

OFFICIAL RECORD OF PROCEEDINGS

Wednesday, 29 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 SZETO WAH

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

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

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

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

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

THE HONOURABLE ALBERT CHAN WAI-YIP

THE HONOURABLE CHEUNG MAN-KWONG

THE HONOURABLE CHIM PUI-CHUNG

THE HONOURABLE FREDERICK FUNG KIN-KEE

THE HONOURABLE MICHAEL HO MUN-KA

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

THE HONOURABLE EMILY LAU WAI-HING

THE HONOURABLE LEE WING-TAT

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

THE HONOURABLE FRED LI WAH-MING

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

THE HONOURABLE JAMES TO KUN-SUN

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

DR THE HONOURABLE PHILIP WONG YU-HONG

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

THE HONOURABLE CHAN YUEN-HAN

THE HONOURABLE ANDREW CHENG KAR-FOO

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHEUNG HON-CHUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

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

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN

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

THE HONOURABLE LAU CHIN-SHEK

THE HONOURABLE SIN CHUNG-KAI

PUBLIC OFFICERS ATTENDING

MR MICHAEL SUEN MING-YEUNG, 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 GORDON SIU KWING-CHUE, J.P.
SECRETARY FOR TRANSPORT

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

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

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

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

MRS DORIS HO KO SUET-YIU, J.P.
SECRETARY FOR HEALTH AND WELFARE

MR TAM WING-PONG, J.P.
SECRETARY FOR TRADE AND INDUSTRY
(w.e.f. 6.30 pm on 29 January 1997)

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

MR ANTHONY GEFFREY COOPER, J.P.
DEPUTY SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS

CLERKS IN ATTENDANCE

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

MISS PAULINE NG MAN-WAH, ASSISTANT SECRETARY GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

PAPERS

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

Subject

Subsidiary Legislation	<i>L.N. No.</i>
Post Office (Amendment) Regulation 1997	27/97
Telecommunication (Amendment) Regulation 1997	28/97
Amusement Rides (Safety) (Fees) (Amendment) Regulation 1997	29/97
Aerial Ropeways (Fees) (Amendment) Regulation 1997	30/97
Lifts and Escalators (Safety) (Fees) (Amendment) Regulation 1997	31/97
Electricity (Registration) (Amendment) Regulation 1997	32/97
Electricity (Wiring) (Amendment) Regulation 1997	33/97
Fire Services Department (Reports and Certificates) (Amendment) Regulation 1997	34/97
Gas Safety (Gas Supply) (Amendment) Regulation 1997	35/97
Gas Safety (Registration of Gas Installers and Gas Contractors) (Amendment) Regulation 1997 ...	36/97
Gas Safety (Registration of Gas Supply Companies) (Amendment) Regulation 1997	37/97
Road Traffic (Parking) (Amendment) Regulation 1997	38/97

Official Languages (Alteration of Text Under Section 4D) (No. 2) Order 1997	39/97
Places for Post-Mortem Examination (Amendment) Order 1997	40/97
Occupational Retirement Schemes (Preparation of Actuarial Certificates) Rules	41/97
Occupational Retirement Schemes (Periodic Certification of Registered Defined Benefit Schemes) Rules.....	42/97
Medical Registration (Amendment) Ordinance 1996 (7 of 1996) (Commencement) Notice 1997	43/97
Medical Registration (Fees) Regulation (L.N. 517 of 1996) (Commencement) Notice 1997.....	44/97
Medical Registration (Miscellaneous Provisions) Regulation (L.N. 520 of 1996) (Commencement) Notice 1997.....	45/97
Medical Practitioners (Registration and Disciplinary Procedure) Regulation (L.N. 521 of 1996) (Commencement) Notice 1997.....	46/97
Wild Animals Protection (Amendment) Ordinance 1996 (77 of 1996) (Commencement) Notice 1997	47/97
Official Languages (Authentic Chinese Text) (Plant (Importation and Pest Control) Ordinance) Order	(C) 3/97

Official Languages (Authentic Chinese Text) (Civil Aviation (Aircraft Noise) Ordinance) Order	(C) 4/97
Official Languages (Authentic Chinese Text) (Antibiotics Ordinance) Order	(C) 5/97
Official Languages (Authentic Chinese Text) (Trading with the Enemy Ordinance) Order	(C) 6/97

Sessional Papers 1996-97

- No. 62 — Hong Kong Council for Academic Accreditation
Annual Report 1995-96
- No. 63 — Report of the Public Accounts Committee on the
Reports of the Director of Audit on the
Accounts of the Hong Kong Government
for the year ended 31 March 1996 and the
Results of Value for Money Audits
(January 1997 — PAC Report No. 27)

ADDRESS

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

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

Report of the Public Account Committee on the Reports of the Director of Audit on the Accounts of the Hong Kong Government for the year ended 31

March 1996 and the Results of Value for Money Audits (January 1997 — PAC Report No. 27)

MR ERIC LI: Mr President, on behalf of the Public Accounts Committee, I have pleasure in tabling the Committee's Report No. 27 today.

This Report contains three main parts:

- (a) the Committee's assessment of the actions taken by the Administration in response to the recommendations made by the Committee in our previous reports;
- (b) the observation of the Committee on the Report of the Director of Audit on the accounts of the Hong Kong Government for the year ended 31 March 1996 and further information supplied by the Director of Audit; and
- (c) the conclusions reached by the Committee on the Director of Audit's Report on the results of value for money audits completed between March and September 1996.

Whilst we appreciate the generally positive attitude adopted by the Administration in implementing the Committee's recommendations, there remain, nonetheless, some areas of concern, which I will now highlight. I should like to speak on two of these.

First, on the actions taken by the Administration in response to the recommendations made by this Committee.

The Committee is gravely disappointed with the unduly long time taken to implement the transfer of the management of community centres and community halls from the Home Affairs Department to the Social Welfare Department. This issue was first raised in the Director of Audit's Report No. 19 tabled in this Council on 18 November 1992. An agreement in principle was reached by the Social Services Policy Group in September 1993 to transfer the management responsibilities to the Social Welfare Department. However, to date, the transfer is still outstanding because the necessary resources to facilitate it are yet to be identified. We urge the Administration to expeditiously come up with a concrete proposal to put the grossly under-utilized facilities to good use. We

have also invited the Director of Audit to conduct a follow-up study on this matter.

The Committee is also concerned about the slow progress made in a number of other issues, such as the issue on "Abuse of policy governing the registration and licensing of goods vehicles" and "The problems of indebtedness of some civil servants working in the Royal Hong Kong Police Force." We urge the Administration to take prompt actions to resolve the problems and implement the Committee's recommendations.

I now turn to the several issues covered in the Director of Audit's Report No. 27, which concern the results of the Director's value for money audits.

Regarding the follow-up review on the advances to the United Nations High Commission for Refugees (UNHCR) for the care and maintenance of Vietnamese migrants (VMs) stranded in Hong Kong, the Director of Audit concluded that there was no available evidence to indicate that the British Government had imposed on the Hong Kong Government any prescribed policies on Vietnamese refugees and migrants. However, the Committee considers that there is strong circumstantial evidence to show that the British Government had played a pivotal role in shaping the Hong Kong Government's policies on Vietnamese refugees and migrants. We are of the view that the British Government has undeniable obligations to help us solve this problem before the change of sovereignty. In our Report, we have set out three incidents, namely, the arrival of the refugees on board the vessels "The Ava" and "Huey Fong" in 1976 and 1979 respectively, and the screening policy in respect of the new Vietnamese arrivals. These clearly demonstrate that the Hong Kong Government had at all times sought blessings from the British Government before taking these actions. We reiterate our plea that the British Government should be urged to continue to press the Vietnamese Government to expedite the repatriation of all VMs before the change of sovereignty. We also urge that the British Government should continue to appeal to the international community for donations to the UNHCR earmarked for the Government of the Hong Kong Special Administration Region, until the outstanding advances have been completely repaid.

Furthermore, the Committee is strongly dissatisfied that the Administration has not put forward convincing justifications for not implementing the

Committee's recommendation to define more precisely the scope of the delegated authority of the Financial Secretary to advance payments under section 20 of the Public Finance Ordinance. We are unanimous that the Financial Secretary should immediately discontinue the practice of charging expenses incurred in the care and maintenance of VMs to the advance accounts, and henceforth seek prior funding approval from the Finance Committee for all such expenditure. For this regrettable decision made by the Administration, we shall hold it fully responsible in the event that the outstanding advances could not be recovered from the UNHCR.

Another issue which has caused us serious concern relates to the allocation of the AA grade quarters to the Commissioner of Police who had received housing benefit under the Home Purchase Scheme (HPS) prior to the allocation. The Committee considers that the problem has originated from a breach by the Administration of the Government's policy on the allocation of quarters. This breach refers to the decision by the Administration to designate the AA grade quarters as a general departmental quarters in 1990 for the exclusive use of the Commissioner of Police. The problem is compounded by the decision made in 1994 to approve the incumbent Commissioner of Police's application to reside in the quarters, despite full knowledge that the Commissioner had been a participant of the HPS since 1984.

Furthermore, in order to rectify these faulty decisions, approval was given in October 1996 to designate the quarters as post-tied quarters. The Committee finds the justifications put forward by the Administration to defend the designation totally unconvincing. We are worried that this may set a very undesirable precedent for allowing senior civil servants to breach the Government's policy against double housing benefits. Against this background and in cognizance of the importance of applying equal treatment to the staff concerned, the Committee have had a lengthy debate in arriving at our recommendations.

We recommend strongly that the Commissioner be required to vacate the quarters; failing that, special dispensation should be sought from the Executive Council to give a one-off approval to this particular case by allowing the Commissioner to continue to reside in the quarters but to require him to make monetary compensation to the Government in regard to the period in which he has enjoyed double housing benefits. The Committee wishes to categorically state that we have no intention of giving any preferential treatment to the

Commissioner of Police by providing an alternative for him to continue to reside in the quarters, but the recommendation has been made with great reluctance after balancing all factors.

The Committee observes that, in matters involving several government policy branches and departments, bureaucratic merry-go-around often occurs. As a result, a lot of resources and time have been wasted to no avail. An issue that best illustrates this point is the failure to exploit fully opportunities for commercialization of government properties. The lack of co-ordination has resulted in the Blackdown Barracks in San Po Kong, which was handed over to the Government in January 1995, not being let on a short-term basis. As a result, a potential annual revenue of \$24 million has been foregone.

The Committee is also concerned about the lack of a mechanism to resolve disagreements among policy branches and departments such as that raised in the Director of Audit's Report concerning the award of tenders under the Private Sector Participation Scheme (PSPS). In spite of repeated suggestions by the Secretary of the Treasury to introduce an objective weighting system to assist tender assessment and the fact that a weighting system has been used satisfactorily in other government work projects, the Secretary for Housing is still hesitant to implement a weighting system to improve the PSPS assessment system. The Committee urges that a mechanism should be devised to enable intervention by the highest level of the Government to resolve disagreements and areas of ambiguities among policy branches and departments.

There is also one recurring issue which the Committee wishes to mention. This refers to the Administration's habitual dependency on external consultants. Whilst we recognize that the external consultants may be useful in some areas, we urge that prior to the appointment of consultants, the Administration does critically examine its capability to conduct in-house feasibility studies. To achieve good value for money, it is also crucial for the departments concerned to be up-to-speed on the subject matters themselves, so as to appoint consultants with the right qualifications and experiences and so that the departments are well placed to give proper and detailed briefs to the consultants.

The Committee has worked exceedingly hard in the past three months. I wish to record our appreciation for the co-operation rendered by the Director of Audit and the efficient support rendered by the Legislative Council Secretariat.

Thank you, Mr President.

ORAL ANSWERS TO QUESTIONS

PRESIDENT (in Cantonese): Question Time. Honourable Members, as the meeting today will be of considerable length, I will limit the time for Members' questions to about one hour. Members should keep their supplementary questions concise, avoid giving lengthy, argumentative and tedious preambles, and raising multi-barrelled questions.

Complaints against Members of the British Forces

1. **MR YUM SIN-LING** asked (in Cantonese): *It was reported recently that some members of the British Forces stationed in the territory refused to pay taxi fares and that some police officers did not pay for their meals in restaurants. In this connection, will the Government inform this Council, in respect of the past three years:*

- (a) *of the numbers of complaints received by the authorities concerned about non-payment of taxi fares by members of the British Forces and the disciplined services respectively;*
- (b) *of the numbers of complaints received by the authorities concerned about non-payment of other fees and charges by members of the British Forces and the disciplined services respectively;*
- (c) *how the authorities concerned handled the complaints against members of the British Forces and the disciplined services committing the above acts; and*

- (d) *of the respective numbers of members of the British Forces and the disciplined services who were disciplined by the authorities concerned, or convicted in a local court, for the above acts?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, as regards part (a) of the question, the British garrison and the disciplined services have not received any formal complaints about non-payment of taxi fares by their members in the past three years. The British garrison are however aware of two recent disputes over the fares charged involving their members. The incidents were settled with the assistance of the police and the Royal Military Police without a formal complaint arising from either party.

As regards part (b) of the question, the British garrison have not received any formal complaints about non-payment of other fees and charges by their members in the past three years. As regards the disciplined services, there are three complaints received by the Independent Commission Against Corruption against police officers (two in 1994, one in 1995) concerning the non-payment of meal expenses in the past three years. The Customs and Excise Department have also received one complaint against its member for using cross border bus services without payment during the period. The claim was not substantiated.

As regards part (c) of the question, if members of the public have a complaint on such acts by a member of the British garrison or the disciplined services, they should report it to the police. The police will deal with them in the same way as all other criminal cases in a fair and thorough manner. If there is an element of corruption, the cases will be investigated by the ICAC.

As regards part (d) of the question, one police officer was charged but not convicted. However, disciplinary action was taken by the police against four officers involved in the cases mentioned in part (b) of the answer.

MR YUM SIN-LING (in Cantonese): *Mr President, part (d) of the main reply mentions that only one police officer was charged but not convicted. Does it imply that all complaints received by the ICAC were eventually not substantiated? Is there any information in this respect?*

SECRETARY FOR SECURITY (in Cantonese): Mr President, the question is about two aspects. The first one is whether anyone involved was convicted, which means that the person concerned was found guilty by the court. I have mentioned in part (d) of the main reply that one police officer was charged but not convicted, which means that he was found not guilty by the court.

As for the other aspect regarding the three complaints received by the ICAC, I have also pointed out in part (d) of the main reply that disciplinary action had been taken by the police against four officers involved in the cases.

Travel Industry Council Trial Scheme

2. **MR FRED LI** asked (in Cantonese): *It is learnt that in mid October last year, the Travel Industry Council (TIC) launched a trial scheme dispensing with the minimum fares requirement for certain outbound travel tours. The trial scheme ended in mid December last year, and the TIC later stated that the outcome of the scheme was favourable, but it still decided to retain the minimum fares requirement for outbound travel tours. In this regard, will the Government inform this Council:*

- (a) *whether the Government is aware of the specific contents of the outcome of the above trial scheme, and the criteria adopted by the TIC for concluding that the outcome was favourable;*
- (b) *whether the Government is aware of the reasons why the TIC has no intention of relaxing the minimum fares requirement for outbound travel tours completely, given the favourable outcome of the trial scheme; and whether the TIC's stance is in breach of the principle of fair competition; and*
- (c) *whether — in response to the views of Members of this Council, the Consumer Council, individual operators in the travel industry and members of the public — the Government will request the TIC to remove the minimum fares requirement for outbound travel tours, so as to safeguard the principle of fair competition; if not, why not?*

SECRETARY FOR TRADE AND INDUSTRY: Mr President, question (a) and the first part of question (b) relate to the Agreed Minimum Package Price (AMPP) scheme operated by the Travel Industry Council (TIC) of Hong Kong. The scheme was first introduced by the TIC in October 1991 as a self-regulatory measure of the outbound travel industry to prevent undercost operation with the objectives of stabilizing the market and reducing the risks of travel agency default or abscondment. At present, there are eight package tour destinations covered by the AMPP scheme. All of them are short-haul destinations where competition is particularly keen. The scheme is regularly reviewed by the TIC to ensure that the AMPPs remain responsive to market changes and are set at a realistic level.

Late last year, the TIC reviewed the AMPPs for package tours to Korea and Thailand and considered that they might no longer be at a realistic level. The TIC therefore decided to lift the AMPPs for these two destinations on a trial basis for two months from mid-October to mid-December 1996. The Council hoped that the temporary lift would help adjust prices through market forces.

During the trial period, the TIC closely monitored the prices for the package tours to Korea and Thailand. They considered that the prices set freely by the travel agents were at a realistic and fair level and that there was no evidence of price undercutting during the period. The TIC was therefore satisfied with the result of the trial.

Towards the end of the trial period, the free market prices closely tracked or were above the AMPPs before they were lifted. The TIC considered it necessary and prudent to resume the AMPPs for package tours to Korea and Thailand at the end of the trial period in mid-December, having regard to the onset of the Christmas and New Year holidays, which are the peak season for outbound package tours. The TIC took this action to prevent intentional cut-throat pricing to attract purchase of tours by consumers which were cancelled later on because they were not commercially viable. The TIC was also keen to minimize the possibility of deliberate underpricing by rogue travel agents for the purpose of amassing payments from consumers before default or abscondment.

The TIC considers that the AMPP scheme is beneficial rather than detrimental to consumers. Competition in the outbound travel industry, especially the short-haul market, is extremely fierce. Both the number of travel agents and the volume of business are higher than those in the long-haul market.

Hence the impact on consumers in case of travel agency default or abscondment will be significantly higher. With the setting of minimum prices, healthy price competition is still engendered but not to the extent of non-commercially viable pricing. In addition, some of the emphasis of competition will be placed on the quality of service, such as inclusion of sight-seeing spots or extra programmes, which is beneficial to consumers.

The second part of question (b) and question (c) asks whether the AMPP scheme operated by the TIC is in breach of the principle of fair competition. We consider that the AMPP scheme is conducive to maintaining a healthy business environment. With the scheme, travel agents do not need to fear the practice of commercially non-viable pricing in order to corner the market. Consumers face less risk of financial loss resulting from default or abscondment by travel agents and less unhappiness resulting from cancellation of tours. With the AMPP scheme, travel agents still compete on pricing but above the minimum threshold. They pay more attention to and compete on quality of service and contents of tour programmes.

We are fully aware of the need to strike a right balance between reducing the risks of intentional underpricing operation by travel agents with all its consequential negative implications for consumers on the one hand, and ensuring that outbound travellers are not required to pay unreasonably high prices on the other. So far, the AMPP scheme operated by the TIC has not caused great concern to the Government. Nevertheless, we will continue to keep the AMPP scheme operated by the TIC under review. We work closely with the Council and the Council is receptive to suggestions from the Government. In addition, we will continue our long-established practice of consulting the Advisory Committee on Travel Agents, on which the Consumer Council is represented, as well as the Legislative Council Panel on Trade and Industry on matters relating to the outbound travel industry and the protection of outbound travellers.

MR FRED LI (in Cantonese): *Mr President, I find it regrettable that the Government still finds nothing wrong in this regard. Given that 75% of outbound travel tours are controlled by 10 travel agents at present, will the setting of minimum prices for package tours to eight popular destinations and the resulted absence of price competition strengthen the market position of those*

travel agents in the industry? Will such practice enable them to corner the market and hence breach the principle of fair competition? Has the Government taken stock of the current market situation to see if anything like that has happened?

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, we do keep an eye on the current market situation, but so far we have not detected any market monopoly which Mr LI is worried about. Theoretically, there are two different views on this issue. One can argue that setting minimum prices will strengthen the market position of the 10 larger travel agents. On the other hand, one can argue to the contrary that if no minimum prices are set, smaller travel agents cannot engage in fair competition in the Hong Kong environment.

PRESIDENT (in Cantonese): There are still three Members on the list. I will draw a line there.

MRS SELINA CHOW (in Cantonese): *Mr President, in paragraph 1 of his main reply, the Secretary for Trade and Industry has mentioned that the Travel Industry Council (TIC) first introduced the AMPP scheme in October 1991. I would like to ask whether the vicious competition at that time warranted the implementation of the AMPP scheme. Does that kind of vicious competition still exist so that the AMPP scheme is worth retaining?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, the TIC conducted a market research in late 1990 and its members called on the TIC to set minimum prices for package tours to certain destinations. The TIC considered their request in detail for almost half a year and held a special meeting which all its members had been asked to attend. At that special meeting, the majority of the members present deemed it necessary to set minimum prices for outbound package tours to the eight short-haul destinations so as to foster healthy and fair competition as well as better protection for consumers.

PRESIDENT (in Cantonese): Mrs Selina CHOW, are you claiming that the reply has not fully addressed your supplementary?

MRS SELINA CHOW (in Cantonese): *The Secretary for Trade and Industry has not answered the second part of my question, that is, whether the reasons for the implementation of the AMPP scheme at that time still exist today?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, the stance taken by the TIC in late 1990 was that the introduction of minimum prices requirement for outbound package tours to certain short-haul destinations would prevent market monopoly, promote fair competition and protect consumer rights. In this regard, the TIC's stance has remained unchanged.

DR ANTHONY CHEUNG (in Cantonese): *Mr President, in his reply to Mr Fred LI's question just now, the Secretary for Trade and Industry has stated that the Government will closely monitor the AMPP scheme and work closely with the TIC, which will be receptive to the advice of the Government. I would like to ask the Secretary for Trade and Industry what concrete advice the Government has made to the TIC regarding the pricing of package tours in order to ensure that the prices are set at a level reasonable to the consumers.*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, the authority to set minimum package prices rests with the TIC. There is an Executive Office under the TIC and four members of the office are appointed by the Financial Secretary. Moreover, the Travel Agents Registry is set up under the Trade and Industry Branch and the Registrar of Travel Agents maintains a very close working relationship with the TIC. The Registry is vested with statutory power to investigate consumers' complaints concerning malpractice of any travel agents. If a consumer's complaint is substantiated, the Registrar can exercise its statutory power to take appropriate measures, including suspension or revocation of licences. The Travel Agents Registry was set up in 1987 and has been in operation for 10 years. According to our experience over the past

10 years, we are of the view that our relationship with the TIC at the working level enables us to hold discussion and conduct studies on matters of common interest, which is conducive to greater consumer protection and is most beneficial to the outbound travel industry of Hong Kong.

PRESIDENT (in Cantonese): Dr Anthony CHEUNG, are you claiming that the reply has not fully addressed your question? If so, which part?

DR ANTHONY CHEUNG (in Cantonese): *My question is mainly about what concrete advice the Government has given to the TIC regarding the setting of minimum package prices, and not about how the Government monitors the TIC in general.*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, we may well say that the TIC has a better foresight than the Government. Towards the end of 1996, the TIC considered that the AMPPs for package tours to two destinations, namely Thailand and Korea, might not be able to reflect the actual cost. In the absence of advice from the Government, the TIC took the initiative to lift the AMPPs for package tours to these two destinations temporarily. Maybe Dr CHEUNG is worried that the TIC is given a free hand in this respect. In this connection, I would like to explain to this Council that as long as five members of the TIC have made requests to review or adjust any of the AMPPs, the TIC is duty-bound to conduct a review, and the results of the review have to be submitted to the decision-making office of the TIC for consideration.

MR HOWARD YOUNG (in Cantonese): *Mr President, I learn from the industry that most smaller travel agents are worried that in the absence of the AMPP scheme, larger travel agents will corner the market. Mr President, there are over 30 million outbound traveller departures every year and I believe several millions of them are outbound package tours. Among the dozens of package tour destinations available, only eight destinations are covered by the AMPP scheme. I would like to ask the Secretary for Trade and Industry*

whether there are any signs showing that this measure has encouraged market monopoly.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, let me put it this way. Package tours to those eight destinations covered by the AMPP scheme account for 60% of the outbound traveller departures. Tours to these eight short-haul outbound tour destinations are run by the largest number of travel agents. Should the assumption that the AMPP scheme leads to market monopoly hold, there should not, according to common sense, be so many travel agents who continue to run package tours to these eight destinations. As a matter of fact, the AMPP scheme has been implemented for six years and the number of travel agents running package tours to these eight destinations is still the greatest.

MR FRED LI (in Cantonese): *Mr President, I really do not understand. The TIC lifted the AMPPs for package tours to two out of the eight destinations, that is, Thailand and Korea, on a trial basis. Results showed that there was no cutthroat competition and the market was free of any malpractice during the trial period. However, the AMPPs for these package tours resumed after the trial. Why did the Government not discuss with the TIC on the basis of the results of the trial and request it to extend the trial scheme to package tours to other destinations to see what the results will be? This will be a better measure than maintaining the status quo. Will the Government further explain why it accepted such results?*

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, I did attempt to answer this question in my main reply just now. Maybe I will say it once again. When the trial period ended, the free market prices were either the same as or were above the AMPPs. In other words, the prices were not artificially raised during the trial period.

In fact, the TIC was concerned about one thing. The period covering the end of the twelfth month and the first month of the lunar calendar was the peak season for outbound travel. With its professional judgement, the TIC knew that there might be a small number of unscrupulous travel agents who took advantage of the peak season by setting package tour prices at unreasonably low levels so as to attract consumers to join the tours and pay deposits. After they had paid the deposits, consumers might be informed by the travel agents concerned one month

before the departure dates that their package tours were cancelled or they had to pay surcharges. We understand that such practice will upset those consumers who intend to take a vacation trip abroad. Even if consumers can get back the deposits they have paid, they will be disappointed as they cannot take a vacation trip abroad as originally planned. According to past experience, the TIC has reasons to believe that the lifting of the AMPPs would give rise to some unwanted incidents.

Concerning Mr LI's suggestion that the AMPPs for package tours to the other six destinations currently covered by the AMPP scheme should also be lifted for a certain period to see what the results will be, I am more than happy to discuss it with the TIC.

Medical Reimbursements for CSSA Recipients

3. **MRS ELIZABETH WONG** asked: *Mr President, will the Government advise this Council whether recipients of the Comprehensive Social Security Assistance Scheme are reimbursed for the actual expenses incurred in using traditional Chinese medicine; if not, why not?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, in line with our policy that no one should be denied adequate medical treatment because of a lack of means, Comprehensive Social Security Assistance (CSSA) recipients are entitled to free medical treatment at public hospitals or clinics. Medical expenses for direct patient care, regardless of whether they are for traditional Chinese medicine or western medicine, are therefore not reimbursable.

MRS ELIZABETH WONG: *Mr President, I refer to the fourth line of the Secretary's reply where she said that they are entitled to free medical treatment at public hospitals. Can she confirm that the "free medical treatment" does include the provision of traditional Chinese medicine in public hospitals such as the Kwong Wah or Tung Wah Hospitals?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I am not sure that I understand the Honourable Member's question regarding the free services provided to CSSA recipients in public hospitals. With regard to services provided at the two herbalist clinics run by the Tung Wah Group of Hospitals, this arrangement is historical and the service is provided free in any case.

MRS ELIZABETH WONG: *Mr President, I would like to simplify my question. My question therefore is: Can the Secretary confirm whether public hospitals or clinics do provide traditional Chinese medicine; if not, why not?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, public hospitals and clinics at present do not provide traditional Chinese medicine. The reason is that at present there is no system in place to regulate the traditional Chinese medicine profession. Until we have a system in place to ensure the safety of our patients and to safeguard consumer interests, this provision will not be considered.

PRESIDENT (in Cantonese): Mrs Elizabeth WONG, are you claiming that your question has not been fully answered?

MRS ELIABETH WONG: *Yes.*

PRESIDENT (in Cantonese): If you have a supplementary, I will put your name at the bottom of the list.

DR LEONG CHE-HUNG (in Cantonese): *Mr President, my question is also a follow up on Mrs Elizabeth Wong's question raised just now. The Government says that since CSSA recipients are currently entitled to seek free medical consultation at public hospitals, it is not necessary to reimburse their medical expenses. However, we all know that at present the practice in traditional*

Chinese medicine is not part of the health care system in the public sector. In this connection, will the Government introduce such practice into the health care system in the public sector? If not, why not? If so, when?

SECRETARY FOR HEALTH AND WELFARE: Mr President, it is government policy to develop and regulate traditional Chinese medicine in Hong Kong. It is also the aspiration of the traditional Chinese medicine practitioners that a regulatory system is first put in place as a matter of priority. As the Honourable Member well knows, the Preparatory Committee on Chinese Medicine has been working very hard and is presently finalizing its report to the Government with the Committee's recommendations for a legislative framework for the regulation and registration of traditional Chinese medicine practitioners. Further development of traditional Chinese medicine in Hong Kong will progress from there, and one of the next steps that have to be considered would be the role of traditional Chinese medicine in our health care system, be it in the private sector, public sector, or both.

MRS ELIZABETH WONG: *Mr President, I want to follow up on Dr LEONG Che-hung's question. Does the Secretary have a timetable when such recognition of traditional Chinese medicine might take place?*

SECRETARY FOR HEALTH AND WELFARE: Mr President, I understand that the Preparatory Committee on Chinese Medicine will be submitting its report to the Government some time in March. The Government will then have to consider those proposals and put the legislation drafting procedure in place. But much would depend on how fast we can move the legislation through this Council.

