OCs often have to face is the recovery of arrears. Although at present, OCs can recover through legal proceedings the sum of money payable by owners under the Deed of Mutual Covenant, in many cases, the owners might still adopt stalling tactics and refuse to pay even though the Lands Tribunal has ruled in favour of the OCs. While the OCs might force the owners to pay by means of registering a charge against their flats in the Land Registry, this will have no effect at all on those owners who would not sell their flats. As a last resort, the OCs can hire a lawyer to take further legal proceedings and ask a bailiff to seize an owner's property for compensation. However, in reality, the costs incurred by the OCs in the recovery procedures often exceed the amounts to be recovered. In addition, since all members of OCs are part-time voluntary works, it is doubtful whether they have enough time to handle the series of recovery procedures. Due to these constraints, the persons in charge of an OC would have to think very carefully about going ahead with the recovery. As a result, the financial position of the OC will be affected and the OC will fail to find sufficient resources to carry out effective management. Mr President, the Democratic Alliance for the Betterment of Hong Kong (DAB) urges the Government to simplify the present procedures for the recovery of arrears by OCs, and consider the imposition of penalty in order to achieve a deterrent effect upon those owners who refuse to comply with the judgments given by the Lands Tribunal.

Besides, the current legislation allows the co-existence of owners' associations, mutual aid committees and OCs for the same building or housing estate. For example, there is the co-existence of both a mutual aid committee and an OC at Aberdeen Centre. For some old Home Ownership Scheme estates, owners' associations, mutual aid committees and OCs even exist side by side. The co-existence of these management or consultative organizations will lead to an overlapping of functions and conflict of roles, which will directly affect the management efficiency of OCs. The Administration should consider enacting legislation requiring the dissolution of the original mutual aid committee or owners' association upon the establishment of an OC in order to enhance the efficiency of building management.

Mr President, from the above cases, we can see that even those buildings

with OCs often encounter enormous difficulties and obstacles in management and the co-ordination of maintenance works. Therefore, buildings which do not yet have OCs must encounter even greater difficulties and their situation must be even worse. Among the 30 000-odd buildings in Hong Kong, only about 10% of the multi-storey buildings have registered OCs and this percentage is miserably low. Thus the Home Affairs Branch and the Home Affairs Department responsible for co-ordinating the establishment of OCs are obliged to review the problems in assisting the owners to set up their OCs promptly.

Of course, in order to make owners of buildings understand that setting up OCs is a good way to improve their living environment, the first thing the Home Affairs Department has to do is to step up publicity so as to enhance the owners' understanding of the powers and operation of OCs with a view to encouraging more buildings to set up their OCs. Although the Home Affairs Department has prepared some publicity pamphlets on the setting up of OCs and produced videos on the relevant subject, is such publicity enough? I wonder how many owners know that free copies of these publicity materials can be obtained and borrowed at the various District Offices? In response to the repeated calls for the Government to do more to urge owners of buildings to set up OCs, the Home Affairs Department used to reply invariably with the helpless gesture that "one cannot make bricks without straw", stressing that it had limited resources and inadequate manpower. The DAB finds this hard to accept.

Mr President, with regard to the setting up of OCs, the Home Affairs Department has always counted on the flat owners' initiative, harbouring the remote hope that one day the owners would suddenly realize the importance of setting up OCs. Is this not wishful thinking? I wonder if the Government should immediately embark on drawing up a new policy to "encourage flat owners to set up OCs" and consider the enactment of legislation requiring owners to set up OCs within a reasonable time after moving in, with a view to improving building management?

In order to co-ordinate and enhance the Government's work of facilitating the setting up of OCs, the Home Affairs Department should strengthen the training of its front-line staff. At present, some Liaison Officers of the Home Affairs Department have such a poor knowledge of the Building Management Ordinance that they are really laughable. I have seen in past occasions some Liaison Officers present at owners' general meetings of OCs offering all sorts of inaccurate information. How can they provide guidance and assistance if they

do not even have the basic knowledge of the percentage of owners that makes up a quorum at an owners' general meeting? I have seen many Liaison Officers present at those meetings just sit at one corner and listen dutifully, without uttering a word. Therefore, the Home Affairs Department should strengthen the training of its front-line staff and provide them with the relevant professional training programmes.

Mr President, we often get the impression that the Home Affairs Department thinks its work is over and it can "withdraw from the scene" after helping the owners to set up their OCs. And the OCs should deal with any problems regarding their buildings by themselves thereafter. Actually, the OCs established are often helpless when faced with maintenance problems. Let me take the Smithfield Terrace in Central and Western District as an example. After squabbling for more than three years over the problem of slope maintenance works, a satisfactory solution has not yet been found. You can imagine how bewildered it is for the owners. Also, when they encounter legal problems, the OCs are even more perplexed and do not know what to do. Thus the Home Affairs Department is obliged to provide professional services to the OCs by liaising with various professional organizations of accountants, architects, lawyers and so on. A central support service unit should also be set up under the co-ordination of the Home Affairs Department to provide voluntary services and consultation services for the OCs in need, as well as to assist the OCs in handling their problems.

Furthermore, the Co-ordination Teams which have been established to handle those "black spot" buildings must be reinforced. Though the 10 Co-ordination Teams throughout the territory have already existed for over 10 years, they have dealt with about 400 buildings only. Such a speed is shockingly slow. Officials of the Home Affairs Department have always blamed it on the non-co-operative attitude of individual owners. However, faced with the remaining 600-odd "target buildings", they are at a loss as to how to deal with those owners who ignore improvement suggestions or who have adopted stalling tactics. It looks that there are loopholes in the relevant legislation as well as law enforcement and it is imperative for the Home Affairs Branch to rectify the situation as early as possible.

In order to enhance the work of OCs, the Home Affairs Department should consider making full use of the existing resources. One method is to set up concern groups dealing specifically with building management within the Area

Committees under the various District Offices and make use of the existing networks to strengthen local connections, with a view to enabling OCs to carry out their work more effectively and efficiently.

Mr President, in a place like Hong Kong where there are huge numbers of private buildings, improvement in the management of private buildings is certainly an important subject. Judging from the above cases and in accordance with the powers conferred upon the OCs of buildings by the Building Management Ordinance, there is a strong case for increasing the powers of OCs, in order to fully improve building management and the public's living environment. In addition, as the policy-making organs for co-ordinating the establishment of OCs of all the buildings in Hong Kong, the Home Affairs Branch and Home Affairs Department must make extra efforts in speeding up the establishment of OCs and facilitating the setting up of OCs by enacting legislation as soon as possible. In addition, the Home Affairs Branch should provide a wider range of more easily accessible professional support services for the operation of OCs.

Mr President, with these remarks, I move the motion.

*Question on the motion proposed.*

**PRESIDENT** (in Cantonese): Mr James TO has given notice to move an amendment to this motion. His amendment has been printed on the Order Paper and circularized to Members. I propose that the motion and the amendment be debated together in a joint debate.

Council shall debate the motion and the amendment together in a joint debate. I now call upon Mr James TO to speak and to move his amendment. After I have proposed the question on the amendment, Members may express their views on the original motion and the amendment.

***MR JAMES TO's amendment to Mr IP KWOK-HIM's motion:***

"To delete "in view of the fact that at present a lot of commercial/residential buildings and private buildings encounter severe difficulties in dealing with maintenance co-ordination and management

matters" and substitute with "despite the passing of amendments to the Building Management Ordinance by this Council in 1993, some private commercial/residential buildings still encounter difficulties in dealing with inspection, maintenance and management matters"; to delete "consider enhancing the existing power given to Owners' Corporations so as to improve the efficiency in building management" and substitute with "conduct a comprehensive review of the existing formation method, power and operation of Owners' Corporations, the mechanism for monitoring the quality and work of management companies, and the relevant legislation, so as to improve the efficiency of building management and safeguard the interests of property owners"; and to delete "to enable the setting up of Owners' Corporations in all buildings in the territory as early as possible" and substitute with "in encouraging the setting up of more Owners' Corporations and to set up a standing consultative committee for discussing building management matters".

**MR JAMES TO** (in Cantonese): Mr President, half of the people in Hong Kong live in multi-storey buildings, including Home Ownership Scheme flats. 1993 was a watershed because in that year there was a substantial change that made it easier to establish Owners' Corporations. Moreover, the supervisory power was enhanced and it was easier to go on the right track as far as operation is concerned. Now that we have accumulated a lot of experience, I would like to raise a few points here. As Vice Chairman of the then Bills Committee, I feel deeply that we should indeed reinstate the former system of Building Management Consultative Committee and continue to tackle the problems we now encounter, with a view to improving further the living environment of half of the population in Hong Kong.

I would like to talk about the problems faced by property owners in respect of management point by point. First, as regards the establishment of Owners' Corporations, if a developer owns a significant proportion of the shares, it will be very difficult to acquire an absolute percentage of 50%. Let us assume that the developer holds 30% of the shares. It will be almost impossible to acquire 50% from the remaining 70% in order to dismiss the management company. This is particularly so for large estates with several hundred or several thousand households. There is now a solution. Sections 3A and 4 of the Ordinance stipulate that on reaching 30%, the owners can ask the Secretary for Home Affairs for approval. Or if more than 20% is reached, the owners can ask the court to approve an order to the effect that the quorum for a meeting needs not be 50%. As long as there is a majority of votes, such as 35% for and 30% against,

decisions can be made as regards the establishment of an Owners' Corporation. However, the provisions have not stated under what circumstances the court will grant such kind of approval and in accordance with what criteria the Secretary for Home Affairs will grant approval. Therefore, individual owners in reality do not know how to exercise such power. As far as I understand, it seems that the Secretary has never exercised such power and difficulties continue to arise. For this reason, publicity and strengthening of front-line training are very important to let the owners know that such a mechanism exists.

Second, the problem of dismissing management companies. At present, to dismiss a management company requires an absolute value of 50%. As I have said just now, if the owners wish to set up an Owners' Corporation but fail to acquire 50%, they can still apply to the court or the Secretary for Home Affairs for approval to enable a simple majority less than this percentage to make a decision. However, the dismissal of a management company requires an absolute value of 50%. How can one say that this is logical? I hope the Government can make amendments in this aspect so that the mechanism I have just mentioned applies to the dismissal of management companies as well.

Third, the handling of problems relating to management fees in arrears or handover claimed to be faced by the original management companies. This problem is in fact the most commonly seen. Nine out of ten such cases referred to offices of Members are related to this problem. Just as I pointed out before, the management companies will take the chance of transition to pocket money. As I expected, this problem did actually arise. Staff of the Home Affairs Department often dare not deal with the matter because of their lack of experience, legal knowledge and training. Even I feel sorry for them. More often than not, they suggest the public to seek assistance from some Members who are conversant with the law. For this reason, the public have often turned to MAN Sai-cheong or CHUNG Pui-lam in the past and now to Daniel WONG Kwok-tung, James TO or Bruce LIU. As a result, the workloads of these Members have increased dramatically. Each of them may even need to deal with cases involving several hundred buildings. Are we, as Members, supposed to play the role of legal consultants for free? This is the kind of hardship that nobody knows.

Fourth, monitoring the quality of management companies is of paramount importance. This is because maintenance fees frequently amount to several million dollars or even over ten million dollars. In fact, in the adjournment debate in 1991 or even over the past years, we have been lobbying the

Government to exercise control over estate agents and enact legislation. Nevertheless, our proposal to supervise management companies has been completely turned down. At that time, the Government said it hoped that the association for management companies would exercise self-discipline. But what has it achieved up so far?

Fifth, as regards the precedents related to "maintenance" and "beautification", the Honourable IP Kwok-him cited the Bay View Mansion as an example just now. It is in fact very difficult to deal with the matter. We have been urging the Government for nearly two years but the Government has not yet put forward any plans. Why is it so? If for fire safety reason, a wooden door is dismantled and replaced by a metal door, can this be regarded as beautification? If this is not done, can the wooden door continue to be used? Although this is acceptable, the Fire Services Department said it was better to use a metal door. Therefore, is it possible for the Government to amend the law to solve these problems with a view to calming down the public?

Sixth, there was once a precedent in which there was a dispute between a restaurant located on the ground floor and the Owners' Corporation upstairs of a certain building in Tsim Sha Tsui. Most of the owners of the building wanted to have a certain door closed but eventually the restaurant won the lawsuit. However, the lawsuit was not executed against all owners but to individual members of the Owners' Corporation, like the chairman or the secretary. This legislation should be amended. If the Government decides that no amendment should be made, I will put forward a Members' Bill in March. In fact, I have drafted the Bill already. The main thrust of the Bill is: When a genuine decision is made, all owners should be responsible. There is no reason why individual members of the Owners' Corporation should bear the responsibilities. Otherwise, no one would dare to become a member of the Owners' Corporation.

Furthermore, there are always difficulties in collecting maintenance fees and management fees. The present channel is to refer the matter to the Small Claims Tribunal but the waiting time is very long. The seizure of immovable property such as his flat, just as the Honourable IP Kwok-him has said, may entail several thousand dollars as deposit for the bailiff alone. Is this a wise action to take for the recovery of just several hundred dollars? If a "charge" is registered against a property, the owner may choose never to sell the property. If the Deed of Mutual Covenant (DMC) does not specify that the property can be sold, even registering a "charge" against the property does not mean that the property can be sold.



I would like to propose some new measures which may be useful. I hope the Government can consider them:

1. Even though the DMC has not so stated, the property of the owner who fails to pay may still be sold;
2. To prohibit the owner from using public facilities such as the lifts or passageways so that he cannot return home; and
3. To issue a short-term closure order or prohibition order.

Furthermore, monitoring the Owners' Corporations has become a new topic as some flat owners might suspect the Chairmen of the Owners' Corporations are corrupt. Such matters, however, can only be dealt with upon receiving requests from 5% of the owners to hold a meeting. Very often, the Chairmen of the Owners' Corporations will put up a lot of resistance or even convene new meetings and there will be disputes as to whether an element of fraud is involved. At the moment, the court does not have any power to appoint the Secretary for Home Affairs or the Home Affairs Department as mediator to chair the meetings under dispute to solve the problems. I hope the Government can conduct a comprehensive review of the relevant issues because they represent only the tip of the iceberg.

I can go on for another two hours to discuss these issues but I am only left with 30 seconds. I hope the Government can consider setting up a standing committee which is representative and which is composed of people from various districts, the professionals and the grassroots in order to conduct a comprehensive review of the relevant legislation. Moreover, the support for front-line staff should be enhanced. In particular, I hope that the headquarters can create a few more posts of legal advisers to support front-line staff so that they do not have to too hard. Furthermore, the Government should exercise the existing power which is vital for monitoring management companies and it is my earnest hope that a consultative committee can be set up.

With these remarks, I move the amendment.

*Question on the amendment proposed.*

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

**MR CHOY KAN-PUI** (in Cantonese): Mr Deputy, as Hong Kong is densely populated, most people live in multi-storey buildings. So, to enjoy a good living environment, there must be sound building management. From an economic point of view, if a building is well managed, maintained and kept in good repair, the quality and value of the property of the owners can be maintained. In respect of daily life, this cannot only safeguard the life and property of the tenants, but also let them enjoy a good living environment. Therefore, owners and tenants have the responsibility of taking part in and actively supporting their building management organizations. In general, building management organizations include mutual aid committees, owners' committees and Owners' Corporations. Regardless of the forms of such organizations, their purposes are to enhance the sense of belonging among the owners and tenants towards their buildings and give play to the spirit of mutual help and protection, in order to effectively manage their property.

Among the various forms of organization, the Owners' Corporation has the most legal power. It is an independent legal entity and has litigation power. Besides being able to represent all the owners to manage and maintain the communal places of a building, it can also appoint and dismiss a management company and supervise the operation of the management company. Therefore, the Administration should actively promote and try its best to assist multi-storey buildings in setting up Owners' Corporations.

The Hong Kong Progressive Alliance is of the view that a building management organization has heavy management duties. For instance, it has to be responsible for formulating and monitoring the safety measures for the prevention of fire and theft which have direct impacts on the life and property of the residents. For example, the recent Garley Building blaze that caused heavy casualties has aroused the vigilance of the public over fire prevention in buildings. This blaze also revealed the problem that more than 400 commercial/residential buildings in Hong Kong built before 1973 have inadequate fire-prevention equipment. Some even do not have basic fire-prevention facilities. Needless to say, a blaze or even a small fire can spread very quickly and we can hardly stop it. Also, towards the end of last year, mass robberies took place at a certain building. The incident made the

tenants realize that the building did not have a caretaker late at night, giving the robbers an opportunity. Certainly, the tenants might not be able to avoid the misfortune even if there was a caretaker. However, a caretaker could at least be an extra obstacle and the robbers and thieves would usually choose the easier way. However, it would be too late if we only review the situation when problems have emerged. Besides managing the interiors of a building, managing the exteriors of a building is also very important. If a concrete slab on the external walls becomes loosened and the canopy collapses because of certain illegal structures and a lack of maintenance, casualties will result and the interests of the owners and tenants as well as the public will be jeopardized. Therefore, we must look squarely at this problem.

Although building management is so important, some buildings in Hong Kong do not even have mutual aid committees. And even though there are organizations such as Owners' Corporations, they cannot give full play to their functions. Moreover, the powers given to Owners' Corporation in Hong Kong are limited, and many Owners' Corporations have various operational problems. Therefore, they fail to give full play to the functions they should. Furthermore, the establishment of Owners' Corporations as legal entities or voluntary bodies is limited by certain professional conditions. Owners or tenants know little about Owners' Corporations and those owners or tenants who have the expertise may not be willing to spare time to take part. On the other hand, those who can spare time to take part may not have the expertise. In view of the above, the Hong Kong Progressive Alliance is of the view that the establishment of Owners' Corporations needs the assistance of the Home Affairs Department and the relevant departments. The Home Affairs Department should encourage those living in buildings to take an active part in the management of their buildings. For example, it should enhance promotion and let these people know more about building management through visits, organizing exhibitions, seminars, visits and training courses and so on, in order to allow the owners and tenants to clearly understand their responsibilities and co-operate with the Home Affairs Department. By doing so, the owners, tenants and the public can benefit and the sound management of buildings would enable everybody to live in a safe and comfortable environment.

In addition, the Hong Kong Progressive Alliance is of the view that the Administration should consider making improvements to the operation of Owners' Corporations, giving them more powers and making them more accountable. The Administration should also provide Owners' Corporations

with active and suitable counselling through the Home Affairs Department.

Mr Deputy, these are my remarks.

**MR ALBERT HO** (in Cantonese): Mr Deputy, I speak in support of the Honourable James TO's amendment. Since the Building Management Ordinance came into effect, flat owners' rights to manage their own buildings have been strengthened and the owners can carry out closer monitoring. This is of course a progress but many problems have arisen from the actual operation over the past few years. Mr James TO has already noted some of the problems. I will quote some more examples and I hope that the Secretary for Home Affairs will take note of them and agree to conduct a comprehensive review.

As regards the procedures for setting up an Owners' Corporation, we all know that it is often necessary to rely on proxies. However, when certain provisions were set, no one knew why they were so set at that time. For example, if there are more than one registered owner according to the title deeds, the proxies must be signed by the one among the several owners who registered first. In fact, this is not always necessary as the owners are very often not clear about this or because of some inconvenience, the document has to be signed by the second or third owners which makes the proxies invalid and gives rise to many disputes.

Section 16 of the Building Management Ordinance states that the Owners' Corporations have to bear the legal liabilities of the owners in relation to the communal parts of the building. But, do the so-called legal liabilities include repaying a huge sum or any sums of management fees owed to the management companies before the establishment of the Owners' Corporations? We have studied section 16 of the Ordinance and found that the provisions are not clearly set out. As a result, some cases I am dealing with are pending the trial by the High Court. We all know that if individual flat owners are to confront the management companies in court, they will be just like a mantis trying to stop a chariot and will suffer tremendously.

On the other hand, the Building Management Ordinance still respects the Deed of Mutual Covenant (DMC) in many ways. There are certainly some but not enough mandatory provisions in the Ordinance. As a result, many unreasonable terms in the DMC are still valid. For example, in the DMC, the

proportions of management and maintenance fees to be shared among individual flat owners are not equal to the stipulated proportions of these owners' shares in the title of the building. In other words, some flat owners can enjoy many shares in the title while the proportions of management fees or maintenance fees they have to contribute may be very small. Yet, there is no way to resolve this at present because no one can alter the DMC unless he can obtain the consent of all parties and it can be said that this is nearly impossible. Therefore, we need to review these mandatory provisions again to see whether there is a need for additional provisions so that the unreasonable terms commonly seen in the DMC can be replaced by reasonable provisions through legislation so as to protect the interests of the flat owners.

Another ambiguity is about the power of the Lands Tribunal. Does the Lands Tribunal alone have the authority to hear disputes in relation to the Building Management Ordinance, or cases in relation to the interpretation of the DMC or complaints about the DMC of a building? We originally thought that this was the case but later a decision by the High Court told us that this was not the case and the High Court has equal authority as the Lands Tribunal because the Ordinance has not taken away the authority of the High Court in judging such cases. Therefore, we can choose to take the case to the Land Tribunal or to the High Court. Many developers will apply for an injunction from the High Court when they want to file a lawsuit against an Owners' Corporation or a flat owner. As a result, the charges will be greatly increased and the procedures will become even more complicated, thus exerting enormous pressure on the flat owners.

Furthermore, there is still no simplified procedures to deal with many common problems. Take the most annoying problem of water leakage as an example. Is there an easier way to make the owner of the flat immediately above the one where the leakage occurs to take up his responsibility and allow his flat to be inspected? Also, concerning the clearance of illegal structures, apart from applying for an injunction from the court, is there a better way to make the owners of the structures respect the DMC so that large sums of money need not be spent every time? Can we work out some simpler procedures of implementing the DMC or the Building Management Ordinance? I think that a review should be made in this aspect.

On the other hand, the support provided by the Home Affairs Department (HAD) to the individual owners is inadequate. Even if we put aside the problem of the establishment of Owners' Corporations, when there are disputes,

can someone from the HAD attend meetings as a witness or take some effective measures to prevent future disputes? This is very important. But more importantly, after the establishment of the owners' corporations, flat owners are still not clear about many things. Will the HAD provide these owners with more guidance or assistance to give them an idea of matters ranging from how to choose a management company, how to monitor a management company, how to assess the standard of a purchase or service contract, to the procedures of the whole operation, such as how to convene a meeting, how to understand the laws and how to examine the accounts? I think that they still need guidance and assistance. Therefore, I feel that HAD should set up a resource centre to provide information on various issues for the owners' reference or provide consultation services or even publish court decisions on a regular basis to help the owners understand more. I have to stress that HAD officials should not be afraid of bearing the responsibility because of the possibility of making mistakes. This is what they should do to serve the public.

Lastly, I think that it is very important for the HAD to serve as a mediator in disputes. It is because effective mediation can alleviate the confrontation which would lead to lawsuits and can cut down high legal costs. Besides, a more flexible means can be adopted to allow more people to settle their disputes through simpler procedures. In the end, this can have a promotional effect. If people know more about building management, a culture of co-operation can be created and that should be very desirable. We hope that the HAD can work out a statutory mediating mechanism requiring that, before anyone files a lawsuit against someone else, he has to go through this mechanism so that the mediators can make their best efforts to help him solve his problems. If the mediation comes to no avail, the mediator has to submit a written report to the Tribunal for it to consider the opinions of the mediator before making a final decision.

I hope that the Secretary for Home Affairs will carefully consider the above points. Thank you, Mr Deputy.

**DR HUANG CHEN-YA** (in Cantonese): Mr Deputy, in Hong Kong, with the exception of a handful of people who live in detached luxury houses, approximately more than half of the population live in public housing estates and the remainder live in multi-storey buildings. Therefore, the problems of building management actually affects a lot of Hong Kong people. Just now,

many Honourable Members have talked about the problems of building management. Here I would like to discuss the experience of the Democratic Party in Central and Western District.

At present, many flat owners of multi-storey buildings simply do not understand the operation of their Owners' Corporations. Rather than thinking that the powers of the Management Committees under Owners' Corporations are too limited (although the Honourable IP Kwok-him has explained why there would be problems if such powers are too limited), they are worried that the Management Committees may have too much powers. In the case of a certain Home Ownership Scheme (HOS) estate managed by the Housing Department, when the Department planned to assist the owners to set up an Owners' Corporation and hand over the power of management to it afterward, the flat owners of that HOS estate actually wanted the Housing Department to continue to manage the estate and they objected to the establishment of an Owners' Corporation. This was because they feared that following the setting up of an Owners' Corporation, the estate might be mismanaged and the Corporation might use up all the reserve fund without their consent. Such cases occur frequently. We can therefore see that if we only consider increasing the powers of the Owners' Corporations without at the same time increasing the flat owners' supervision over Owners' Corporations, more owners may be induced to resist the setting up of Owners' Corporations. This will not only fail to expedite the establishment of Owners' Corporations as a means of improving building management, but will also produce an adverse result. Therefore, when the powers of Owners' Corporations are reviewed, owners' powers to monitor their work should also be enhanced.

The problems currently faced by flat owners and the Management Committees under Owners' Corporations can be categorized as follows:

First, the Building Management Ordinance (Cap. 344) is completely beyond the comprehension of flat owners, but they have no channels to seek advice. At present, no particular government departments are responsible for explaining the contents of the legislation to owners. When they want to enquire about property management legislation, they can only approach the District Offices. But, in the District Offices, the staff who help them are mainly Liaison Officers or Temporary Community Organizers who have not received any relevant legal training and thus cannot provide them with legal advice. They would normally advise those flat owners to consult their own legal professionals.

The point is that most flat owners or Owners' Corporations would find it difficult to spare any money for legal counsel because most of the time, the building management funds are barely sufficient or with just scanty surpluses. That being the case, if owners have to spend a lot of money or even an unknown amount of money on legal advice, they would probably hold back due to financial consideration. Instead, they would try to interpret the laws themselves, thus leading to numerous unnecessary misunderstanding. Therefore, in view of inadequate management funds for most buildings, the Government should set up some organizations to provide flat owners with legal advice in connection with the Building Management Ordinance, so that they can truly understand the laws and do what they should do accordingly.

Many flat owners think that the statutory title shares required for an owners' general meeting to set up an Owners' Corporation are too high. As stipulated in the Ordinance, 50% of the title owners have to attend personally or by proxy the owners' general meeting. Owners are thus concerned that, with this stipulation, it is highly unlikely the owners' general meeting will have a quorum and so they simply give up the idea of forming an Owners' Corporation. In the Central and Western District, many owners have complained to the Offices of Legislative Council Members about this matter. The Honourable James TO pointed out just now that under certain circumstances, the Ordinance actually allows a smaller quorum for the purpose of setting up an Owners' Corporation. But, Mr TO also pointed out that the Ordinance is not clear and so even government officials are unable to provide the owners with any clear answers. That being the case, these laws are of no real use since they cannot help flat owners at all. I very much hope that the Government will review the quorum requirement for the setting up of Owners' Corporations and make some improvements, so that flat owners can set up such organizations more easily.

What is more, I have received a lot of complaints from flat owners who state that they do not know what the Management Committees of their Owners' Corporations are doing. Although the laws already stipulate that the minutes of Management Committee meetings have to be posted in a conspicuous place inside the buildings concerned within 28 days after a meeting, some owners have told me that they still want to attend the meetings themselves so that they can voice their opinions before the Committees make any decision. However, the laws have not provided that the owners are to be informed of the agenda before a meeting, nor is it provided in the laws that the owners can attend these meetings. In order to remedy this lack of communication between flat owners and



Management Committees of their Owners' Corporations, I hope that the Government would amend the laws to allow owners to participate in such meetings and stipulate that the agenda of the meetings should be posted.

Mr Deputy, I support Mr James TO's amendment.

**MR MOK YING-FAN** (in Cantonese): Mr Deputy, regarding the management of private buildings, however complicated the issue is, the root of the matter is, I believe, "people". In other words, people play a significant role in this issue. If the property owners, be they the developers or individual flat owners, could not care less about improving their living environment, are suspicious of each other and are unwilling to shoulder their own responsibilities, then even the best legislation can neither improve the efficiency in building management nor have management problems in private buildings solved. Why do I say that? It is because I was once the chairman of an Owners' Corporation for several years. Later I will share my experience in this with my Honourable colleagues.

The Building Management Ordinance was amended in 1992, yet only 4 692 Owners' Corporations were established by November 1996. A lot of private composite commercial/residential buildings have not yet set up their Owners' Corporations and quite a large number of such are, at present, faced with a lot of problems with regard to financial management, building inspection, maintenance work and general management matters.

Having been the chairman of an Owners' Corporation before, I would like to share my experience with Honourable colleagues. When I was first elected as chairman of the Owners' Corporation, the management of the building could be described as in a mess. I am not trying to blow my own trumpet, but there were really a lot of problems then. These included high indebtedness; management fees in arrears, some of which had been outstanding for months; water pipes in disrepair; peeling off of pasting from the ceiling; lack of supervision of the management company and so on. Faced with so many problems, the newly elected members of the Owners' Corporation were at a loss as to what to do. Finally, with the concerted efforts of all members, we made a lot of reforms including suggesting certain improvement measures for the management company to implement. We indicated that if the company failed to improve, we would terminate its contract. In addition, we made some efforts to collect outstanding management fees, threatening to take legal proceedings against those who refused to pay. After we had collected all outstanding fees,

the Owners' Corporation was able to commission some repair and maintenance works for the building. Later on, we became acquainted with other flat owners, who gradually understood that they would be the ones to benefit when the building is well maintained since they would at least enjoy an appreciation in the value of their flats. Gradually the management of the building got on the right track. Then I resigned from the post and I am not the chairman any more.

My experience tells me that problems in building management are not derived from problems in the method of establishment, powers or operational procedures of the Owners' Corporations concerned. Instead, the problems have developed from the following factors. Firstly, the property owners do not know how to set up an Owners' Corporation and how to properly monitor the management of their building under after the Owners' Corporation has been set up. Secondly, most property owners do not know what their own rights and responsibilities are and could not care less about building management. They do not know that they are in fact responsible for the maintenance of their building and that only through proper maintenance can their flats appreciate in value. Thirdly, a lot of management problems will arise if the executive members of the Owners' Corporation have no idea of what their rights and responsibilities are or how the operational procedures of the Owners' Corporation should be like. Problems will also arise if they fail to discharge their duties effectively.