Gold Coast Beach Fireworks Traffic Arrangements

4. **MR ALBERT HO** (in Cantonese): *It is reported that some 300 000 people went to Gold Coast Beach in Tuen Mun on New Year's Eve last year to see the fireworks display, causing traffic chaos in the district. As a result, many people who were at the scene were unable to reach home until three to four*

o'clock in the early morning on New Year's Day. In this connection, will the Government inform this council:

- (a) whether, before the event, the departments concerned had assessed the possibility of a large crowd turning up at the site and drawn up any contingency measures, such as arrangements for dispersing the crowd to various districts, extending the service hours and increasing the frequencies of ferries and buses to transport people to and from the site; and whether the Tuen Mun District Office or the Tuen Mun District Board had been consulted on such arrangements;*
- (b) whether, after the event, the department concerned have reviewed the arrangements and contingency measures, including any special traffic arrangements, adopted on that day; if so, what the outcome is; and whether the departments concerned will offer a public apology for the inconvenience caused to the people concerned; and*
- (c) whether the departments concerned had considered beforehand if it was suitable to stage this kind of major activity in the district?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, the 1996 New Years Eve Countdown Fireworks Display was organized by the Tuen Mun Yan Oi Tong with the assistance of the Tuen Mun District Office, the Regional Services Department and the Police.

An Inter-departmental Working Group led by District Officer/Tuen Mun was set up in early October 1996 to work out an action checklist and define the respective roles of the government departments concerned in organizing the Display.

The Working Group planned on the basis of a turnout of at least 100 000 people watching the Display along the coastline from Siu Lam to Butterfly Bay. The Transport Department, on the other hand, had contingency plans to cater for more passengers riding on buses, if this was necessary.

The Transport Department together with the Police worked out special traffic and transport arrangements for the event, including road closures, suspension of carparks and pedestrian flow, to ensure safety and to facilitate

movement of public transport vehicles. The Castle Peak Road section between So Kwun Wat and Sam Shing was closed to all vehicles except buses.

The Transport Department had made arrangements with public transport operators for special services before the Display. KMB, KCRC and LRT deployed additional buses and extended the hours of operation to meet the demand. Tsuen Wan bound passengers would take KMB buses from the eastern end of the pedestrianized area on Castle Peak Road, and Tuen Mun and Yuen Long bound passengers would take KCRC feeder buses or the LRT from the western end at Sham Shing.

By 11.00 pm on New Year's Eve, it was estimated that the number of spectators exceeded the 200 000 mark and the enhanced contingency plans were activated:

- (a) KMB, which already had 80 buses standing by, eventually deployed 100 more buses to the scene and extended the services until the queue was cleared;
- (b) KCRC extended the departure time of buses to operate between Tuen Mun, Sam Shing and Yuen Long until all passengers were cleared;
- (c) LRT also extended the services of six routes and the last train left Tuen Mun at 3.30 am.

It is estimated that in the event, some 78 000 people took public transport (25 000 on KMB buses, 12 000 on KCRC buses and 41 000 on the LRT) and 20 000 travelled by private cars, taxis and minibuses.

Due to the large size of the crowd and for the sake of safety, a segregation crowd management programme was implemented by the Police during the dispersal phase of the event. This programme allowed for the dispersal of large sections of the crowd in phases, interspersed with security gaps to ensure a large section in between to ensure an orderly departure. The tactic proved effective in ensuring pedestrian safety.

The situation was more difficult along the section of Castle Peak Road near Gold Coast Phase I. For some 30 minutes, the large number of people crowding at the narrow Castle Peak Road disallowed buses approaching the pick up point to turn around quickly and pick up passengers.

The option of providing a ferry service was carefully considered but had to be discarded because of practical problems. The Gold Coast Pier was small and could only cope with vessels no larger than 200 seats, that is, not much more than a large double decker bus, but the boarding time was much longer. The main ferry pier at Butterfly Bay was right next to the Light Rail Terminal, and the space in between was too restricted to accommodate the marshalling of both ferry passengers and Light Rail passengers in large numbers.

Following the event, when there were reports about the crowd control and transport situation, the Director of Home Affairs apologized to residents and spectators who had been inconvenienced that night. An inter-departmental review was convened by the District Officer/Tuen Mun. The meeting agreed that while the main objective of the event was achieved and inter-departmental co-ordination was satisfactory, there were clearly congestions and delays in journeys caused by the sheer size of the crowd which was significantly larger than anticipated.

Regarding whether Tuen Mun was suitable for holding major public events, the departments concerned did recognize that traffic and transport arrangement would be more difficult to handle because Tuen Mun was not served by mass carriers like the KCR and the MTR. However, as the fireworks display in 1989 had been conducted smoothly, and after considering other relevant factors, the authorities concerned decided to proceed with the fireworks display. The debriefing session on 13 January did not rule out similar public events in Tuen Mun, but the experience gained in last New Year's Eve would be fully taken into account in future. New traffic arrangement, for example, for any future major displays in Tuen mun, could be introduced. It might for example be possible to pedestrianize a wider section of Castle Peak Road and provide bus boarding points at locations which could gain exit to Tuen Mun Road quickly.

MR ALBERT HO (in Cantonese): *Mr President, after the event, the representative of the Police reiterated before the mass media that the*

arrangement on that day was, in fact, proper. The problem was only due to the fact that the size of the crowd was larger than expected. The answer of the Secretary for Transport also affirmed this point of view. However, he seems to have admitted that the contingency measures could not function well to handle such a large crowd.

Mr President, I believe that all residents of that district or people in Hong Kong hope to get an answer to this question : if such a large event is held again in future and 200 000 to 300 000 participants are expected, does the Government have the confidence to adopt an effective measure so as to ensure that similar situations will not occur again? If so, what are these measures?

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, "a fall in the pit, a gain in your wit." From the lesson learnt this time, some points are worth being taken as future reference. First, the slowest bus passengers that evening were those in the pedestrianized area at the southeast end. Why was the boarding so slow? The main reason was that buses and the private cars parked on the roadside blocked each other's way when they departed. If a similar situation occurs again, apart from considering the extension of the pedestrianized area, we may also restrict the crowd flow to one direction only and bus boarding locations may be arranged all at the northern end of the pedestrianized area. Moreover, all passages leading to Tuen Mun Road may be designated for buses use only. That evening, only four buses could get through each time. With the above arrangement, 10 to 12 buses can get through each time in future and thus, the time required will be much shortened. If such situation occurs again, we should apply the lesson learnt in this incident.

PRESIDENT (in Cantonese): There are still five Members on the list. That is too many. As the question time has lasted almost an hour, I would give the priority to Members who have raised less than ten supplementary questions in this session.

MR MICHAEL HO (in Cantonese): *Mr President, the Chinese version of the original reply mentions that the crowd size by eleven o'clock on that evening was as large as 200 000 people but its English version states that the crowd size exceeded the 200 000 mark. Will the Government inform us of the true figure it estimated at eleven o'clock? Were there contingency measures in place to cope*

with a crowd size of over 200 000, 300 000 and 400 000 people? And what is the expected highest capacity of the part of Castle Peak Road which allows only one lane in and one lane out ?

SECRETARY FOR TRANSPORT (in Cantonese): According to the estimation of our colleagues at the scene at that time, there should be more than 200 000 participants. As it was a very rough estimation, we were not sure whether the crowd size had reached 300 000 people or not. As regards crowd dispersal, it was mainly achieved by deploying more buses. At the beginning, we expected to send 80 buses but later, 180 buses were deployed. However, in my reply to the supplementary question raised by Mr HO, I have mentioned that the deployment of additional buses could not solve problem of the late arrivals and departures of buses caused by the traffic congestion at the southern end of Tuen Mun. Therefore, at that time, their plans were to send buses from three locations. This arrangement already made full use of the resources, especially when the departure speed of buses at the southern end was restricted by other factors. Therefore, should similar situations arise in future, the contingency measures may be changed completely.

MRS MIRIAM LAU (in Cantonese): *Mr President, according to my understanding, when the Transport Department made arrangements with the public transport organizations for this event, mini-bus operators were excluded. And it so happened that the problem occurred this time did involve mini-buses. Having learnt from this lesson, when organizing similar events in future, will the Transport Department make proper arrangements with the mini-bus operators or the Public Light Bus (PLB) Association in advance?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, in fact, mini-buses also took part in the crowd dispersal that evening. 120 mini-buses departed near Sam Shing Estate. However, all of them were red mini-buses. Improvements can be made in various aspects such as fares. This is also an example of "a fall in the pit, a gain in your wit". When we organize similar events next time, we may discuss with the maxicab Associations within or outside the district. Apart from bus service, we will provide special green

minibus service so as to disperse the crowd at the places where buses cannot reach.

DR LAW CHEUNG-KWOK (in Cantonese): *Mr President, I am very glad to hear the public officers mention "a fall in the pit, a gain in your wit" in the introduction. However, I remember that some ten years ago, a fireworks display was held in Shatin and the traffic was also chaotic at that time. On the transport arrangements of the fireworks display in Tuen Mun this time, will the Government inform us clearly of the measures that were taken as reference from the traffic chaos of the fireworks display in Shatin last time?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, I am sorry. As I do not have in hand any information on the situation of the Shatin event, nor any comparison made. Can I give Dr LAW a written reply on the comparison between the two events? (Annex)

Tourist Points along Widened Castle Peak Road

5. **MR HOWARD YOUNG** asked: *Mr President, with regard to the feasibility studies and plans being undertaken on the project of widening Castle Peak Road, will the Government inform this Council whether consideration is being given to providing adequate lay-bys and stopping places for coaches at certain vantage points along Castle Peak Road which can give viewers a panoramic view of the Tsing Ma Bridge, so as to develop the road into a tourist attraction as well as a transport artery between Tsuen Wan and Tuen Mun; if not, why not?*

SECRETARY FOR TRANSPORT: Mr President, we do have plans to widen to dual-2 lane standard Castle Peak Road between Tsuen Wan and Tuen Mun in stages. Work on some sections has already been completed. Plans are being drawn up to widen the sections from Sham Tseng to Tsuen Wan Area 2, from Ka

Loon Tsuen to Sham Tseng, from So Kwun Tan to Siu Lam, and from Siu Lam to Ka Loon Tsuen.

The widening of Castle Peak Road improvement is aimed at coping with the traffic demand resulting from developments on both sides of the road. Where possible in our design, we shall provide space for lay-bys. However, given the primary function of Castle Peak Road as a busy transport artery between Tuen Mun and Tsuen Wan, the hilly topography and severe site constraints, there are limitations to the provision of purpose-built lay-bys enroute to allow drivers to stop and park their vehicles.

Mr President, the Government is well aware of the community interest in viewing the spectacular Tsing Ma Bridge, which is going to be a new landmark for Hong Kong. In the proposed widening of Castle Peak Road between Ka Loon Tsuen and Area 2 of Tsuen Wan near Bayview Garden, we will take the opportunity to expand the lay-by facilities and to provide more parking areas along the road, where possible. Eight new lay-bys each of 30 m long can be provided along this section. These extended lay-bys can cater for both buses and coaches for boarding and alighting of visitors. We will also consider in our feasibility studies to provide more parking areas by making use of some of the discarded carriageways after Castle Peak Road has been realigned.

As regards viewing the Tsing Ma Bridge, the best location is at the Airport Core Project Exhibition Centre at Ting Kau and also at northwest Tsing Yi, where a purpose-built viewing platform with over 100 parking spaces for coaches, private cars and motorcycles will be provided. This new strategic viewing facility is scheduled for commissioning in May. We are confident that it will become a major tourist attraction, for both local and overseas visitors. In addition, we are considering the possibility of widening the northwest Tsing Yi Island site further, so that it will, in the longer term, become the tourist centre for looking at the Tsing Ma Bridge.

MR HOWARD YOUNG (in Cantonese): *Mr President, the Secretary for Transport has just made a vigorous promotion of the new tourist attractions at north west Tsing Yi and Ting Kau. Will the Government consider putting up meters in the parking areas for coaches so as to prevent the parking spaces from being misused?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, the Government will certainly do so.

MRS MIRIAM LAU (in Cantonese): *Mr President, the provision of lay-bys will probably be far from adequate if they only cater for buses and coaches for boarding and alighting of visitors, as buses and coaches, after the alighting of visitors, will have to rove around Castle Peak Road before returning to pick up the visitors at the lay-by facilities, and this might worsen the congestion at Castle Peak Road. Moreover, does the Government or the Secretary for Transport realize that a lot of vehicles may queue up to use the lay-by facilities, thus blocking the vehicles behind and worsening the congestion at Castle Peak Road?*

SECRETARY FOR TRANSPORT (in Cantonese): Mr President, I actually share the concern of Mrs LAU. Frankly speaking, even when Castle Peak Road is widened to four lanes in future, coaches or any other kinds of vehicles should not be encouraged to stop there for a long time for boarding and alighting of passengers. After all, coaches will have to return to the same place where the visitors alight to pick them up. Therefore, I have strongly recommended some other better vantage points in the forth paragraph of my main reply. As to how the facilities will be used after their completion, I think it is mainly a matter of enforcement, and we will keep an eye on it.

Police Vehicle Traffic Accidents

6. **MR CHOY KAN-PUI** asked (in Cantonese): *Will the Government inform this Council of:*

- (a) *the number of traffic accidents related to police vehicles, and the type of police vehicles involved in such accidents, in each of the past three years;*

- (b) *the main causes of traffic accidents involving police vehicles, and the total number of such accidents related to the skill or mistakes of the drivers of police vehicles in the past three years; and*
- (c) *the average period of suspension from service of police vehicles involved in traffic accidents before they can be put back to use, and the effect on normal police work during the suspension in the past three years?*

SECRETARY FOR SECURITY (in Cantonese): Mr President,

- (a) The number of traffic accidents involving police vehicles were 628 in 1994, 610 in 1995 and 527 in 1996. Of the 628 cases in 1994, 242 involved motorcycles and 386 involved four-wheeled vehicles. Of the 610 cases in 1995, 182 involved motorcycles and 428 involved four-wheeled vehicles. Of the 527 cases in 1996, 218 involved motorcycles and 309 involved four-wheeled vehicles.
- (b) The main causes of traffic accidents involving police vehicles are deficiencies in driving attitude and skill. The police record showed that 82, 75 and 29 police officers were convicted in court for "Careless Driving" under the Road Traffic Ordinance (Cap. 374) respectively in 1994, 1995 and 1996. Only one police officer was convicted in 1996 for "Reckless Driving".
- (c) The police do not keep separate statistics on the average period of suspension of police vehicles involved in traffic accidents. The police only keep statistics on the average period of suspension from service of police vehicles, including suspension caused by maintenance and accidents. The average period of suspension from service of police vehicles in 1994, 1995 and the first 11 months of 1996 were 47 days, 43 days and 37 days respectively. The police consider that the current average period of suspension acceptable and has little impact on daily work.

MR CHOY KAN-PUI (in Cantonese): *Mr President, I would like to know whether police officers involved in traffic accidents while on duty are required to receive a screening breath test; if not, what the reasons are.*

SECRETARY FOR SECURITY (in Cantonese): Mr President, not each of the police officers on duty is required to receive a screening breath test. At present, the usual practice is that a screening breath test will only be conducted on the driver if evidence or the driver's behaviour makes the police officers in the enforcement of law suspect that the driver was probably driving under the influence of alcohol.

PRESIDENT (in Cantonese): I believe what Mr CHOY means is that if there is a traffic accident, is the driver of the police vehicle concerned required to receive a screening breath test?

SECRETARY FOR SECURITY (in Cantonese): If there is a traffic accident, the Police will handle the driver of the police vehicle in the same way as they do in the same situation involving ordinary people.

PRESIDENT (in Cantonese): Mr CHOY Kan-pui, is that the case?

MR CHOY KAN-PUI (in Cantonese): *Yes.*

WRITTEN ANSWERS TO QUESTIONS

Private Medical Insurance

7. **DR LEONG CHE-HUNG** asked: *Does the Administration know, in respect of each of the past three years, of:*

- (a) *the number of individual persons covered by private medical insurance in the territory, together with the total premium and the total payout involved; and*
- (b) *the number of business establishments in the territory taking out medical insurance for their employees and the total number of employees covered by such insurance, together with the total premium and the total payout involved?*

SECRETARY FOR FINANCIAL SERVICES: Mr President,

(a) and (b)

Medical insurance business is conducted by both general business insurers and long term business insurers. There are no separate reporting requirements for medical insurance business in Hong Kong as there are no specific prudential concerns. Generally, statistics on medical insurance business are reported in aggregate with those on accident insurance business if carried on by general business insurers, or subsumed under those of life insurance business if carried on by long-term business insurers because such business is largely transacted in the form of endorsement to a life policy. The Insurance Authority (IA) does not, therefore, have disaggregated statistics on medical insurance business in Hong Kong.

The Medical Insurance Association (MIA) collects statistics on medical insurance business from its members. The MIA is a trade association of authorized insurers with 46 members currently. The MIA's statistics on private medical insurance and on group medical insurance are annexed. However, as some insurers who carry on medical insurance business are not members of MIA, and as submission of statistics by members to the MIA is entirely voluntary, the statistics annexed do not cover the total amount of business conducted and payments made in the relevant years. The IA's rough estimate is that these figures should cover about 60% of the total relevant amounts.

Annex

Table A - Private Medical Insurance

<i>Year</i>	<i>No. of persons covered</i>	<i>Total premium (note 1) (in HK\$m)</i>	<i>Total payout (note 2) (in HK\$m)</i>
1993	297 047	323.28	140.90
1994	386 376	453.46	145.38
1995	1 061 650	1 073 52	448.65

Table B - Group Medical Insurance

<i>Year</i>	<i>No. of business establishments (note3)</i>	<i>No. of employees covered</i>	<i>Total premium (note 1) (in HK\$m)</i>	<i>Total payout (note 2) (in HK\$m)</i>
1993	10 595	627 153	879.52	616.51
1994	11 573	693 824	1,109.60	778.98
1995	15 402	856 690	1,453.31	1,045.30

Note:

1. Total premium represents gross earned premium during the year, which is the gross written premium adjusted by the unearned premiums at the beginning and end of the year.
2. Total payout represents gross claims paid during the year, which is the aggregate of claim costs and expenses directly attributable to the settlement of claims (such as legal or medical expenses).
3. The MIA does not collect statistics on the number of business establishments taking up medical insurance for their employees. The figures represent the number of policies in force. As a group of companies may take out one single policy which covers all the employees within the same group, it is probable that the number of business establishments involved may be higher.

Trainees from Mainland China

8. **MR CHAN WING-CHAN** asked (in Chinese): *Will the Government inform this Council of:*

- (a) *the number of people coming from mainland China to the territory in each of the past three years, for reason of undergoing training;*
- (b) *the number of these trainees remaining in the territory as at the end of last year;*
- (c) *the trades in which these trainees have been engaged after arrival in the territory, and the percentages of these trainees working in restaurants and the retail trades respectively; and*
- (d) *the average period of stay granted to these trainees, and the longest and shortest period of stay granted?*

SECRETARY FOR SECURITY (in Chinese): Mr President,

- (a) Statistics on the number of visas issued under the policy for entry for training in general are as follows:

<i>Year</i>	<i>No. of training visas issued</i>
1994	5 726
1995	5 460
1996	4 154

The Immigration Department does not keep separate arrival statistics for People's Republic of China nationals who entered for training purposes or have a breakdown of the visas issued by nationality of the recipients of visas.

- (b) The limit of stay granted to these persons varied from one to six months. The Immigration Department does not keep separate statistics on the number of persons still receiving training in Hong Kong;
- (c) The policy of admitting foreign nationals for training is open to all industries. A sample survey conducted in 1995 on 3 664 approved training applications revealed the following distribution of industries with foreign trainees in Hong Kong in descending order:

<i>Business nature of sponsoring company</i>	<i>Percentage</i>
University/Tertiary Institution	20.8
Trading and Investment	18.9
Industrial Enterprise	11.2
Engineering	10.2
Banking	6.8
Shipping, Transportation, Property Management, and so on	6.8
Computer Industry	5.7
Hotel Industry	5.0
Others	14.6

(Others included accountancy, airline industry, architecture and design, human resources, insurance, multi-mass media publisher, legal field, telecommunication and so on.)

The Immigration Department does not have a breakdown of the industries in which the trainees are engaged.

- (d) Under the policy for entry for training, the duration should not exceed 12 months. The duration of the majority of training applications ranges from one to six months. The duration of some cases was as short as seven days, while a few cases were of 16 months duration on exceptional basis.

9. **MR IP KWOK-HIM** asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the effectiveness of the Green Manager Scheme in government departments since its implementation; and whether the Scheme has achieved the expected results; if not, of the improvement measures in place; and*
- (b) *whether the Government will promote the implementation of the Scheme in the commercial sector or other private organizations; if so, what the details are; if not, why not?*

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

- (a) The overall objective of the Green Manager Scheme is to require each policy branch and department to provide a senior officer to ensure that environmental issues are considered when formulating policy or applying departmental programmes. The following speak for the achievement of the Scheme so far:
 - (i) Since the implementation of the Green Manager Scheme in January 1994, 88 government branches and departments have appointed Green Managers.
 - (ii) Green Managers have implemented a total of 65 green housekeeping measures involving waste minimization, waste recovery, energy conservation, staff participation, publicity and education.
 - (iii) To date seven departments have completed or are in the process of conducting environmental audits for their offices and operations. These pilot projects have been successful and we intend to encourage as many departments as possible to carry out their own environmental audits. In January 1997, we commissioned consultants to provide training courses for 250 government officers to enable them to carry out environmental audits and implement environmental management systems in their own work places.

- (iv) The Government is finalizing a draft Waste Reduction Plan and will conduct widespread consultation later in the year. The administration will give a clear lead to the community and we will naturally look to Green Managers in departments to help us implement a range of waste reduction measures.
 - (v) To maintain the momentum of the Scheme, a plenum of Green Managers will take place in March 1997.
- (b) The Government is also actively promoting the Green Manager Scheme in the private sector through the following measures:
- (i) We compile and update a Green Manager Information Database and maintain active liaison with private sector green managers to promote initiatives related to corporate environmental management.
 - (ii) The Environmental Protection Department (EPD) collaborates actively with the Hong Kong Productivity Council (HKPC), the Centre of Environmental Technology and the Hong Kong Quality Assurance Agency to provide training to interested private sector companies.
 - (iii) The EPD has also provided advice to the HKPC on the ISO 140 00 Environmental Management System pilot scheme.
 - (iv) A pamphlet "Green Managers in Business" has been published to provide guidance on setting up green manager schemes.
 - (v) A book "A simple Guide to set up an Environmental Management System" will be distributed by March 1997 and placed on the EPD's homepage on the internet to help green managers establish Environmental Management Systems.

- (vi) A booklet "Advisory Note on Energy Efficiency in Existing Commercial Buildings in Hong Kong" has been published to provide guidance to Green Managers and building users on energy efficiency and conservation.
- (vii) A brochure "Waste Paper Recycling from Office" encourages Green Managers to start waste paper recycling programmes in office buildings.
- (viii) The Industrial Support Fund, managed by the Industry Department, funds industrial and technological development research, including environmental projects relevant to Green Managers.
- (ix) We will shortly be distributing a video entitled "Green Offices" to introduce practical tips to reduce waste in offices and to promote the Green Manager Scheme.

Illegally Imported Diesel Oil

10. **MISS CHRISTINE LOH** asked: *Will the Government inform this Council, in respect of the past three years, of:*

- (a) *the estimated respective annual consumption of illegally imported diesel oil and industrial diesel oil by commercial vehicles;*
- (b) *the types of commercial vehicles using illegally imported diesel oil and industrial diesel oil;*
- (c) *the respective proportions of annual consumption of illegally imported diesel oil and industrial diesel oil by commercial vehicles to the annual total consumption of diesel oil for vehicles;*

- (d) *the impact of the use of illegally imported diesel oil and industrial diesel oil on air pollution in the territory; and*
- (e) *the total loss of government revenue as a result of the use of illegally imported diesel oil and industrial diesel oil by commercial vehicles?*

SECRETARY FOR THE TREASURY: Mr President,

- (a) We do not have statistics about the annual consumption of illegally imported diesel oil and industrial diesel oil which may have been used by commercial vehicles. We only have statistics on the quantity of illicit diesel oil seized. The statistics for the past three years are set out in the following table:

Year		1994		1995		1996	
		<i>Quantity</i>	<i>Duty Potential</i>	<i>Quantity</i>	<i>Duty Potential</i>	<i>Quantity</i>	<i>Duty Potential</i>
		<i>seized</i>	<i>(\$)</i>	<i>seized</i>	<i>(\$)</i>	<i>seized</i>	<i>(\$)</i>
		<i>(litre)</i>		<i>(litre)</i>		<i>(litre)</i>	
(a)	Illegally imported unimported diesel oil	183 342	447,252	147 895	388,013	558 196	1,606,314
(b)	Industrial diesel oil used by commercial vehicles:						
(i)	Marked oil	408 690	998,354	1 035 338	2,728,762	776 259	2,216,932
(ii)	Marked oil	88 540	216,923	286 567	774,066	133 810	385,576
	(Detreated)	-	-	-	-	-	-
	Total	680 572	1,662,529	1 469 800	3,890,841	1 468 265	4,208,822

- (b) The types of commercial vehicles where the use of illegally imported diesel oil and industrial diesel oil is commonly found

during enforcement action in the past three years are taxis and heavy goods vehicles.

- (c) For the reason set out in (a), we do not have statistics about the proportions of annual consumption of illegally imported diesel oil and industrial diesel oil by commercial vehicles to the annual total consumption of diesel oil for vehicles.
- (d) Illegally imported diesel oil and industrial diesel oil tend to have a higher sulphur content than automotive diesel oil. Therefore, their use as automotive fuel is likely to cause higher emissions of sulphur dioxide and respirable suspended particulates. However, we have no evidence to show that the misuse has caused any significant adverse impact on the overall air quality in the territory.
- (e) On the basis of the quantity of illicit diesel oil seized, the potential duty loss to the Government for the past three years is provided in the table at (a) above.

English Language Education

11. **DR DAVID LI** asked: *The Examinations Authority has disclosed that, according to the results of the students sitting for the Hong Kong Certificate of Education Examination (HKCEE) for the first time, the average percentage of such students who failed the English Language subject was much higher than that for the Chinese Language subject over the last 10 years. In this connection, will the Government inform this Council:*

- (a) *of the average percentage of the students sitting for the HKCEE for the first time who obtained a pass in the Chinese Language and English Language subjects respectively over the past three years; and*

- (b) *whether additional resources will be allocated to assist students, particularly those from schools with consistently poor performance in the Chinese Language and English Language subjects in the HKCEE, in improving their language proficiency?*

SECRETARY FOR EDUCATION AND MANPOWER: Mr President,

- (a) Over the past three years, the results of first-time HKCEE candidates in the Chinese Language and English Language subjects are as follows:

<i>Year</i>	<i>Subject</i>	<i>Pass (Grade E or above) Rate (%)</i> <i>(No. of students)</i>		
		<i>Chinese Language</i>	<i>English Language (Syllabus A)</i>	<i>English Language (Syllabus B)</i>
1994		60.2 (35 824)	50.5 (2 557)	55.4 (30 443)
1995		60.1 (36 637)	45.5 (2 730)	56.8 (31 376)
1996		59.5 (36 967)	44.9 (3 051)	56.4 (31 318)

- (b) The Administration is committed to ensuring that our students acquire a high level of proficiency in both Chinese and English and has allocated substantial resources in this respect. It has accepted fully the recommendations of the *Education Commission Report No.6* entitled "Enhancing Language Proficiency: A Comprehensive Strategy" and is implementing from 1996-97 the Phase I recommendations at a full year recurrent cost of about \$44 million.

Highlighted below are some of the key measures which are being implemented and which will continue in the coming years:

- the setting up of the Standing Committee on Language Education and Research in October 1996 to provide an institutional framework to enable research to be conducted into language education needs of Hong Kong, to develop policies to meet those needs, and to monitor and evaluate such policies in a coherent and systematic manner;
- the Education Department will continue with the Extensive English Reading Scheme for Primary Five to Secondary Three students, which has been implemented on a phased basis since September 1991. A Chinese Extensive Reading Scheme in Primary Schools (Phase I) was introduced in December 1996 and since then about 4 800 students from 34 primary schools have participated in the Scheme. It is anticipated that about 8 400 students from 60 schools will participate in Phase II of the Scheme starting from September 1997;
- a pilot scheme on the Intensive English Course for Secondary Six students in English-medium schools was introduced in late 1996 to help the target students achieve the standard of English required for entry into the tertiary institutions. Meanwhile the Intensive English Language Programme for Secondary Six and Secondary Seven students in Chinese-medium schools continues, benefiting about 3 300 students;
- to enhance the effectiveness of language teaching, the Advisory Committee on Teacher Education and Qualifications has engaged consultants to set language benchmarks for teachers and has now developed tentative language benchmarks for English teachers of lower secondary forms, teachers of Putonghua and those using Chinese as the medium of instruction in primary schools. Further studies will need to be conducted before the benchmarks are finalized. Thereafter, the benchmarks will be imposed on new teachers as soon as possible, and all serving teachers are expected to

pass the benchmark examinations within a reasonable period of time;

- we will continue to encourage and assist schools to employ native English-speaking teachers. As at September 1996, 87 native English-speaking teachers are employed in 53 schools;
- to identify ways to improve the effectiveness of language teaching, the Education Department has recently commissioned a study on the workload of language teachers; and
- to improve support services for language teaching, we will set up a Language Resource Centre later this year. Electronic media and computers will be used to develop links among school teachers and various institutions to enhance the exchange of teaching ideas and materials.