To improve building management, civic education is indispensable. The purpose is to foster the public's sense of concern about their surroundings and to enhance their willingness to shoulder responsibilities. The Committee on the Promotion of Civic Education should help the public understand what their rights and responsibilities as property owners and tenants are in order to enhance their sense of belonging towards the buildings the management of which they will then pay more attention to. In addition, they should also be encouraged to express their opinions and discharge their rights and responsibilities through setting up Owners' Corporation to improve the management of their buildings.

Support from the Government plays a significant role in the effective operation of an Owners' Corporation. At present, the Government's support to Owners' Corporations is confined to distribution of leaflets, holding of conferences or seminars and occasional attendance of meetings of Owners' Corporations by Liaison Officers from District Offices. In my opinion, these measures are simply ineffective and not practical at all. I think the Government

should provide more systematic and well-organized training for property owners. In particular, after an Owners' Corporation has been set up, it should explain to the people concerned the method of establishment, powers and operation of an Owners' Corporation, so that all Owners' Corporations can properly discharge the duty of monitoring building management. I think the District Offices should send officers of higher ranks to help the Owners' Corporations and give them advice. As Dr the Honourable HUANG Chen-ya has just pointed out, the Temporary Community Organizers and part-time Liaison Officers just cannot achieve these objectives.

Lastly, I suggest that the Government provide funds to voluntary organizations so that they can set up resource centres in their own districts. These resource centres will help the Owners' Corporations to operate effectively and discharge their management duties properly. The services provided by the resource centres should include: 1. Advisory service: to provide advisory service executive members of Owners' Corporations so that they can have sufficient information to help them to deal with their problems; 2. Consultancy service: when faced with management or personnel problems, executive members of Owners' Corporations can get advice and assistance from social workers, lawyers or other professionals so that problems can be solved promptly; 3. Training service: to provide managerial skills and on-the-job training to executive members of Owners' Corporations; 4. Promotion of communication among Owners' Corporations and enhancement of mutual support; and 5. Enlisting resources and support. Through the resource centres, professionals who are interested to provide voluntary services can offer assistance to buildings which need support. These resource centres should be run by voluntary organizations so as to maintain an impartial image and to avoid the bureaucratic constraints in government departments. As such, services can be provided more flexibly.

I so submit.

**MR ALBERT CHAN** (in Cantonese): Mr Deputy, about 60% of our population are living in private buildings. The management of private buildings is something closely related to the residents concerned. However, disagreement and disputes are not uncommon between flat owners and the management companies over issues concerning building management, Deed of Mutual Covenant, management fee and finance. The government departments responsible for assisting flat owners on issues ranging from building management to the setting up of Owners'

Corporations are the District Offices and the Land Registry. However, what they have done are far from satisfactory. I would like to cite three cases to demonstrate how these two departments have confounded the flat owners.

The three housing estates are located in Tsuen Wan and Kwai Chung areas. They requested the relevant District Offices to help them to set up their Owners' Corporations in 1995 and staff from the District Offices participated in the whole process. Eventually, the application made by one estate was rejected, one was shelved and one approved. However, the irony is, the Owners' Corporation of the approved estate was the most controversial and most problematic one among the three. The management committee of the estate concerned was not appointed at the owners' general meeting and the tallying of votes on many resolutions was done in the office of the auditor picked by the meeting convenor instead of at the owners' general meeting. As such, most of the owners who attended the owners' general meeting could not witness the tallying of votes. Besides, hundreds of the proxies were not returned to their authorizers after the meeting. Many owners therefore opined that the resolutions at that meeting should be annulled. However, the Land Registry endorsed the resolutions at the meeting and subsequently approved the application for the setting up of the Owners' Corporation.

As for the housing estate whose application was rejected, the Land Registry rejected it on the ground that the management committee as well as the chairman and vice chairman of the committee were not appointed at the owners' general meeting. The Land Registry was indeed contradicting itself in its own decisions and has confounded the property owners. The most regrettable thing was, the two estates had invited representatives from the District Offices to attend their owners' general meetings, and the owners did complain to the representatives in attendance immediately but failed to receive any response. The District Offices later explained that it was because neither the Secretary for Home Affairs nor the Director of Home Affairs has the statutory responsibility to handle matters concerning the formation of management committees. Such an explanation has obviously let the general public down. Most of the flat owners have mistaken that the District Office representatives could help to co-ordinate things and solve disputes. However, what they got from the District Offices was: "It is not our responsibility to handle such matters."

As for the housing estate whose application was shelved, the Land Registry shelved it on the ground that a legal proceeding involving the

management company and the developer was scheduled to be heard at the Lands Tribunal. Actually, regarding the title concerned, the developer does not have a large share. However, with abundant resources and manpower, it is able to, on one hand, play politics and made use of the grey area in the law to suppress the flat owners who wish to set up an Owners' Corporation, and to extend the contract signed with the management company on the other so as to reap profits. This is a good example of the obnoxious kind that illustrates how the rich and powerful could play politics and fool the flat owners. However, the Government has, so far, offered no assistance to the owners, not to say fighting for their rights and interests. This is an obvious breach of the spirit of this Council's amendment of the Building Management Ordinance in 1993. This is really regrettable!

Mr Deputy, the helplessness of the flat owners, the arbitrary decision made by the Land Registry in approving applications, as well as the seemingly right but utterly wrong work attitude of the District Offices are clearly reflected in the three cases above. To avoid such problems from occurring again, and to prevent the unfair condition from cutting into the rights of the flat owners, the Government should promptly review the roles and performances of the various departments.

Mr Deputy, the management work of a building affects the residents so greatly that their lives and property will also be affected. As early as 1989, I submitted a proposal to the Government urging it to enact laws to monitor property management agents. However, the Government has not taken any action so far.

Legislation for the purpose of monitoring the management of private buildings has long been lacking. In addition, flat owners, especially those in old tenements with divided titles, have encountered a lot of difficulties in their attempt to set up an Owners' Corporation. It is therefore very difficult for them to participate directly in building management and management companies could make use of this to abuse their power to reap profits. Also, many management companies of private buildings and estates have close ties with the developers, some are in fact subsidiaries of the developers with intertwined interests. The rights of the flat owners are thus all the more difficult to be safeguarded.

To remedy the situation, it is my opinion that the Government should promptly enact laws to monitor the management companies of private buildings and regulate their formation and mode of operation, including their amount of

capital and professional qualifications of the staff employed. It is because such management companies can easily get a company registration for just a few thousand dollars but could then manage housing estates and handle funds amounting to tens of millions of dollars a year. Who should be held responsible if such a large amount of money together with any maintenance expenses are appropriated illegally by someone? The Government should set up for these property management companies a management fund to compensate flat owners for the losses they may suffer as a result of the closure or poor operation of the companies concerned. Legislation should be enacted at the same time to ensure that the responsible persons of such companies are professionals so as to safeguard the interests of the consumers who hire their management services.

Mr Deputy, the problems involving management companies can be very extensive. If the Government can enact laws to monitor the real estate agents, I do not see why the same cannot be done to regulate property management companies.

Mr Deputy, with these remarks, I support the Honourable James TO's amendment.

**MR AMBROSE LAU** (in Cantonese): Mr Deputy, there are generally three types of management organizations for private buildings: Owners' Committees, Owners' Corporations and Mutual Aid Committees. Their methods of formation and terms of reference differ from one another. Owners' Corporations are independent corporate bodies formed under the Building Management Ordinance, and since they are vested with the power of litigation, they can legally represent all the owners concerned in managing the communal areas of buildings, appointing property managers and supervising their work. The remaining two types of management organizations perform the main functions of assisting in the communication between individual owners and management companies, fostering solidarity among the residents, promoting neighbourhood relationship and mutual aid and, to some extent, carrying out the management work of buildings. Since these two types of management organizations cannot compare with the Owners' Corporations in terms of litigation power and legal status, the powers of co-ordinating and managing the maintenance works of private buildings are mainly concentrated in the Owners' Corporations.

Mr Deputy, the issue of building management has caused a lot of disputes mainly because of the conflicts between individual owners and Owners' Corporations and such conflicts have in turn stemmed from the lack of supervision by individual owners over the Owners' Corporations. The publicity materials published by the Independent Commission Against Corruption on the prevention and reporting of bribery reveal that the Commission has received quite a number of complaints about bribery cases related to the management of private buildings with divided titles. The more common cases involve attempts made by works contractors bidding for contracts to bribe the Owners' Corporations in charge of inviting tenders for maintenance projects. It can thus be seen that while trying to strengthen the powers of the existing Owners' Corporations, we must step up the supervision over their work at the same time. Only such a two-pronged approach can reduce the resistance, strengthen the powers of Owners' Corporations, and enable all buildings in Hong Kong to form their Owners' Corporations as soon as possible.

Under the Multi-storey Buildings (Owners Incorporation) Ordinance (now renamed the Building Management Ordinance) drawn up by the Government in 1993, the supervision of Owners' Corporations has been strengthened in a number of ways. However, this Ordinance still cannot effectively minimize certain kinds of disputes related to building management. Therefore, if we can strengthen the monitoring of Owners' Corporations, we will be able to effectively win the support of owners for the setting up and development of Owners' Corporations.

Mr Deputy, many private buildings in Hong Kong are ageing and in need of maintenance and repairs. Although it is the responsibility of the owners of private buildings and composite commercial/residential buildings to manage their own properties, the Government should also provide some essential assistance and support. Apart from assisting all buildings in Hong Kong in the formation of Owners' Corporations as soon as possible, the support services which should be provided by the Home Affairs Department (HAD) should also cover staff liaison with the Owners' Corporations, Owners Committees and Mutual Aid Committees. HAD staff should make recommendations on building management for these management organizations' reference. Besides, District Offices should also organize seminars on building management to help members of Owners' Corporations to discharge their duties effectively. During such

seminars, public enquiries on matters relating to building management should be answered and complaints handled.

Mr Deputy, the HAD has set up a number of Building Management Co-ordination Teams in various District Offices. Buildings with serious management problems are identified by these teams for improvement through the concerted efforts of the relevant departments and the owners. But, the point is that there are too many buildings with problems, and these problems include illegal structures, structural damage, broken facilities, blocked fire exits, unhygienic environments and poor security. Therefore, apart from strengthening the work of the Building Management Co-ordination Teams, on the target buildings, the HAD should also increase the existing powers of Owners' Corporations and step up the monitoring of them at the same time. Moreover, the Department should promote the formation of Owners' Corporations for all buildings in Hong Kong as soon as possible so as to strengthen the maintenance and management of private buildings.

Mr Deputy, these are my remarks.

**DR JOHN TSE** (in Cantonese): Mr Deputy, I would like to concentrate my speech on the role of District Offices in building management.

Nowadays, many flat owners are selfish and egoistic and they only care about their own affairs. The District Offices have no idea how to improve building management and could be regarded as a complete failure in this respect. Ever since the enactment of the legislation on Owners' Corporations (OCs) in 1970, the District Offices have been given the task of assisting flat owners of buildings in setting up OCs. However, after 26 years, only 3 400 OCs have been set up with the help of Liaison Officers at District Offices. I have done some calculation. If you divide 3 400 OCs by 26 years and further divide this by the number of Liaison Officers, which is now 324, the result is 0.4, which means that each Liaison Officer has helped to set up only 0.4 OC each year, or each Liaison Officer has helped to set up only one OC every two and a half years. Such a pace and such inefficiency are totally unacceptable.

In the past 10 years, the 10 Building Management Co-ordination Teams have inspected over one thousand buildings with serious management or fire



safety problems. These 1 000-odd buildings have been put on the blacklist so to speak. However, only about 400 of them have seen improvement in management. Again, I have done a little calculation. The 10 Building Management Co-ordination Teams have inspected only 100 buildings per annum on average. In other words, each team has inspected only 10 buildings per annum, which is a very slow pace indeed. At this speed, it would take 400 years to inspect all the present 40 000-odd buildings in Hong Kong. I am sure that no one would find this pace acceptable.

I would like to urge the Government to do three things: first, to disclose the names of the above-mentioned 1 000-odd blacklisted buildings which have serious management problems, so that the residents in those buildings would be alerted and management of the buildings could be enhanced; second, to increase resources expeditiously and urge Liaison Officers to assist owners in setting up OCs; and third, to effectively monitor and regulate the work of OCs and building management companies.

Thank you, Mr Deputy.

**MR YUM SIN-LING** (in Cantonese): Mr Deputy, I would like to put forward several suggestions on this subject for the Government's reference.

First, the Home Affairs Department should examine the legal loopholes or untouched areas in building management, such as those issues concerning advertisements or signboards on the external walls and illegal structures in communal areas. In this aspect, government legislation and control are inadequate. The Home Affairs Department and the Buildings Department should work together to formulate legislation and implement measures to help management incorporations of flat owners in problem solving.

Second, the Home Affairs Department should, following the example of the Buildings Department in ordering buildings to carry out maintenance works, study the feasibility of enacting legislation with particular reference to the infringement of interests of the entire building or the impact on the interests of other owners by a single householder, such as default on payment of management fees or leakage causing nuisance to other units. The Home Affairs Department should take up the responsibility of issuing warnings which, if not heeded, will

result in prosecution. The Government should shoulder the costs of prosecution consider using a small portion of the revenue from rates to cover the costs. Otherwise, owners' organizations will not dare to institute legal proceedings to deal with many thorny problems just because of some untouched areas or grey areas in legislation. Of course, expedient legislation should be in place to support the Government in issuing warnings and instituting prosecution.

Third, the Government should seek to enact legislation to supervise management companies of buildings to ensure that the companies are acting in the interests of the owners.

Fourth, all District Offices should allocate more resources to expand the scope of target buildings and appoint more trained personnel to actively assist buildings in their districts to solve management problems. In addition, every member of the staff should be responsible for a certain number of target buildings in promoting education, inspecting, taking part in management, issuing warnings and instituting prosecution.

Mr Deputy, I would like to make these suggestions for the Government's reference. Thank you.

**MR CHAN KAM-LAM** (in Cantonese): Mr Deputy, as land is extremely expensive in Hong Kong, it is the aspiration of everyone in Hong Kong to own a home. It is also the hope of every flat owner that his property is well managed and maintained, so that it can really become his comfortable home. Unfortunately, building management involves a great many issues ranging from matters as simple as replacing a light bulb in the corridor to as extensive as maintenance projects costing tens of millions of dollars, all requiring careful attention.

We can see that the Administration has always insisted that "it is the owners' responsibility to manage their buildings". However, the fact is, out of the 30 500 private buildings across the territory, only 4 000-odd have their Owners' Corporations. This is a very small proportion, so small that it is hardly acceptable. A building without an Owners' Corporation is of course plagued by all kinds of problems, yet there is no guarantee of peace for those owners who have set up their Corporations.

Mr Deputy, everyone is busy with work and leads a hectic life in Hong

Kong. Not all flat owners can afford to participate in the management of their buildings. Those who are willing to sacrifice their own leisure to get involved in the management of their buildings do deserve our support and encouragement.

Nevertheless, building management involves great complexity and the problems cannot be easily resolved with the owners' enthusiasm alone. We often hear about disputes between the Owners' Corporations and the owners or tenants. The Corporations try to manage the buildings but are unable to operate properly.

Management companies vary greatly in terms of their service quality. It is by no means easy for Owners' Corporations to obtain detailed information in the market to assess the experience and performance of management companies when deciding which one to hire. When a Corporation finds that the management company it has hired is not performing up to its expectation, it will have many misgivings, worrying that it may not be able to find a better replacement after dismissing it. The reason is that there are loopholes in building management.

Concerning the management of private buildings, it is the Administration's hope that the property owners will manage their own buildings on a self-help basis. If the building is to be managed effectively, it would take the active involvement of both the flat owners and tenants. As we all know, every private building in Hong Kong has its own unique problems and the majority of the executive members of Owners' Corporations are not professional building managers. As such, it is crucial for the Administration to provide assistance and the necessary support.

Looking around, we can see that the building management service provided by the Home Affairs Department (HAD) is mainly to assist the property owners who come to seek help to set up an Owners' Corporation. What comes next is publicity and education work. The HAD admits frankly that because of limited manpower and resources, it has difficulty in approaching the flat owners of every building. Also, most flat owners are not particularly concerned about their buildings, and it is even more difficult to get the owners of commercial buildings to set up a Corporation, as there is no legislation requiring the owners to do so.

Mr Deputy, the Administration has been quite indifferent to the

management of private buildings in the past. With the shrinkage of manpower, the building management co-ordination work provided by the HAD is limited to a superficial and remedial nature only. Very often, by the time the government departments step in, the problem has reached a point that it has got out of control. Besides, many of the HAD officers responsible for handling such problems are part-time workers who have not received any legal training and know nothing about building management. Further, as the HAD has, in recent years, been putting more emphasis on the services for new immigrants from China, without any input of new resources, the building management co-ordination work would inevitably be neglected somehow.

According to the law, an Owners' Corporation is the corporate body responsible for the co-ordination of the management of a building. However, because of the lack of professional support regarding building management, Owners' Corporations often have their hands tied when trying to carry out the work. They may even get tangled up in tedious legal proceedings at times, which in turn deals a direct blow to the owners' enthusiasm for participating in the management of their building. The Administration has all along been of the opinion that the laws concerned are sound and need no amendment, yet I think it should still put in more manpower to liaise with the flats owners of those buildings that have not set up an Owners' Corporation and assist them to set up a corporate body to carry out the maintenance and management work of the buildings and improve their living environment. On the other hand, the Government should also take the initiative to understand the existing problems and difficulties faced by Owners' Corporations, target its efforts at helping them to deal with various complicated problems such as large-scale maintenance and repair work, clearance of illegal structures, improvement to the security and sanitation of their buildings and so on.

We are in full support of the Administration to provide more assistance to the management of private buildings. The public expect the Administration to participate more, especially in providing professional assistance in management and legal support. Apart from helping the owners of a building to set up a Corporation, the Administration should also pay more attention to the subsequent operation of the Corporation. Furthermore, there is an apparent inadequacy in the law and law enforcement that the Administration must rectify before it is too late. The management of buildings does have a direct impact on the safety of tens of thousands of people living in them and the Administration should never take it lightly. Instead, it should conduct a comprehensive review of the present

situation expeditiously and formulate more effective measures to give practical support to the Corporations. In our opinion, the Government should not turn a blind eye to those buildings which have not set up their Corporations because the problems existing in buildings that have long been poorly managed could be very serious. At present, it is impossible for the Buildings Department, the Fire Services Department and other government departments to conduct a thorough inspection of all these buildings to make sure that they do comply with the law in all aspects, should any accident happen in such buildings, the situation will be extremely dangerous. As such, the Government should learn a lesson from the many incidents that have happened recently in such buildings.

Mr Deputy, these are my remarks.

**MR IP KWOK-HIM** (in Cantonese): Mr Deputy, I would like to respond to the several questions raised in Mr James TO's amendment one by one.

Mr TO mentioned that there is a need to conduct a comprehensive review of the formation, power and operation of the Owners' Corporations. I think this is a good suggestion. In fact, it is necessary to review the legal and operational aspects of Owners' Corporations so as to provide better statutory support to the voluntary members or enthusiasts who work for the Corporations. In this way, they can truly serve the Owners' Corporations and their own buildings.

Mr TO also mentioned the problems of management companies. Although recent statutory amendments have imposed more restrictions on these companies, numerous problems still arise when an Owners' Corporation wants to change the management company. We really need to consider plugging the legal loopholes in this aspect.

In addition, he also mentioned about encouraging the forming of Owners' Corporations. In this regard, I think that Mr TO may not be enterprising enough. At present, the Home Affairs Department is doing a lot of publicity work and District Offices are encouraging each and every building to set up its Owners' Corporation. However, the problem lies in the insufficient knowledge about Owners' Corporations on the part of the public or the owners. Therefore, we believe that we can work with a more progressive approach towards some new buildings. We may consider enacting a law to require the owners of new buildings to flexibly set up their Owners' Corporations within a reasonable period

of time, thus motivating them to feel that they have the responsibility to do so. From my experience of participating in community voluntary work for over a decade, I believe that this is necessary. Only by doing so can we make the first stride towards bringing about a good start for building management.

Moreover, Mr TO proposed to set up a standing consultative committee. I think this direction and view should be worthy of further exploration. Yet, I have to point out that it will be insufficient to rely on just one consultative committee. As I have said in my speech earlier, the main problem faced by Owners' Corporations is the lack of support, especially in the professional aspect such as legal and financial support. So they feel their hands are tied when they get down to work. I very much hope that the Home Affairs Branch and Mr James TO would seriously consider this point. Just now, I heard Mr TO mention about some support groups, with professional people to offer advice to the owners. Thus I believe he will agree to my point of view.

Finally, there is one more point that I think is worth mentioning. I find loopholes in the management of property not covered by the existing legislation. Some private housing developments in the New Territories, including Palm Springs, Hong Lok Yuen and Fairview Park, cannot set up Owners' Corporations because they are not multi-storey buildings, and there are also many unresolved problems in their titles. Therefore, the question of how to include such villa-style private housing estates in the Building Management Ordinance is also worthy of our consideration.

Thank you, Mr Deputy.

**SECRETARY FOR HOME AFFAIRS** (in Cantonese): Mr Deputy, I have listened very carefully to the speeches made by Members. They all showed a deep understanding of the various problems concerning building management. At the same time, they expressed valuable opinions for consideration by the Government. However, after listening to their criticisms, people would think that the position of the Government in this regard is just superficial, not comprehensive, and the Government has even brushed some problems aside. I beg to differ.

Let us take a look at the Policy Commitments of the Home Affairs Branch published simultaneously with the Governor's policy address in October 1996. The Programme Highlights of the Home Affairs Branch in respect of community development in 1996-97 are as follows:

"In 1996-97, we will encourage the formation of Owners' Corporations and Mutual Aid Committees as part of our effort to promote public participation in community affairs. We are also organizing a series of training courses and seminars to enhance public understanding of the participation in building management."

Members of the Panel on Home Affairs of this Council should recall that I briefed them on 10 October that the Government was in fact actively enhancing its role in respect of building management and the new services to be provided. I would explain the details later.

The subject of the motion and its amendment is centred on the maintenance and management of buildings, the power of Owners' Corporations, the quality of property management companies, and the support services provided by the Government.

As a matter of fact, the Government has often conducted reviews of issues on building management matters. We are well aware of the various problems Members have just pointed out. We would like to further improve our internal reviews, hence we pledged to enhance building management in our 1996 Policy Commitments.

We believe effective building management depends on the support of the following four factors:

1. the effective functioning of the Owners' Corporations;
2. satisfactory service provided by building management agents;
3. substantive and active support by the Home Affairs Department (HAD); and

4. special support by the relevant professional bodies where necessary, such as legal support as mentioned by some Members just now.

I would discuss with Members the above points in detail.

The first point concerns the power of the Owners' Corporations. I would like to point out that the effective functioning of Owners' Corporations does not depend on giving the Corporations more statutory power.

The HAD receives well over one thousand inquiries concerning building management each year on average and at least four to five hundred cases have to be individually handled as a result of complaints lodged. From our experience, the contents of these complaints are mostly related to following management problems:

1. the owners are not satisfied with the management standards and practices of the management companies or the management committees of the Owners' Corporations;
2. muddled financial management and ambiguities in the accounts, unreasonable increase in management fees, and losses incurred in management funds or deposits;
3. unexpected large sums of expenses such as works or service contracts but the contracts have not been awarded through tender according to law or approved by the owners;
4. there is a lack of transparency or communication between the owners and the management organizations, and owners' meetings are not held regularly;
5. members of the management committee fail to step down and get re-elected according to law when their terms of office expire; and
6. the management agents are not familiar with the legislation and hence they fail to act according to law.

An Owners' Corporation is a building management organization set up under the Building Management Ordinance. It is an independent legal entity and it manages the building on behalf of the owners. The management



committee which actually carries out the work on behalf of the Corporation has to work according to the provisions in the relevant legislation while the owners have the power to monitor the Owners' Corporation.

The Owners' Corporation is fully empowered by the Building Management Ordinance to manage the building concerned as specified in some of its provisions. Section 14 of the Ordinance states that owners may adopt resolutions with respect to the control, management and administration of the communal parts of their buildings. Section 16 states the rights and duties of the owners in relation to the communal parts of the buildings. Section 18 empowers the Corporation to maintain the communal parts and the property of the Corporation in good, usable and clean conditions. Section 20 empowers the Corporation to establish and maintain general and contingency funds to meet the expenses on the exercise of its powers and the performance of its functions under the Building Management Ordinance or the deed of mutual covenant (if any).

The Building Management Ordinance also provides a legal and administrative framework for monitoring the conduct of property managers employed by the owners of private buildings. Schedule 7 of the Ordinance lists out the duties of a property manager. As stipulated in Schedule 7, should a Corporation find the performance of a property manager not satisfactory, it can terminate the appointment of this property manager by a resolution of the owners holding not less than 50% of the shares in the title of the building.

The above information clearly shows that there are methods of solution for the relevant complaints under the Building Management Ordinance. The real problem is that the owners, for various reasons, do not know much about their legal rights, and are not actively taking part in the management of their buildings. To solve this problem, we should suit the remedy to the case, enhance the public's understanding of building management, such that they can take an active part in building management. In this regard, I was very happy to hear about the successful example cited by the Honourable MOK Ying-fan just now.

The second point concerns the quality and performance of property management companies. Generally speaking, the management of smaller buildings poses little problems, and the appointment of a professional management company is not necessary. The owners of the buildings just have to employ the relevant personnel. However, if the owners of larger buildings want satisfactory services, they must be careful in appointing reputable management companies which usually have a good record of service. The

property managers having managerial or administrative duties usually have professional qualifications awarded by such professional bodies as the Chartered Institute of Housing (Hong Kong Branch) or the Hong Kong Institute of Housing.

To enhance the confidence of the public in the standards of property managers at all levels, the Government encouraged some years ago various professional bodies to form the Hong Kong Association of Property Management Companies Limited, and the Association was registered and established in January 1990.

The main purpose of the Association is to establish, improve and maintain the standards of professional management of real estate and to safeguard the public interest by effective supervision of its membership. We are in constant contact with this Association.

To ensure discipline among its members, the Association has worked out a code of operation for all its members to observe. If it is found that any member has breached the code or acted against the purposes of the Association, such a member may be denounced, and its membership may be temporarily suspended or even cancelled.

Some Members just commented that the standards of these companies vary greatly. Certainly, many companies have excellent performance but we also admit that there are a few black sheep. We will continue to liaise with the Association, discuss with the Association about the problems just raised by Members and look for solutions. We will not, at this stage, arbitrarily decide whether we should enact legislation. We will strengthen our communication with the Association and make a decision as to whether legislation has to be enacted in this regard after we have studied the issues with the Association.

As a matter of fact, Owners' Corporations have been empowered by the Building Management Ordinance to carry out effective monitoring of management companies. As I have just talked about this point, I shall not repeat it.

The third point, and the key point of my speech today, concerns the

services currently provided by the HAD in relation to building management.

The HAD has devotes itself to assisting owners in setting up Owners' Corporations. In this regard, the HAD will provide the owners who plan to set up an Owners' Corporation with a certification to enable them to obtain, free of charge, from the Land Registry the records of all the owners. Advices on procedures and technicalities will also be given by staff of the HAD to the owners, so that the owners can convene general meetings of owners under section 3 of the Building Management Ordinance. Should the owners fail to convene meetings under section 3 of the Building Management Ordinance, and the owners concerned hold not less than 30% of the shares in the title of the building, the HAD will assist the owners in applying for an order from the Secretary for Home Affairs, allowing the owners to convene meetings under section 3A. Some Members just wondered if the Secretary for Home Affairs has exercised his powers in this regard. I can tell them that the answer is yes.

After the Owners' Corporation is formed, our staff will continue to pay them regular visits through their own networks of contacts and attend their meetings. In this respect, I would like to respond briefly to the views expressed by some Members. These Members seemed to be saying that our staff have not done their best as, for example, by way of calculation, each staff member has helped set up less than one Owners' Corporation a year. In fact, we have to understand that our front-line staff have a heavy workload and this is but one of their tasks. Admittedly, we have to discuss about how we can enhance the support services provided. Actually, I also have some information derived from calculations just like what Dr the Honourable John TSE has just quoted, and the information shows that setting up an Owners' Corporation is not simple. Should everything work smoothly, without hitches and according to schedule, our staff have to spend about a hundred working hours on handling the relevant work. Hence, this is not as simple as some people may think, and is very demanding. Nevertheless, we will continue to allocate more resources in this respect, and our staff will try their best to give advice to those owners who encounter any management problems as well as assist them in solving such problems. I will later explain in detail the services we provide, however, we cannot solve the problems on the owners' behalf. I will go into the reasons later.

As at the end of November 1996, about 4 690 Owners' Corporations had been set up in the territory. In 1995, the HAD received a total of more than 4 000 inquiries concerning building management, and handled more than a

thousand complaints, most of which were successfully settled. Of course, Members have just cited some isolated, extreme cases in which we failed. We have to admit that we have not been handling all the cases successfully for many reasons. I will explain this later.

To promote the idea of effective building management, the HAD has been providing promotional and educational services to enhance the owners' and the residents' knowledge of building management. These services include:

- (i) the publication of booklets and leaflets on the procedures of setting up Owners' Corporations, as well as information on and the skills of building management;
- (ii) organizing regular building management seminars and courses in various districts;
- (iii) the HAD holds territory-wide seminars every year. From 1990, we have been organizing large scale territory-wide seminars. Moreover, we will regularly hold smaller scale seminars in each district; and
- (iv) producing educational video tapes on building management. The public can borrow such tapes free of charge from the district offices in various districts.

Since 1990, we have held a total of more than 270 seminars in which more than 32 000 people have taken part.

On this basis, we can consider further developing the resource centres just mentioned by Members. These resource centres can provide the owners with in-depth education, letting them know more about their own responsibilities. The most important thing is whether we can find some professionals to provide professional support, especially legal support, through these centres. The Honourable James TO just complained that the existing support services are actually provided by three Members of this Council. We hope that more lawyers can take part in the work. In fact, we have been discussing this with the Law Society and individual lawyers. Hence, it is worthwhile for us to consider whether the services in this respect can be enhanced by means of setting up resource centres on the basis of what Members just said.