All these measures are aimed at improving the language proficiency of our students, including those from schools with consistently poor performance in the Chinese Language and English Language subjects in the HKCEE.

Public Hospitals' Prescription of Antibiotics

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

- (a) *of the number of patients suffering from influenza who sought treatment at public hospitals as well as general outpatients clinics under the management of the Department of Health, and the number of these patients who were prescribed with antibiotics by the medical officers concerned, in each of the past three years;*
- (b) *whether the authorities concerned have any mechanism to assess whether the prescription of antibiotics to such patients by medical officers is appropriate; if so, of the percentage of cases in the past*

three years in which the prescription of antibiotics was found to be inappropriate; if not, why not; and

- (c) *whether the authorities concerned have monitored the drug resistance of bacteria arising from the inappropriate prescription of antibiotics; if so, of the extent of the increase in drug resistance of common bacteria according to the data obtained in the past 10 years?*

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, statistics are not readily available on the number of cases involving patients suffering from influenza or common cold who sought treatment at our public hospitals or general outpatient clinics.

Apart from professional training on the appropriate use of antibiotics, frontline medical staff are provided with expert assistance from the pathologists/microbiologists or infection control committees affiliated with their respective institutions. All major public hospitals also conduct regular surveillance of antimicrobial susceptibility on bacterial isolates, the outcome of which is promulgated widely through newsletters, departmental seminars and periodic reports to promote good prescription practice.

The Drug and Therapeutic Committee or a similar functioning committee has been set up at each hospital to review and advise on proper use of antibiotics, to assess the need for inclusion of new antibiotics in the prescription list, as well as to formulate prescription policies and practices. Furthermore, the Central Drug Utilization Review Committee in the Hospital Authority Head Office promotes efficacious use of drug through utilization reviews and publication of a drug bulletin providing education and feedback to clinicians on the proper use of drugs, including antibiotics.

The outcome of surveillance in recent years has revealed increased antibiotic resistance for common pathogens to some older antibiotics which is in line with overseas experience. However, this problem can be managed by the use of new antibiotics or combination of antimicrobial chemotherapy.

Inappropriate prescription of antibiotics is only one of the many known causes for the emergence of drug resistant bacteria.

Winding Up Petitions

13. **MR CHIM PUI-CHUNG** asked (in Chinese): *Will the Government inform this Council:*

- (a) *of the criteria adopted in determining whether the Official Receiver or some other fit person should act as the liquidator in winding up cases; and*
- (b) *whether the party filing a winding up petition has the right to name the liquidator; if so, how the interests of the company being wound up are protected?*

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

- (a) In dealing with compulsory company winding-up cases, the decision of the Official Receiver (OR) on whether he himself or another fit person should act as the liquidator of the estate is determined mainly by the amount of assets in the company's estate. If those assets are not likely to exceed \$200,000, the OR will seek the court's approval to process the case under a summary procedure order whereby the OR will be appointed as the liquidator.

If the assets of the company's estate are likely to exceed \$200,000, the OR shall process the case in accordance with section 194 of the Companies Ordinance (the Ordinance) and call meetings of creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the court for appointing some other fit person who has insolvency experience to be the liquidator. If there is a difference between the determinations of the meetings of creditors and contributories in respect of the appointment of a liquidator, the court will decide the

matter and make such order as it thinks fit under section 194(c) of the Ordinance.

- (b) The party presenting a petition for a compulsory winding-up against a company does not have the right to designate who shall be the liquidator of the estate. The procedure for the appointment of the liquidator is as set out in (a) above.

Under section 193 of the Ordinance, the court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition. A party filing a winding-up petition may apply to the court to appoint a provisional liquidator at any time before the making of the winding-up order and either the OR or any other fit person may be appointed. The company against whom the winding-up petition has been filed may also apply to the court to object to the appointment of the provisional liquidator prior to the winding-up hearing. On the making of a winding-up order by the court, the OR by virtue of his office becomes the provisional liquidator and continues to act until a liquidator of the company has been appointed in accordance with the procedure set out in (a) above. Such procedures ensure that the interests of the company being wound up are protected.

Tsuen Wan Slaughterhouse

14. **MR HOWARD YOUNG** asked: *As the residents living in the vicinity of the Tsuen Wan Slaughterhouse have complained about noise and odour nuisances emanating from the slaughterhouse, will the Government inform this Council whether it has considered adopting the same arrangements used in the removal of Shiu Wing Steel Limited in Tseung Kwan O, thus enabling the private operator of the slaughterhouse, the residents and the property developers in the area to benefit at little or no public expense; if so, what the details are; if not, why not?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President, the justifications for the relocation of Shiu Wing Steel Works do not

apply in the case of the Tsuen Wan Slaughterhouse. Shiu Wing was relocated to implement the Tseung Kwan O Outline Zoning Plan because the site Shiu Wing occupied is zoned "Commercial/Residential" and "Open Space" on the plan. The site the Tsuen Wan Slaughterhouse occupies, however, is zoned "Other Specified Uses" annotated "Slaughterhouse" on the Kwai Chung Outline Zoning Plan.

As regards the complaints by nearby residents regarding the odour and noise from the Tsuen Wan Slaughterhouse, we would like to point out that the operation of the slaughterhouse complies with the licensing conditions and public health requirements under the Public Health and Municipal Services Ordinance (Cap. 132). The odour and noise emissions are within the limits under the Air Pollution Control Ordinance (Cap. 311) and the Noise Control Ordinance (Cap. 400).

Nevertheless, we appreciate that such emissions, although not in breach of statutory limits, may be a cause of nuisance to residents. To reduce the emissions, we have obtained the co-operation of the operator for more frequent hosing down of the pig unloading area and the lairage area, repairing the broken windows facing Riviera Gardens and closing up the windows during slaughtering hours. In recent weeks, the operator has also closed a good proportion of the open apertures facing Riviera Gardens. The operator of the Tsuen Wan Slaughterhouse has obtained the agreement of the pig delivering lorry drivers that they should not pass through Riviera Gardens via Wing Shun Street. To ensure that this is done, the Transport Department has prohibited the south-bound traffic at Wing Shun Street from turning right into the slaughterhouse. These measures have brought about significant improvements to the area. The operator has also agreed to consider employing consultants to examine other measures to further reduce noise and odour including the feasibility of using odour neutralizer. A working group with representatives from Tsuen Wan District Office and relevant government departments, the Tsuen Wan Slaughterhouse management, District board members and representatives of Riviera Gardens was established in July 1996 to identify and monitor practical ways of reducing and containing the noise and odour nuisances emanating from the slaughterhouse. The Administration is also considering imposing additional conditions on the licence of the Tsuen Wan Slaughterhouse upon its renewal in November 1997.

Public Hospital Accident and Emergency Service

15. **DR HUANG CHEN-YA** asked (in Chinese): *Is the Government aware, in respect of the past year, of:*

(a) *the total number of patients who attended the accident and emergency departments in public hospitals, and the number of such patients who were:*

(i) *admitted into hospital wards directly,*

(ii) *admitted into observation wards and later transferred to hospital wards, and*

(iii) *admitted into observation wards and later discharged;*

(b) *the number of patients admitted into observation wards in public hospitals, whose condition had deteriorated and who:*

(i) *were required to undergo operation;*

(ii) *were required to receive treatment in the intensive care units; and*

(iii) *died*

within 24 hours of admission; and

(c) *the number of patients who attended the accident and emergency departments in public hospitals but were refused admission initially and who:*

(i) *were later admitted into hospital for treatment, and*

(ii) *died*

within 48 hours?

SECRETARY FOR HEALTH AND WELFARE (in Chinese): Mr President, a total of 1 973 661 patients attended the accident and emergency departments in public hospitals during 1996, out of whom 379 590 were admitted into hospital wards directly. Based on activity statistics captured by the Accident and Emergency Information System which cover seven acute general hospitals* accounting for about 60% of the total workload, 17 002 patients were admitted into observation wards and then transferred to hospital wards, while 76 007 were admitted into observation wards and later discharged.

We do not have any readily available information on the number of patients admitted into observation wards whose condition had deteriorated to require operative treatment, intensive care or died within 24 hours of admission. However, it is important to note that only patients with borderline medical conditions who are not deemed necessary for hospitalization will be admitted to observation wards.

* Caritas Medical Centre, Pamela Youde Nethersole Hospital, Prince of Wales Hospital, Queen Elizabeth Hospital, Tang Shiu Kin Hospital, United Christian Hospital and Yan Chai Hospital.

We do not have any readily available information on the number of patients who attended the accident and emergency departments but were refused admission initially and later admitted for treatment or died within 48 hours.

Professional Staff of Official Receiver's Office

16. **MR CHIM PUI-CHUNG** asked (in Chinese): *Will the Government inform this Council:*

- (a) *the respective numbers of staff in various professional grades in the Official Receiver's Office at present; and*
- (b) *the number of winding-up cases handled by the Official Receiver acting as the liquidator in the past three years; and the number of winding-up cases in which other fit persons were appointed as the liquidator or provisional liquidator in the same period, together*

with the reasons for appointing such persons as the liquidators to handle these cases?

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

- (a) As at 27 January 1997, there are a total 69 insolvency officers, 20 accountants and accounting officers; and 14 legal officers in the Official Receiver's Office.
- (b) In the past three years, the total number of compulsory company winding-up cases is 1 392. Of these, the number of cases where private sector insolvency practitioners are appointed as the liquidator or provisional liquidator is 47.

Section 194 of the Companies Ordinance provides that where the company's estate exceeds \$200,000 in assets, creditors and contributories are entitled at creditors' and contributories' meetings to decide whether or not to apply to the court to have some other fit persons to be appointed as joint and several liquidators in place of the Official Receiver. In addition, to cope with the increasing workload, the Official Receiver has since May 1996 contracted out compulsory company winding-up cases exceeding \$200,000 in assets to private sector practitioners who are members of the Administrative Panel of Insolvency Practitioners.

Chemical Waste Treatment Centre Charges

17. **MR JAMES TIEN** asked (in Chinese): *It is learnt that the year-on-year increase in the cost recovery rate for chemical waste treatment by the Chemical Waste Treatment Centre (CWTC) has resulted in the manufacturers significantly reducing the amount of chemical waste sent to the CWTC for disposal. In this connection, will the Government inform this Council:*

- (a) *whether the charges imposed by the CWTC are higher than the cost incurred by the manufacturers using their own facilities to dispose of chemical waste; if so, how much higher; and*
- (b) *of the other reasons, apart from the gradual increases in the charges imposed by the CWTC, that have prompted the manufacturers to reduce using the services provided by the CWTC and use their own facilities to dispose of chemical waste?*

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

- (a) We do not have the data to compare the charges imposed by the CWTC with individual costs incurred by different manufacturers treating their wide range of chemical wastes with their own facilities. Experience shows that the CWTC generally offers waste producers a price competitive service for highly concentrated wastes containing multiple chemical compounds that are difficult to treat in an environmentally acceptable manner.
- (b) It is difficult to speculate on the reasons why some manufacturers treat their own waste. The CWTC charges certainly provide an economic incentive to manufacturers to upgrade technology, minimize waste generation and improve waste management practices. Furthermore, manufacturers are increasingly incorporating environmentally friendly manufacturing techniques and processes in their operations, having recognized the growing importance that customers, both corporate and individual, place on this. I very much welcome this development.

Undisclosed Records on Japanese Occupation

18. **MR ALBERT HO** asked (in Chinese): *It is learnt that the Government Records Service Division at present still keeps certain undisclosed records, which include information on the military yen and other administrative measures*

during the Japanese Occupation. These records have been classified as confidential documents, such that even the index of these documents is not disclosed. In this connection, will the Government inform this Council whether, given the implementation of the Code on Access to Information, the Government has given consideration to disclosing the relevant documents, so that the public can know about the valuable historical records of Hong Kong during the Japanese Occupation; if so, what the outcome is; if not, why not?

CHIEF SECRETARY (in Chinese): Mr President, the Public Records Office (PRO) holds a small collection of war-time records relating to finance, land, social development, citizenship and economy. We apply the spirit of the Code on Access to Information (the Code) to the archival stock in the PRO in the same way as we do to information held in other government departments or agents. The public have direct access to all open records in the PRO. There is also provision for members of the public to apply to the Government Records Service Director for access to records which are classified as "closed records". Any such application will be considered carefully, with due regard to the provisions of the Code, and to the Personal Data (Privacy) Ordinance in the case of records which contain personal data. Any member of the public who is interested in the history of Hong Kong is welcome to contact the Public Records Office for assistance.

Protection of Wages on Insolvency Fund

19. **MR LEE CHEUK-YAN** asked (in Chinese): *The Protection of Wages on Insolvency Fund Board (the Fund Board) stated in its 1995-96 Annual Report that it would closely monitor the Protection of Wages on Insolvency Fund (the Fund) to see how the Fund's overall operation would be affected by the resolution passed by this Council on 31 January last year to significantly increase the Fund's coverage. In this connection, will the Government inform this Council:*

- (a) *of the details of the analysis of the approved ex gratia payments as percentages of applicants' entitlement during the period from 2 February last year when the resolution came into effect, up to 31 December of the same year; and how these figures differ from those recorded before the resolution became effective (that is, during the 10-month period from 1 April 1995 to 31 January 1996);*

- (b) *of the total amount of ex gratia payments made from the Fund during the period from 2 February to 31 December last year; and how the amount differs from that paid in the 10-month period before the resolution became effective;*
- (c) *of the up-to-date financial position and balance of the Fund;*
- (d) *how the Fund Board assesses the effect of the resolution on the operation of the Fund;*
- (e) *whether the authority concerned will increase the maximum amount of ex gratia payments in the light of the passage of the Protection of Wages on Insolvency (Amendment) Ordinance 1996 to extend from four to six months the period within which applications for ex gratia payments from the Fund may be made; and*
- (f) *whether the authority concerned has any plan to increase the amount of ex gratia payment from the Fund in accordance with the annual wage increase; if so, when the plan will be implemented; if not, why not?*

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

- (a) We do not keep statistics on the approved *ex gratia* payment as a percentage of the applicants' entitlement. We only have statistics on the percentage of applicants recovering their full entitlement in respect of arrears of wages (AW), wages in lieu of notice (WILON) and severance payment (SP) before and after the resolution came into effect on 2 February 1996:

Percentage of applicants recovering their full entitlement

<i>1 April 1995 to</i>	<i>2 February 1996 to</i>
<i>1 February 1996</i>	<i>31 December 1996</i>
<i>(under previous ceilings)</i>	<i>(under new ceilings)</i>

AW	81.76%	92.30%
WILON	67.11%	97.66%
SP	52.5%	70.76%

- (b) During the 11-month period from 2 February 1996 to 31 December 1996, the amount of *ex gratia* payment paid out from the Protection of Wages on Insolvency Fund (the Fund) was \$171 million. This represents an increase of 86% as compared to the amount of \$92 million paid out in the 11-month period prior to 2 February 1996.
- (c) As at 31 December 1996, the Fund Board had a total accumulated fund of \$865 million.
- (d) The Fund Board has expressed deep concern over the sharp increase in the amount of *ex gratia* payment paid out after the resolution came into effect in February 1996. It is estimated that the annual surplus of the Fund will fall from \$113 million in 1995-96 to \$40 million in 1996-97 and further to only about \$5m in 1997-98. The effect of the new coverage has yet to be fully felt because over 30% of the applications approved during the 11-month period ending December 1996 were still paid under the previous ceilings. The Fund Board will therefore be in a better position to assess the full impact of the resolution later this year.
- (e) The extension of the application period from four to six months is to cover employees who would otherwise be denied protection because of the delay in making application to the Fund. This is not related to increasing the maximum levels of payment as the latter is to enable eligible applicants to recover a higher percentage of their entitlement.
- (f) The maximum levels of payment were only increased substantially in February 1996. The Fund Board and the Administration would need more time to assess the full effect of the revision. We therefore do not intend to revise the ceilings of payments at this stage. We will keep the situation under regular review and

consider further improvements as and when necessary in the light of the wage movement and the financial position of the Fund.

Illegal Use of Industrial Buildings as Office Premises

20. **MR HENRY TANG** asked: *Regarding the problem of illegal use of industrial buildings as office premises, will the Government inform this Council:*

- (a) whether the Government has taken any actions to arouse public awareness of the illegal use of industrial buildings as office premises beyond the allowable ratio; if so, of the effects of such actions; and the extent of such illegal use throughout the territory, and whether the actions taken by the Government have been effective or adequate in tackling the problem;*
- (b) of the percentages in respect of the sale, leasing and vacancy positions of industrial and office buildings respectively in Kwai Tsing in each of the past three years according to the records of the Rating and Valuation Department; and whether the illegal use of industrial buildings as office premises in Kwai Tsing has any effect on the compilation of such figures;*
- (c) whether the Kwai Tsing District Lands Office has carried out inspections to ascertain if there are any industrial buildings in Kwai Tsing that are illegally used as office premises in the past year; if so, of the number of industrial buildings inspected, the number of industrial buildings found to have been used as office premises illegally and the number of prosecutions instituted against the building owners concerned; and*
- (d) how the statistics mentioned in the answer to (c) above compare with those in other districts?*

SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS: Mr President,

- (a) The Government has undertaken publicity through various media including television, radio and the press from time to time on the illegal use of industrial buildings beyond the allowable office use ratio. Inspection checks are also made at periodic intervals. We consider the current level of actions taken appropriate and effective to tackle the problem.
- (b) Vacancy rates of offices and flatted factories in Tsuen Wan in 1993 to 1995 are as follows:

<i>Year</i>	<i>Offices</i>	<i>Flatted factories</i>
1993	21.4%	6.2%
1994	17.8%	5.7%
1995	11.5%	6.6%

The above figures for Tsuen Wan include Kwai Chung, Tsing Yi, Nga Ying Chau, Ting Kau, Sham Tseng and Tsing Lung Tau. There are no separate figures for Kwai Tsing. Statistics for 1996 are being compiled. There is no record of the percentage of sale or letting of these properties. Factory buildings illegally used as office premises are still classified as flatted factories.

- (c) In 1996, District Lands Office, Kwai Tsing has conducted 303 inspections on industrial premises. The number of cases of illegal use discovered was nine. As the illegal use constitutes a breach of lease conditions, lease enforcement action has been taken including warnings and initiation of re-entry or vesting actions.
- (d) Taking the two districts in Kowloon as examples, in 1996 we conducted 291 inspections in Kowloon East, which includes Kwun Tong. The number of cases of illegal use discovered was 96. The figures for Kowloon West, including Cheung Sha Wan, were 320 inspections and 78 cases of illegal use discovered.

GOVERNMENT BILLS

First Reading of Bills

MENTAL HEALTH (AMENDMENT) BILL 1997**DANGEROUS DRUGS (AMENDMENT) BILL 1997**

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

Second Reading of Bills**MENTAL HEALTH (AMENDMENT) BILL 1997**

THE SECRETARY FOR HEALTH AND WELFARE to move the Second Reading of: "A Bill to amend the Mental Health Ordinance."

SECRETARY FOR HEALTH AND WELFARE: Mr President, I move that the Mental Health (Amendment) Bill 1997 be read a Second time.

This Bill seeks to strengthen the provisions of the Mental Health Ordinance, with a view to providing better legal safeguards for mentally disordered and mentally handicapped people, as well as people caring for them.

In the existing Mental Health Ordinance, "mental handicap" is not separately defined. It is subsumed under the term "mental disorder" together with mental illness and other disorders of the mind.

To avoid misunderstanding that the two disabilities are the same, we propose to redefine the term "mental disorder" so that persons with only a mental handicap will be excluded. A new definition of "mental handicap" will also be introduced so that people who are only mentally handicapped can benefit from the relevant provisions of the Ordinance without being regarded as having a mental disorder.

At present, an application to manage the property and affairs of a mentally disordered or mentally handicapped person may be made to the High Court either under Part II of the Ordinance or, by virtue of section 12(4) of the Supreme Court Ordinance (Cap. 4), under Part VII of the United Kingdom Mental Health Act

1983. This problem of dual jurisdiction needs to be rectified to avoid confusion.

We propose to make improvements to Part II of the Mental Health Ordinance by reference to the United Kingdom Mental Health Act. The Bill seeks to introduce amendments which will specify more clearly the powers of the High Court and the relevant application procedures.

At present, the Director of Social Welfare plays various roles in relation to application for guardianship of an adult who is mentally disordered or mentally handicapped. He is required to make an assessment of an application and at the same time is the approval authority. He may also initiate an application. In many instances, he serves as guardians.

To enhance impartiality of the system, we propose to set up a separate and independent Guardianship Board to consider applications for guardianship order. The Chairperson and members of the Board will be appointed by the Governor and will be supported by an independent secretariat.

We also propose that the Guardianship Board may confer on guardians additional legal powers for the protection and well-being of persons received into guardianship. One such power is for the guardian to give consent for the person with a mental handicap or disorder to receive medical or dental treatment.

Furthermore, we propose to empower a doctor or dentist to administer treatment without the guardian's consent in the event of an emergency or where it is necessary and in the best interests of the person to receive the treatment. However, if the person has to receive special treatment, which is defined as treatment of an irreversible or controversial nature, consent must be obtained from the High Court.

Mr President, we have consulted the welfare non-government organizations and parents of people with a mental handicap or disorder. The proposed amendments which I have just described are welcomed by them. Indeed, they look forward to an early enactment of the Bill.

Mr President, I beg to move.

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).

DANGEROUS DRUGS (AMENDMENT) BILL 1997

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

SECRETARY FOR SECURITY (in Cantonese): Mr President, I move that the Dangerous Drugs (Amendment) Bill 1997 be read a Second time.

The purpose of the Bill is to provide for heavier sentences for adult offenders who involve young persons in the commission of drug offences.

Between 1991 and 1995, there was a rapid increase in the number of young persons arrested for trafficking and manufacturing of dangerous drugs, rising from 170 to 344. There is evidence to show that it is becoming more prevalent for drug traffickers to exploit young persons in their illegal trade. Young people are used because they are cheaper to employ, easier to control, and less prone to police attention.

The Bill defines which offences under Part II and Part V of the Dangerous Drugs Ordinance are specified offences upon which an enhanced sentence may be imposed. It empowers a court to pass a more severe sentence on an adult offender convicted of a specified offence, if it is satisfied beyond reasonable doubt on the involvement of a minor in the commission of that specified drug offence. In order to provide a stronger deterrent effect, the Bill also extends a court's power to pass a more severe sentence to cover the inchoate offences of conspiracy to commit, inciting another to commit, attempting to commit, and aiding, abetting, counselling or procuring the commission of a specified drug offence.

In order to ensure that the existing rights of the defendant to present mitigating circumstances to the court should not be prejudiced, the Bill allows an adult offender convicted of a specified drug offence to object to the reception of

the information on the involvement of minors in the commission of the offence, and furnish other information to the court. Moreover, the Bill stipulates that the enhanced sentence passed for a specified offence must not exceed the maximum penalty permitted by law for that offence.

It is the community's wish to deter adults from exploiting young persons in the commission of drug offences. The Bill is a step in the right direction to meet the public's expectation.

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).

Resumption of Second Reading Debate on Bill

LEGAL AID (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 8 January 1997

MR LEE CHEUK-YAN (in Cantonese): Mr President, as pointed out in the "Report of the Reconvened Working Group on Legal Aid Policy Review" published in July 1994, "the provision of legal aid services is an integral part of the administration of justice". The question of whether there is a sound legal aid system is one of the important factors to determine whether the ideal of all men are equal before the law can be effectively realized.

A sound legal aid system would not only safeguard the interests of the accused in criminal proceedings, it would also serve as a major prerequisite for a fair trial when the "working people", having been treated illegally by their employer or by other people, resort to the judicial system for justice and compensation by instituting court proceedings or lodging an appeal to the court.

The many requirements imposed on the applicants in the present legal aid system, in particular the means test based on financial eligibility limit, are crucial factors to determine whether they can be granted with legal aid. The Hong Kong Confederation of Trade Unions (CTU) had a meeting with the Director of Administration, Mr R J F HOARE, last October and put forward to him its suggestions in improving the legal aid system. It is a pity that the Bill introduced by the Government fails to address to the CTU's suggestions!

According to the current method adopted in the computation of the disposable income of legal aid applicants, the applicants' living expenses as determined by the "Comprehensive Social Security Assistance standard" (CSSA standard) and their rent/mortgage payment and so on will be deducted from their annual income (or family income). I believe all Members will agree that the determination of the applicants' living expenses with the CSSA standard will obviously be inadequate to present a true picture of the living expenses of an average household. Under the existing system, the living expenses of the average legal aid applicants have undoubtedly been underestimated. Hence their disposable income is overestimated. Consequently, people in need of legal aid are deprived of the assistance due to some miscalculations and overassessments in their financial capacity.

The Government stated in the "Consultative Paper on Legal Aid" published in 1993 that 40% to 60% of households in Hong Kong should be eligible for application for legal aid. As such, CTU suggests that in calculating the disposable income of legal aid applicants, living expenses of "families with median household income" instead of those of "families receiving CSSA payment" should be deducted from their annual income, as the latter only represent 2% of households, which are the most economically deprived ones in Hong Kong.

According to the Household Expenditure Survey 1994-95, the average monthly expenditure (after deduction of rent) of a family with median household income is about \$11,300, whereas the standard amount of monthly expenditure of a standard four-member family receiving CSSA payment (long-term recipient) is about \$6,800. Therefore, if CTU's suggestion is adopted, the annual living expenses to be deducted in the computation of the disposable income of legal aid applicants will be increased by \$54,000. From another perspective, it represents an increase of the upper financial eligibility limit by \$54,000.

In revising the upper limit of the disposable income of aided persons, the Government, to my grave disappointment, did not accept the CTU's suggestion as mentioned above concurrently, which would otherwise rationalize the existing legal aid system. I did intend to achieve the objective by proposing Committee stage amendments to increase the upper limit, but regrettably, the amendments have to be withdrawn because they were ruled by the President as having charging effect.

Anyway, I hope the Chief Secretary will, in her reply, undertake to review the legal aid system as soon as possible and take comprehensive measures to improve the system, so that people in genuine need of assistance will be offered reasonable legal protection.

Mr President, with these remarks, I support the Second Reading of the Bill.

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

MR ALBERT HO (in Cantonese): Mr Deputy, I think that all of us will agree that, to put into practice the protection of human rights, the principle of "all are equal before the law" and a system for the rule of law, ordinary citizens should have access to legal services when the need arises. This is a very important principle. Therefore, the legal aid system is an indispensable component of the legal system in a society which is ruled by law. In Hong Kong, the operation of the legal aid system as a whole and the current criteria used to assess the eligibility of legal aid applicants have all along been criticized by various sides, including the Democratic Party, which is of the view that there is still a lot to be desired in this respect. Therefore, Members of the Legislative Council Panel on Administration of Justice and Legal Services raised many questions with members of the Legal Aid Services Council when they met together earlier this year, in the hope that the latter would promptly undertake a comprehensive review and launch reforms in such areas as the operation and scope of legal aid, and the criteria used to assess the eligibility of legal aid applicants (including financial eligibility), all of which are very important.

In view of these, we have been waiting for the Government to undertake a comprehensive review without delay and to fully co-operate with the Legal Aid

Services Council, in order to present to this Council as soon as possible the legislation for implementing the reforms.

Meanwhile, this amendment Bill on legal aid is only a biennial routine adjustment of the criteria used to assess the financial eligibility limits for legal aid applicants to reflect the accumulated inflation rate. We are not satisfied with such a partial amendment. However, we do not want to see our views be used by the Government as an excuse for raising objections on financial grounds, thus delaying the implementation of this amendment Bill and depriving many citizens of the benefits which would come along with the passage of this Bill. Therefore, we are also in favour of the early passage of this Bill. However, I wish to reiterate that a comprehensive review of the legal aid system must be carried out with the establishment of the Legal Aid Services Council. I would like to remind the Government again that it must assist the Legal Aid Services Council in presenting a comprehensive report on the review and consult this Council more frequently, in order to carry out reasonable reforms.

The Democratic Party supports the Second and Third Reading of this amendment Bill on this precondition.

Thank you, Mr Deputy.

CHIEF SECRETARY: Mr Deputy, on 8 January, the Legal Aid (Amendment) Bill 1996 was introduced into this Council. This Bill aims to increase the financial eligibility limits for the legal aid schemes operated by the Legal Aid Department and to make other related changes to the Legal Aid Ordinance. The Bill has been considered by the House Committee of this Council, which decided that it was not necessary to set up a Bills Committee to study it and supported the resumption of its Second Reading.