On the other hand, the HAD will enhance the training of its staff. Besides offering formal legal courses regarding the Building Management Ordinance in conjunction with the University of Hong Kong, the HAD also organizes workshops and training courses for Liaison Officers. Experience sharing group meetings are also held for staff in charge of building management.

The HAD headquarters have issued to Liaison Officers some guidelines and an Operations Manual on setting up Owners' Corporations, allowing them to serve the Owners' Corporations more effectively. At present, every District Office has appointed a staff member to be responsible for the co-ordination of all building management matters.

Besides, the HAD has strengthened the Building Management Co-ordination Team at its headquarters to provide better support for the front-line staff. We have successfully fought for the increase in human resources with effect from 1 April this year. I am sure this is good news to Members, too. The HAD is now planning for a further reform of the Co-ordination Team in order to enhance the link between its staff in the districts and the HAD, thus providing more comprehensive and efficient services to the public.

A Central Information Unit has been set up under the Co-ordination Team at the HAD headquarters. It is responsible for the collection of building management cases from various districts, and for the analysis, compilation and recording of the information so collected. Should the front-line staff encounter similar problems in future, they can refer to these records before formulating strategies to solve the problems. This should be helpful to the solution of some knotty problems in future.

The HAD regularly reviews the services provided to assess whether these services are adequate to meet the needs. It will also look for more resources to further improve its services. HAD will also continue to promote the idea of effective building management and assist the owners of private buildings to set up Owners' Corporations to improve the quality of management of their buildings.

As for the powers of the Home Affairs Department, I would like to discuss this here with Members. As many members of the public do not fully understand that the HAD is but one of the departments monitoring the

implementation of legislation, they wrongly think that the staff of the HAD have the authority and ability to interfere in disputes, and solve the problems in a straightforward manner. But as a matter of fact, the functions and duties of our staff in this respect are defined by the Building Management Ordinance. Their work depends on the co-operation of the owners and, in particular, their decisions. We offer advice but cannot make decisions for the owners. Besides, the owners have legal responsibilities which our staff cannot shoulder for them.

We certainly understand that most owners are just too busy to spare time for the management of their buildings. They often cannot attend meetings of their Owners' Corporations as they are very busy, so they do not have a good grasp of management matters. Only when the management of the buildings is muddled up, their maintenance is fouled up, the facilities and services are suddenly suspended, their daily lives are affected, and the management fees soar would they start tackling the problems. As they do not know much about the law, when they are at a loss as to what to do, they look everywhere for help and solutions. Very often, the cases of complaints or requests for assistance received by the HAD belong to this category.

The staff of the HAD do not have arbitration power under the law. They cannot take over the management committees and rectify the wrong doings of these committees on behalf of the owners. Recently, a large building in Shau Kei Wan submitted to the Lands Tribunal that they wanted the HAD to take over their work. Certainly, this request was turned down by the Lands Tribunal. I quote this case as an example to clarify that we are providing support services. As flats in a building are the personal property or residence of the owners, we cannot take over their management committees and rectify the wrong doings of these committees for the owners. This is because monitoring the management committees is the internal affairs of the Owners' Corporations, and the Government cannot be a substitute for the Corporations and interfere directly with management matters. As the law gives the owners adequate power of monitoring, the owners have to be responsible for the management of their buildings.

As the law gives the owners such responsibilities, when the HAD handles such cases, it mainly gives advices on solutions instead of interfering. This is respect for the spirit of the law and we also have to respect the rights and responsibilities of the owners. Therefore, the most concrete help the HAD can offer to both parties is advice on how to solve their problems. However, we

cannot, and should not, make the final decisions. The owners, as members of an Owners' Corporation, will ultimately have to decide upon how they should solve their problems.

Some Members just mentioned that some of the buildings constructed during the early 1960s and 1970s have become dilapidated due to poor management and lack of maintenance. These buildings pose hazards to the residents as well as the general public. Under these circumstances, although the management of private buildings is the responsibility of the owners, the Government, for the sake of public interest, also offers additional help to those owners who encounter difficulties in building management.

The Building Management Co-ordination Team just referred to by several Members was set up in 1985 for the purpose of offering help to the owners of buildings having serious building management problems. There are, at present, 10 such teams. Their work is to co-ordinate the services provided by various government departments. We cannot make decisions on their behalf, or handle the necessary work for them. We only facilitate their work by providing them with professional advice. Should there be special needs, we will, through the Co-ordination Team, seek help from the relevant departments. Over the past years, we have identified more than a thousand target buildings, of which more than 400 cases have been dealt with and the management of these buildings have been greatly improved. Should Members be interested, we can show them the differences in the cases before and after the participation of the HAD, and they will see that great changes have been achieved in each of the cases. As to the other cases, for various reasons, the results of our work are somewhat affected. The most prominent problem is that if illegal structures in the buildings are not dismantled, some improvements cannot be made. Just now a Member asked why it took such a long time to solve the problems. In fact, this is one of the major reasons. We have to complete many other procedures before we can help them to improve building management.

The Co-ordination Team is mainly an advisory and co-ordinating body responsible for liaising with the owners and the Owners' Corporations. The Team is also responsible for promoting among the owners and the Corporations the way of effective building management and other publicity programmes. They regularly hold seminars, training courses and workshops for members of the Owners' Corporations and Mutual Aid Committees to convey to these people the idea of effective building management.

As to the fourth and my last point, it is our wish that more professional bodies would take part and provide special support services. In fact, in the past few years, we have held discussions with the relevant professional bodies on special topics during our annual building seminars, and we have discussed such topics as legal advice, accounting, building structure and fire safety. The professionals had given us many valuable advices, and let the building management personnel know about these aspects. However, these are, after all, general knowledge. If the owners encounter some special problems, such as special legal problems, the advices on their problems should not be provided by HAD staff. We hope that special support can be given by the professional bodies. We are willing to contact these professional bodies, where resources allow, to see how we can provide better support services. We can consider the enhancement of such services through the resource centres just mentioned. The Home Affairs Branch will follow up this issue after the debate, and we will submit a report on the outcome to the Panel concerned.

Lastly, I would like to respond to two issues, and these are the review of legal provisions and the setting up of a standing consultative committee. As I just said, I believe the existing legal provisions have given the owners ample power. The heart of the matter lies in how we can let the owners realize their rights and provide them with an effective and simple means to solve their problems. The problem does not lie in giving them more powers because, very often, they do not know how to exercise their powers.

As regards setting up a standing consultative committee, if we can listen to more opinions, it will certainly be a good thing. However, I hope that after listening to what I have just said, Members would know that we are actually well aware of these problems and we have the channels to consider these problems. Hence, it is indeed not necessary to establish a standing consultative committee at present as this could mean a duplication of efforts while we consider Members' suggestions such as the setting up of resource centres. We think that we should consider this after we have studied how we can establish the resource centres and how these centres can function effectively.

Mr Deputy, with the public's rising living standards and expectations, people now have stronger demand for effective building management. Therefore, we have been doing our best to provide all the services concerned to



the Owners' Corporations to assist them in enhancing their understanding of building management.

We will encourage the formation of Owners' Corporations and Mutual Aid Committees by the residents to promote public participation in community affairs. We will also continue to organize a series of training courses and seminars to enhance the public's understanding of building management.

Finally, I promise once again that I would use the views expressed by Members just now as our reference, especially the feasibility of setting up resource centres on the basis of our existing foundation. Moreover, we will carry out a follow-up study.

Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

**PRESIDENT** (in Cantonese): The normal procedure for a debate is that Members, except for the mover of the motion, will not speak after the public officers have spoken. However, under Standing Orders, I do not have the authority to prohibit a Member who has not spoken from speaking. I understand that Mr TSANG Kin-shing now wants to speak. Mr TSANG Kin-shing, do you intend to speak?

**MR TSANG KIN-SHING** (in Cantonese): Mr President, my speech will be very brief.

I would like the Secretary for Home Affairs to note that: "You could not care less and you are not handling matters properly despite our begging and pushing, and that is indeed unreasonable." This is actually the manner in which District Offices deal with the Owners' Corporations and the owners. The publicity launched by the District Offices is invincible, but when it comes to work, it is strong in will but weak in efforts. The officers are there only to make up the number and they fail to tackle real problems.

Just now the Secretary for Home Affairs has made a long speech to explain how the Owners' Corporations operate and monitor the management companies,

but he has not mentioned that when the flat owners find that there are something wrong with the Corporations, nobody would help those flat owners. The Corporations can use the flat owners' money to hire lawyers to suppress the owners because so long as the Corporations are in office, they can use the resources of the building's resources. They can use all the resources to suppress the owners' voice. The usual complaints of the owners against the Corporations are fraudulent practices, financial problems, mismanagement and not holding elections when their terms have expired. When they contact the District Offices, the District Offices would tell them to look for someone else for help, saying that it would not interfere. I believe that the current thousand-odd cases are all induced by misunderstanding between the flat owners and the Corporations.

At present there are 40 000 buildings in the territory and 4 600 Owners' Corporations have been formed. That means about one-tenth of the buildings have set up their Owners' Corporations. Among these buildings, a quarter of them have problems. The Secretary for Home Affairs said that they are already offering guidance to the owners on how to manage the buildings and monitor the work. However, normally only people from the Corporations can take these courses. The average flat owners have to work during the day and they cannot spare the time at all to take care of such matters. Moreover, they do not know through what channels can they learn more. There is basically something wrong with publicity. When the owners discover that there is something wrong with the buildings, they would go everywhere for help. As they get to the District Offices, the staff there often refuse them. The case of Tai On Building in Shau Kei Wan mentioned by the Secretary for Home Affairs just now is one of the examples. The flat owners found that there was something wrong with the Corporation, but after they lodged numerous complaints, the District Office could still not settle the case. Finally, the owners had to pool their resources to hire a lawyer. If the ordinary flat owners do not have the money to hire a lawyer, what can they do? Therefore, I hope that the Secretary for Home Affairs will pay attention not only to how the Owners' Corporations monitor the management companies but also how to help the flat owners monitor the Corporations.

Thank you, Mr President.

*Question on the amendment put and agreed to.*

**PRESIDENT** (in Cantonese): Mr IP Kwok-him, you are now entitled to reply and you have one minute five seconds out of your original 15 minutes.

**MR IP KWOK-HIM** (in Cantonese): Mr President, of course I will not have so much time as the Secretary for Home Affairs for my speech. I have only one minute five seconds left and what I can say will be limited.

Just now the Secretary for Home Affairs has made a lot of promises and mentioned a lot of differing viewpoints. I think we all have the answer in our minds. I hope the Secretary can really live up to his promises, in particular the setting up of resource centres as the Owners' Corporations are in desperate need of support in this aspect.

Also, I hope the Secretary will consider setting up ad hoc building management teams under the Area Committees of District Offices, particularly in districts such as Central and Western District, Yau Tsim Mong and Sham Shiu Po, where there is a high density of private buildings, to take up follow-up work.

Nearly 11 Members have spoken on my motion just now. I am very happy to see that Members can share their experiences on this issue. I hope Members will continue to pay attention to the management problems faced by the Owners' Corporations.

Thank you.

*Question on Mr IP Kwok-him's motion as amended by Mr James TO's amendment put and agreed to.*

## **COMPREHENSIVE REVIEW OF FIRE SAFETY MEASURES**

**MRS SELINA CHOW** to move the following motion:

"That, although the Governor has appointed an independent commission with extensive legal powers to inquire into the fifth alarm fire which broke out recently at Garley Building in Yau Ma Tei and caused serious casualties, and the interim and final reports on the inquiry are expected to take half a year and a year respectively to complete, this Council therefore strongly demands that the Fire Services Department, the Buildings Department, the Labour Department and the other departments concerned should, in accordance with the internal investigation report and the

recommendations made by the public, take immediate corresponding actions, so as to eliminate as far as possible any potential danger that may trigger similar incidents and prevent the recurrence of such tragedies before the completion of the inquiry, and that the respective departments concerned should brief this Council on the immediate actions they plan to take and report the progress of such actions on a regular basis."

**MRS SELINA CHOW** (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

The motion I move today is, no doubt, triggered by the Garley Building fire. However, I am not here to find out who is to blame for the tragedy, much less to focus the debate on passing our judgement on the fire. Rather, with so many casualties resulting in so many tragic experiences in this incident, I hope to awaken the Government and the public, now when the memory of the accident is still fresh, to actively make short-term and long-term preparations for preventing the recurrence of fires of such heavy casualties.

I do think that time is running out for us to deal with this matter of urgency. Not only because the dry season is already here, but because we, more often than not, only realize that there is a need of taking some actions that we are not normally aware of during a short period of time after the occurrence of a tragedy. Now that the memory of the Garley Building fire is still fresh, the Government should turn panic into positive force with a view to motivating the whole community to make recommendations and decide on fire preventive measures and various measures for preventing casualties during outbreaks of fire. Otherwise, should we wait three more months for the completion of a review by the relevant government departments and one year for the independent commission's report and recommendations, we might then lose the momentum to do a good job of this task.

I hope that the government departments will, before the completion of the investigation and the making of recommendations, embark on improving some arrangements. It is for this reason that I ask the departments concerned to brief this Council on, as a contingency measure, the immediate actions they plan to take to minimize fire risk, and report the progress of such actions on a regular basis.

Fire prevention, fire fighting and rescue work can in fact be divided into

two categories, namely the hardware and the software. Basically, shortage in the hardware can be remedied by acquisition or replenishment. But as far as the software is concerned, including the strategy for promoting fire prevention, preconcerted rescue, on-site co-ordination, as well as the public's alertness to fire and their awareness of fire prevention and fire escape, it is more difficult to deal with.

On the government front, I think a more efficient planning for fire prevention and fire fighting requires a complete and comprehensive strategy to enable the facilities and measures of different departments to tie in with one another, instead of working separately on their own. Of the tragic fires in my memory, be it the fire broke out at the Hongkong Bank branch in Shek Kip Mei, the Pak Sin Range or Garley Building, the firemen have indeed made their greatest efforts. But have the various units done their best as far as co-ordination is concerned? For instance, did the Fire Services Department and the Government Flying Service co-operate with each other in a perfect manner? Have lessons been drawn from the past as far as co-ordination is concerned so that improvement can be made to achieve the greatest effectiveness? No tragic disaster is caused by one single factor. From the Fire Services Department's report on the Garley Building fire, we can see that some situations were resulted from a series of coincidences and human negligence which eventually led to the tragedy. Of course, fire prevention is important, but fire can never be totally prevented, no matter how many facilities we have. Should fire breaks out, the most important thing is to prevent casualties, especially in places where there is a heavy flow of people. In fact, a contingency plan understood by all the departments concerned and based on a common language should be put in place. Moreover, the public's alertness to risks under such circumstances should be heightened.

While schools conduct fire drills every year, how many private buildings or residential premises have such awareness of carrying out fire drills? Do we pay attention to where the fire exits are located when we go to a department store or shopping mall? Have the department store employees undergone any special training in escaping fire or helping customers to escape fire? I do believe that there is still much room for improvement as far as awareness of fire prevention and alertness of the residents and commercial tenants of multi-storey buildings are concerned. It is indeed imperative for the Government to promote work in this aspect.

It is mentioned in the Fire Services Department's report on the Garley

Building fire that the fire exits were piled up with miscellaneous stuff and there was a large store of inflammable items. I believe this was not unique to Garley Building. Although the Fire Services Department does not have enough manpower to carry out daily inspection of all the multi-storey buildings in the territory, I wonder if it could set a risk scale, while we are waiting for the independent commission's interim report, and accord priority to inspect those old commercial buildings where there are heavy flows of people and which are not subject to the Fire Services Ordinance, as well as proposing improvement suggestions or arrangements to property management companies?

The mention of management companies reminds us that fire prevention should not be the sole responsibility of the Government. In fact, every member of the community may come under the threat of fire. Every one of us thus has the responsibility of preventing fire and making preparations for rescue work. But in retrospect, why have there been so few complaints on blockage of fire exits or damage of fire prevention facilities? As the Electricity Regulations came into effect in 1992, with its first five-year phase near the end, why do more than 80% of the buildings still fail to have their electrical installations tested as provided in the Regulations? Are the management companies, caretakers, Owners' Corporations or mutual aid committees aware of their own responsibility? Have they done what they are obliged to do?

Their lack of adequate initiative to complain or take action may be due to the fact that they are unaware of the seriousness of the consequences. Another possibility is that basically they have no idea as to how to complain, report or seek professional advice.

I propose that a centralized fire prevention hotline be set up by the Government so that any enquires or reports on fire prevention can be directed to this hotline. And the callers will then be referred to the government departments concerned for follow-up action. Through this simplified procedure, in addition to the lessons learned from the Garley Building fire, I believe the public will be more proactive in paying attention to fire risks that have a direct bearing on them. This will, on the one hand, help the Government identify potential danger and take precaution beforehand and, on the other, heighten the public's awareness of fire. I believe the most painful lesson learned from the Garley Building fire is the psychological impact of "crying wolf"!

False fire alarms are not infrequent in many buildings. This may be resulted from some misunderstandings arising from decoration works. In this aspect, there is an actual need for the management companies, owners' corporations and so on to take extra care. Moreover, the people working inside the buildings should as well heighten their alertness to prevent the occurrence of any accidents.

Mr President, it has been the practice of the Government to give piecemeal responses. Just now I also proposed that we adopt an attitude of giving responses as an immediate measure for consideration. However, such responses are not adequate in the long run. How can we allow our society to go without a macroscopic and systemic planning on such a life-and-death issue as fire prevention? So far, the Government has done little that is worth mentioning. For this reason, I suggest that, as a long-term solution, the Government should set up an inter-branch committee to promote the inspection of fire preventive measures.

I believe the fire prevention problem we are now facing is mainly due to the fact that basically we do not have comprehensive planning. Moreover, there is no comprehensive awareness in respect of fire prevention within the Government itself. While the Fire Services Department comes under the jurisdiction of the Security Branch, the Buildings Department is under the Planning, Environment and Lands Branch, the Electrical and Mechanical Services Department under the Works Branch, the Labour Department is under the Education and Manpower Branch, and the Home Affairs Department is under the Home Affairs Branch. The Policy Secretaries of the various Branches have similar level of powers and responsibility, and the various departments have their own policy as far as fire prevention planning is concerned. I think we all have the answer in our minds as to the extent of co-ordination among the various departments.

Relying solely on the existing framework is not sufficient for co-ordinating the whole fire prevention work properly. It is imperative for the Government to set up a special mechanism to carry out the work. As this mechanism is vested with great responsibility, with its jurisdiction extending across a number of Policy Branches, its composition and the selection of its chairman will be of paramount importance.

I suggest that besides officials from the various Branches and departments concerned, professionals outside the Government should also be included in the

mechanism for their professional advice. As for the post of chairman, it can be taken up by the Chief Secretary, or the Secretary for Security specially authorized by the Chief Secretary, or even an authoritative and socially respected professional. What actually matters is, the chairman must be a person of high standing and possess certain real power and status. This committee, vested with real power, is different from an ordinary consultative committee. This is because only with the possession of certain power can it bring the various departments into full play and be highly regarded. It has to be authoritative in order to gain public and professional respect so as to achieve professional standard. Also, in so doing, the committee can have a good grasp of its work progress, efficiency and priority in making arrangements, so as to ensure full co-operation between the Government and the public.

The functions of the committee should at least embrace four aspects, namely: first, to formulate fire prevention and rescue plans for the Government; second, to introduce professional participation of the private market; third, to introduce public participation; and fourth, to carry out effective publicity and education work.

The scope of the planning of fire prevention and rescue work will be far more extensive than what we have at present. The committee should, first of all, acquaint itself with the progress of each department in making fire prevention preparations, as well as formulating the necessary work and legislation for control purpose. It should then proceed to seek inter-departmental co-ordination. And finally, it should monitor the implementation by the various departments according to schedule to ensure that the overall plan for fire prevention is well co-ordinated.

To attract professionals or the private market is to take the professional advice from those outside the Government. As the Government is basically lack of sufficient manpower, it can draw support from the professionals through their participation.

Furthermore, it is important and essential to draw public participation in fire prevention. This is because fire prevention needs the participation of the whole community. We can only achieve maximum alertness if the public take the initiative to pay attention to the issue.



As for publicity and education on fire prevention, there is even a greater need for a comprehensive strategy and design in order to keep the community and all people concerned in constant preparation for fire prevention and emergency.

I hope that, through this motion debate, Members can put forward any suggestions in any aspect. But what matters most is timing as urgency is of paramount importance and we cannot allow any more delay.

Mr President, with these remarks, I beg to move.

*Question on the motion proposed.*

**MR EDWARD HO** (in Cantonese): Mr President, I feel deeply sorry about the Garley Building fire. Since the Government has appointed a judicial inquiry committee to independently investigate into the cause of and other issues related to the fire, therefore, I would not direct my speech at this incident.

In Hong Kong, there are a lot of skyscrapers and multi-storey buildings. When a fire breaks out, it will definitely arouse the extensive attention of all members of the public. On the motion of a "comprehensive review of fire safety measures" moved by the Honourable Mrs Selina CHOW, I would like to, as a professional in the field, probe into the problems of fire safety and rescue in multi-storey commercial buildings.

The problems can mainly be divided into three aspects: first, whether the architectural designs of the buildings comply with the fire safety standards; second, management of the buildings; third, the fire control facilities during the construction period, particularly the fitting up period of the buildings.

*First, the architectural designs of the buildings*

Fire safety is based on five important principles:

- (1) There should be a fire compartmentation in the design to prevent flames from spreading in case of fire;
- (2) an efficient system of fire alarm and detection;

- (3) an effective fire-fighting system;
- (4) a safe and smokeproof means of escape should be provided to rapidly evacuate people inside a building in case of fire; and
- (5) an environment which facilitates the rescue work of firemen.

The above five principles are stipulated in the Code of Practice for the Provision of Means of Access for Fire-fighting and Rescue, the Code of Practice for the Provision of Means of Escape in Case of Fire and the Code of Practice for Fire Resisting Structure published by the Government's Building Authority. These Codes have been constantly amended to keep pace with the needs of our society and technological progress. Therefore, the buildings constructed in recent years have been designed on the basis of the latest standards and we can have due confidence in them. However, the fire safety and escape facilities of some old buildings which were built many years ago may not be up to the current safety level since they were constructed before the existing codes were drawn up.

Recently, the Legislative Council has started examining the Fire Safety (Commercial Premises) Bill. The purpose of the Government in introducing this Bill is to provide better fire prevention equipment to the occupants, users and visitors of certain kinds of commercial premises such as banks and department stores.

When examining the Bill, we found that the commercial buildings approved to be built before 1973 were not installed with fire prevention systems such as automatic sprinklers, fire alarms and detection systems. Our priority now is to pay attention to the safety problems of such multi-storey commercial buildings.

In fact, once the Fire Safety (Commercial Premises) Bill is passed, multi-storey commercial buildings can simply be added to the Schedule and they can then be monitored as well. However, if all the old commercial buildings are required to install automatic sprinkler systems, we will have to consider whether technical problems actually exist and that a large sum of money may have to be spent. Should there be actual problems, we may have to contemplate giving them a grace period or requiring the gradual installation of other fire safety

facilities as a substitute. Such improvement projects should of course be supervised or taken up by professionals.

*Second, the management of the buildings*

An effective fire control system and a safe fire escape passage are very important. However, fire control systems or smokeproof doors are often altered or broken and not functioning. Multi-storey buildings, therefore, ought to be managed professionally. The building management companies are responsible for checking and monitoring the fire prevention facilities, for example, stepping up the patrol and inspection of smokeproof doors and fire hoses to ensure that they are always functioning well.

*Third, fire control facilities during the construction period, particularly the fitting up period*

Fire is prone to break out during the fitting up period. When a building is under construction, it is supervised by the Buildings Department and the relevant authorized persons, but the internal fitting up work and other exempted items are not subject to supervision. The Government should issue guidelines on building management to ensure fire safety during the fitting up period. I also propose that laws be enacted to regulate unauthorized alteration or sabotage of fire control facilities and consider such acts as punishable offences. Moreover, the building management agencies or the Owners' Corporations should take up the responsibility of patrolling and monitoring those facilities.

The above are my suggestions. Thank you, Mr President.

**MR CHAN WING-CHAN** (in Cantonese): Mr President, the Fifth-alarm fire which broke out at Garley Building in Yau Ma Tei led to a disaster with a record number of casualties in the history of commercial buildings in Hong Kong. The tragic scenes of the dead and the injured were extremely horrifying. What is more, several cases of fire were also recorded at Asian House in Wan Chai on one single day recently. These cases of fire all broke out at some old-style composite commercial/residential buildings located in the densely populated

areas of our city. Therefore, it is only natural that people have become concerned about two issues: First, have the fire-fighting facilities and regulations regarding the old-style composite commercial/residential buildings in our city become inadequate or even out-dated? Second, is the occupational and personal safety of the employees working in various kinds of old-style composite commercial/residential buildings protected by law? I think that the Government, employers or owners, employees and the community alike should pay more attention to these problems and take up the required responsibilities.

I am pleased to note that the government departments responsible for the follow-up actions and investigation work related to the recent fire at Garley Building have come up with some tentative findings. I hope that the independent judicial committee set up by the Government for the matter can complete its in-depth investigation as soon as possible and release the findings to the public. I also hope that we can learn a lesson from the fire and take steps to prevent a recurrence of similar unfortunate incidents.

The Garley Building fire highlights a number of problems with old composite commercial/residential buildings, such as inadequate fire prevention facilities and imperfect and out-dated legislative control over fire prevention. For improvements to fire-prevention measures, the Government should not wait until the said committee has completed its investigation. Instead, it should promptly start to inspect at full speed the fire-fighting facilities in old composite commercial/residential premises, and urge employers or owners to improve their fire prevention facilities. Such an operation can be carried out in a scale similar to that of the "Catherine Wheel Operation", a territory-wide inspection of dangerous illegal structures conducted by the Buildings Department. This would effectively improve building management and the work of fire prevention.

In response to the Garley Building fire incident, the Government should amend the Fire Services Ordinance as soon as possible to require that old composite commercial/residential buildings should be equipped with adequate and effective fire prevention facilities.

Moreover, since the employees working in old composite commercial/residential buildings are not covered by the Factories and Industrial

Undertakings Ordinance, their occupational safety has not been given any due attention so far. The Occupational Safety and Health Bill, which also covers the employees working in non-industrial premises, has recently been submitted to this Council. I hope that the Legislative Council can pass this Bill as soon as possible. In this way, the Government will be able to complete its legislative work on occupational safety and health as soon as possible, thus ensuring that safe workplaces can be provided to the 800 000 people working in industrial undertakings and the 2.3 million people working in non-industrial undertakings.

Mr President, regarding the adequacy and effectiveness of fire-fighting facilities in the said premises and the occupational safety of employees in their workplaces, the owners or employers naturally have to shoulder a great responsibility. If the employers can do a good job of ensuring occupational safety and health, they can definitely boost the morale and productivity of their employees. Regrettably, the Hong Kong General Chamber of Commerce issued a statement a few days ago to oppose the said Occupational Safety and Health Bill. For example, Mr Ian CHRISTINE, its chairman, said that the Screen Display Regulation in the Bill was not necessary. One of the reasons given was that the diseases connected to screen display suffered by an employee may not be related to the work environment. This actually shows that the employers are not being responsible and are not sufficiently positive towards the matter. The Federation of Trade Unions and I express our regret and are disappointed about this. We strongly demand that the Hong Kong General Chamber of Commerce withdraw its statement.

In addition, employees should pay more attention to fire-prevention and safety facilities in commercial premises and in their work environment. They should also be more alert and take an active part in improving safety measures in the workplace to create a safe and pleasant work environment.

Mr President, these are my remarks.

**MRS MIRIAM LAU** (in Cantonese): Mr President, the soaring and densely packed skyscrapers on both sides of Victoria Harbour demonstrate the majestic airs of Hong Kong as an international metropolis. However, the catastrophic Garley Building fire in Yau Ma Tei that took the lives of 39 people and a fire officer at the scene as well as injured numerous people and firemen has awakened us in a sudden shock. We came to realize that hazards actually are hidden behind prosperity. The concentrated commercial buildings, especially the

old-style ones, may turn out to be death traps.

"A fall in the pit, a gain in your wit." What have we learned from this painful lesson?

The internal report of the Fire Services Department on the Garley Building fire has revealed that there seemed to be insufficient co-ordination and communication between the Fire Services Department and the Government Flying Service. The two departments both proceeded with the rescue only from their own professional angles. Their spirit of risking their own lives to save others is respectable, but under such circumstances where everybody is eager to help, I believe that there would be more time to save lives and efficiency could be enhanced if the rescue efforts of the different departments can be better co-ordinated.

Learning from this experience, I think it is necessary for the Government to stage some large-scale manoeuvres to test the capability of relevant government departments to tackle emergencies in case catastrophic accidents happen in the busy parts of the urban area. Particular attention should be paid to the capabilities of the Government Flying Service and the Fire Services Department, so that the two can co-ordinate their rescue operations in the air and on the ground. For instance, if a fire is not occurring on the top floor of a building, how do the firemen at the scene get to know that the helicopters are arriving and that they can have one more option of rescue by leading the trapped victims to the roof to wait for help; or if the air currents fanned by the helicopters enhances the spread of the flames and thus affecting the escape routes, how do the firemen inform the helicopter pilots that they should withdraw from the scene immediately? Co-ordination in this aspect is very important.

We should always take preventive measures before disasters happen. In the case of fire prevention, different departments should co-operate more closely. For instance, when the Labour Department conducts regular inspection of industrial safety facilities, rather than confining to its own area of inspection, if the fire escape routes are found blocked or smoke doors damaged, it can inform the departments concerned so that they can go and check.

The Government may consider drawing up a set of guidelines for inspecting fire-prevention installations so that all departments which have to visit multi-storey buildings for inspections can have a reference. These departments can thus assess whether there is a need for the Fire Services Department or the Electrical and Mechanical Services Department to follow up with further investigations.

Mr President, the investigation report of the Fire Services Department has noted that the smoke doors on the 11th and 12th floors of Garley Building were closed when the fire broke out, thus stopping the thick smoke and flames from spreading. As a result, the fire did not cause very serious damage to the 11th and 12th floors. The more important point is, the people trapped on the lower floors were therefore able to wait for rescue.