Just now, the Honourable LEE Cheuk-yan is in favour of raising the financial eligibility limits for applicants for legal aid by more than the rate of inflation. This is not appropriate in the context of this Bill, as its purpose is to make a routine biennial adjustment to the limits in line with inflation, and hence preserve their real value. However, as promised in our Policy Commitments published with the Governor's policy address last October, we are currently conducting a review of the criteria used to assess the financial eligibility of legal aid applicants. In this, we will consider whether the current criteria are still

appropriate to the circumstances of Hong Kong today, or whether they need to be adjusted. We aim to consult Members of this Council and the public on our preliminary proposals in May this year.

Mr Deputy, with these remarks, I commend this Bill to Honourable Members for approval.

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).

THE PRESIDENT resumed the Chair.

ENVIRONMENTAL IMPACT ASSESSMENT BILL

Resumption of debate on Second Reading which was moved on 31 January 1996

MR EDWARD HO (in Cantonese): Mr President, I rise to speak in my capacity as the Chairman of the Bills Committee formed to study the Environmental Impact Assessment Bill. The Bill aims at providing a statutory framework for the prediction, assessment and mitigation of potentially adverse environmental impacts from development projects undertaken by both the public and private sectors. The extent of public concern on the Bill can be reflected in the number of organizations which requested to meet the Bills Committee and the number of submissions received by the Committee. In the eight-month scrutiny period, the Bills Committee has met 18 deputations and received 25 written submissions. I shall highlight the major issues considered by the Bills Committee.

Whilst all members of the Bills Committee recognize the need to protect and improve the environment, they are concerned whether the existing mechanism has already achieved the intended purposes of the Bill as the Town Planning Board should have taken into account environmental factors when approving a development proposal. Members have queried whether there will

be a duplication of efforts if the project proponent has to apply for an environmental permit under the EIA Bill for the same project. Some Members are worried about a possible overlap between the Town Planning Ordinance and the EIA Bill.

The Administration's explanation is that the EIA Bill and the planning process complement rather than overlap with each other. In the planning process, only broad environmental considerations, such as cumulative development impacts and compatibility of land use, will be taken into account. This is quite different from the EIA Bill which aims at addressing project-specific and site-specific environmental requirements. The Administration has also clarified that most of the designated projects under the EIA Bill are permitted as of right and do not require case-specific planning approval. Even for projects which will require planning approval, the approval cannot be extended to cover the operation phase nor to control its on-going environmental impacts. The EIA Bill is therefore necessary to address these issues through the environmental permit system.

Another major concern of the Bills Committee lies with the proposed EIA process. The proposed EIA process will take 195 days to complete. Members have expressed concern over a possible increase in development time and delays in the completion of projects. The Administration has repeatedly assured members that the proposed EIA process will shorten development time through simplified procedures and the imposition of statutory time limits on all actions by the Director of Environmental Protection. Both the public inspection period and the time given to the Advisory Council on the Environment to comment on EIA reports are clearly stipulated in the Bill. To further allay members' worries, the Administration has accepted the suggestion of the Bills Committee to deem an application approved if the Director of Environmental Protection does not respond within the statutory time limits. The Bills Committee welcomes this move of the Administration. To achieve this effect, the Administration will later move Committee stage amendments to a number of clauses.

The Bills Committee has also thoroughly considered whether the Bill has provided for adequate public participation in the EIA process. Members share the concern of some environmental bodies that the preparation of the EIA study brief should not be solely decided by the Director of Environmental Protection. The Administration has acknowledged members' concern and has agreed to move an amendment to the Bill to allow for public input at the study brief stage.

Under the amendment, the project profile will be made available to the public and the Advisory Council on the Environment to comment on broad environmental concerns. The statutory time limit of 45 days for the Director to issue a study brief will remain unchanged. The Bills Committee is satisfied that this proposal can address public aspiration for participation without lengthening the time required for the EIA process.

The Bills Committee has had vigorous debates on whether parties other than the project proponent should be given the statutory rights of appeal under the Bill. After in-depth discussions, members have accepted the Administration's explanations that a well-established system is already in place for dealing with objections to development proposals at the planning stage under various legislation. Objections to development proposals and planning arrangements are resolved by the Governor in Council having regard to the interests of all parties involved. Members have noted that where the Governor in Council exempts a project from the application of the Bill, an exemption order is required which will be subject to negative approval by the Legislative Council. To further allay some members' worry over the power of the Secretary for Planning, Environment and Lands to make a decision outside the parameters of the Bill, the Administration has agreed to move an amendment to the Bill to stipulate that the effect of the Secretary's advice to the Director of Environmental Protection under the Bill must be to protect the environment.

I understand that some Members in this Council are concerned about the effects of the Bill on residential developments. This issue has been taken up by the Bills Committee, which has noted the Administration's clarification that most residential developments will not fall within the purview of the Bill. Only residential developments in ecologically sensitive areas and residential developments exceeding 2 000 flats and not served by public sewerage will be controlled by the Bill. Members may rest assured that the Bill should not have adverse impacts on residential developments.

Lastly, Mr President, I would like to take this opportunity to thank all the organizations which have made constructive comments and suggestions to the Bills Committee in the course of its deliberations. The Bills Committee also wishes to thank the Administration for being open-minded to members' views and for having taken on board a number of Members' suggestions to improve the Bill.

Subject to the Committee stage amendments to be moved by the Administration, I request Members to support this Bill.

MISS CHRISTINE LOH: Mr President, Hong Kong has an extraordinary record of economic growth and territorial development, but it has also paid some heavy environmental prices. This Bill takes a major step towards managing Hong Kong's future development in a more environmentally responsible way.

The examination of the Bill has necessarily concentrated on implementation and enforcement matters, questions of means rather than the ends. That is because the Bill itself is virtually silent about the level of environmental quality that Hong Kong aspires to achieve, or about the environmental values that guide us. In fact, the Bill contains no substantive standards of environmental protection at all. It establishes a legal and administrative framework for enforcing such standards, but it does not set the standards themselves.

If you want to know what substantive standards will be enforced under the Bill — for example, if you want to know how much noise, air or water pollution of different types we are prepared to tolerate, or what our ecological conservation priorities are, or what levels of risk to human life we regard as unacceptable — you will have to turn to the Annexes appended to the Bill's forthcoming Technical Memorandum. That is where you will find the specific, technical criteria and guidelines that answer such questions. I think it is therefore fair to say that the real heart of the Bill is in the Technical Memorandum.

The Administration has pledged to put the Technical Memorandum before this Council very soon and I urge them to do so. We will want to scrutinize the Technical Memorandum very carefully. The Bills Committee has already examined a draft, and it generally seems to have set appropriately detailed and rigorous environmental standards. When the Director of Environmental Protection and the officers who work for him apply those standards to individual cases, they will inevitably enjoy a considerable margin of discretion. I have had dealings with those officers, and I am confident generally that their professionalism, along with their genuine commitment to improving environmental quality, will incline them in the right direction most of the time.

Nonetheless, I remain concerned about the difficult task of self-regulation that the Bill imposes on the Administration. In the case of many important projects, such as large-scale public housing, reclamations or other infrastructural projects, the project proponent sitting across the table from the Director of the Environmental Protection Department (EPD) will be another senior government officer representing some other aspect of the public interest. We know there will be internal conflicts within the Administration over how stringently to apply the Bill in such cases.

I was therefore disturbed to see a section in the draft Technical Memorandum that requires the Director, whenever he encounters a particularly difficult or controversial case, to seek advice from the Secretary for Planning, Environment and Lands on how to apply the Bill. Since the Director is legally bound to follow any advice the Secretary gives, I think the term "directions" is really more appropriate than "advice". The Secretary himself may in turn refer such cases further up the government hierarchy to the Chief Secretary.

It seems to me that this arrangement may create a serious loophole in the Bill. Unlike the Director, neither the Secretary for Planning, Environment and Lands nor the Chief Secretary is legally bound to observe the specific environmental standards contained in the all-important Annexes in the Technical Memorandum. Either Secretary would no doubt take into account all the conclusions reached in those Annexes. Each is, however, free to override those conclusions in favour of other, competing public priorities. Indeed, their ability to take account of factors that lie outside the cognizance of the Director of Environmental Protection must be the main reason for taking the decision out of his hands.

I recognize that there may be cases where the public interest genuinely requires that environmental considerations be overruled. In such a case, clause 30 of the Bill, Mr President, already enables the Governor in Council to exempt the project wholly or partly from the Bill. A formal exemption, done by a gazetted order, ensures that a case of this type will receive all the public and legislative attention that it deserves. The process may be short-circuited, however, if the same result can be achieved unaccountably and unassailably by a backdoor directive issued by either the Secretary for Planning, Environment and Lands or the Chief Secretary.

The Administration has assured the Bills Committee that the two Secretaries' power to advise the Director will not be used for any such purpose. The Bills Committee was also given to expect that the Secretary for Planning, Environment and Lands would put this assurance unequivocally on record in today's debate, and I look forward to hearing him do so.

During the final stages of the Bills Committee's deliberation, I also held lengthy negotiation with the Administration to find some way of amending the Bill to eliminate such misgivings definitively. In the end, the Administration has agreed to move a brief Committee stage amendment which states simply that any advice that the Secretary for Planning, Environment and Lands gives to the Director must have the effect of protecting the environment. This will apply equally to advice originating from the Chief Secretary. I hope this amendment will ensure that, no matter how far upstairs the decision goes, the ultimate decision-maker will still keep the environment as the first priority when mediating internal disputes over how to apply the Bill to pet government projects.

Finally, Mr President, I want to urge the Administration to take a planning rather than a mitigation perspective as it implements the Bill. Environmental impact assessment should not merely be a damage limitation exercise for plans that were made in the first place without concern for the environment. Rather, the Bill should be used to integrate environmental considerations into the development process where they count most, that is, Mr President, at the very beginning. I believe the Administration appreciates this point. I suggest that this Council's Environmental Affairs Panel, which I chair, should invite the Administration to brief us in more detail on how it intends to use the Bill as a planning tool in the not too distant future.

Mr President, with these comments, I strongly support the Bill.

DR JOHN TSE (in Cantonese): Mr President, the Democratic Party supports the Environmental Impact Assessment Bill. This Bill has won the support of nearly all environmental protection groups in Hong Kong. The Democratic Party proposes early implementation of the recommendations on environmental impact assessments, so as to protect the environment and the public.

In fact, the importance of the Bill lies in its stipulation of the experience on environmental assessment gained over the past decade or so. If criticisms are to be made, it is that the Bill has come too late, since many large-scale development

projects having an impact on the environment, such as those of the new airport and West Kowloon Reclamation, were all exempted from such assessments. In fact, for the sake of public interests, the Administration should lay down detailed guidelines concerning conditions for granting exemptions.

While the Democratic Party supports the Bill, it proposes that an review be conducted expeditiously after the Bill has been implemented for one or two years.

Thank you, Mr President.

MR IP KWOK-HIM (in Cantonese): Mr President, this Council can at long last resume its Second Reading debate on the Environmental Impact Assessment (EIA) Bill, which had been discussed for over half a year. We will then proceed to the Third Reading of the Bill for passage by this Council. The enactment of this Bill is a piece of good news for not only the environmentalists, but also for the general public. The EIA Bill is undoubtedly an important step forward in environmental protection. However, the Bill is by no means a panacea for all environmental problems.

The Bill provides for a statutory process wherein all "designated projects" must obtain environmental permits granted by the Director of Environmental Protection. When applying for an environmental permit, an applicant is required to submit a description of the project profile or to undertake a formal EIA. The current EIA process is predominantly an administrative arrangement rather than a statutory requirement. With the enactment of the Bill, which lays down the relevant provisions and guidelines in law, a legal backing is provided for the EIA process and, at the same time, "designated projects" are defined. The Bill also provides for an appeal mechanism whereby applicants may appeal to the Appeal Board if they are not satisfied with the decision of the Director of Environmental Protection. Since this series of procedures can provide a statutory control process for relieving the environmental impacts caused by development projects, this Bill plays a positive role in improving the environment of Hong Kong. At present, even if environmental consequences actually arise from development projects, the Environmental Protection Department will not take any action if no complaint is received. With the enactment of the Bill, such a drawback in the current arrangements can be effectively rectified. Taking the incidents at the district where I live as an

example, the residents living in the vicinity of the construction sites of the Western Harbour Crossing had to suffer the environmental consequences arising from the construction project. I believe that with the enactment of the new legislation, the chance of residents having to suffer from similar plights will be greatly reduced.

According to the statutory EIA process under the Bill, the Environmental Protection Department shall, in granting an environmental permit, give regard to "whether the environmental impact caused or experienced by the designated project is or is likely to be prejudicial to the health or well being of people, flora, fauna or ecosystems." In Hong Kong, a city referred to as a concrete jungle, such provisions would definitely be conducive to further putting into effect the policy of protecting the natural environment of Hong Kong.

The Democratic Alliance for Betterment of Hong Kong supports this Bill, which embodies the spirit of progress and is geared towards the right direction. The new legislation puts in place a statutory process whereby the drawbacks in the current environmental protection arrangements can be remedied. However, I must reiterate that although the Bill is conducive to protecting the environment, the Government must put in more efforts to draw up an overall and territory-wide strategy for ecological protection, if the target of protecting nature is to be really and effectively achieved. This is the right direction of development in the long term.

Mr President, I so submit in support of the Bill.

DEPUTY SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS:

Mr President, I would like first to thank members of the Bills Committee, especially its Chairman, the Honourable Edward HO, for their hard work and thorough examination of this Bill. This process has helped the Administration to fine-tune the Bill in a manner that enhances public participation in the statutory Environmental Impact Assessment (EIA) process on the one hand, and provides greater certainty to development planning and programming on the other. We have also responded positively to most of the ideas put forward by members of the Bills Committee and these are reflected in the Committee stage amendments which I will move later. However, it will be useful if I explain the Administration's response to several points raised by the Bills Committee and other organizations, such points concerning the arrangements for public

participation in the EIA process, the timing of the process, the scope of projects designated under the Bill, and the provisions for exempting projects from the EIA process.

I will begin by reminding Members of the importance of this legislation, a point emphasized by my colleague, Mr Bowen LEUNG, when introducing the Bill to this Council just one year ago. Members will recall that the Bill provides a statutory framework modelled on the existing administrative arrangements for the conduct of EIAs and serves two main purposes. The first purpose is to require the proper evaluation, at the earliest possible stage, of the environmental impacts of development projects. The second purpose is to ensure the satisfactory implementation of necessary prevention and mitigation measures to protect the environment.

Interface with development related and pollution control legislation

While these purposes are generally accepted, some Members are concerned that the Bill may overlap the existing legislation for land use planning and pollution control. However, most of the projects covered by the Bill are infrastructure projects which do not require project specific planning approval, and the issues covered by EIA concern primarily site specific environmental requirements and monitoring which are outside the scope of planning control. The EIA Bill therefore complements the planning process by ensuring optimal environmental performance of agreed development projects during their design, construction and operation phases. As EIA deals with preventive rather than remedial controls, many of the matters addressed in the EIA are not covered by the existing pollution control legislation. We therefore feel that a dedicated legislation on EIA is an appropriate arrangement which allows maximum flexibility for different aspects of project planning to proceed concurrently or sequentially as circumstances may require.

Mechanism for public consultation

Turning to the issue of public consultation in the EIA arrangements, we have strengthened the consultation procedures and widened the scope of public participation at avarious stages of the EIA process. The Bill makes it obligatory to make the EIA report available for public inspection and comment for one month. It also provides for independent review of EIA reports by the Advisory

Council on the Environment. To further enhance the transparency of the EIA decision making process, the Bill sets up a register which makes key documents of the process accessible to the public.

Some professional organizations and environmental groups made submissions to the Bills Committee suggesting that arrangements should be made to allow the public to provide inputs for the preparation of an EIA study brief. Having regard to this aspiration, as well as the need to avoid lengthening the EIA process, we have devised a mechanism to require an applicant for a study brief to advertize the availability of the project profile, thereby inviting interested parties to raise environmental concerns which the EIA should address. Proceeding in parallel with consideration of the project profile by government departments, this arrangement will allow earlier and wider public participation in the EIA process while keeping it as short and simple as practicable.

Time

This leads me to reassure Members about the timing of the EIA process. While I am aware that Members are concerned that the statutory EIA arrangements may add to the length and complexity of project planning and cause greater uncertainty to project implementation, we have assured Members that the EIA process has been significantly streamlined and that statutory time limits on that process have been imposed. The Bill therefore represents a balance between the need to protect our environment and the need to allow important development projects to proceed efficiently.

I can, moreover, assure Members that the Environmental Protection Department will process EIA studies and applications for environmental permits expeditiously. We have sufficient confidence of this and, as an additional safeguard, we have also accepted Members' suggestion to allow an applicant to treat his application as having been unconditionally approved if the Director fails to respond within the statutory deadline. These improvements, which I shall move at the Committee stage, will help make the EIA process more predictable.

Members will agree that by spelling out clearly the requirements and procedures for EIA, we will bring more certainty to project planning and costing. A project proponent will now be in no doubt about whether his proposed project requires an EIA, thus enabling the proponent to initiate the EIA early, to facilitate integration of environmental requirements into project design and layout, and to save the time and money subsequently required to remedy damage and muster community acceptance.

Residential development

On the question of the EIA Bill's scope, we have heard some concerns that the Bill, together with other development related controls and arrangements, may delay housing production at a time when the community's demand for a sufficient supply of flats is intense. This concern seems to arise from a misunderstanding. I would therefore like to clarify that residential developments, except those in ecologically sensitive areas and those exceeding 2 000 flats in unsewered areas, are not covered by the EIA Bill. The majority of housing sites are therefore outside its scope and there is no question of EIA arrangements delaying the overall housing production programme.

Exemption provisions

On the issue of exemptions, there were some discussions at the Bills Committee about provisional clause 30 to enable the Governor in Council, in the public interest, to exempt a designated project from the Bill. I would like to emphasize again that this exemption provision is intended for exceptional circumstances when not exempting a project, or part of a project, would not be in the public interest.

Finally, I am aware of a concern that the provision in clause 16(2), which enables the Secretary to require or authorize the Director of Environmental Protection to follow his advice, might enable the Secretary to direct the issue of an environmental permit to a project with significant environmental impacts. I can assure Members that because decisions made under the Bill are bound by its legislative intention to protect the environment, the Secretary could not issue such authorization. And as I have just noted, exemptions in the public interest require the approval of the Governor in Council. Such exemptions, which will in any case be rare, are subject to this Council's approval, thus ensuring thorough scrutiny of the social and economic merits of a development project against its environmental aspects.

Technical Memorandum and commencement

In closing, I would like to mention that, as with some other items of environmental legislation, the Bill provides for a Technical Memorandum to prescribe the conduct of EIA, its enforcement, and the detailed assessment methodologies and criteria to be applied in a transparent and consistent way.

Consultation on this technical document will start soon before finalizing it for scrutiny by this Council's Environmental Affairs and Planning, Lands and Works Panels in April this year. Our aim is to submit the Technical Memorandum, and subsidiary legislation on appeal procedures and fees, to this Council for approval in May, with a view to bringing the Bill into operation in early 1998. It is also our intention to review the EIA procedures after a year's implementation.

Mr President, with these remarks, and subject to the Committee stage amendments proposed by the Administration, I recommend the Environmental Impact Assessment Bill to Honourable Members.

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

Bill read the Second time.

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

WASTE DISPOSAL (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 3 July 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).

MOTOR VEHICLES (FIRST REGISTRATION TAX) (AMENDMENT) (NO. 2) BILL 1996

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

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

Bill read the Second time.

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

ELECTRICITY (AMENDMENT) BILL 1996

Resumption of debate on Second Reading which was moved on 3 April 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).

CARRIAGE BY AIR BILL

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 Bills

Council went into Committee.

LEGAL AID (AMENDMENT) BILL 1996

Clauses 1 to 6 were agreed to.

ENVIRONMENTAL IMPACT ASSESSMENT BILL

Clauses 1, 2, 7, 9, 11, 15, 18, 20 to 23, 25, 27, 28, 29, 31, 33 and 34 were agreed to.

Clauses 3 to 6, 8, 10, 12, 13, 14, 16, 17, 19, 24, 26, 30 and 32

DEPUTY SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS:

Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Members.

Power to designate split projects as a designated project

The new clause 4(4) empowers the Secretary for Planning, Environment and Lands to designate a series of contiguous projects which generate cumulative environmental impacts tantamount to a designated project. Two prerequisites have to be met for the exercise of this power: first, the contiguous projects are undertaken by the same person or associated persons; and second, the Secretary reasonably believes that the aim of splitting up a project into parts or phases is to circumvent the threshold defining a designated project in Schedule 2 of the Bill. To balance the use of this power, a new clause 4(5) is added to allow a project proponent to ascertain with the Director of Environmental Protection whether a series of contiguous projects would be treated as a designated project. The new clause 26(5A) makes splitting up a project to circumvent the EIA requirements an offence.

Public participation at the study brief stage

We have accepted the Bills Committee's recommendation to allow for the public to provide input to the study brief. The amendment to clause 5(2) and the new clauses 5(2A), 5(3A) and 5(3B) provide for such a mechanism by requiring an applicant for a study brief to advertise the availability of his project

profile, and to invite public comments on the environmental concerns associated with the project within 14 days. As public consultation proceeds in parallel with the preparation of the study brief, there is no need to extend the time limit of 45 days for processing a study brief. This arrangement allows wider and earlier public participation without lengthening the EIA process.

Deemed approved provisions

The EIA Bill imposes time limits on various stages of the EIA process. While the Director of Environmental Protection will strictly observe the statutory deadlines, the Bills Committee suggested that, to make the EIA process more predictable, there should be provision to allow an applicant to presume unconditional consent and proceed with his project on that basis in case the Director fails to respond within the relevant time limit. The new clauses 5(4A), 6(4A), 8(3A), 10(3A), 12(3A) and 13(2A) accommodate this suggestion.

Other amendments

The Bills Committee has also proposed certain amendments to fine-tune the Bill and improve the EIA arrangements enshrined therein. Clause 3(4) sets out the actions the Chief Secretary will take in the event of a public officer contravening the provisions of the EIA legislation. It is amended to require the Chief Secretary, apart from investigating and stopping any contravention, to also ensure that appropriate actions are taken to remedy any resultant environmental damage.

Clause 14(3) empowers the Governor in Council to suspend, vary or cancel an environmental permit. This reserve power will be exercised very sparingly in the unlikely event that the continuation of a project would cause serious environmental damage not envisaged in the EIA. A new clause 14(3A) requires the Governor in Council to give reasons for revoking a permit and the conditions on which it can be reinstated.

The amendments to clauses 17 and 19 concern the appeal arrangements. Clauses 17(1)(ia) and 17(1A) are added to allow statutory appeal on the content of an EIA study brief and on a decision to designate split projects under the new clause 4(4). Clause 19(5) is amended to disallow a public officer from serving as a member on the Appeal Board.

The amendments to clause 16 concerning the making of technical memorandum are primarily technical. Clause 16(2) provides that a technical memorandum issued by the Secretary for Planning, Environment and Lands may require or authorize the Director of Environmental Protection to follow his advice. This provision enables any decision that may be controversial to be deliberated carefully at a senior level in the Administration. To allay some Members' concern that this provision might create a loophole allowing the Secretary to direct the issue of an environmental permit to projects with unacceptable environmental impact, a new clause 16(2A) is added to ensure that the Secretary's advice pursuant to a technical memorandum is consistent with the spirit of the EIA legislation to protect the environment. Clause 16(11) clarifies that a technical memorandum is not subsidiary legislation and hence does not form a part of the law volume. Nevertheless, since the Technical Memorandum is relied on in the exercise of power under the Bill, it carries statutory effect and its making and any future amendment are subject to this Council's approval.

Some professional organizations have suggested that the EIA Bill should prescribe the minimum qualifications of persons involved in the statutory EIA process, a view shared by some members of the Bills Committee. While we still consider it more appropriate to control the quality of an EIA through clear and consistently applied guidelines and meticulous vetting of the EIA report, a new clause 32(1)(aa) is added to provide the Secretary for Planning, Environment and Lands with the flexibility to set out, if necessary, the qualifications of the personnel involved in an EIA study. We have no intention to set out statutory requirements on qualifications for the time being, but shall review the need to do so in the light of actual experience in implementing the EIA Bill.

Mr Chairman, I beg to move.

Proposed amendments

Clause 3

That clause 3(4) be amended, by adding "and to remedy any environmental damage that may have occurred" after "recurrence".

Clause 4

That clause 4 be amended, by adding —

"(4) The Secretary may after consulting the Director specify in writing as a designated project, contiguous projects which, if taken individually, do not meet the specified levels in Schedule 2 or 3 to qualify as a designated project, and which are proposed by the same person or associated persons, if he is satisfied that the purpose behind the separation of the projects is to avoid the purposes of this Ordinance. The Director must give the person or associated persons who propose or are carrying out the contiguous projects a copy of the specification of the projects as a designated project.

(5) A person or associated persons may apply to the Director for confirmation as to whether contiguous projects proposed by him or them are to be treated as designated projects. The Director must advise the person or associated persons within 14 days that the projects are to be treated as a designated project."

Clause 5

That clause 5(2) be amended —

(a) in paragraph (b), by deleting "and".

(b) by adding -

"(ba) advertise in the form the Director may require the availability of the project profile on the day following the lodging of the project profile with the Director in a Chinese language daily newspaper and an English

language daily newspaper, each of which circulate generally in Hong Kong; and".

That clause 5 be amended, by adding —

"(2A) The Director shall inform the Advisory Council on the Environment on the receipt of a project profile and forward a copy of the project profile to it."

That clause 5 be amended, by adding —

"(3A) If the Director requires further information, the Director may also require the applicant to advertise the availability of the additional information or details relating to the information.

(3B) The Advisory Council on the Environment and any person may comment on a project profile to the Director on environmental issues covered by the technical memorandum relevant to the designated project within 14 days of its being advertised. The Director is to consider any comments received in drawing up the study brief for the designated project."

That clause 5 be amended, by adding —

"(4A) The Director is taken to have given his consent for an applicant under subsection (4)(c) to apply directly for an environmental permit if the Director has not given notice in writing refusing permission within 45 days of receiving the application or further information under subsection (3)."

Clause 6

That clause 6(2) be amended, by adding at the end —

"The Director may require the applicant to supply sufficient copies of the report so that the Director is able to circulate copies to relevant parties as defined in the technical memorandum."

That clause 6(3) be amended, by deleting "of the receiving" and substituting "of receiving".

That clause 6 be amended, by adding —

"(4A) The Director is taken to have decided that the environmental impact assessment report meets the requirements of the environmental impact assessment study brief and the technical memorandum if the Director has not given notice in writing that the report does not meet the requirements of the brief and the technical memorandum within 60 days of receiving the report. The applicant is required to submit the number of copies of the report as set out in the brief."

Clause 8

That clause 8(3) be amended, by deleting "as meeting the requirements of the environmental impact assessment study brief".

That clause 8 be amended, by adding —

"(3A) The Director is taken to have approved without conditions an environmental impact assessment report if the Director has not given notice in writing rejecting the report or approving it with conditions within 30 days of the happening of the later of the events set out in subsection (3)(a), (b) or (c)."

Clause 10

That clause 10 be amended, by adding —

"(3A) The Director is taken to have granted without conditions an environmental permit if the Director has not given notice in writing rejecting the permit or approving it with conditions within 30 days of the happening of the later of the events set out in subsection (3)(a), (b), (c) or (d).".

Clause 12

That clause 12 be amended, by adding —

"(3A) The Director is taken to have issued a further environmental permit on the same conditions as the previous environmental permit if the Director has not given notice in writing rejecting the application or approving it with conditions within 30 days of the receipt of the application.".

Clause 13

That clause 13 be amended —

(a) in subsection (2) by deleting "changes" and substituting "variations".

(b) by adding -

"(2A) The Director is taken not to require an environmental impact assessment report for the variations sought if the Director does not notify the applicant within 30 days of the receipt of the application.".

Clause 14

That clause 14 be amended, by adding —

"(3A) The Governor in Council shall give the reasons for the suspension, variation or cancellation and the conditions on which the permit can be reinstated."

Clause 16

That clause 16 be amended, by adding —

"(2A) In giving advice pursuant to a technical memorandum, the Secretary shall ensure that the effect of his advice is to protect the environment."

That clause 16 be amended, by adding —

"(11) A technical memorandum is not subsidiary legislation."

Clause 17

That clause 17(1) be amended, by adding before paragraph (i) —

"(ia) as to the content of an environmental impact assessment study brief issued by the Director under section 5(4)(a);".

That clause 17 be amended, by adding —

"(1A) A person whose project is specified as a designated project under section 4(4) may appeal to the Appeal Board against the decision to designate the project."

Clause 19

That clause 19 be amended, by deleting subclause (5) and substituting —

"(5) The Appeal Board must not include public officers."

Clause 24

That clause 24(3) be amended, by adding "from the owner of, or the operator or the contractor on, the site of the designated project" after "work".