This is not a miracle but a living example illustrating the importance of fire-prevention facilities. However, even though the fire installations of a building affect directly the safety of the users of a building who also have the responsibility to abide by the Fire Services Ordinance, many people have neglected the importance of such installations or over-estimated their own luck. They have left the smoke doors open for the sake of convenience or made unauthorized use of the fire hoses.

In view of such, the responsibility of safeguarding the safety of the users of buildings thus falls on the management company and the building management agents. However, if the building users refuse to co-operate, ignore the advice of the management agents and block the fire escape with odds and ends or reopen the smoke doors closed by the management agents, the fire-prevention facilities will be useless however perfect they are.

"There is no 'take two' in life." Nobody should gamble his life or other people's lives with the God of Death. Only by abiding by the Fire Services Ordinance and through the co-operation between the building management agents and the users of buildings can the potential hazards of fire be eliminated.

Mr President, while the people's memory of the Garley Building fire is still fresh, the Government should step up the publicity of fire prevention and alert

the people more to the importance of fire prevention. Besides, the Government should abandon its obsolete publicity measures and adopt a brand new way of promotion such as those used in the advertisements for police recruitment exercise or fighting drug abuse. I believe it will be much more effective. I also urge the Government to, through publicity and education, strengthen the co-operation between the users of buildings and the building management agents, with a view to ensuring that all sides will do their best to adhere to the fire prevention measures adopted.

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

**MR YUM SIN-LING** (in Cantonese): Mr President, I have eight suggestions to make. We have received two preliminary investigation reports on the Fifth-alarm fire at Garley Building, completed by the Fire Services Department (FSD) with the help of other government departments. We notice that they have grasped a lot of essential information related to the fire. We hope that the Government will not spend too much efforts on the legal recognition of the reports and lose sight of the urgency of preventing similar tragedies. We hope that the Government can complete an interim report within three months, and a final one within six months. At the same time, the FSD, the Buildings Department, the Labour Department and the Home Affairs Department should each set up a working group with representatives from professionals for the purpose of devising and implementing prompt and effective measures to prevent similar tragedies. Now, let me put forward some recommendations for reference.

First, the Housing Managers of the Building Management Co-ordination Teams under various District Offices should immediately identify all those commercial buildings in their respective districts which were built before 1973 and which have in fact been used for composite commercial and residential purposes. Such buildings should be classified as "Fire Prevention Targets" for which fire prevention work must be launched at once.

Second, District Offices should urge the owners corporations (OCs) or Mutual Aid Committees (MACs) of "Fire Prevention Targets" to assign representatives to take part in the fire prevention forums organized by the Fire Services Department in their districts. They should also help inspect their buildings and contact outside professionals for early improvements. In case a building does not have an OC or MAC, the District Office concerned should



promptly urge over 50% of its flat owners to set up such an organization. In the interim, the owners should be asked to appoint some provisional representatives to take up the work mentioned above.

Third, the Buildings Department should explore whether it is feasible to install, on the roof-tops of these existing buildings, water tanks which can serve the top floors only. The Department should also persuade the flat owners on those top floors who are thus benefited to contribute money for the installation of the water tanks and sprinkler systems required. Owners on the lower floors should be advised to install the so-called "dry sprinkler system", which is cheaper and has its supply of water on the ground level. In the event of a fire, firemen can feed water into the system, thus facilitating the process of fire fighting. Even if some flat owners are reluctant to contribute, the "user pays" principle can be applied. This means that owners on the higher floors can decide whether they are going to make any contributions and the roof-top water storage sprinkler systems eventually installed will only cover those who choose to participate. Likewise, owners on the lower floors can choose to participate in the installation of "dry sprinkler systems". That way, the severity of any fire can be minimized.

Fourth, a lesson which we should learn from the Garley Building fire is that management offices of buildings should be equipped with powerful portable loudhailers. This can enable caretakers to go out on the street to warn tenants inside a building on fire or, where it is safe to do so, to give escape signals from staircases to the tenants on the floors where a fire has started.

Fifth, the Secretary for Planning, Environment and Lands once remarked that it was impossible to ban or manage signboards in Hong Kong. If so, I wonder whether we can consider banning only those signboards which may obstruct fire fighting and which are mounted on commercial or composite commercial/residential buildings built before 1973. This can be done by classifying them as illegal structures which must be dismantled or reduced in size.

Sixth, the FSD should hire the Electrical and Mechanical Services Department (EMSD) as its consultant for the purpose of drawing up fire-prevention measures for lift maintenance work. Then, lift maintenance contractors should be required to strictly implement these measures.

Seventh, since there is at present redundant manpower in the electric power companies and the EMSD, the FSD can in fact join hands with them to provide low-priced wiring checking services for buildings built before 1973. In case there is any potential danger of electricity leakage, the management of the buildings concerned should be ordered to replace the old wiring.

Eighth, today, since the main force of the manufacturing industry in Hong Kong has shifted northward and the production plants remaining in Hong Kong have become smaller both in number and size, the Labour Department should gradually shift the deployment of its manpower to the work of inspecting commercial premises in buildings built before 1973 so as to prevent them from being used as workshops or godowns. Moreover, in the case of commercial premises where there is heavy use of instruments, computers or communication facilities, the management concerned should be advised to lower their density of staff in relation to space.

These eight measures have been proposed after learning the lesson of the Garley Building fire incident, and they can all be put in practice quickly. I hope that the relevant government departments will consider them with a view to minimizing the incidence of similar tragedies in the future. Thank you, Mr President.

**MR CHOY KAN-PUI** (in Cantonese): Mr President, the lesson which we have learned from the tragic casualties sustained during the Garley Building blaze is indeed much too costly. That said, I would say that it is after all never too late to mend if we can make serious and genuine efforts to learn from this experience, and come up with some effective preventive measures.

The Fire Safety (Commercial Premises) Bill, which is now being examined by this Council, aims to step up the regulation of fire-fighting facilities in public premises with a higher concentration of people. These public premises are divided into five categories which cover banks, betting centres, shopping arcades and so on. But, old-style composite commercial/residential buildings constructed before 1973 are not covered. While the Bill has not yet been passed, a severe fire has in the meantime broken out in one of these composite commercial/residential buildings. People have thus become more concerned than ever before, and they want to consider whether these densely populated composite commercial/residential buildings should be brought within the scope

of regulation. Immediately after the recent blaze, the Fire Services Department conducted a territory-wide inspection of all the 400 old-style composite commercial/residential buildings not equipped with automatic sprinkler systems. It was found that some of these buildings were not even equipped with any fire-hose reels and fire hydrants, let alone other better fire-fighting installations. Of course, we would certainly encounter some difficulties if we are to require that all old buildings built a long time ago must, within a short time, be fitted with modern fire-fighting equipment such as an automatic sprinkler system because simply no spare space was reserved for such purposes when the buildings were constructed. And, there are other limitations too. However, these technical problems are not insurmountable. It is clear that the flat owners concerned have to put in time and money to up-grade the fire-fighting installations in their buildings. Therefore, unless the Government makes it legally mandatory for the owners to do so, hardly anything can be effectively implemented. Of course, at the initial stage when the relevant legislation takes effect, a grace period should be given for the landlords and tenants to carry out the improvements required, and the government departments concerned should also provide them with appropriate guidance and positive assistance.

On the other hand, no matter how strict and comprehensive the Fire Services Ordinance is, and no matter how advanced our fire-fighting equipment is, nothing much can be done if the buildings remain poorly managed as a result of the people's carelessness and low vigilance against fire. Hence, the need to enhance people's vigilance against fire and building management cannot be overlooked either. The Garley Building blaze is a good example. At that time, when the staff in a certain unit heard the fire alarm, and saw thick smoke in the corridor, they still hesitated whether they should escape despite the instruction of their supervisor, thinking that "the fire might not spread to where they were". We should not blame them for lack of vigilance because fire drills are not common in Hong Kong, and schools seem to be the only places where such drills are conducted. In general, no fire drills are conducted in commercial buildings. So, in case of a fire, people simply do not know how to escape. Will the Government consider enacting some legislation which require the management companies of all commercial and industrial buildings to carry out fire drills on a regular basis every year so as to increase the tenants' vigilance against fire? The Fire Services Department should also step up its inspection of fire-fighting installations in buildings to ensure that management companies have taken proper preventive measures and that fire-prevention equipment is in sound and good working condition. When adequate precautionary measures are in place,

even if a fire does breakout, fire-fighting equipment will be able to function in the most effective manner to prevent the fire from spreading quickly, thus keeping the losses to the minimum.

Mr President, Hong Kong is a densely-populated place. Most people live and work in multi-storeyed buildings with a high concentration of people. But, the people's vigilance against fire is generally low. Moreover, many old buildings are poorly managed and not equipped with adequate fire-prevention equipment. The Hong Kong Progressive Alliance thinks that only by taking a two-pronged approach of regulation by law and education through publicity can the Government prevent similar disasters from recurring.

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

**MR JAMES TO** (in Cantonese): Mr President, I believe it will take a very long time for many people in Hong Kong, especially the victims' families, to forget the distressing scenes of the blaze that broke out at Garley Building, although it took place 50 days ago. We venerate Mr LIU Chi-ho, a senior fireman, who gave his life in fighting the fire bravely. We also cherish a feeling of profound respect towards hundreds of firemen, paramedical workers and officers in other disciplined services who rescued the injured from the fire.

The fire is doubtless a tragedy. However, if we can learn a lesson from it and improve our building management, fire prevention and fire fighting, then we have indeed found something positive in this disaster. This catastrophe reflects not only the problems of fire prevention and fire fighting but also the problems of building management because the fire-prevention and fire-fighting facilities in buildings need quality building management before their functions can be brought into play. As many Members have spoken on building management in the motion debate earlier and I generally agree to all their views, I will talk about fire prevention only.

After the disaster, many people have focused their attention on the fire-prevention facilities in commercial buildings constructed before 1973, as Garley Building is one these buildings. Certainly, we have to pay much attention to fire prevention in old-style commercial buildings, but we should also conduct a review to see if improvement is needed in other areas. In fact, these

buildings are already being monitored by some basic legislation. At present, there are many unauthorized alterations and additions to buildings in the old districts such as the Yau Tsim Mong area which are not monitored by the Government. These structures are indeed the most dangerous "death traps". It is lucky that there has been no catastrophe so far. Take the flats on the floors below my office in Shanghai Street and those buildings nearby as an example, they have been converted into massage parlours and karaoke lounges where government monitoring is totally absent. Even worse, the interiors of these flats are partitioned into very small rooms which are frequented by many people, and among them, many smokers. In case a fire breaks out, they will doubtless become death traps.

Originally the elimination of unauthorized structures is the responsibility of the Buildings Department. The Buildings Department, formerly the Building Ordinance Office, is responsible for inspecting unauthorized structures about which complaints have been lodged. However, even if people complain to the Fire Services Department of potential fire hazards in some buildings, these complaints will have to be referred to the Buildings Department if the elimination of unauthorized structures is involved. But according to my experiences as well as those of people involved in community affairs in my district, the Buildings Department has not done enough in this aspect. For instance, the complaints lodged by the Yau Tsim Mong District Board were handled only after a six-month delay despite the fact that these complaints were lodged under the name of the District Board. The insufficient work of the Buildings Department in this aspect will certainly lead to blatant violation of the law. Of course, some people may argue that the delay in handling cases is due to inadequate staff resources of the Buildings Department and a large amount of complaint cases. But I really wonder whether this is due to insufficient staff or delay by bureaucratic red tape. I hope that the Government can give us a report in a serious manner to explain about the performance of the Buildings Department.

According to the data compiled by the Buildings Department, there are more than 600 old-style commercial buildings similar to Garley Building in Hong Kong. Under the existing law, they are not required to install sprinkler systems. Further, the number of buildings with unauthorized structures is unknown. The

Government has so far only inspected 40 of these crisis-riddled buildings. I would like to ask: When can the inspection of all these buildings be completed? What are the reasons why the Government refuses to publish the names of the buildings which have been inspected and the details of the improvements in fire prevention already made by these buildings? I think that the employees working in these risk-riddled buildings or people who go there to consult doctors or visit have reasons to know whether they are in a dangerous or safe place. What worries us is that the Government, as what it often did in the past, has only claimed that improvements would soon be made after the disaster. But until today, no legislation has been enacted to cater for this. I hope that the Government will not wait until the inquiry committee headed by the Honourable Mr Justice WOO has completed its inquiry report before proposing legislative recommendations. I also hope that the Government will immediately publish the names of the buildings which have sub-standard fire safety facilities, carry out inspection of these buildings as soon as possible, announce the related recommendations and enhance such safety standards by legislating.

On the other hand, the fire at Garley Building has also exposed the problem of fire prevention in the old districts. Certainly, the report of the committee will touch upon some recommendations. However, in view of the vast number of buildings having an even higher risk of fire than Garley Building, I am of the opinion that, when the inquiry committee puts forward improvement recommendations, it should not confine their consideration to commercial buildings similar to Garley Building, just like the way when the fire at the Hongkong Bank Shek Kip Mei Branch was reviewed. It should, instead, conduct an overall review of fire prevention in these old districts.

From a positive point of view, quite a number of buildings in the old districts need improvements to be made to their fire prevention facilities. However, as a result of the absence of owners' corporations or for other reasons, sufficient funds were not raised for these projects. Recently, the Government has proposed setting up the Urban Rehabilitation Fund as a part of its urban renewal programme, and low-interest loans will be provided to help the residents in the old districts who have difficulties repairing their buildings. I think the Government can consider including improvements in fire-prevention facilities, and not just those relating to structural safety, in the scope covered by loans under this fund, so that residents in the old districts who really want to have their buildings improved can get the necessary assistance.

Besides, some suggestions of a technical nature can also be considered. After the terrible fire, for instance, quite a number of people have suggested that the commercial buildings built before 1973 should be compelled to install automatic sprinkler systems. Is it not possible? Can the installation of dry sprinkler systems which have lower requirements in terms of the structure of building be considered? In addition, some people have suggested that the use of inflammable building materials like bamboo scaffolding should be banned in confined spaces such as lift shafts. These suggestions are worth considering.

This Council is now scrutinizing the Occupational Safety and Health Bill which will empower the authorities concerned to issue a suspension notice to dangerous workplaces. But which department — whether it is the Labour Department or the Fire Services Department — will be responsible for inspecting the safety of these buildings in future and how will their duties be divided? All these issues also need considering.

With these remarks, I support the motion.

**DR JOHN TSE** (in Cantonese): Mr President, regarding the importance of fire prevention, especially in the old areas, I do not think there is any need for me to further expound on. Take the Third-alarm fire that broke out at East Town Building in Wan Chai this morning as an example, it took some people half an hour to escape from the scene of the fire. In just a few days, three fires broke out at Asian House in Wan Chai. All these fires should serve to alert the community to the importance of fire prevention. The most ironical tragedy of the Garley Building fire, to me, is that those who jumped down survived but those who waited for rescue met their death. Even with our modern technology, when people were trapped in a fire in a multi-storey building for several hours, we could but watch them being burnt to death before rescue came. There must be some problems that warrant our serious review. I hope the three points that I am going to raise now could help the Government to improve its fire-prevention work.