Clause 26

That clause 26 be amended, by adding —

"(5A) A person who either alone or with an associated person, separates contiguous projects, which, if taken individually, do not meet the specified levels in Schedule 2 or 3 to qualify as a designated project but which collectively qualify as a designated project, to avoid the purposes of this Ordinance is taken to have contravened subsection (4) if he permits the carrying out of any part of any of the contiguous projects without first applying to the Director under section 4(5)."

Clause 30

That clause 30(2)(b) be amended, by deleting "to".

Clause 32

That clause 32(1) be amended, by adding —

"(aa) prescribe the minimum qualifications and experience of persons undertaking environmental impact assessment studies;"

That clause 32 be amended, by deleting subclause (3).

Question on the amendments put and agreed to.

Question on clauses 3 to 6, 8, 10, 12, 13, 14, 16, 17, 19, 24, 26, 30 and 32, as amended, put and agreed to.

Schedules 1, 2 and 4

DEPUTY SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS:

Mr Chairman, I move that the Schedules specified be amended as set out in the paper circularized to Members.

The amendments to the Schedules are primarily technical and consequential. They define the technical terms introduced in the Committee stage amendments and describe the designated projects in Schedule 2 in a clearer manner.

Thank you.

Proposed amendments

Schedule 1

That schedule 1 be amended —

- (a) in the definition of "designated project", by adding "or specified by the Secretary under section 4(4) as a designated project" after "3".
- (b) by adding -

""associated person" (相聯繫的人) means -

- (a) the spouse or minor child or minor step-child of the person;
- (b) a corporation of which the person is a director;
- (c) an employee or partner of the person;

- (d) the trustee of a trust of which the person, his spouse, minor child or minor step-child, is a beneficiary or a discretionary object;
- (e) another person who has agreed or arranged to act together with the person to acquire, hold or dispose of shares or other interests in a corporation or to act together in voting in the corporation;
- (f) another person in accordance with whose directions the person is accustomed or obliged to act;
- (g) another person accustomed or obliged to act in accordance with the directions of the person;
- (h) a corporation in accordance with whose directions or the directions of its directors the person is accustomed or obliged to act;
- (i) a corporation accustomed or obliged to act, or whose directors are accustomed or obliged to act, in accordance with the directions of the person;
- (j) a corporation of which the person, either alone or together with his spouse, minor child or minor step-child, is directly or indirectly entitled to exercise or control the exercise of 35% or more of the voting power;

- (k) a corporation of which the person, either alone or together with another, including a corporation in which the person is entitled to exercise or control the exercise of 35% or more of its voting power, is directly or indirectly entitled to exercise or control the exercise of 35% or more of the voting power;
- (l) a corporation of which the person controls the composition of the board of directors of the corporation;
- (m) if the person is a corporation -
 - (i) a director of the corporation;
 - (ii) a corporation which is a holding company of the corporation or a subsidiary of the holding company;
 - (iii) a subsidiary of the corporation;
 - (iv) a director or employee of the subsidiary;
 - (v) a pension fund, provident fund or employee share scheme of the corporation or of a subsidiary of the corporation;

"controls the composition of the board of directors of the corporation" (控制法團董事局的組成) means to be able, either alone or with the consent or concurrence of another person, to appoint or remove a majority of the directors and a person is taken as having the power to appoint or remove a director if -

- (a) a director cannot be appointed without the person exercising a power in favour of the prospective director; or
- (b) a person's appointment as a director follows necessarily from his being a director or other officer of the person;

"corporation" (法團) means any company or other body corporate incorporated in Hong Kong or elsewhere, but does not include -

- (a) any body corporate that is incorporated in Hong Kong and is a public authority or an organ or agency of the Government;
- (b) any corporation sole;
- (c) any credit union registered under the Credit Unions Ordinance (Cap. 119); or
- (d) any corporation registered under the Building Management Ordinance (Cap. 344);".

Schedule 2

That schedule 2, part I be amended —

- (a) in item P.2(b), by deleting "before" and substituting "by the time".
- (b) by deleting item Q.1(a) and (b) and substituting -

"(a) minor maintenance works to roads, drainage, slopes and utilities;

- (b) minor public utility works including the installation of telecommunication wires, joint boxes, power lines with a voltage level of not more than 66 kV, and gas pipelines with a diameter of 120 mm or less;"
- (c) by deleting item Q.1(h) and substituting -
 - "(h) all works not otherwise designated projects listed in Parts A to P undertaken by the Country and Marine Parks Authority under section 4 of the Country Parks Ordinance (Cap. 208) or section 4 of the Marine Parks Ordinance (Cap. 476) for developing and managing country parks and special areas, marine parks and marine reserves;"
- (d) by deleting item Q.1(j) and substituting -
 - "(j) minor works including -
 - (i) improvements to catchwaters;
 - (ii) the provision of -
 - (A) water pipes and valves of diameter 450 mm or less;
 - (B) water tanks;
 - (C) hydrological stations and associated structures; and
 - (D) village supply schemes."

Schedule 4

That schedule 4 be amended, in item 15, by deleting "environmental impact assessment".

Question on the amendments put and agreed to.

Question on Schedules 1, 2 and 4, as amended, put and agreed to.

Schedule 3 was agreed to.

WASTE DISPOSAL (AMENDMENT) BILL 1996

Clauses 1, 2 and 3 were agreed to.

MOTOR VEHICLES (FIRST REGISTRATION TAX) (AMENDMENT) (NO. 2) BILL 1996

Clauses 1 to 6, 8, 10 and 11 were agreed to.

Clauses 7 and 9

SECRETARY FOR THE TREASURY (in Cantonese): Mr Chairman, I move that clauses 7 and 9 be amended as set out in the paper circulated to Members.

The proposed amendments seek to improve the Chinese text of the Bill. They do not affect the English text. The proposed amendment to clause 7(b)(iii) seeks to adopt the term "進口者" for the word "importer" in the Chinese text of the clause for the sake of consistency with other provisions in the Chinese text of the Bill. The proposed amendment to clause 9 seeks to improve the Chinese text of the new section 4H(3A).

Mr Chairman, I beg to move.

Proposed amendments

Clause 7

That clause 7(b)(iii) be amended, in the proposed section 4D(1)(b)(iv), by deleting "商" and substituting "者".

Clause 9

That clause 9 be amended, in the Chinese text, by deleting the proposed section 4H(3A) and substituting —

"(3A) 為評估任何汽車的應課稅價值，任何獲授權人可無需手令在合理時間進入註冊進口者或註冊分銷商的處所（住用處所除外）以檢查該輛汽車，但如有人提出要求，則須先行出示根據第 4G 條發出的書面授權及其身分證明文件。".

Question on the amendments put and agreed to.

Question on clauses 7 and 9, as amended, put and agreed to.

Schedule was agreed to.

ELECTRICITY (AMENDMENT) BILL 1996

Clauses 1 to 11

MRS SELINA CHOW: Mr Chairman, as Chairman of the Bills Committee on the Electricity (Amendment) Bill 1996, I wish to report to Honourable Members the deliberations of the Bills Committee. In considering this Bill, we have written to over 100 interested parties to invite views and many of these parties have responded and offered valuable comments on different aspects of the Bill.

The Bill mainly seeks to improve the Electricity Ordinance to ensure effective and equitable enforcement of some provisions relating to electrical products by prohibiting the supply of an unsafe electrical product and removing the exemption for electrical products intended for use outside Hong Kong. The Bills Committee has also noted that a proposed set of Electrical Products (Safety) Regulation, which will enable the Director of Electrical and Mechanical Services to prescribe safety requirements for household electrical products, will be made after the Bill has passed into law.

Members of the Committee are in support of the Amendment Bill. However, during the course of deliberation, the Committee has raised a number of concerns which the Administration has undertaken to address by making suitable amendments to the Regulation.

Firstly, to address the members' concern about the possible repercussions of the broad definition of "supply" of electrical products to which the stipulated safety requirements would apply, the Administration agrees to amend the Regulation to exempt those electrical products which are sold under a sale contract agreement entered into in Hong Kong, but supplied in a place other than Hong Kong.

Secondly, in respect of the supply of electrical products designed to operate at a different voltage from that in Hong Kong, the Administration agrees to introduce a warning label system to be specified in an additional Schedule to the proposed Regulation, to warn consumers of the danger of directly connecting an electrical product with a different voltage, to the Hong Kong supply voltage of 220 volts without using a transformer. Hence, 110 volt electrical products which meet the safety requirements in all other aspects can be supplied locally. This is intended to enable the sale of such products to tourists and consumers who intend to use them in overseas territories adopting the supply voltage of 110 volts.

Thirdly, members consider that the provision under which suppliers are responsible for "any non-electrical danger" arising from the electrical products is too onerous on the trade. The Administration agrees to narrow the scope of the provision by deleting the word "any" before "non-electrical danger" in relevant sections of the Regulation.

Lastly, in order to be fair to both consumers and the trade, the Administration will amend the provision that the Director of Electrical and Mechanical Services may require the supplier of an electrical product that does not comply with the safety requirements to refund the purchaser any sum paid for the product, by including the condition that a receipt for the product is surrendered to the supplier.

The Administration has provided a complete set of draft amendments to the Regulation, which is considered acceptable by members.

The Committee has also identified some other concerns which would not involve any amendments to the Bill nor the Regulation. These concerns are related to clarifications regarding the scope of the definition of "supply" of electrical products and measures to facilitate implementation of the Bill, including the possible shortage of certification bodies and the content of the guidance notes which will contain all the detailed requirements set for different categories of electrical products. I understand that the Secretary for Economic Services would be giving assurances on these issues.

Mr President, on behalf of the Committee, I support the motion.

CHAIRMAN: Technically, Mrs CHOW is speaking to the question that: Clauses 1 to 11 stand part of the Bill. Mrs CHOW, you may wish to conclude your speech with that and address me as Chairman.

MRS SELINA CHOW: Mr Chairman, on behalf of the Committee, I support that clauses 1 to 11 stand part of the bill.

SECRETARY FOR ECONOMIC SERVICES (in Cantonese): Mr Chairman, I am most grateful to the Bills Committee chaired by Mrs Selina CHOW for its detailed and thoughtful consideration of the Electricity (Amendment) Bill 1996 and the proposed Electrical Products (Safety) Regulation.

As mentioned by Mrs CHOW, I have been requested by the Bills Committee to give certain clarifications and assurances on points concerning the operation of clauses 2 and 4 of the Bill.

Clause 2 of the Bill defines the word "supply" in relation to a household electrical product in terms intended to include all of the commercial means through which a product may reach consumers, including "exhibit for sale or for hiring out".

I confirm, for the avoidance of doubt, that clause 2 is not intended to apply to the bringing into Hong Kong for an exhibition, or the exhibition, of a household electrical product that is not for sale or for hiring out in Hong Kong. I also confirm that the definition of "supply" in clause 2 is not intended to apply to the repair or maintenance of household electrical products.

Clause 4 of the Bill provides for the Director of Electrical and Mechanical Services to prohibit the supply of an unsafe electrical product and to seize such a product if it is supplied after three days have elapsed from the date on which the Director has published in the Gazette a notice prohibiting its supply.

I confirm that, in such circumstances, the Director will include in his notice of seizure the right of the person concerned to appeal against the seizure, through setting out in the notice the terms of sections 43(1) and (2) of the Ordinance, which provide for appeals to an appeal board.

In addition to these points, and mentioned by Mrs CHOW, it was agreed in the Bills Committee that the proposed Electrical Products (Safety) Regulation should be amended in several respects before it is referred back to the Executive Council to be made.

Firstly, section 3(2) of the Regulation, which sets out the circumstances under which the Regulation does not apply to an electrical product, will be amended to state that the Regulation does not apply to an electrical product which is supplied in a place other than Hong Kong under a sale agreement entered into in Hong Kong.

Secondly, section 6 of the Regulation, which sets out the safety requirements for particular types of electrical products, will be amended to the effect that an electrical product which is designed solely for use at a voltage of less than 200 volts should carry a label warning of the possibility of injury to people or damage to property if the product is connected directly to the electrical supply system in Hong Kong.

Thirdly, section 11 of the Regulation, which sets out certain powers of the Director of Electrical and Mechanical Services, will be amended so that when the supplier of an electrical product that does not comply with the safety requirements is required by the Director to refund the purchasers any sum paid

for the product, the refund is subject to a condition that a receipt for the product is surrendered to the supplier.

Fourthly, certain minor drafting improvements to Schedule 1 of the proposed Regulation have also been made.

As mentioned by Mrs CHOW, the Bills Committee was also concerned about the availability locally of certification bodies to provide the certificates of safety compliance required under the proposed Regulation for products subject to specific safety requirements, such as plugs, adaptors and lampholders.

Two laboratories accredited locally are equipped to perform inspection and safety tests on these products. These and two other laboratories have expressed interest in expanding their facilities to cope with the demand for testing after the Regulation is brought into effect in about 12 months' time. There are only six types of products subject to specific safety requirements and the Director of Electrical and Mechanical Services will continue to liaise with local laboratories with a view to ensuring that, when the Regulation is brought into effect, the demand for testing and certification of these products can be met satisfactorily. Overseas certification bodies will also be recognized by the Director for such purposes.

Lastly, I am pleased to confirm that the Director of Electrical and Mechanical Services will prepare guidance notes to assist the trade in understanding and complying with the Electrical Products (Safety) Regulation and will consult the trade on the draft guidance notes after the Bill has been passed by this Council.

Thank you, Mr Chairman.

Clauses 1 to 11 were agreed to.

CARRIAGE BY AIR BILL

Clauses 1 to 20 were agreed to.

Schedules 1 to 5 were agreed to.

Council then resumed.

Third Reading of Bills

THE CHIEF SECRETARY reported that the

LEGAL AID (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 DEPUTY SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS reported that the

ENVIRONMENTAL IMPACT ASSESSMENT BILL

had passed through Committee with amendment and the

WASTE DISPOSAL (AMENDMENT) BILL 1996

had passed through Committee without amendment. He moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

THE SECRETARY FOR THE TREASURY reported that the

**MOTOR VEHICLES (FIRST REGISTRATION TAX) (AMENDMENT)
(NO. 2) BILL 1996**

had passed through Committee with amendments. He moved the Third Reading of the Bill.

Question on the Third Reading of the Bill proposed, put and agreed to.

Bill read the Third time and passed.

THE SECRETARY FOR ECONOMIC SERVICES reported that the

ELECTRICITY (AMENDMENT) BILL 1996 and

CARRIAGE BY AIR BILL

had passed through Committee without amendment. He moved the Third Reading of the Bills.

Question on the Third Reading of the Bills proposed, put and agreed to.

Bills read the Third time and passed.

MEMBERS' MOTIONS

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

MR FRED LI moved the following motion:

"That the Travel Industry Compensation Fund (Amount of Ex gratia Payments and Financial Penalty) (Amendment) (No. 2) Rules 1996, published as Legal Notice No. 544 of 1996 and laid on the table of the Legislative Council on 8 January 1997, be amended -

- (a) in section 2 by repealing "90%" and substituting "100%";
- (b) in section 3 by repealing "90%" and substituting "100%";
- (c) in section 5(a), (b) and (c) by repealing "90%" wherever it appears and substituting "100%";
- (d) in section 6, in the new section 6 by repealing "90%" and substituting "100%".

MR FRED LI (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

Mr President, the increase in the rate of compensation to 90% of the tour prices made by the Government can of course make improvements in the protection of consumers, but I think it is still not enough. I, therefore, propose amendments to enable consumers to obtain full compensation. In November last year, I proposed a Private Bill to raise the rate of compensation to 100%.

Simply speaking, there are mainly three reasons for proposing full compensation. Firstly, before joining a package tour, consumers are required to pay the fares in advance. They should therefore be entitled to a full refund of their money paid for not getting the service which is due to them. Secondly, the practice of partial compensation is to force consumers to suffer from the consequences of inadequate regulation of travel agents, which is unfair to the consumers. Thirdly, when choosing a package tour, consumers can only make his/her choice by a travel agent's reputation, the known quality of service, size, tour prices and so on. There is no absolute guarantee in the selection of reliable travel agents. Therefore, it is reasonable for the Travel Industry Compensation Fund (TICF) to provide adequate protection for consumers.

Mr President, the arguments put forward by the Government against full compensation at the Bills Committee set up last time are unconvincing. One of the arguments is that as the levy of the TICF is paid by travel agents instead of being borne by consumers, it is unnecessary for the TICF to provide full compensation for consumers. This argument is not in line with the facts. If only we make a random enquiry with any travel agent, its staffs will inform us

that the total prices include a levy equivalent to 0.5% of the package prices. Thus, the levy of the TICF has already been included in the tour prices but travel agents do not list out the actual prices and the payable levy separately. As consumers do contribute to the TICF, they should absolutely have a say as to the rate of compensation. Moreover, as 0.35% of the levy is allocated to the TICF and the remaining 0.15% is allocated as the operating cost of the Travel Industry Council (TIC), consumers not only bear their own rate of compensation, but also the expenditure of the TIC.

Another argument is that full compensation may probably lead to cut-throat competition among travel agents and collapse of smaller ones. In the long run, this may result in the domination of the market by a few big players. As a matter of fact, the outbound package tour market has now been controlled by about 10 major groups, with a market share of over 75%. In addition, the minimum package prices set by the TIC in respect of some package tours have basically protected the existing benefits of travel agents. This point has just been mentioned in the Question Time. Therefore, if the Government is really concerned with the issue of monopoly in the market of outbound package tours, it should ask the TIC to remove the minimum prices as soon as possible and introduce legislation on fair competition. A review should also be conducted to find out if at present the structure of the package tour market meets the standards of fair competition.

I would like to emphasize again that even if full compensation is available, consumers will not necessarily regard the price as the prime criterion in the selection of travel agents since such other factors as reputation and the quality of service are also very important. According to the result of a survey conducted by the Democratic Party, these factors are even more important than the prices. I really find the Government's argument that full compensation will lead to monopoly of the market unacceptable.

We might as well study the issue in terms of the actual amount involved. The price of a general package tour is below \$15,000 and the difference between 90% and full compensation is \$1,500. The difference is even less if the price is several thousand dollars (in fact the prices of the majority of package tours in Hong Kong are around \$5,000). However, it is fair to consumers if full compensation is available. I hope Members will give serious thought to it and support my amendment motion.

Finally, apart from increasing the rate of compensation, I also hope the Government will propose amendments to lower the levy of the TICF as soon as possible. We all know that the TICF has a huge reserve of over \$220 million, and the amount of compensation involved in the incidents last year of the two travel agents, namely Mera Travel Services Limited (Mera Travel) and Observers Travel Enterprise Company Limited, was only just some \$4 million. If the reserve is allowed to accumulate and the resources are left idle, it will be a waste in terms of opportunity cost. Therefore, it is indeed necessary for us to seriously consider reducing the rate of the levy to benefit the public. As a result of the "rapid drifting" incident in Indonesia, the scope of the TICF was extended early last year to cover the provision of emergency financial assistance for outbound travellers who are killed or injured in accidents while touring abroad. This year, with the operation of the Accident Contingency Fund for one year, the Government should have a clearer picture of the situation in order to estimate the amount to be reserved for accident compensation.

Moreover, even if a large travel agent collapses in the peak season, the TICF should not be affected seriously as the Registrar of Travel Agents (the Registrar) strictly regulates the operation of travel agents and in particular pays close attention to the 10 major travel agents. If these large travel agents collapse, a substantial amount of money will be involved. But I absolutely believe that if there are problems with these travel agents in respect of their capital or their own management, the Registrar should have discovered them at an early stage, and not in the last two or three days before they collapse. Taking the closure of Mera Travel last year as an example, the Registrar had discovered that the travel agent might have financial difficulties, so it proposed to it that its scope of operation be narrowed in order to eventually reduce the number of affected travellers and accordingly the amount of compensation.

Mr President, I so submit and propose the amended motion.

Question on the motion proposed.

MR CHAN KAM-LAM (in Cantonese): Mr President, I rise to speak in the capacity of the Chairman of the Subcommittee on Travel Industry Compensation Fund (Amount of *Ex gratia* Payments and Financial Penalty) (Amendment) (No.2) Rules 1996. All members of the Subcommittee welcome an increase in the maximum rate of *ex gratia* payment under the Travel Industry Compensation

Fund (TICF). In considering whether the rate of *ex gratia* payment under the TICF should be increased to 90% or the full amount of outbound tour prices, the Subcommittee has taken into account the views expressed by the TICF Management Board, the Travel Industry Council of Hong Kong and the Consumer Council.

Some members of the Subcommittee have expressed concern over any possible adverse effects if the *ex gratia* payment is increased to the full amount of tour prices. The Subcommittee has noted the Administration's explanations that it has to balance consumers' interest on the one hand and the healthy operation of the travel industry on the other. Should the *ex gratia* payment be set at 100% of tour prices, there will be no incentive for travellers to exercise care in the choice of travel agents. Travel agents will also be less inclined to honour their moral obligations to clients, as the former know that the latter will be fully compensated upon the closure of their businesses. The majority of members of the Subcommittee agree with the TIC's views that travellers care more for their holiday plans than monetary compensation. If travellers are given an option, they prefer proceeding with their holiday plans to having their tour fares refunded.

Although members of the Subcommittee hold different views on the maximum rate of *ex gratia* payment, they are unanimous in requesting the Administration to suspend or reduce the levies. The Subcommittee feels that, notwithstanding the need to maintain adequate reserve of the TICF to meet the potential liabilities, there is a strong case to suspend or lower the levies. The total amount of compensation paid out from the TICF upon the closure of the two travel agents last year is only \$4.3 million. Compared with the reserve of the TICF, which currently stands at around \$233 million, this amount is relatively insignificant. Suspending and reducing the levies would not affect the Administration's plan to replace all the franking machines in use since their costs are estimated to be around \$10 million only. With improved regulatory regime of the outbound travel industry, members consider it highly unlikely that major travel agents will collapse at the same time. The Subcommittee is pleased that the Administration has taken note of the members' request. The Administration has agreed to review the situation having regard to the business situation of the travel industry during the coming Lunar New Year and the Easter holidays, and to report its review to the Legislative Council Panel on Trade and Industry in April 1997.

Lastly, I must point out that the Subcommittee has considered the merits of the Honourable Fred LI's proposal to make the rate of *ex gratia* payment equal to the full amount of tour prices. However, having balanced the interests of various parties and the majority views of its members, the Subcommittee has expressed support for the Administration's proposal to raise the maximum rate of *ex gratia* payment to 90% of outbound tour prices upon default of travel agents.

With these remarks, Mr President, I support the Amendment Rules.

MR HOWARD YOUNG (in Cantonese): Mr President, the Travel Industry Compensation Fund (TICF) was set up in 1988 and the rate of levy from which the TICF derives its income has been reduced from the original 1% to the present 0.5% of outbound package tour prices. The TICF has accumulated a reserve of over \$220 million, growing at a rate of about \$34 million per annum. This is indeed no meagre sum. However, we should bear in mind that the fund has accrued little by little as a result of the contributions from travel agents and the travelling public over the years. We may well say that the money accumulated is "public money" which warrants prudent spending and it must not be abused.

Certain people from the travel industry have told me that some travel agents deduct the 0.5% levy from package tour prices secretly instead of charging outbound travellers separately. They are of the view that well-run and law-abiding travel agents are cross-subsidizing poorly-run and unscrupulous ones. However, following extensive consultation and elaboration, the majority of members of the trade, the Government and most Legislative Council Members have agreed that the TICF should have adequate reserve to meet the potential liabilities arising from the increase in the rate of *ex gratia* payments from 80% to 90%, and that such revision will neither compromise the operations of the fund nor defeat its purpose.

Providing 100% compensation cannot offer travellers any special protection. Instead, a small number of tour operators which are on the verge of closure may be lured to give up their efforts to save their business and simply bring their business to a close irresponsibly instead. They may have a false impression that even if they wind up their business, their customers can still get 100% compensation from the Travel Industry Council's compensation fund. Thinking that they will not do their customers a disservice, these operators may be tempted to leave the unfinished work to the TIC. Such a practice is

detrimental to the interests of the local travel industry, the travelling public and even the whole society.

Upon the collapse of the Observers Travel Enterprise Company Limited last year, the TIC was able to take prompt contingency measures on its own initiative although the legislation had yet to be perfected. As a result, a great number of outbound travellers were able to set out as scheduled. It can be seen that the provision of 90% compensation coupled with the co-operation among travel agents is proved to be effective in helping outbound travellers to proceed with their travel plans and meeting their needs.

When the incident took place last year, the rate of compensation was set at 80%. As many travel agents were willing to extend assistance by agreeing to the 80% compensation rate, many travellers were able to set out on their trips as scheduled.

Mr President, I would like to point out that the rate of *ex gratia* payment is even higher than the compensation rates under insurance policies. Insurance companies usually do not offer full coverage and premium paying insurers even have to accept "no-claim" terms.

Mr President, I support the Government's proposal to raise the compensation rate to 90% and object to Mr LI's proposed rate of 100%.

DR LAW CHEUNG-KWOK (in Cantonese): Mr President, I object to the motion moved by Mr Fred LI to raise the amount of compensation to 100% of the package tour prices. In the realm of economic theories, a relatively new theory known as "moral hazard" — which I will translate loosely into Chinese as "道德危險", has for many years been developed and applied in various aspects. I will give some simple examples to illustrate why we have to bear a "basic liability" when we take out the motor vehicle insurance policy, or why many countries with bank deposits insurance have set a ceiling on the amount of compensation payable. The economic theory I have just mentioned is applied in these cases.

Regarding the examples I have just given, the main purpose of the "basic liability" is to ensure that people would still drive very carefully even though they have taken out a motor vehicle insurance policy, and that they would not

think that they can drive dangerously without having to bear any monetary costs. The main reason for setting a ceiling on bank deposit insurance is to encourage the public to be very cautious in choosing a bank, taking into consideration its credibility and mode of operation, so that they will choose banks with good reputation and sound operation to conduct their business, deposit their money and carry out transactions.

We can apply this theory to the choice of package tours by the general public in Hong Kong. Although it is impossible for the general public to obtain all the information relating to a travel agent, we must bear in mind that in dealing with everyday matters, we cannot wait until all information is available before we make a decision. If compensation is given in full, obviously the public will not be so alert in making their choices. A lowering of alertness is a problem in itself, and will also prevent travel agents from giving full play to their merits and demerits in the course of competition. This is not conducive to the long-term development of the entire travel industry.

I would also like to point out that fellow colleagues of the Democratic Party not only propose today to give full compensation, but also proposed in the motion debate last week that the Government should finance in full the construction cost of the Ma On Shan rail link. These two issues reflect a very inadequate understanding on the part of fellow colleagues of the Democratic Party on how free economies can function effectively and what should be cherished in such economies.

Thank you, Mr President.

MRS SELINA CHOW (in Cantonese): Mr President, I am not always in total agreement with the views expressed by Dr LAW Cheung-kwok, but today I am.

What Dr LAW has just said is very convincing and I fully subscribe to his arguments. Both Dr LAW and I used to be members of the Consumer Council and I also took up the Chairmanship of the Council for a while. This is something which I must declare for fear of someone who might "settle old accounts in future." At the time when the subject of the need for the Compensation Fund was raised, I was a member of the Consumer Council. The Legislative Council subsequently held a debate and carried out studies on this subject. At that time, I demanded the rate of compensation be set at 100%. In

my opinion, a compensation of 100% was certainly a good proposal from a Hong Kong consumer's point of view.

As the Chairman or a member of the Consumer Council, it appeared that I was obliged to make a demand for a compensation of 100%. However, if we take a step backward and look at the issue from a wider perspective, the arguments put forward by Dr LAW are undoubtedly very convincing and I also fully support the proposal for increasing the rate of *ex gratia* payment to 90%, which, in my opinion, is a reasonable amount as the consumers themselves should also bear part of the responsibility.

But I would like to point out the fact that it is not the compensation which the consumers are after. Their biggest concern is whether they can make their trips. It would be a nightmare for anyone who had booked a package tour through a travel agent to be told of the collapse of the agent just before the trip was to start. Nothing can be a sufficient compensation to make such a consumer happy. I hope people in the travel industry can do their best to arrange for those affected to make their trip. This is what I would rather see.

During the scrutiny of this Bill, I also mentioned that the accumulated reserve of the Compensation Fund had reached \$226 million and queried if we could further lower the rate of levy, which is 0.5%.

My understanding is that the travel industry also intends to look into this issue. In my opinion, a reduction in the rate of levy will benefit the travelling public as a whole. Mr Fred LI may argue that the ultimate beneficiary will be the travel industry instead of the travelling public. I think such an argument indicates that he does not quite understand the force of free market competition. When the costs are reduced, there is every possibility that consumers will benefit, particularly in such a fiercely competitive industry as the travel industry.

This is what I hope to see. I also hope that all of us can understand that the question of increasing the rate of compensation right now should be looked upon separately from that of reducing the overall fee, that is, the rate of levy of the Compensation Fund. If someone argues that it is more desirable to increase the rate of compensation right now than to reduce the rate of levy by then, I take exception to such an argument. Since the interests of consumers as a whole are our main concern, we should consider as far as possible whether there is a genuine need for establishing the Fund. In other words, we should not solely

rely on the Fund. There are actually many other measures and I hope it will not be necessary to use the Fund frequently.

I hope the Government will bring us some good news in April by lowering the rate of levy. I believe this is what most consumers are looking for.

MRS MIRIAM LAU (in Cantonese): Mr President, what will wise consumers take into account when choosing to join a package tour? Their main concern may be whether the package is "the best value for money", whether the itinerary covers a lot of tourist attractions, whether the food and accommodation provided are of "first class" quality, and whether morning flight is arranged for outbound journey and evening flight for return journey so as to maximize their stay. How many of them will care for the reputation of the travel agents, whether they own their business premises, or whether they are large scale enterprises or small companies?

In fair and free market economy, we always emphasize that consumers should have the freedom to choose. But we tend to forget to remind them of the risks in relation to such freedom. In case they make a wrong decision, they will incur losses in all circumstances. What we are discussing now is whether the rate of *ex gratia* payment paid out of the Travel Industry Compensation Fund (TICF) to affected travellers upon default of travel agents should be set at 80%, 90% or 100% of the tour prices.

Let us not talk about the exact rate of *ex gratia* payment for the time being. Let us discuss, instead, whether full compensation should be provided. We should not stick to trifles and forget the essentials. We should bear in mind that the TICF is set up to provide some sort of protection to travellers "in case" the travel agents they patronize have closed down. That is why the fund was established in the first place. I have to point out that the purpose of establishing the TICF has always been to provide some sort of protection, not necessarily 100% protection. Besides, there are merits in providing less than total protection for consumers. Since travellers will not get a full refund of the tour prices, they have to, to a certain extent, bear the responsibility for their freedom of choice. It can remind them of the need to exercise due care when selecting travel agents and not to base their decisions solely on tour prices and disregard

the quality of service. If the public all have a right attitude as consumers and exercise due care when choosing travel agents, those agents which are not up to standard will eventually be forced out of business. The "potential" risk for default of travel agents will be further reduced. We could then review the need for a further increase of *ex gratia* payment or whether other measures are necessary.

As to the rate of *ex gratia* payment, I think we have to balance consumers' interests on the one hand and the healthy operation of the fund on the other. Now is not the right time to increase the compensation rate drastically to the full amount. Even though the TICF has recorded a substantial balance, we should not try as hard as we can to exhaust the fund simply because there is a surplus. The TICF should maintain a stable balance to prepare for "worst of the worse", even if the chance is only "one ten thousandth" that "ten thousand" travel agents are closing down. Of course, we are not going to have 10 000 defaulting travel agents, because there at most 1 000 or so travel agents in Hong Kong. However, even if 1% of these one thousand travel agents are closing down, our travel industry will no doubt suffer a heavy blow. In that case, could the TICF stand the impact? This is a factor we need to take into consideration. Moreover, the Package Tour Accident Contingency Fund Scheme established by the Advisory Committee on Travel Agents in February last year will provide instant assistance to outbound travellers in need when accidents occur. Funding for the Scheme also comes from the TICF. Therefore, the TICF has to maintain an adequate reserve to prepare for contingencies.

At the present stage, I think it is reasonable enough to increase the rate of *ex gratia* payment to 90% of tour prices, which could no doubt be reviewed in future in light of the accumulated reserve of the fund, the development of the travel industry and the attitude of the public as consumers.

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese) : Mr President, the Travel Industry Compensation Fund (Amount of *Ex gratia* Payments and Financial Penalty) (Amendment) (No. 2) Rules 1996 seek to increase the maximum rate of the *ex gratia* payment under the Travel Industry Compensation Fund from 80% to 90% of the outbound fare already paid by the travellers upon the close down of the travel agents. The amendment Rules were gazetted on 20 December 1996 and came into effect on the same day. After consultation with

the Financial Secretary, the Travel Industry Compensation Fund Management Board prepared the amendment Rules. If this Council does not raise any objection, these Rules will be deemed to be approved.

The Honourable Fred LI has moved this motion to increase the maximum rate of the *ex gratia* payment to 100%.

Mr President, I would like to state clearly to this Council that the Travel Industry Compensation Fund Management Board's decision to increase the maximum rate of *ex gratia* payment from 80% to 90% is supported by the Advisory Committee on Travel Agents and the Travel Industry Council of Hong Kong (TIC), and this increase is also accepted by the Consumer Council.

The Advisory Committee on Travel Agents is composed of representatives from the outbound travel industry, other trade related sectors and professions, as well as consumer interests groups. The Advisory Committee supports the upward revision of the maximum rate of *ex gratia* payment from 80% to 90%, but not 100%. The Advisory Committee considers the increase of the maximum rate of *ex gratia* payment to 90% can further enhance the protection of outbound travellers, while at the same time address the concern of the outbound travel industry.

The TIC shares the view of the Advisory Committee on Travel Agents. The TIC is concerned that if the *ex gratia* payment is set at 100%, the travelling public will be less prudent in choosing travel agents, and will more likely only go for those offering the lowest prices. Also, when the travel agents know that if they close down, travellers will still get full compensation, they may then neglect their moral responsibility towards their customers. The TIC thinks that this will not be healthy for the outbound industry as a whole. This is the professional view of the travel industry and we should not ignore it lightly.

The Consumer Council considers the increase of the compensation rate from 80% to 90% to be acceptable. It regards the increase of the maximum rate to 100% to be a long-term objective.

The Legislative Council Panel on Trade and Industry has already discussed the Travel Industry Compensation Fund Management Board's decision to increase the maximum rate of *ex gratia* payment from 80% to 90% on 12 November 1996, and the Subcommittee chaired by the Honourable CHAN

Kam-lam to study these amendment Rules has also discussed this issue on 11 January 1997. An overwhelming majority of Members present at the above two meetings support the increase of the maximum rate of *ex gratia* payment to 90% but not 100%.

Mr President, I would like to tell all Members that apart from increasing the maximum rate of *ex gratia* payment to 90% to enhance the protection of the travellers from any loss upon the close down of the travel agents, the Government has already implemented a series of measures, including both preventive and remedial measures, to strengthen the existing mechanism for controlling the licensed travel agents upon the advice of the Advisory Committee on Travel Agents. We have already briefed Members in the meeting of the Legislative Council Panel on Trade and Industry on 12 November 1996 regarding the different measures adopted by the Government. We believe such measures, including the increase of the maximum compensation to 90%, will best safeguard both the interests of the consumers as well as the outbound travel industry, and they can also strike the best balance between these two groups.

It is hoped that Members can support the Travel Industry Compensation Fund (Amount of *Ex gratia* Payments and Financial Penalty) (Amendment) (No.2) Rules 1996 formulated by the Travel Industry Compensation Fund Management Board, and also vote against Mr Fred LI's motion.

Mr President, this afternoon some Members suggest that since the balance of the Travel Industry Compensation Fund currently stands at about \$226 million and its financial status is stable, the Government should therefore consider lowering the existing rate of levy which is 0.5% of the outbound fees paid by the travellers. The Government would like to give thanks to Members for their proposal. I can make an undertaking here that we will review the levy rate, consult the Travel Industry Compensation Fund Management Board and the Advisory Committee on Travel Agents. The findings of the consultation and our recommendations will be presented to the Legislative Council Panel on Trade and Industry this April by the TIC.

Thank you, Mr President.

PRESIDENT (in Cantonese): Mr Fred LI, do you wish to reply?

MR FRED LI (in Cantonese): Mr President, how much time do I have?

PRESIDENT (in Cantonese): According to the Standing Orders, you have 15 minutes to speak.

MR FRED LI (in Cantonese): I do not think I need that much. Mr President, as I have heard, some Members who spoke on the motion and the Secretary for Trade and Industry who has just responded, as well as Mr Howard Young who happens to be not in his seat at the moment, have all put forward the same argument, that is, if the rate of compensation is to be increased from 90% to 100% of tour fares, travel agents will be induced to act irresponsibly, such as closing down their business without serious consideration for they know that the consumers will be fully compensated. I think if that is really the case, then does it not show that the Travel Agents Registry, which is a government department, and the Travel Industry Council, which is a self-regulatory body of the industry, both fail to exercise control on travel agents against such irresponsible acts? After all, the difference between 90% and 100% is very little and I do not think travel agents will be more inclined to act irresponsibly by closing their business without serious consideration simply because of this difference of 10%. I think this 10% increase is neither an inducing factor nor a catalyst. We have no reason whatsoever to look at it this way.

Secondly, I am extremely disappointed with Dr LAW Cheung-kwok. I am going to refute his arguments one by one. He said that for motor vehicle insurance, the full amount of compensation will not be paid out for there is a "minimum liability" on the policy. But we should bear in mind that insurance companies do not have any mandatory provision for the inclusion of a "minimum liability". Consumers have the right to bargain. They can choose to take out an insurance with any company with or without the requirement of "minimum liability". Besides, the amount of such "minimum liability" may also vary. However, under the amendment put forward by the Government now, consumers can only be compensated with 90% of the tour prices regardless of the travel agent they choose. They cannot ask their travel agents to guarantee full

compensation upon default. Under such circumstances, travellers can neither negotiate nor bargain with travel agents. In the light of the above, I think that on comparison, these two cases are different in nature.

Some Members have said that should full compensation be provided, consumers will be less prudent in their selection of travel agents, knowing that they will not suffer any monetary loss. This is a view shared by many Members, including Dr LAW Cheung-kwok. But we must not forget that there are many people who are holders of Certificate of Identity requiring a visa to travel, and they have to pay quite a lot for it. Even for those who are holders of British National (Overseas) Passport like me, we still have to pay for entry visas to Japan. Can these fees be reimbursed upon default of travel agents? Travellers will have to suffer monetary loss in any event. How can we discount all these simply by saying that consumers tend to act hastily as they do not have to pay for their losses if the protection of 100% refund of tour prices is offered.

I think all Members share Mrs Selina CHOW's view that no one would hope for the default of travel agents which they have chosen to travel with so that they would get 100% compensation. They have taken leave from work to go on a vacation to have fun. They are unlikely to select a travel agent hastily just because the rate of compensation is set at 90% or 100%. I do not think this argument is tenable.

We have interviewed consumers and conducted a comprehensive territory-wide survey. But none of the Members has ever studied the issue seriously. The majority of respondents indicated that price was neither the only nor the prime factor for consideration. Instead they would consider the fame and reputation of the travel agents, and would choose certain agents for certain routes and destinations. In fact, the general public probably know which travel agents are more popular among the young people and they may choose to join their tours; or which travel agents charge a higher fare and offer more luxurious tours targeting at the middle and upper classes, and they would not choose such agents. These are things that the consumers know. But they certainly have no knowledge of which travel agents are going to default. They only know some agents may be better at certain packages and some agents are not. I think consumers will neither make their choice solely on prices, nor exercise less care when choosing travel agents because there is a 90% or 100% refund. I hope I can also refute that point.

According to the Secretary for Trade and Industry, the Travel Industry Council, the Advisory Committee on Travel Agents and the Consumer Council all agreed to set the rate of compensation at 90% of tour prices. I would like to tell the Secretary that I also support the amendments she proposed. Yet I hope that the compensation rate can be further increased to 100%. I certainly do not oppose the proposal for setting the rate of compensation at 90% which is an improvement and a step forward indeed. Nevertheless, I hope that better protection can be provided. The controversial 10% increase seems to be making a big difference here as consumers will tend to exercise less care in selecting travel agents and travel agents will be inclined to wind up their businesses or make business decisions without serious consideration under the provision of full compensation. These arguments, in my view, are too hypothetical. Of course, I will not be too optimistic to expect that the amendment I proposed will be endorsed by this Council. But I would like to call on Members to reconsider my proposal which, in practice, will not have a great impact on the Fund. Since the closure of Observers Travel and Mera Travel in the past few years, the Government has pledged to progressively step up control through the Travel Agents Registry, and to work together with the Consumer Council to exercise closer supervision over travel agents. Thus I do not believe that there will be unexpected closure of major travel agents that will result in tens of million dollars of compensation. The chance is very slim indeed.

Mr President, I do not want to waste any more time. I hope my colleagues would support offering full protection that will benefit outbound travellers for the coming Lunar New Year peak season and, for this reason, vote in support of my amendment. Thank you.

Question on the motion put.

Voice vote taken.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): Members please be reminded that the question now put to you is: That the motion moved by Mr Fred LI be approved.

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

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

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Mr LEE Kai-ming, Mr LEUNG Yiu-chung, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Frederick FUNG, Miss Emily LAU, Mr Eric LI, Mr Henry TANG, Dr Samuel WONG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHENG Yiu-tong, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the motion.

THE PRESIDENT announced that there were 21 votes in favour of the motion and 28 against it. He therefore declared that the motion was negatived.

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 28 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.

Honourable Members, before we proceed to the first debate on the Order Paper, I should like to explain why I have ruled that Mrs WONG may not raise the subject matter contained in her motion for debate in an adjournment debate, as she has originally intended.

Standing Order 9(4) states that a Member may move that this Council do now adjourn for the purpose of raising any public matter for which the Government is responsible, with a view to eliciting a reply from a designated public officer.

Mrs WONG gave notice on 10 January 1997 of her intention to initiate an adjournment debate in the Council. The terms of her notice were "為維護立法局主席獨立性，公正性及公信力，黃宏發議員實應自動放棄主席一職！".

Members' attention was drawn to the provision of Standing Order 9(4) at the House Committee meeting on 10 January 1997. Mrs WONG sent in a revised notice on 13 January 1997, adding the words "與此同時，香港政府實應就此事作出回應". The intention, I suppose, was to render the notice a concern of the Government.

Staff of the Secretariat then drew Mrs WONG's attention to Standing Order 9(1) which states, "when for any sufficient reason it is not desired to formulate a motion in express terms for the purpose of debating a matter, a motion that the Council do now adjourn may be moved for the purpose of such a debate". As Members are aware, a matter for an adjournment debate is traditionally presented in the form of a "topic". Mrs WONG subsequently changed the topic of her proposed adjournment debate to "Independence, impartiality and credibility of the President of the Legislative Council". I then ruled the topic of Mrs WONG's proposed adjournment debate out of order because the matter was not one for which the Government was responsible.

Mrs WONG then changed the terms of the notice of her proposed adjournment debate to what is now in front of Members. However, the notice proposed was again couched in the form of a full-scale motion. The proposed notice still failed to satisfy the requirements of Standing Orders 9(1).

Further, according to Erskine May (21st Edition, pages 325-326), "certain matters cannot be debated, except on a substantive motion which allows a distinct decision of the House. Among these are the conduct of the Speaker, Members of either House of Parliament Such matter cannot, therefore, be raised by way of an adjournment motion". In the case of Hong Kong, this principle applies to the President and Members of this Council.

For the above reasons, I have ruled that Mrs WONG's topic or motion should be debated as a substantive motion, and not as an adjournment motion.

Honourable Members, the motion that Mrs WONG will be moving shortly is on the presidency of this Council. I have considered very carefully whether I should preside over the debate on this motion. Having studied the practice in the House of Commons of the British Parliament where the Speaker is always in the House presiding over debates on motions commenting or reflecting on his action, I have decided that I should preside over the debate on Mrs WONG's motion.

Members will recall that, at the sitting of the Council on 11 December 1996, I gave an assurance to Members that I would continue to discharge the duties of the President of this Council to the best of my ability, and in an impartial and fair manner. This undertaking still stands, particularly for this debate.

Mrs WONG, please move your motion now.

PRESIDENCY OF THE LEGISLATIVE COUNCIL OF HONG KONG

MRS ELIZABETH WONG to move the following motion:

"That, in view of the Government's staunch opposition to the setting up of the provisional legislature and the public's strong reaction to the decision of the Honourable Andrew WONG, President of the Legislative Council,

to join the provisional legislature, in the event that the Honourable Andrew WONG does not resign from the presidency of the Council so as to safeguard the impartiality and integrity of the office, this Council urges the Government to seek a declaration from the court that:

the Honourable Andrew WONG, being president of the Legislative Council, has conflicts of interest when required to adjudicate on issues relating to the provisional legislature of which he is a member."

MRS ELIZABETH WONG (in Cantonese): Mr President, I move the motion standing in my name in the Order Paper.

First of all, let me express my appreciation for the President's agreement to this motion which questions the suitability for the President to continue being the President of this Legislative Council. I also appreciate the fact that you are presiding over this motion debate today which, in my view, is an indication of your acquiescence to the moral ideal of this debate and your support to me. This act of yours commands my deepest admiration. If however you retired from this meeting to avoid this debate, or even dared not face up to criticisms that are fair and just, I believe others might mistake that decision for acting behind the scene. Therefore, I have to thank Mr President for presiding over this debate. Furthermore, if Mr President could, in the interest of this Council, volunteer to step down from the Presidency of this Council, I am sure you will win the respect not only of colleagues of this Council but also of the populace at large.

As we all know, the provisional legislature was chosen by 399 people and has already begun operation outside the territory. The President, together with 32 others, have gloriously, or ingloriously, become its members.

Whether or not there should exist a provisional legislature has been the subject of a controversy for some time. I have no intention of stirring up further debate at this very moment. The pure-hearted will remain pure. The tarnished will remain tarnished. Hong Kong people have eyes that see all. Right or wrong, good or bad, history will be our witness.

That Mr President and 32 members of this Council will not suffer the pains of unemployment is a subject for congratulations. It is all the more admirable that you will receive two salaries at the same time. The energy and the stamina

with which you go to-ing and fro-ing between Hong Kong and China every week to have meetings in two places fill us with awe. But I earnestly implore that the President will do his best, in the interest of the most democratically elected Legislative Council in the history of Hong Kong, to let us retain a little bit of honour for this Council in the remaining days of our tenure; and let Councillors, elected by the people of Hong Kong to represent Hong Kong people, to carry on their duties with responsibility and dignity, until the last days of this Council.

Two legislatures, sharing half of their membership, but with their mandate coming from different sources, and with dissimilarity in allegiance, will inevitably create many problems of this and that. For example, on the question of whether the laws concerning the right to assembly can be re-instated or not, where will your decision lie: on the side of the general public? Or on the side of the central Government? I dare not wish for colleagues to quit the provisional legislature; but when half of the membership of this Council have become elite members of the provisional legislature, my hope is that at least the President of this Council will not join the provisional legislature so as to avoid giving people the impression that this Council is subordinate to the provisional legislature.

Mr President, you often compare yourself to a referee. You have also adjudicated on many issues, including the question of flora. There are many Members of this Council who have a legal background. Mr President yourself, being a political scientist, will surely know that under the Common Law system, anyone who has power to adjudicate on the interest of others, must apply the principles of natural justice; otherwise his adjudication will be null and void.

One of the principles of natural justice is that the adjudicator shall not be biased. Partiality may not necessarily occur; but for as long as the possibility of partiality exists, or where suspicion exists, the adjudication will be invalid.

Let me quote from a decision that every law student must have read: "The appearance of justice is part of the substance of justice. It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly, undoubtedly, be seen to be done".

When being concurrently the President of this Council and a member of the provisional legislature leads to a conflict of interest or a confusion in the role, you, Mr President, should resign from your service because it is in fact no longer

appropriate for you to continue to assume the Presidency of this Council. Otherwise, any adjudication you make as the President will not only jeopardize credibility, but also open up challenges in judicial reviews.

Mr President, let me remind you that already there appear examples where Hong Kong people feel that being concurrently the President of the Legislative Council and a member of the Provisional Legislative Council has led to a confusion in the roles. It is obvious that recently, you have shown your support in the Legislative Council Commission for staff of this Council to resign on favourable terms to join the provisional legislature. Mr President, forgive me for my common-placed question: Did you have the interest of this Council at heart, or the interest of the provisional legislature at heart when you made this decision?

The irony is that, if you recognize that staff of this legislature will have to resign from their posts before they work for the provisional legislature so as to avoid a conflict of interest, our most respected President, what about you?

Moreover, you gave copies of Standing Orders of this Council to members of the provisional legislature. This could just be a courteous gesture. But this is Mr President's own courtesy which may not have the support of the Hong Kong people. This gesture can be likened to "worshipping Buddha with offerings of borrowed flowers".

Furthermore, Mr President, I thank you for explaining just now as to why you twice rejected my proposal to debate this subject as an adjournment debate. Is there no conflict of interest here? I am considering seeking legal advice on your decisions in this respect.

I recall that you justified your aspiration to become President of the provisional legislature on the ground that as its president you would not have to express a view so as to demonstrate your impartiality. Unfortunately, you have now been cold-shouldered by the provisional legislature and only become one of its common members. To lower yourself from your present esteemed position, will it not only demean yourself, but also this Legislative Council?

Mr President, you announced last night that until 1 July, you will adopt the three "nos" approach, that is, you will neither interject, nor speak up, nor cast a vote in the provisional legislature. My humble view is that it is far better for

you to quit the provisional legislature and thus free yourself from the strictures of enforced silence, and obedient decorum in a cocoon of self-inflicted confinement.

Mr President, about a quarter of a century ago, you hosted a TV programme on "Point Counter-Point" and you were positive in promoting political and public affairs. Additionally, you have for a long time assisted university students in political sciences, and performed the sacrosanct duties of an educationist. In the past year and a half, you have presided over this Council. Whether you are suitable for the post is a matter of different views. But, in performing your duties in Council, the loss of your leisurely hours and your self-denial of cigarette-smoke is a sacrifice for all to see. Thus, basically, I do have respect for you.

However, if you have no intention to step down from your presidency, if perforce you are determined to be the green willow drooping over two households, when the wind blows, where will the willow cast its shadow?

Besides, to be in the Court of Chin in the morning, and in the Court of Chor in the evening, when one is physically in Tso's camp but the heart belonging to the Han, the ennui felt by Hong Kong people can be well imagined. How then can Hong Kong's most democratic legislature have a dignified end?

The accusations of many a man; the critical comments of many a pen, will not spare you from criticism. Pardon me for my well-meaning words which will not be pleasant to your ear. I hope you will consider cautiously my view and be true to yourself.

To back down one step will open up a new vista. To persevere for a while will bring one peace and quiet. With Lao Tse's philosophy of "Not To Be so as To Be", I commend this to you and to this Council.

These are my remarks.

Question on the motion proposed.

PRESIDENT (in Cantonese): Mr David CHU has given notice to move an amendment to this motion. His amendment has been printed on the Order Paper and circularized to Members. I propose that the motion and the amendment be debated together in a joint debate.

Council shall debate the motion and the amendment together in a joint debate. I now call on Mr David CHU to speak and to move his amendment. After I have proposed the question on the amendment, Members may express their views on the motion and the amendment.

MR DAVID CHU's amendment to MRS ELIZABETH WONG's motion:

"To delete ", in view of the Government's staunch opposition to the setting up of the provisional legislature and the public's strong reaction to the decision of" and substitute with "this Council believes that"; to delete "to join the provisional legislature, in the event that the Honourable Andrew WONG does not resign from the presidency of the Council so as" and substitute with "will still have the ability"; to delete "the" of "the office" and substitute with "his"; and to delete ", this Council urges the Government to seek a declaration from the court that:

the Honourable Andrew WONG, being president of the Legislative Council, has conflicts of interest when required to adjudicate on issues relating to the provisional legislature of which he is a member" and substitute with "after joining the provisional legislature, and will help in the continuity of this Council"."

MR DAVID CHU (in Cantonese): Mr President, I move that the motion of Mrs Elizabeth WONG be amended as set out under my name in the Order paper.

I cannot agree to the motion of Mrs Elizabeth WONG on Mr Andrew WONG, the President of this Council, and must move the amendments to protect the impartiality and reputation of the Legislative Council.

Mrs Elizabeth WONG points out in her motion that, in view of the Government's staunch opposition to the setting up of the provisional legislature, the Council should do so and so. The position of the Legislative Council needs

not coincide with that of the Government. The Legislative Council should not object to an issue simply because the Government does so. Should that be the case, the Legislative Council will become what Mrs WONG often mentions, a "rubber stamp".

Mrs WONG also mentions the public's strong reaction to the decision of Mr WONG to join the provisional legislature. In respect of public reaction, views of the Hong Kong community are fully represented by the Members of the Legislative Council, and I believe that Mrs WONG would not object to that. Dear colleagues, you should recall that:

1. the Honourable Andrew CHENG's motion on the opposition to the setting up of the provisional legislature was negated by this Council on 4 December last year; and
2. in the provisional legislature election on 21 December last year, 34 Members of this Council participated and 33 of them were finally elected, which represented a majority of this Council.

These facts prove that the provisional legislature receives substantial support from this Council and the community. I believe the "public's reaction" that Mrs WONG mentioned should be referring to the reaction on "supporting" the provisional legislature.

Moreover, Mrs WONG urges the Government to seek a declaration from the court on Mr WONG. This is obviously an act in which the "legislature" urges the "executive" to request the "judiciary" to intervene in "legislative" issues. The fundamental principle of "separation of the three powers" adopted by the Government structure will be seriously affected.

The Legislative Council is responsible for the business before 1 July, while the provisional legislature will deal with the business after that day. As both bodies work for the interest of Hong Kong, the issue of conflict of interest mentioned by Mrs WONG does not exist.

As for Mrs WONG's concern that Mr WONG, after taking office of the member of the provisional legislature, will lose his impartiality and integrity, in October 1995, all members of this Council supported Mr WONG and elected him the President of this Council, because they believed that Mr WONG would act

"impartially" and "honestly". These are part of his personality. There is a saying that "Rivers and mountains may be changed but it is hard to alter a man's nature", and the nature of a man will not change only because he takes up another office. Therefore, the Mr WONG who has joined the provisional legislature is still Mr WONG, and the Mrs WONG who has joined the frontline is still Mrs WONG.

While Mrs WONG objects to the setting up of the provisional legislature and Mr WONG supports its establishment, both of them have their own justifications. However, such an internal affairs of the Legislative Council had better be handled in the Council.

Mr President, with these remarks, I move my amendments.

Question on the amendment proposed.

MISS CHRISTINE LOH (in Cantonese): Mr President, I would very much like to deliver my speech in Cantonese, but I am not going to do so today and will speak in English afterwards. However, as inspired by Mr David CHU's speech, which was made in Cantonese with very beautiful Shanghaiese accent, I think I have to stand up and say a few words in Cantonese for the occasion.

MISS CHRISTINE LOH: Mr President, it is a pity that the motion was not more straight forward in asking this Council to express a view on how Members see the President's role in view of the fact that the President has joined the provisional legislature. Indeed, the President have tried to be the President of the provisional body. As phrased, however, I cannot support the text of the Honourable Mrs Elizabeth WONG's motion. It is fundamental to this Council's independence that we insist on an exclusive right to regulate our legislative work. But instead of claiming that right, unfortunately the motion throws it away.

The motion invites a court of law to decide for us the limits of our own President's authority. I am fairly confident that the courts would refuse the invitation, but we should not invite them into this Chamber in the first place. Such an extension of jurisdiction would be constitutionally destructive. It would draw the courts into political questions, and also weaken the legislature.

In the United Kingdom, Parliament's exclusive right to regulate its own proceedings is firmly established. That right has been recognized as essential to legislative independence and it has been established since 1689. Whether this Council enjoys a comparable right has never been tested, but any such right will not long persist if the Council does not actively assert and defend it.

Worse, the motion invites the Government to intervene in the inner workings of the Council. To those who disagree with the setting-up of the Provisional Legislature, the invitation may seem benign. But as a precedent for the future, it strikes at the very heart of the Council's independence. We should resist executive influence over this Council, and certainly not invite it.

I know that the Mrs Elizabeth WONG's motion is not intended to erode the Council's independence, but I am afraid that it would do so. Although I am sympathetic to the concerns her motion expresses, I cannot responsibly support it, and will therefore abstain from voting on it because essentially I agree to the spirit of what she is trying to say.

I will, however, oppose the motion if it is successfully amended by the Honourable David CHU. Moreover, I want to emphasize that the President should take no comfort in Mr David CHU's amendment.

As President, the Honourable Andrew WONG has done good work, for example, in bringing out the historic, bilingual edition of Standing Orders. But it was a grave and irreversible error of judgment for him to voluntarily embroil himself in the controversy over the provisional legislature.

Both the community and this Council are bitterly divided over the provisional legislature. It has become the lightning rod for all the community's fears and disagreements over the impending transition to Chinese rule. There is little doubt that each future step it takes will either ignite new controversies or rekindle old ones.

A series of past motion debates has established fairly precisely how this Council divides between supporters and opponents of the provisional legislature. I expect that in this debate, the Council will divide clearly and distinctly along the same, familiar lines. That division, it seems to me, is the true message of this debate. It demonstrates that this President's tenure in office now depends on partisan support from the bloc in this Council that supports the provisional legislature.

It is not enough for the President to be impartial as a personal matter. The President's authority rests on Members' common recognition of his impartiality. It must be a matter of consensus, not a matter of factional support.

The Council's division on today's debate should send a very clear signal. The President must not mistake support of such a partisan kind for a refuge. On the contrary, it is an indictment.

MR ALLEN LEE (in Cantonese): Mr President, you are the subject of this debate — Mr President, this is a serious matter, despite the outright laughs and snickers among Members which were brought forth by the Honourable David CHU attempting to deliver his speech in his Shanghainese Cantonese.