According to reports, there are now some 180 000 to 200 000 signboards in the territory and it is the responsibility of the Buildings Department as well as the Fire Services Department to check and examine these signboards. However, as far as I understand, this has yet to be done. I hereby urge the departments

concerned to promptly remove some signboards that may obstruct rescue efforts. Let me cite an example. When passing through Percival Street, I noticed that the street is not only lined with tram tracks and cables but its two sides are also franked with signboards that are prone to cause hazards in these old areas. I really cannot understand if one says such signboards will pose no obstruction to rescue efforts at all.

Secondly, I hope the Government will act promptly to improve the management of buildings, especially in the setting up of owners' corporations. Since this issue has been covered in the debate earlier, I am not going to repeat my points here. Just now the Secretary for Home Affairs argued that building management is the responsibility of the property owners. I would like to cite an example. The Government could as well say that vehicle maintenance is the responsibility of the vehicle owners. However, vehicle maintenance is monitored by the licensing system with a view to minimizing the risk of accident. From this point of view, we can say that building management and fire prevention are not only the responsibilities of the property owners but of the Government as well. Work concerning fire prevention is far from adequate and I hereby urge the Government to make greater efforts as soon as possible. Since only 10% of the buildings in Hong Kong have set up their owners' corporations, even if individual flat owners are willing to chip in for better fire-prevention facilities, there is no way they can do so. As such, the setting up of owners' corporations is a must.

Thirdly, the Fire Services Department should promptly inspect the some 40 000 buildings in the territory as soon as possible and ensure that the fire-prevention installations and fire escape routes in such buildings are sound and safe. In addition, prosecution should promptly be instituted against any breach of laws. As for the existing situation, I can very well sum up as "rescue slow in coming, escape difficult in making, and fire prevention definitely needs improving." Life is precious. We just cannot let any fire happen easily.

Mr President, these are my remarks.

**MR HOWARD YOUNG** (in Cantonese): Mr President, the crux of the motion today is how the various departments can prevent disasters like the Garley Building blaze from taking place again. I believe that after the completion of the investigation reports prepared by the Administration and the appointed judge,



we will be provided with many useful technical information.

Recently, many people have yearned for the enactment of legislation or more stringent monitoring on the basis of relevant laws to solve the problem. However, I think the crux of the problem lies not in the statutory penalties but the measures to be adopted for effective prevention. As Dr the Honourable John TSE has just pointed out the problem of shop signs, I would also like to express my views. In fact, the problem of shop signs has long been regarded as a ball, and the Government has always hoped that the ball could be kicked from one department to another. I recall that many years ago when I was a member of the Urban Council, some government departments contacted the Urban Council, inquiring whether it was willing to take over the work and monitor shop signs by means of permits. It was because the Buildings Department did not want to tackle the problem. However, the heart of the problem does not lie in issuing permits or taking over the monitoring work, or whether the relevant departments could generate revenue, but in how effective monitoring could be achieved.

Many shop signs in Hong Kong are not erected by the existing users, tenants or owners, and many are actually old shop signs. For example, if a person wants to lease a shop in order to open a restaurant or do other business, he has to go through many procedures before he could obtain the permit and open the shop for business. However, when the original lessees discontinue their businesses and move elsewhere, most of the shops will be leased to other people who would renovate the shops again. However, the new lessees often do not know who should be responsible for dismantling the shop signs. It seemed that only the Urban Council was responsible for dismantling the shop signs in the past but it did not have any monitoring mechanism or financial resources for support. Therefore, I hope that the investigation carried out by the Administration in the future can reveal whether any obstruction has been caused by the old shop signs left on the buildings in Hong Kong or in the incident concerned. We should be able to see that the problem does not lie in the directions and sizes of the advertising shop signs. The steel wires holding these shop signs could jeopardize people's lives for they impede the movements of the scaling ladders on fire engines.

Recently, people have also been asking whether the Administration should monitor the owners in a more stringent manner through legislation. In regard to this incident, we all know that many reports revealed the fact that the fire doors

were either opened, rebuilt or fitted up anew. I think that the owners may not necessarily be held responsible for such alterations as many commercial buildings in Hong Kong are leased out and the tenants are responsible for fitting up the leased units themselves. If a tenant cannot continue his business, the unit he leased would be taken over by another lessee. This is a common practice. Therefore, I think that the crux of the matter lies in how to educate the users (not only the owners), residents or people using such buildings to make them realize that such alterations can pose a threat to their safety, no matter whether large scale renovation works are carried out or articles are used to block the fire doors.

Mr President, after the Garley Building blaze has taken place, I believe many people have had messages ringing in their ears, and the incident has also aroused the public's concern that fire prevention and safety measures are not trifling matters. I hope that this can develop into a general atmosphere of society, and that everybody will realize that arbitrary alterations to fire prevention measures will pose a threat to everyone and is not right. I think enacting legislation or imposing penalties will not necessarily solve the problem. For example, when Hong Kong initially passed such legislation as the prohibition of smoking in public places or elevators, although there is a rule that penalty will be imposed if the regulation is breached, how many people have actually been penalized? I believe few people have been penalized. However, we all recognize that such acts are socially unacceptable and if a person lights a cigarette inside an elevator, he will be looked down upon or even reproached bluntly by the people around him. This is precisely mutual monitoring by members of the public. We have all learned a lesson. On the basis of the same standard of behaviour, if a person acts in the future against the safety measures of fire prevention or fire escape, his neighbours would voice their opinions, and criticize or censure him. This could be more effective than the Government sending someone to patrol the buildings or perform monitoring functions.

I think that this motion has come at an opportune time. I support the motion.

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, the views expressed by Members in this debate show that members of the public are very concerned about whether fire safety measures are adequate. This concern is

shared by the Government. There are certainly lessons to be learned from the tragedy which happened at Garley Building.

### *Inquiry*

Two weeks after the incident, the Director of Fire Services already completed two investigation reports on the causes of fire and the reasons why there were so many casualties. The Administration has also set up a statutory commission of inquiry to conduct a full investigation into the causes of the fire, give advice on the adequacy and proper co-ordination of the emergency services, and make recommendations to prevent any recurrence of similar tragedies. At the same time, all the relevant departments are also conducting special inquiries. While the inquiries conducted by the Architectural Services Department, the Labour Department and the Electrical and Mechanical Services Department are nearing their final stage, the police's investigation into the causes and circumstances of casualties is still in progress.

### *Follow-up actions*

On 16 December last year, the various government departments concerned already briefed the Legislative Council Panel on Security and the Panel on Planning, Lands and Works on the findings and recommendations of the investigation reports made by the Fire Services Department. The Government has adopted all of the 13 recommendations contained in the above-mentioned reports and some of the recommendations have already been put into practice. In three months' time, we will review the progress of the various government departments. By that time, we will be able to submit a progress report on the follow-up actions to the Legislative Council Panels concerned.

Currently, we are adopting a number of measures to step up our publicity and law enforcement actions. We are also considering the introduction of new legislation in order to raise the fire safety standards of old buildings.

### *Publicity*

With regard to publicity, the various departments have formulated plans to

step up publicity campaigns on fire safety in the coming months. The authorities concerned will enhance publicity on the importance of adopting fire safety measures while carrying out welding works, the merits of conducting regular fire drills, the danger of unauthorized alterations to protected means of escape and the consequences of leaving smoke doors open. With the support of the liaison network of the Home Affairs Department, the Fire Services Department will actively publicize the message of fire safety to Owners' Corporations.

### *Law enforcement*

With regard to law enforcement, the Fire Services Department, the Buildings Department and the Labour Department are now reinforcing law enforcement actions. Apart from handling complaints, these departments will actively step up their inspection of buildings and premises to check the fire safety standards and fire prevention installations.

### *Legislation*

As far as legislation is concerned, the Bills Committee of the Legislative Council is now scrutinizing the Fire Safety (Commercial Premises) Bill, which requires that the fire service installations and means of escape provided must be reinforced, and the standards for fire-resistant structures be raised in certain prescribed commercial premises. The Bills Committee has discussed most of the outstanding issues. I hope the Bill will be passed by the Legislative Council into law as early as possible. On 4 December last year, the Occupational Safety and Health Bill was introduced to the Legislative Council for scrutiny. The Bill covers workplaces similar to those located in such commercial buildings as Garley Building. If the Bill is passed, the Administration will introduce subsidiary legislation to prescribe fire safety measures to be taken in a workplace. Where necessary, the Commissioner for Labour may require employers to take additional fire safety measures other than those prescribed by other legislation. We hope the Legislative Council can scrutinize and pass the Bill as soon as possible.

### *Step-by-step approach*

The public hold that there is a need to review fire safety measures in such kind of buildings like Garley Building in order to prevent a recurrence of tragedies. The Government shares this view too. As we think that old commercial premises/office buildings run a higher risk in case of fire, the Government's foremost task should be to solve the fire safety problems in such kind of buildings. As industrial buildings are more frequently inspected by staff of the Labour Department and the Fire Services Department, law enforcement actions can be carried out speedily upon identifying any irregularities or inadequacies in the course of inspection. In the case of residential buildings, since the burning capacity is comparatively low, the degree of damage in case a fire breaks out is also smaller.

For this reason, the first step we are taking is to review old commercial premises/office buildings similar to Garley Building and examine what additional fire safety measures should be taken. The Fire Services Department and the Buildings Department are now conducting a sample survey of 40 of such type of buildings. Since these buildings are unlikely to be installed with sprinkler systems, protection will be inadequate in case of fire. Based on the findings of this inquiry, we will assess whether we can extend the requirements similar to those contained in the Fire Safety (Commercial Premises) Bill to this type of buildings, and propose enacting appropriate legislation thereafter. During this process, we are most willing to listen to the views put forward by Members of this Council.

### *Conclusion*

To conclude, we agree with the main thrust of the motion that we must improve and regulate fire safety measures. However, while making the improvements, we believe we should have a clear objective and adopt a step-by-step approach in order to best serve the public interest. The buildings that require priority treatment are those buildings with a higher fire risk, such as old commercial buildings.

Thank you, Mr President.

**PRESIDENT** (in Cantonese): Mrs Selina CHOW, you are now entitled to reply and you have 48 seconds out of your original 15 minutes.

**MRS SELINA CHOW** (in Cantonese): Mr President, a lot of comments have in fact been expressed by Honourable colleagues but I would like to respond to what the Secretary for Security has just said about publicity, law enforcement and legislation. All these are but methods and actions that can be undertaken by the Government. What I want to point out is, fire prevention and fire fighting are not solely the Government's responsibility. The whole community, including the professionals and all other people, be they property owners, employers or employees, should all share the responsibility.

Hence, if the Government can take the lead in arousing the awareness of the community and make them alert, and provide them with some opportunities to participate, I believe their awareness and alertness to fire prevention and fire fighting will surely be much strengthened. As for co-ordination, I hope that the Government will seriously consider what I have just suggested and see if the series of comprehensive strategic projects can be improved. Thank you, Mr President.

*Question on the motion put and agreed to.*

## **MEMBERS' BILLS**

### **First Reading of Bill**

#### **TRADE UNIONS (AMENDMENT) BILL 1997**

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

### **Second Reading of Bills**

**TRADE UNIONS (AMENDMENT) BILL 1997**

***MR LEE CHEUK-YAN to move the Second Reading of: "A Bill to amend the Trade Unions Ordinance."***

**MR LEE CHEUK-YAN** (in Cantonese): Mr President, I move that the Trade Unions (Amendment) Bill 1997 be read the Second time.

The purpose of the Bill is to remove outdated and unreasonable restrictions on trade unions, so that workers' freedom of association can be manifested. In drafting the Bill, the Confederation of Trade Unions has based on the International Labour Convention No. 87, that is, the Freedom of Association and Protection of the Right to Organize Convention 1948, as the standard of measurement in order that the Trade Unions Ordinance of Hong Kong can comply with the provisions of the Convention. We have also made reference to section 18 of the Hong Kong Bills of Rights Ordinance and Article 8 of the International Covenant on Economic, Social and Cultural Rights regarding freedom of association. With reference to the standard of these international conventions and to tie in with the present development of trade unions in Hong Kong, we recommend that the Bill should:

*First, to repeal the provision that prohibits the formation of trade union federations covering different industries:*

The right to organize trade union federations is internationally recognized as a basic right for workers and, in fact, such right enables the trade union federations in Hong Kong to register under the Trade Unions Ordinance, thereby enabling the federations to acquire the rights given to trade unions under sections 40 to 44 and section 46 of the Trade Unions Ordinance. Such rights mainly include immunity from civil proceedings, avoidance of action in tort, peaceful picketing and so on. However, after the registration of a trade union federation as a trade union, it will have to register with the Registry of Trade Unions and come under its supervision.

*Second, to repeal the requirement of Governor's approval for a trade union to be a member of and donate funds to any international trade union:*

Freedom of association should not be confined to the national level, but should also be extended to the international level. As an international city, Hong Kong should not only encourage international activities in business, but also encourage exchanges at the non-governmental level. Local trade unions should enjoy the basic human right to join international trade unions and this should also be encouraged.

*Third, to repeal the restriction on the use of funds by trade unions in political activities:*

As the trade union movement in Hong Kong has become mature, the Government should not impose any restrictions on how trade unions should make use of their funds. Rather, it should let members of trade unions to decide for themselves. In fact, Hong Kong's trade unions do have a hand in political activities, and the most obvious example is the defence of the Diaoyutai Islands campaign. According to the existing legislation, it is just impossible for trade unions to use any funds to place advertisements, make banners or pay for expenses on staging demonstrations.

*Fourth, to relax the age restriction to become officers of a trade union from 21 to 18, and to allow a person to be an officer of a trade union or a trade union federation even though he is not engaged in the same trade or business of that trade union.*

*Fifth, to simplify the procedure for changing the name of a trade union from voting by all members to voting at a general meeting of members of the trade union.*

We can see from tracing the history of the Trade Unions Ordinance that the restrictions imposed on trade unions were originated from the Illegal Strikes and Lock-outs Ordinance enacted in 1927. The main reason for the enactment of that Ordinance was to crack down on a series of trade union movements triggered by the Canton-Hong Kong strikes, and to sever the ties between the trade unions in Hong Kong and those in the Mainland. With the forthcoming reversion of Hong Kong to China now, it is indeed a big irony to retain these colonial legislation.

Mr President, with these remarks, I move the Second Reading of the Bill. Thank you.



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

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

### **Resumption of Second Reading Debate on Bill**

#### **THE METHODIST CHURCH, HONG KONG, INCORPORATION (AMENDMENT) BILL 1996**

#### **Resumption of debate on Second Reading which was moved on 4 December 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 Bill**

Council went into Committee.

#### **THE METHODIST CHURCH, HONG KONG, INCORPORATION (AMENDMENT) BILL 1996**

Clauses 1 to 6 were agreed to.

Council then resumed.

### **Third Reading of Bill**

MR LAU CHIN-SHEK reported that

**THE METHODIST CHURCH, HONG KONG, INCORPORATION  
(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.

**ADJOURNMENT AND NEXT SITTING**

**PRESIDENT** (in Cantonese): In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 15 January 1997.

*Adjourned accordingly at eighteen minutes past Nine o'clock.*

*Note:* The short title of the Freight Containers (Safety) Bill, Banking (Amendment) Bill 1996 and The Methodist Church, Hong Kong, Incorporation (Amendment) Bill 1996 listed in the Hansard have been translated into Chinese for information and guidance only; they do not have authoritative effect in Chinese.