This Council today looks, to me, rather like a denunciation rally, and you are being criticized and denounced for your motive of joining the provisional legislature, especially your running for the presidency of the said legislature. Mr President, I believe I have more experience of these denunciation rallies, in my youthful days in Shanghai, than any other Members in this Council. Such denunciation rallies call back horrible memories.

Members of this Council are in no position, and cannot have been otherwise, to denounce you. You are an elected legislator — with me in Tai Po neighbouring you in Sha Tin — and you were elected because your constituents believed that you were the most suitable man to represent them in this Council. If the people — your constituents — dislike what you have been doing, they will turn their votes away from you next time and you may have to step down. However, it is not for the Members of this Council to decide what you should do or otherwise.

Joining the provisional legislature is a personal decision, and its membership is not handed to one on a silver platter or "appointed" as some said. Instead, one has to run for it through an election process. If it had been "appointed", it would have been open to all. The fact is that the members of the provisional legislature were not appointed. They had to run among 130 nominated candidates. You ran. Thus I detest, and I object to, other people judging you unfairly with their own decision.

As a Member of this Council, in fact, it is not my business to defend you. However, you are muted and silenced today as you are the subject of this debate, so I take it upon myself to speak to the people of Hong Kong. If your constituents find that you wrong, find that you are no longer their man in this Council, let them say so with their votes.

Members of this Council, especially the Honourable Mrs Elizabeth WONG, have gone too far. It is her perfect right to dislike the provisional legislature, but it is also other people's perfect right to join it. The Honourable lady really is in no position to denounce other people's decision here. However, we are going to hear more of such criticisms as there are some other Members who dislike the provisional legislature, who refused to join, who boycotted its election, and even greeted its meeting with tomatoes and eggs. Is this our way of doing things?

Votes speak. The people of Hong Kong will, in time, let us know what they really think.

DR YEUNG SUM (in Cantonese): Mr President, the Honourable Allen LEE has compared today's motion debate to a denunciation rally in the Cultural Revolution. I do not feel that he should add political colours to this motion debate. Whether the argument put forward by the Member today is right or appropriate, I believe that after the public have read it in the newspapers or watched it on television, they will make a fair judgment.

There are indeed technical problems with the motion moved by the Honourable Mrs Elizabeth WONG today. When considering this motion, the Democratic Party also wondered why Mrs Elizabeth WONG's motion urged the Government to seek a declaration from the court on a Legislative Council matter. Hence, it is no wonder why some Members say that it is inviting intervention from the executive to the legislature. But we have to look carefully at her chief motive of moving this motion, which is to arouse the public's attention to the impact that you, being the President of the Legislation Council, have made on the Legislative Council in joining the provisional legislature. I believe that Mr Allen LEE has put it too strongly in saying that Mrs Elizabeth WONG's motion is a denunciation. I want to point out that her main purpose of introducing this motion is to arouse the public concern about the impacts that you, Mr President, have on the Legislative Council in joining the provisional legislature. Mrs

Elizabeth WONG does so out of her love for the Legislative Council and her desire to uphold the image of the Legislative Council, rather than to denounce you.

Mr President, no matter what the outcome of the voting on this motion debate will be, the whole thing is greatly regrettable as the identity and role of the President has undoubtedly been challenged by quite a number of colleagues in this Council in this motion debate. This kind of challenge, even though there are various views over the issue, has already dealt a blow to and tarnished the image of the President of this Council. The Democratic Party has been working hard all along to establish a good system for the Legislative Council in order to monitor the operation of the Government. Hence, it is regrettable that this Council has to go through this motion debate to question the neutrality of the role of the president.

Mr President, I would like to stress that this motion debate is not a dispute caused by personal feelings; rather it is a matter of integrity. The integrity that concerns with the presidency has reached a point where it has to be dealt with by this Council. Mr President, I think three things are of great concern to the colleagues who feel that they have to be dealt with seriously.

First of all, during the election, Mr President did state very clearly your opposition to the provisional legislature but now you have taken up a seat in the provisional legislature. This is a matter of undertaking during election, on which we have no need to argue too much. But more importantly, it involves the impact of your joining the provisional legislature on the Legislative Council. Mr President, everyone knows that as far as the Legislative Council and public opinions are concerned, the provisional legislature is a highly controversial issue and the controversy has yet to die down. As the President of the Legislative Council, you should be well aware that once you join the provisional legislature, your duty as the President is bound to get tangled up in political disputes. The rulings made by you, the President, in this Council will inevitably arouse the doubts of some colleagues about your impartiality and that, in fact, has already hindered the execution of your duty as the President.

Secondly, the incident that the President gave some copies of the Standing Orders of the Legislative Council as a gift to members of the provisional legislature on your own accord was again called into question by colleagues of this Council. Actually, when foreign visitors come to visit, I believe that Mr

President will also give them copies of the Standing Orders out of courtesy, but giving copies to members of the provisional legislature would cause people associate it with Mr President's contest for the presidency of the provisional legislature and question whether the President has conflict of interests. This incident further aggravates the controversy over the duty and role of the President and has also made the Democratic Party look squarely at the role of the President.

To add fuel to the controversy over your role as the President is your running in the election for the presidency of the provisional legislature, Mr President. People in general would also say that while one is the presidency of the Legislative Council, which is legal, and the other is the presidency of the provisional legislature, which has no legal grounds and represents the retrogression of democracy, how can one take up two entirely different roles? The Bible also says, "No man can serve two masters". Fortunately, Mr President, you lost in the contest; otherwise, there would have been technical problems. Today you have to preside at the Legislative Council in Hong Kong and then at the weekend you have to rush to Shenzhen to preside at the provisional legislature meeting. In setting your schedule for the meetings, sometimes it is inevitable that you would attend to one thing and lose sight of another, in turn jeopardizing the work of this Council.

Some suggest that having you to take up the presidency of the two legislatures can help maintain the continuity of the Legislative Council. To that I beg to disagree. The continuity of the operation and culture of the Legislative Council is by no means for one single person to maintain. Such argument is no more than stressing the importance of an individual while overlooking the rationality of the whole system itself.

Mr President, actually I very much appreciate your capability of being the President of the Legislative Council. In fact, you have also done your best in discharging your duty as the President up till now. But your joining the provisional legislature and contesting for the presidency there have indeed undermined the neutral image of the presidency of this Council and resulted in a conflict of roles which is greatly regrettable. The Democratic Party thinks that for the sake of the integrity of the presidency of the Legislative Council and your own dignity, you should consider resigning from the presidency of the Legislative Council.

With these remarks, I support the motion.

DR LEONG CHE-HUNG (in Cantonese): Mr President, I speak here to voice my objection to the original motion.

I have to state first that I speak on my own, not as Chairman of the House Committee; I also have to state that I am not here to be the President's attendant, but to point to some basic principles which we all should uphold.

The Honourable Mrs Elizabeth WONG's motion contains three main parts:

Firstly, criticizing the President of this Council for joining the provisional legislature;

Secondly, questioning whether the impartiality and integrity of the office of the President would be compromised by the incumbent joining the provisional legislature; and

Thirdly, urge the Government to seek declaration or ruling from the court on the President.

Mr President, many Members of this Council (including myself) still believe that the smooth transition of Hong Kong is best ensured by the "through train" of this Council to 97. Hence, many Members still insist that the provisional legislature is a redundancy.

However, the iron-cast fact is that the provisional legislature has been set up and, whether we like it or not, it is the legislature of Hong Kong after 30 June. Hence, many Members believe that, with the best transition option of "through train" for the whole Council gone, we should settle for the second best. That is, seek the continuation of this Council through the biggest possible number of present legislators in the provisional legislature. I believe, this is also the reason for the President to join the provisional legislature.

Mr President, the impartiality of a person depends on his character and his integrity. These are the exact words from the Honourable Mr YEUNG Sum's speech earlier on. Many of the Members present occupy multiple roles. There are bound to be, more or less, conflict of interest among these various roles. The heart of the matter is not that one holds different roles, but how one seeks a balance when carrying out these various roles without compromising one's character, impartiality and integrity, especially in public office.

The best way to judge a person's impartiality and integrity is to "listen to his words, and observe his deeds." Our Honourable President has specifically promised, in public, not to participate in any discussion or comments on any issues of the provisional legislature except that of the house affairs before 30 June. I find this a very appropriate arrangement.

Mr President, I am sure that none of the Members present will object to the separation of the executive, legislature and judiciary, with each independent of another. In fact, The Legislative Council of today has won its independence only through long and hard battles to overcome many an obstacle. (New Members may not be fully aware of the issue here.) We should treasure the Legislative Council's independence, and uphold the very essence of a democratic society. Under no circumstance will we allow the Legislative Council ordering the Administration to request the judiciary to give ruling on and interfere with a house matter of the Legislative Council.

Finally, Mr President, works await us here. Fellow members have all committed to doing their utmost to finish the works of this Council. To honour our commitment, we should all stop our internal fights and finger pointings, but rather, through the co-operation with the Government, strive for the betterments of the community.

MR NGAN KAM-CHUEN (in Cantonese): Mr President, the impartiality and integrity of the presidency of the Legislative Council depend not upon the Administration's position on a certain matter. Ignoring the Government's opposition to the setting up of the provisional legislature, the Honourable Andrew WONG, President of this Council, has determinedly joined its election and has been elected. Mrs Elizabeth WONG is of the view that in so doing, he

has compromised the impartiality and integrity of his office as President of this Council, which I cannot agree to.

The necessity and justification for setting up the provisional legislature have been fully expounded and were endorsed by this Council on 4 December last year. Therefore, to be a member of the provisional legislature while serving as the President of this Council is acceptable to this Council and the impartiality of the presidency will not be compromised. If we follow Mrs Elizabeth WONG's logic as shown in her motion, there will be no one who can assume office as President upon the resignation of the incumbent President, as everyone in this Council with the exception of Mr Andrew WONG has made known his or her stance on the setting up of the provisional legislature. To have no one head the Council, it is like having the foundation of this Council undermined.

It does not matter very much if Mrs Elizabeth WONG undermines the foundation of the Council with her own hands. However, there will be serious consequence if the respective roles of the executive authorities, the legislature and the judiciary are compromised. In her motion, Mrs Elizabeth WONG urges the Government to seek a political declaration from the court. Doing so will jeopardize judicial independence and destroy the impartial image of the court. Under a sound judicial system, the court can only make a ruling on cases brought before it. However, according to the original motion, the court has to bow to government pressure and make a political declaration which carries no legal effect on issues of public concern. This will definitely politicize the judicial system and destroy its impartiality and integrity.

Mr President, with these remarks, I oppose the original motion and support Mr David CHU's amendment.

MR LEUNG YIU-CHUNG (in Cantonese): Mr President, I do not agree to the remarks of some Members that our debate today is a denunciation rally. On the contrary, when I watched the first meeting of the provisional legislature held in Shenzhen last Saturday, I found some familiar faces. However, they behaved like the old people sitting in the Great Hall of the People, as they only knew how to raise their hands to show approval, clap their hands and applaud. The newly elected President of the provisional legislature, Mrs Rita FAN, said that it should establish a new parliamentary culture having Chinese features. It will probably be a rubber stamp parliamentary culture which replaces rational debates with absolute obedience, hand clapping and "boot licking". In the face of the

provisional legislature having a congenital loss of representativeness and an acquired institutional imbalance, people will only realize how precious and lovely are the parliamentary tradition and culture of debate which have been gradually established after the introduction of a directly elected Legislative Council.

In order to allow Members to continue to speak impartially without any inhibitions during debates, we need an impartial president who is going to apply the rules of order in an unbiased manner. In order to uphold the said principle of impartiality, the President of the Legislative Council not only has to do his best to fight for fairness, more importantly, as in the declaration made by Mr President the day before yesterday, "the President would have to give the public a totally objective and unbiased image; and precisely because he has to be deemed as totally unbiased, the President must not express any views on political issues".

In this Council, I believe that you are the one who is most familiar with the operation and principles of business of the Council. However, it is a great pity that your recent actions show that you are willing to contradict yourself, dismantle your own bulwark and move stones to crush your own feet. Although you have made a declaration that you would be a "dumb" Member and you would not vote on the affairs of the provisional legislature or publicly express your views, regardless of the manner in which you take part in the work of the provisional legislature, you cannot evade the fact that taking a stand refers not only to what you say, but also to your act of joining the provisional legislature, which shows that you have taken a political stand. Unless you think that your spirit and your body are two separate things, your act of joining the provisional legislature clearly shows your political stand towards it. This is so-called "having plunged yourself into the matter", and whatever you do afterwards would not help.

Certainly, some people would say that the stances of member on the provisional legislature are already diametrically opposing each other. Even if you do not join the provisional legislature, people may also say that you have taken the political stand of opposing the provisional legislature. I do not agree to this. It is because your capacity as the President makes it inappropriate for you to show your political stand. I think that the act of not taking part in the election of the provisional legislature itself is a clear and definite indication.

This is utterly the same as the case in which you would not take part in the voting when Members have to vote on any debated topic. The impartial image of the President can be defended and the President can secure the respect and trust of the public this way. However, it is a great pity that after you have joined the provisional legislature, you defended yourself by saying that you have not taken a stand on whether the provisional legislature should be established. You have actually acted in a farfetched manner and given people an impression that you are deceiving yourself and others and what you did can hardly be convincing to the public.

Furthermore, you can hardly avoid a conflict of roles when you are concurrently the President of the Legislative Council and a member of the provisional legislature. Similar cases are your distribution of the Standing Orders and secondment of the staff of the Secretariat. I think you cannot claim that you are innocent and make the public think beyond doubt that you do not have any conflicts of interests or roles. After these cases, there is nothing left of the totally objective and unbiased image you, as the President, should have. Although you made a declaration the day before yesterday that you would try to remedy the situation, now that you have to remedy the situation, why do you not ask yourself this: "if the situation has to be like this now, it is a pity that I have allowed this to happen like this in the beginning."

The wording of the amendment moved by the Honourable David CHU shows that Mr CHU has failed to touch upon the crux of the problem. Our debate today is not about finding fault about you or commenting on your competence or abilities. In fact, in our debate today, we are discussing about the objectivity and impartiality of the President. Very often, people like to compare the work of the President to a referee of a football match. I would also try to take a football match as an example. In important international matches, say, a team from South America is playing against an European team, the referee shall be a person not coming from South America or Europe. Such an arrangement is made not because people have doubts about the abilities of a referee from South America or Europe, but for the avoidance of a conflict of role, so as to convince the public of the impartiality and objectivity of the referee. Therefore, I would only like to ask a question, "if a referee had joined a football team, say, the South China Team, as the leader or a member, would the judgment he was going to make in any football match in future be impartial and convincing to the public?"

Mr President, the crux of our debate today is, whether there will be a conflict of roles when you are concurrently the President of the Legislative Council and a member of the provisional legislature. Will this impair the impartial image of the President? Moreover, would what you have done upset the excellent tradition and custom of the Legislative Council in the past, as well as the democratic image of the Council which has been strenuously established by Members?

Mr President, I earnestly hope that you can consider seriously whether you should continue to assume the office of the president.

Mr President, these are my remarks.

MISS MARGARET NG: Mr President, I oppose the motion. This is because in no way would I agree that the Government has any business interfering with the office of the President of this Council, whether by way of seeking the intervention of the court, or by any other means.

But there is nothing wrong with the Honourable Mrs Elizabeth WONG bringing up for debate the question of whether the impartiality of the President has been compromised by certain acts or decisions of the present incumbent. Mr President, you will be the first to agree, that we would expect ourselves to discuss any matter of public interest in a forthright manner, with detachment and no rancour. I am grateful to Mrs Elizabeth WONG for implicitly affirming this by moving this debate.

Let me state my own position in a very few words. My views on the Provisional Legislature is well known to this Council. These views remain unchanged. I believe it is relevant to note the fact that Members are sharply divided in their stance, and that this division has affected, and will continue to affect, the many debates this Council has held, and will hold in the future. To maintain impartiality and put impartiality beyond question is not easy for the President. I must admit that to do so while electing to be a member of the Provisional Legislature would make the task extremely difficult, because it is almost like having already taken sides by conduct in a fundamental controversy of this Council.

However, Mr President, I also deeply believe, that it must be a matter for you, having considered every factor, to decide what public duty requires you to do. I am sure that if you should find, at any time, that your personal circumstances stand in the way of the smooth running of this Council, you would take the right steps to put an end to remove that obstacle. I am not prepared to urge any decision upon you. Less do I feel called upon to enter into any question of your integrity.

Mr President, there may be others in this Council who know you better, but I doubt if many have known you longer than I did. We knew each other in our university days, when I was more interested in minor poets than major headlines of newspapers. In those days, you were already wholly taken with parliamentary procedure. Scorning being president of the union, your ambition was to set up a sophisticated constitutional and procedural framework for the student organizations you took part in. It was an unusual, but certainly worthy, ambition for a young man.

But you and I do know, that in agreeing to take up public office, we must put the requirements of that office first, and our own interest and ambition second, even if they are noble ones. In a way, worldly ambitions which we know to be ignoble are less dangerous, because we are less inclined to accept that our nobler ambitions are nonetheless personal ones.

In the difficult months to come, we have an important duty in upholding the dignity of this Council. The public must look to the President to symbolize that dignity. This is a grave responsibility worthy of great personal sacrifice. It is not whether you personally minded the criticism, but whether the dignity of the office is objectively compromised. I am sure that you, Mr President, appreciates this to the full.

I have no intention to prose on about the meaning of public office. I have stated my position, and it must suffice. Except that I should also state, that as I do not consider the provisional legislature a legitimate legislature of the Hong Kong Special Administrative Region, I will also oppose the amendment of the Honourable David CHU.

Thank you, Mr President.

MR CHOY KAN-PUI (in Cantonese): Mr President, the purpose of the Honourable Mrs Elizabeth WONG in moving the motion today is to force the President of the Legislative Council, the Honourable Andrew WONG, to step down. She named two reasons why Mr WONG should step down: first, the Government's staunch opposition to the setting up of the provisional legislature, and second, the public's strong reaction to his decision to join the provisional legislature.

The Honourable Mrs Elizabeth WONG's arguments contain serious flaws. According to her logic, as long as the Government opposes to something, Members should obey and bow to its wishes, otherwise they should step down. Such views are indeed shocking. Possibly, this is the mentality of someone who used to be a senior government official. As for Mrs WONG's second reason, I also have no idea on what grounds it is based.

PRESIDENT (in Cantonese): Mr CHOY Kan-pui, one moment please. Mrs Elizabeth WONG, do you have a point of order?

MRS ELIZABETH WONG (in Cantonese): I do have a point of order. I would like to know what Mr CHOY meant when he said that I used to be

PRESIDENT (in Cantonese): Mrs Elizabeth WONG, what you are raising is not a point of order.

MRS ELIZABETH WONG (in Cantonese): Perhaps Mr CHOY can explain what he means, because I do not quite understand.

PRESIDENT (in Cantonese): If you would like Mr CHOY to explain, you could only ask him to do so if Mr CHOY agrees to it. Mr CHOY, would you entertain Mrs Elizabeth WONG's request for you to elucidate part of your speech?

MR CHOY KAN-PUI (in Cantonese): Yes.

PRESIDENT (in Cantonese): Mrs Elizabeth WONG, please state which part of his speech you would like Mr CHOY to elucidate.

MRS ELIZABETH WONG (in Cantonese): I would like Mr CHOY to explain his remark "since Elizabeth WONG used to be a senior government official". I do not even recall the exact words.

PRESIDENT (in Cantonese): Mrs Elizabeth WONG, please sit down. Mr CHOY, please explain.

MR CHOY KAN-PUI (in Cantonese): I did not say that. I merely said "the mentality of someone who used to be a senior government official". I did not name anyone.

PRESIDENT (in Cantonese): Mr CHOY, did you say "who used to be a senior government official" or "who 'is' a senior government official"?

MR CHOY KAN-PUI (in Cantonese): The mentality of someone who used to be a senior government official.

PRESIDENT (in Cantonese): He said "who used to be a senior government official". Mrs Elizabeth WONG, it is not the time for you to debate with Mr CHOY. When it is your turn to reply, you will still have a chance to comment on his speech, unless you are seeking elucidation or you have a point of order.

MRS ELIZABETH WONG (in Cantonese): Mr President, may I ask Mr CHOY to explain whether he meant it as a compliment or a slight? What is the meaning of "someone who used to be a senior government official"? What has it got to do with my motion debate today

PRESIDENT (in Cantonese): Mrs Elizabeth WONG, you have already raised the point you want to seek elucidation on, and Mr CHOY Kan-pui has repeated what he said, which means that he has not explained anything. However, he has a right not to answer your question. Mr Bruce LIU, do you have a point of order?

MR BRUCE LIU (in Cantonese): Mr President, I have a point of order. May I ask whether the Standing Orders give the mover of a motion the right to call other people "to be in the Court of Chin in the morning, and in the Court of Chor in the evening", while forbidding other Members to say that she "used to be a senior government official"?

PRESIDENT (in Cantonese): Mr Bruce LIU, what you said is already a thing of the past. Mr CHOY Kan-pui, please continue with your speech.

MR CHOI KAN-PUI (in Cantonese): It is certainly true that, with regard to whether there is a need to set up the provisional legislature, there are different views in the community. This is quite normal, but there is by no means a one-sided opposition. According to a recent survey, the majority of the public think that the Government should co-operate with the provisional legislature. In any case, so far, no opinion poll or evidence shows that the people of Hong Kong strongly demand the resignation of the Honourable Andrew WONG. Nor does the Government hold this view. This is just a small group of people making loud noises.

Mr Andrew WONG is not yet discharging his duties as a member of the provisional legislature. So far, no incident or evidence suggests that Mr Andrew WONG has shown any bias, unfairness or lapse in exercising his powers as President of the Legislative Council which has undermined the impartiality and integrity of the office. The motion we are now debating is in effect an attempt to start a political trial by replacing facts with assumptions and speculations. To demand the President of the Legislative Council to resign is to use political blackmail against him just because he holds different political views.

Moreover, the Honourable Mrs Elizabeth WONG also hopes that this Council will urge the Government to seek a political declaration from the court. I wonder on what legal grounds this is based.

Mr President, let us examine closely the declaration that Mrs Elizabeth WONG wants from the court. She hopes that the court will make a declaration that: Mr Andrew WONG, being president of the Legislative Council, has conflicts of interest when required to adjudicate on issues relating to the provisional legislature of which he is a member. Such a declaration is to ask the court to assume that the provisional legislature is illegal and it is wrong to join the provisional legislature in the first place. If this is not her intention or if the court remains politically neutral towards the provisional legislature, then if someone who is against the provisional legislature assumes the presidency of the Legislative Council and is required to adjudicate on issues relating to the provisional legislature, will he not have conflicts of interest?

Mr President, if this Council really passes Mrs Elizabeth WONG's motion and if the Government really acts accordingly, it would have grave consequences. This is because this would no doubt bring political disputes into the judiciary system and the court will be used as a tool for political struggle. As a result, Hong Kong's rule of law will be undermined; and the system of check and balance between the executive and the legislature as well as the independence of the judiciary will be seriously impaired.

Mr President, I so submit.

MR ANDREW CHENG (in Cantonese): Mr President, politics is Members' business. As the power of a Legislative Council Member originates from Hong Kong people, he has the right to express the views of Hong Kong people on their behalf in a solemn Council, and his words, actions, manner, honesty and credibility are being strictly monitored.

These precarious years during which politicians have become waverers and have been gaining advantages from both sides precisely reflect the fact that, during the transition period, most Members responsible for monitoring the operation of the Government no longer have a sense of mission. In the face of the gradual intervention of a paternal political culture, the backs and feet of Members seem to have been shaken by the paternal rulers, or Members may want to get political interests, power and positions from the trust of the paternal rulers. The unbiased Members should look for support among the public rather than political status from the autocratic rulers. The Honourable Andrew WONG was elected by 59 Members as the President of this Council, the person in charge of

monitoring the operation of the Government. Mr WONG acts not only on behalf of himself but also for the sublime significance of the Legislative Council.

As what the Honourable LEUNG Yiu-chung has said, "if the situation has to be like this now, it is a pity that I have allowed it to happen like this in the beginning.". Mr Andrew WONG should be prepared at the time when he ran for the presidency of the provisional legislature that, if he failed to be elected, his neutral role as the President of the Legislative Council would be seriously affected. If he acted wilfully, his acts would show that his political ideas would have changed his role from an elected Member accountable to the general public to an appointed Member in disguised form in mutual co-ordination with the privileged class. As Mr WONG has many years of political experience, he would certainly not have made such a risky move without the pledge and guarantee of the privileged class at the very beginning. His move of accepting such a pledge has precisely made us doubt the sincerity and credibility of Mr WONG. More unfortunately, Mr WONG has belittled the complexity of the privileged class and the struggle for political power in the Chinese Communist Party. In other words, he has placed trust in the Chinese Communist Party too readily.

"There is always a taller mountain" and the sectarianism among political power in the Chinese Communist Party is far too complex. Every person in power says that he has the greatest and strongest power while the strongest and most powerful mountain is just like the Lushan Mountain in China, the real appearance of which is never seen. Mr Andrew WONG has also been befuddled by this Lushan Mountain.

Some pro-Chinese people think that Mr Andrew WONG's position as the President of the Legislative Council while he is a member of the provisional legislature will not constitute any impact. They deeply believe that Mr WONG can settle all "conflicts of interests" with his "political wisdom". If he can transit in the capacity of the President of the Legislative Council, this will be conducive to the continuity of the legislature. This idea reflects the idea of the rule of man persistently adopted by the pro-Chinese people who overlook the importance of an institution. The most important thing is not the continuity of the legislature. Instead, its legal status and credibility are of utmost importance.

The provisional legislature is established on neither the basis of legal principles nor the popular will. Its concurrent existence and operation with the

Legislative Council returned in 1995 by millions of Hong Kong people has already become a big constitutional laughing stock among various countries. Now, Mr Wong has become a member of the provisional legislature and at the same time the President of the Legislative Council. After he has failed to be elected as the president of the provisional legislature, he claimed that he would not vote or express his personal views on matters not related to the internal affairs of the provisional legislature, so as to remain neutral. I am astonished by what Mr WONG has said. In all tolerant parliamentary politics, members or the general public will not accept the fact that any Member, except the President, would not take a stand or vote. If the provisional legislature accepts this advisory member's special privilege to concern only with the order of business, I believe this would strike another blow at the status of the provisional legislature which does not have much credibility.

I am grieved by the existence of the provisional legislature as it has struck a severe blow at democracy and the rule of law. However, it has become the best tool for testing the sincerity and credibility of politicians. I believe this is the only value of the existence of the provisional legislature. Mr President, if you still cherish the position in the provisional legislature, I hope that you can ponder over this and resign from the office of the President of this Council, in order not to affect the credibility of this Council.

Mr President, these are my remarks in support of the motion.

MR IP KWOK-HIM (in Cantonese): Mr President, the current Legislative Council Members are elected by the people of Hong Kong. The master of the Legislative Council is the people of Hong Kong rather than the Legislative Council or the provisional legislature as alleged by some Members. To regard the Legislative Council or the provisional legislature as the master of Members and compare that to "serving two masters" is fundamentally flawed.

Mr President, I wonder whether many historical records have been set in this legislative session just because this is the last term of the Legislative Council in the history of colonial Hong Kong and Members want to leave more records in its history. There was the first case in which the President invoked the Standing Orders to order a Member to leave this Chamber. Today there is another first case in which a Member moves a motion debate to ask the President to resign from office.

The provisional legislature has held its first meeting last Saturday where its president was duly elected. The provisional legislature is ready to get on with its work. This Council has debated so many times over the work of the provisional legislature. I am rather tired of it. I am somewhat worried that the people of Hong Kong would think the Legislative Council has shifted its task from monitoring the Government to a sole mission of monitoring the provisional legislature. If colleagues are not forgetful, or not intentionally forgetful, they ought to remember very clearly that in this very chamber on the fourth day of last month, this Council passed with 33 votes in favour and 25 against the Honourable MOK Ying-fan's amendment to express this Council's agreement to the idea that as the negotiations between China and Britain had failed to reach a consensus, to avoid a legislative vacuum, the setting up of the provisional legislature was inevitable. Mr President, the result of this motion has been recorded clearly in the official record of the 4 December Legislative Council Sitting. This is a decision made in a democratic council after serious and heated debates. As elected Members, colleagues should appreciate the importance of respecting the decision of a democratic council. This Council's stand toward the provisional legislature is clear and unmistakable and it is indisputable that we have already accepted the view that the establishment of the provisional legislature is inevitable. Today a Member still disregards the reality and opposes the provisional legislature. As regards to that, are they misleading the public and trying to twist the decision of this Council?

The motion of the Honourable Mrs Elizabeth WONG today is targeted at the President, which calls in question whether the President will have conflicts of interest when required to adjudicate on issues relating to the provisional legislature of which he is a member. First of all, I would like to remind Members that the incumbent President of this Council was elected unanimously by Members among themselves at the first sitting in the last legislative session. That day, every colleague gave the President a vote of confidence. To the colleague who proposes and those who support the request for the President's resignation today, I would like to refer to them with the phrase that is on the lips of every colleague of the Democratic Party, which says, "pulling down yesterday's me with today's me". I hope that the colleagues of the Democratic Party will think about this point.

Mr President, it is most important for the president who presides over the meetings to be impartial and unbiased. Whether the President has lived up to the expectation of Members and the public in presiding the meetings is for all to

see and everyone has an idea. Moreover, if the President fails to preside over the meetings justly and impartially, which has in turn obstructed the effective operation of this Council, then even if colleagues of this Council do not ask him to step down, he should have known it himself and take the blame and offer to resign. Now, are there some Members who have read the "crystal ball" and can foretell that the President will definitely preside over the meetings in an unfair and partial manner? If not, this request for the resignation of the President is actually based on a political move. The Democratic Alliance for Betterment of Hong Kong is firmly against the politicizing of this issue.

Mr President, as regards the present situation, colleagues in this Council have taken two stands towards the provisional legislature, that is, to join it or oppose it. Who should be the President if the incumbent President had to step down for being a member of the provisional legislature? Will it be the Honourable Martin LEE, LEUNG Yiu-chung or TSANG Kin-shing, who opposes the provisional legislature? In the event that any one of them should become the President, would there not be conflicts of interest when he adjudicated on issues relating to the provisional legislature? Should that be the case, does it follow that the Legislative Council has no more need for a president?

Mr President, over the past few months, debates in this Council have all been centred around political issues. Recently, debates on livelihood issues have been on the rise. The trend should be a good sign. But today this trend is reversed with such an issue. It is really regrettable. Mr President, the 33 colleagues in this Council who also hold a seat in the provisional legislature all share a common goal, that is, to work for the smooth transition of Hong Kong, and I believe that the people of Hong Kong have the same wish too.

Mr President, these are my remarks.

MR CHIM PUI-CHUNG (in Cantonese): Mr President, just now when the Honourable David CHU spoke on the amendment, his repeated mentioning of Mr WONG and Mrs WONG gave people the impression that a couple was quarrelling for fun.

Today's motion debate actually underscores the issue of the provisional legislature. While we have to know why the provisional legislature is set up,

we are also aware that many Honourable Members object to it. Despite her New Zealand nationality, the Honorable Mrs Elizabeth WONG should understand that she is after all Chinese, although she speaks English better than Chinese. The provisional legislature is set up because the United Kingdom failed to reach a consensus on the "through train" arrangement with China. Although the Governor says time after time on behalf of the British Government that they object to the setting up of the provisional legislature, up to now not a single court in the world, including those in Hong Kong, has negated the status of the provisional legislature. Moreover, in order to protect the interests of Hong Kong people, the Chinese Foreign Minister QIAN Qichen has said that there will only be one Legislative Council before 30 June 1997. Another legislature will operate after 1 July 1997 and, due to the specialness of the circumstances, a provisional legislature will be set up. Even though there may not be a unanimous view on this, as Chinese, we should all stand on the same side. Some people assess facts with a partial attitude and when they dislike something, they force other people to dislike it too. I hope they will have a chance to think it over again in future.

The President of the Legislative Council carries out his duties in accordance with the Legislative Council Standing Orders. It is narrow-minded for those who query the President simply because he does not take the same path as the 26 Councillors do. Just as what the Honourable Allen LEE said a moment ago, if what the President does is not supported by the voters, he will naturally face great challenges in 1998; anyway, maybe he himself does not want to join the election then. Even though he is interested in taking up the post of the President of the Legislative Council (but he does not have the chance any more), we can vote against him if he is nominated again by Members. Now you have to produce sufficient evidence and tell us on which clause of the Standing Orders you are basing that you move this motion of no confidence. If it is not done according to the rules and you have no confidence in him just because he chose to be a member of the provisional legislature, such attitude of accusing others simply because they have dissenting conceptions is too domineering. Mrs Elizabeth WONG may be haughty enough to consider herself the queen of votes whereas some others may be complacent as they believe they are the kings of votes, but I believe firmly that their voters may not subscribe absolutely to their thinkings.

Mr President, politics changes with the realities of history. One should not be self-complacent about a temporal achievement and think that it will last forever. We have to know that the return of Hong Kong to China is a very special situation and it will surely face criticisms and challenges from different political views, political organizations of various interests and other countries in the world. However, we have to remember that this is afterall an important issue of China and, as Chinese, we should encourage and support our country whenever possible. In politics, there is nothing known as justice or truth, politics is only about power. If you are powerful, countries and regions will naturally flock to negotiate terms with you. We have heard that the Chairman of the United States Senate's Committee of Foreign Relations is considering introducing a Members' Bill to ban members of the Hong Kong Provisional Legislative Council from entering the United States. I personally think that, if Hong Kong is powerful enough, we can well ban them from entering Hong Kong too. What do we lose by doing so? Although Mr Allen LEE says this is a barbaric way of doing things, we can take up any political challenges from other countries if we are strong enough.

Mr President, if people are fastidious about you in the debate, it is not because you are too conceited, but because you do not take the same path as they do. This is neither a normal practice nor one that accords with the Standing Orders. If we follow that practice, we can move a motion at any time to query a Member's way of doing things whenever we dislike him or her. I doubt if Members have such a power. Therefore, I hope that Members can judge in the light of the Standing Orders lest the public be too perplexed.

The appeals and carping of numerous foreign organizations will not affect seriously the normal operations of Hong Kong in future. I wish that Honourable colleagues will prepare themselves amply and those who have not joined the provisional legislature will stage a comeback in 1998 to achieve the aim of serving Hong Kong people.

Mr President, these are my remarks.

MR YUM SIN-LING (in Cantonese): Mr President, your greatest contribution of joining the provisional legislature is not that you "will help in the continuity of this Council", but you "will help in the continuity of the Legislative Council Secretariat staff". While the trouble taken by you is praiseworthy, your theory of "smoking does not equal supporting smoking" is also recognized by many people, though it should be changed to "second-hand smoking does not equal supporting smoking".

With respect to the recent incident of James SOONG resigning in Taiwan, a senior statesman said, "Being a government official is a temporal matter, whereas being a man is a lifelong matter". This really warrants our contemplation.

When you signed up on the 8th of last month for the election of the provisional legislature, you recalled a poem you wrote in 1981. Today, I would like to add the couplet's second line to each line of your poem. This is only a game and I hope you do not mind:

Hong Kong —

one year is like a decade,
five years make a generation,
a decade becomes a century,
15 years later —
a beautiful new world.
1997?

No need to pay attention!

It is not that I do not care,

but nobody has a way to show concern,

the stand can fluctuate;

just take it with relaxation;

dance when it is breezy;

tell the story from the first chapter;

Nobody wants to be an obedient girl.

Hit the nail on the head even?

What is the point of the election?

**I join the election just because I want to,
I swear**

**whoever has the means can join should
he yearn,**

I am not asking you to totally ignore it,

but there is no reason to make any inappropriate request.

I am just asking you to rest assured and go for it,

circumstances can be fabricated so that the right ones are all set.

Please excuse me if this gives offence and please dismiss it with a smile. With these remarks, I support Mrs Elizabeth WONG's motion. Thank you, Mr President.

MR AMBROSE LAU (in Cantonese): Mr President, Hong Kong is returning to China soon. During the transfer of sovereignty, how should we regard the offices of Members and President of the Legislative Council of Hong Kong? If this major question is not clarified, many problems will be confused and become increasingly muddled.

Some people take the Hong Kong Legislative Council and the provisional legislature of the Hong Kong Special Administrative Region (SAR) as two diametrically opposite entities. Certainly, they are two different legislatures under different legally constituted authorities. However, the difference in the legally constituted authority between the Hong Kong Legislative Council and the Hong Kong SAR provisional legislature should not be a reason to see the roles of Members of the Legislative Council and members of the provisional legislature as being in conflict. This is because both Members of the Legislative Council and members of the provisional legislature are serving the people of Hong Kong. With this same fundamental nature, their interests do not conflict with each other. I strongly believe that those who are not very familiar with the work of the provisional legislature should study the seven basic tasks assigned to the provisional legislature by the SAR Preparatory Committee. Then it would never occur to them that there is any conflict of interest in the Honourable Andrew WONG playing the dual roles of President of the Legislative Council and member of the provisional legislature.

Mr President, during this period of transfer of sovereignty, how should the people of Hong Kong, including the Members and President of the Legislative Council, regard their own identity? As we all know, in the Letters Patent, Hong Kong's constitution under British rule, it is stated that "We do hereby require and command all Our officers and ministers, civil and military, and all other the inhabitants of the Colony, to be obedient, aiding and assisting unto the Governor

and to any person for the time being administering the Government of the Colony". However, another equally commonly known fact is that after the Sino-British Joint Declaration formally came into effect on 30 June 1985, Hong Kong officially entered into the transitional period. During the transitional period, any Hong Kong resident, including the president of the Legislative Council, should not create any awkward situation purposefully. During the transitional period, any Hong Kong resident can make preparations for or act in anticipation of their future identity. This is especially true for Hong Kong people holding official posts, including Legislative Councillors. They should feel no embarrassment as a result of so-called "conflict of interest" or "dual allegiance". In another five months, we will all be residents of the SAR, while some of us will be holders of public offices of the SAR. Such transitional matters are provided for in the Sino-British Joint Declaration and are quite natural. As for the theories of "conflict of interest" and "dual allegiance", they are hypocritical, unnatural and contrary to reason.

Mr President, such theories about "conflict of interest", "dual allegiance" and "embarrassment of roles" are by no means apt descriptions of the nature of the transitional period and the roles of the Hong Kong people. Before 1 July 1997, Hong Kong's constitution is based on the Letters Patent and Royal Instructions. However, from 30 June 1985 to 1 July 1997, the Sino-British Joint Declaration is also in effect. This means that everyone, including the Governor, should abide by the provisions of the Joint Declaration, support its successful implementation and the smooth transfer of government, and support the necessary measures to ensure a smooth transition in 1997. Thus the Government led by the Governor should support the provisional legislature and the participation of the President and Members of the Legislative Council in the work of the provisional legislature, since the setting up of the provisional legislature is a necessary measure to ensure a smooth transition in 1997.

Mr President, I also agree with the Honourable David CHU's amendment which says that the Honourable Andrew WONG, President of the Legislative Council, and I would like to add the other 32 Legislative Councillors, will after joining the provisional legislature still have the ability to safeguard the impartiality and integrity of their offices, and help in the continuity of this Council. The experience they have gained in the Legislative Council in parliamentary operation will help the smooth running of the provisional

legislature and ensure that it will serve the interest of Hong Kong and its people more effectively.

Mr President, these are my remarks.

MR LEE CHEUK-YAN (in Cantonese): Mr President, today's debate is not what the Honourable Mr Allen LEE so said, a denunciation rally. As we can clearly discern from the speeches so far, no one was being denounced. Nor is it what the Honourable Mr CHIM Pui-Chung so described, a discussion on the provisional legislature. Members please do not "make the wrong guess".

What we discuss here is, simply, "will the impartiality, integrity, and neutrality of the presidency of this Council be compromised by the incumbent President also acting as member of the provisional legislature, or will there be a conflict of roles." However, it is unavoidable that the conflict of roles, when put into discussion, has to be judged from the public's point of view. A case at hand is what the Honourable Mrs Elizabeth WONG has just pointed out — the hopping over of the Legislative Council Secretariat staff to the provisional legislature has to go through the formality of resignation, and it was so voted by the President at the Legislative Council Commission. It is inevitable that others may wonder: "What about your acting as a Member of the provisional legislature, is that also a conflict of roles?" What if, in future — we do not know yet — matters table here are also being discussed at the provisional legislature? As President of this Council cum member of the provisional legislature, will it lead to a suspicion of conflict of roles? Some people would argue that the President would uphold his impartiality even in times of conflict, and this is what the Honourable David CHU has just declared. He believes the President is fully capable of maintaining his impartiality. That might very well be true. If you ask me, I too will declare my total faith in the President. However, the point here is not whether I believe the President, whether the Council believes the President, it is the question of how the community look at this matter.

Concerning the conflict of roles, the president, in his statement yesterday, says, "I never waver from upholding the neutrality, objectivity and impartiality that traditionally associated the president of the Council who, customarily regarded as a servant of the Council, refereeing the sittings and order, has to be, and needs to be seen as, totally impartial and objective. To be seen to be totally impartial, the President has to effectively silence himself on all matters political."

This is from your statement. The most crucial line, I believe, is "To be seen as totally impartial", and the key issue of today's debate is on just these three words, "To be seen": how you are seen and whether you are seen as impartial. Your Honour could swear to your impartiality, and I am ready to believe you. The Honourable David CHU has declared his complete trust in you. But how about the six million people here? Here is the key point of this debate. What matters is not whether you are impartial, but whether you are seen as impartial. Your Honour have obviously given it some thought and have decided that, in order to be seen as impartial, you would follow a "three nos" policy. In your own word, "In order to uphold the neutral role of the president of the Legislative Council of Hong Kong, I will not vote or comment publicly on the major issues tabled in the provisional legislature, except housekeeping matters." Can this no-speech, no-vote, no-comment policy be regarded as impartial? How about your very participation in the body? How will the public think of it? Can it be seen as impartial? That is the point.

I have a story here and would lady fellow Members please excuse me. I have to state here that this is purely fictional and it refers to no Members whosoever. Now it is similar to the TV show "Do The Right Thing". The case here involves Mr and Mrs WONG. Mrs WONG was thunderstruck by the confession of Mr WONG on just such a stormy day that he had a mistress in Shenzhen, and that he, well, had to go to her once a week. However, he swore his faithfulness to Mrs WONG that he went there just for soup and for chat only, and that he would insist on his "three-nos" policy, including no hand-holding and no partial treatment to the mistress. Mr WONG, besides, declared in his heart his love to Mrs WONG, "I still love you," and his impartiality to the two women. Then the neighbour Mr CHU entered the scene. He came to Mrs WONG and said, "you should have confidence in him. I have known him for almost 20 years. He is fully capable of exercising self control. No sex for sure. Do not worry." Now the fun part. If you were Mrs WONG, what would you do? Would you believe what Mr CHU said and so put your confidence in Mr WONG? That there would not have conflict of roles? Or you just would not believe it? Mrs WONG might at last succumbed and said, "All right, I believe him." But what about the others? Mrs WONG's own relatives? Their children? Would they believe Mr WONG? What if all those around Mrs WONG simply would not take Mr WONG's word? That would be detrimental to Mr WONG too as Mr WONG's integrity would be called into question when others simply could

not believe that he would not favour the mistress. This is, after all, also the problem of "to be seen". Will the public still regard the President impartial if he is already a member of the provisional legislature? If the impartiality of the President is being doubted, the whole Council is affected. We do hope Mr WONG will figure out what is the right thing to do.

At this moment, when morals are no longer practised in the political arena, I do hope that there are still some fresh breezes in this elected Council. Mr President, for the upholding of impartiality, for the continuation of the presidency being regarded as such by the community, would you consider a choice of either your presidency or the membership of the provisional legislature?

Thank you, Mr President.

MISS EMILY LAU (in Cantonese): Mr President, I am speaking in support of the Mrs Honourable Elizabeth WONG's motion. Actually, another member of the Frontier, the Honourable LEE Cheuk-yan has spoken many things already. I do not want to repeat. However, I find his story about the keeping of a mistress disagreeable and I may not think that it is good. We hope that Members will give due respect to the female gender when they speak. Mr LEE Cheuk-yan is well aware of this but he told the story anyway. I believe that since it is not a particularly good story, I hope that he will not tell such stories in future.

Mr President, Mr LEE Cheuk-yan's points are right. Today we would like to discuss the impact that the President of the Legislative Council has on the presidency, or the office of what we call the Speaker, in joining the provisional legislature; or taking a broader view, what effect that has on the reputation and dignity of the Legislative Council. Someone has said something about a denunciation rally or political struggle but that is definitely not so. I believe that all you have heard here today are by no means personal attacks and that we only want to bring this up for discussion. Many Members have also talked about why you have to remain neutral and impartial. All these I will not repeat. However, we are now faced with an indisputable fact that both the Hong Kong Bar Association and the Law Society of Hong Kong call in question the legitimacy of the provisional legislature. Therefore, no matter whether we look at it from a legal or a political point of view, it is still a highly controversial issue.

Now, the President of the Legislative Council has got himself involved in this political and legal whirlpool and then tell the people not to be afraid as that has affected neither the neutrality nor impartiality of the office. Who do you expect to believe?

In the past few weeks or months, we have heard so many views expressed outside, on the radio and among the public. You also know that people in Hong Kong are deeply disturbed over the whole issue and therefore I hope that you will understand what Members have said today have also reflected the heart-felt feelings of the people. Of course, some Members are very supportive of you. They can even say it here that they have enough votes to support them until they get the motion amended. However, there is so much resentment and grievance among the people that, we, as elected Members, have to reflect. Has the office of our Speaker been sullied by your joining the provisional legislature? Someone has also mentioned the Committee on Members' Interest of the Legislative Council and that if some Member does something which tarnishes the reputation of this Council, the Committee should take action. As a member of the Committee, I think that I would propose to the Committee on how to handle this should there be such need. Hence, Mr President, I hope you would understand that the matter in discussion today is very solemn and so I cannot agree with Dr the Honourable LEONG Che-hung that we have to stop fighting among ourselves. Is it that every time when we talk about issues relating to the provisional legislature — just like the other time when chairing the House Committee, Dr LEONG Che-hung called us the Provisional Legislative Council several times in a roll and everyone thought that he had already gone over there, or his mind had flown over there — we are fighting among ourselves? I believe that Dr LEONG also understands that it is not sour grapes for us. When we see something wrong, either legally, politically or in any other aspects, we will have to bring it up and discuss it. Mr President, I can tell you that this debate tonight is not the last time that we discuss issues relating to the provisional legislature and everyone knows it. I also hope that Dr LEONG Che-hung will not say that we are fighting among ourselves whenever we discuss the provisional legislature.

Just now, the Honourable Allen LEE sounded as if we were forcing you to step down and resign from the a Legislative Council. We understand that you have been elected by the people and under our present constitutional framework, you cannot be recalled. We are only asking you to step down as the President

so that, I believe, will subject the office of the Speaker to less adversary attack. This has been talked about by Members over and over again. We hope that you will consider it seriously. The Honourable NGAN Kam-chuen and IP Kwok-him said that no one could assume your office if you resigned. Some of you think so while some others do not. If you listen to our argument, you would find that we certainly hope that it will be taken over by someone who is not a member of the provisional legislature; then at least, the question of conflicts of roles and interests can be eliminated. We do not wish to see you wear this hat today and another tomorrow, leading to conflicts in discharging your duties. We are just concerned about this issue. Mr NGAN Kam-chuen said that no one could assume the presidency. How would there be no one? The question only lies with the fact that the candidate should not be someone who at the same time holds these two embarrassing identities.

Therefore, Mr President, I believe that our colleagues have said many things from the bottom of their hearts. I also feel that you are very magnanimous. You are willing to sit here and listen. Your successor may not have such magnanimity to listen. But the most important thing is that you will act accordingly to the current situation after listening to all that. Mr LEE Cheuk-yan have said that in the Legislative Council Commission you voted in favour of the secondment of the Secretariat staff but he is wrong. You had no need to vote at that time. If there were an equal number of Members on each side, you might have been required to vote. But you did not cast a vote at that time. Of course, I believe that everyone knows because you have openly expressed your view that you were in favour of seconding Legislative Council Secretariat staff there but you did not cast any vote at that time. Concerning the many things that have been spoken of today, I believe you have listened and weighed very calmly and in good temper. I hope that you will ultimately make the wisest final decision. Thank you, Mr President.

MR ERIC LI (in Cantonese): Mr President, the motion debate this time is really "different from other motion debates". Obviously, the motion itself may be stretched to a lot of possibilities. It can be seen clearly from the apparent wording that the motion is meant to ask Members of this Council to take the

initiative to invite the executive authorities to ask the court to adjudicate on matters on the internal affairs of this Council. Apparently, this is in total contradiction with the idea of the division of the three powers: the executive authorities, the legislature and the judiciary. This is unthinkable.

In the process of debating, relatively strong messages have been expressed by Members. That is to say, in terms of the internal affairs of the Legislative Council, the President is requested to think over his political stance and make a decision as to whether he should resign. The Honourable LEE Cheuk-yan used the term "home affairs" to describe the debate. Although I take exception to part of his analysis, I think today's debate does smell strongly of "home". The meaning of the motion can be understood if Members of this Council (including the President) acted against the law. However, if what the President involves in is a matter of personal political orientation or political ethics, asking the court to interfere becomes "kicking up a row".

The thrust of the entire debate hinges on whether the motion is something about "legitimacy or reason". If it were illegal to be a member of the provisional legislature, then all those who have joined the provisional legislature, be they the President of the Legislative Council or one of the 33 Members or even non-Members who have joined the provisional legislature, had acted against the law. Simply resigning from the aforesaid presidency would not be a remedy. Obviously, the Honourable Mrs Elizabeth WONG's motion today and the requests she makes are targeted at political stance rather than illegal acts. She is hoping that you, Mr President, act accordingly.

Mrs Elizabeth WONG may think so long as one is a member of the provisional legislature, one does not have the credibility to be the president of this Council. The Honourable IP Kwok-him also pointed out the 60 Members here, each holds on to a position which cannot be clearer. It is not simply a matter of status. Each of us has a clear and open stance and political orientation. No one is politically neutral. Even if I said somebody is so, none would believe me. Similarly, if a Member says he or she is neutral, no one will believe him or her. Therefore, the passing of the motion will result in only one political message for the society: only when a Member opposes the provisional legislature is that Member sufficiently "credible" or "qualified" to play the role of president

of the Legislative Council. If this is not political censorship, what can we call it?

Must we force ourselves to distinguish between the idea of "being politically right" and "being politically wrong"? Is this appropriate for the freedom of speech and the politically diversified environment of Hong Kong? The motion tends to purposely set the provisional legislature against the Legislative Council. I have great reservations about this line of thought. The amendment put forward by the Honourable David CHU correctly points out it is possible to achieve actual "continuity" between this Council and the provisional legislature in specific arrangements to effect a smooth transition. This is particularly possible as there are now 33 Members who have chosen to stay in the establishment from now to 1997 and thereafter. How would the many Members, who make up more than half of this Council, purposely set the Council in which they find themselves against the provisional legislature? The assumption is totally irrational. I do not believe Members of this Council would say they would remain loyal to Britain up to 30 June and then to China starting from 1 July. I quite believe Mr President and other Members would always be loyal to Hong Kong and serve the people of Hong Kong all the way through. That being the case, how come people think that Mr President is "physically in Tso's camp but the heart belonging to the Han"? If you had the chance to respond, Mr President, you would presumably tell Mrs Elizabeth WONG that you belong to Sha Tin, body and soul! You would prove that you do by what you will do in 1988.

Whether Mr president should join the provisional legislature is a matter for you and those who elected you. To live up to the spirit of democratic elections, this Council should let you explain to your voters for what you do rather than request other Members to denounce you.

In this Council, mutual criticisms among Members are treated with prudence. There are very strict provisions in the Standing Orders in this respect. Codes regarding Members' interests were rejected twice in this session and the last one just because we wanted to prevent the codes from being used as a weapon for political attacks. The debate this time can be regarded as very much bordering on the limit of the provisions. Members' self-discipline is being put to test.

In fact, in today's debate, most of the speeches appeared to have expressed different political views about the provisional legislature. Members who spoke never produced any evidence, fact or allegation to prove that Mr President has said anything that is specifically not neutral politically. Moreover, it was unanimously agreed that Mr President has always conducted meetings smoothly. Mr President, you are under fire just because you have decided to join the provisional legislature.

Unlawful acts, political orientations, and political ethics are utterly different things. If the motion of Mrs Elizabeth WONG were adopted, a very bad precedent would be set. Irrespective of whether there had been political attacks in today's debate, Members and the public were allowed to see that which had taken place. Or as Mr LEE Cheuk-yan said, the debate made the public believe it was a process of an open political denunciation. It need not have taken place. It would enough to be "seen to be". The motion is a decision to confuse the three powers. So, I strongly oppose the original motion and support Mr David CHU's amendment.

MR BRUCE LIU (in Cantonese): Mr President, first of all, I would like to show here, what it means to be a "poor loser"! It is stated in the Record of Proceedings of the 4 December 1996 Sitting that this very Council, with 30 votes versus 25 votes, endorsed the amendment moved by the Honourable David CHU and amended by the Honourable MOK Ying-fan and which virtually vetoed the original motion moved by the Honourable Mr Andrew CHENG. I read it out to refresh fellow Members' memory: "That, as the negotiation between China and Britain failed to reach a consensus over the political system of Hong Kong, thereby resulting in the non-convergence of the pre-and post-1997 electoral models for the law-making body of the territory and rendering the setting up of the provisional legislature inevitable, this Council calls on the candidates for the election of the provisional legislature to fulfil, as the target of their participation in political affairs, the principles of 'one country, two systems; Hong Kong people ruling Hong Kong; and high degree of autonomy'."

Mr President, the decisions of this Council, though not binding, are nonetheless pressing the Government to follow suit for better policy implementation, administration management and financial arrangements. Should the Government fail to comply, it will meet harsh criticisms from

Members and be accused of ignoring the advices of this Council. Be strict to oneself, but lenient to others; a higher standard should then be set up for us Members, and for this Council. The participation in the election of the provisional legislature and joining that body by some of our Members, though in full compliance of the spirit and wordings of the 4 December motion, is not in compliance with the Honourable Mrs Elizabeth WONG's liking. So it seems that Mrs Elizabeth WONG will support what is to her liking, and object what is not, irrespective of the decisions of this Council, or the principle of the rule of the majority. This is what I called a "poor loser".

Secondly, I would like to talk about "impartiality". According to what Mrs WONG just said, as your Honour is now also a member of the provisional legislature, your rulings as the President of this Council have lost the trust of the public. This is what Mrs WONG means.

This can be called the fallacy of "Mr WONG is always wrong". Anyone who has some training in logical thinking or processes a bit of that ability can see that judging a person's ruling depends not on his political role, his background or his political stand, but whether his ruling is in full compliance of the acknowledged and unbiased rules. Hence, whether the rulings of the President of this Council are fair or not depend not on your support of the provisional legislature or your being a member of the provisional legislature, but whether your every ruling is in full compliance with the "Standing Orders" of this Council, and the ruling precedence; that is, the precedences listed in the "sacred book" you refer to so very often.

Thirdly, I would like to answer the question the Honourable LEE Cheuk-yan has just raised, which is whether there is a conflict of interests if the President of this Council is, at the same time, a member of the provisional legislature. This is also the topic of today's debate. In my opinion, there will be a conflict of interests if the two sides have different interests. But, what is the interest of the Legislative Council, and what is that of the provisional legislature? I believe they are one and the same; that is, their interest is the interest of the people of Hong Kong. Sure enough, those who oppose the provisional legislature will not agree to this. They would rather believe that the provisional legislature, or the members of the provisional legislature, have in mind only the interest of China, or even their own personal interests, and not those of the Hong Kong people. However, I do believe that, when I myself, or the other members of the ADPL, or Mr President yourself, participated in the

election of the provisional legislature, we had only the interest of the Hong Kong people in mind. Hence, there is no conflict of interests even though your Honour, as a member of the provisional legislature, continue to preside over this Council.

Mr President, I would like to dedicate a few lines from a song I just picked off hand for you, and please pay attention to the words. With the dedication, I hope that you will stay put, "do not budge", "bite the bullet", and remain where you are and consider no resignation even if the motion is carried. "Deliberate provocations I will not mind, but follow what I have in mind". This is, "upstream".

I do not sing that well, but please pay attention to that particular line of the lyrics which your Honour has ruled that I can sing here —

"The hardships, then , I bore in silence,
The sufferings had not made me give up,
The deliberate provocations , now, I will not mind,
But follow what is in my mind."

Mr President, these, with the lyrics, are my remarks.

MR MOK YING-FAN (in Cantonese): Mr President, the provisional legislature and the Legislative Council are two different entities. The provisional legislature only deals with those indispensable laws upon the establishment of the Hong Kong Special Administrative Region on 1 July 1997 and thereafter. The present Legislative Council, however, deals with legislation before 1 July 1997 when Hong Kong is still under British rule. The two entities have different functions and deal with different matters. Members who play a part in both should have no trouble with their conscience as long as they can play the different roles by performing to the best of their abilities what is required of them in the roles they play, be fair, focus on matters rather than the person and live up to the expectations of Hong Kong people. Indeed, in a modern society, it is quite common for one to be member of several institutions at the same time. The point is whether one can resolve the possible role conflict in an impartial manner.

The Association for Democracy and People's Livelihood (ADPL) has been advocating a parliamentary spirit of criticizing matters not the person, and discussing the merits and demerits of the institution, not those of the person.

However, as the motion today is undoubtedly a "vote of confidence" on the President of the Legislative Council, the Honourable Andrew WONG, I need to talk about both the matter and the person.

The ADPL, judging from Mr Andrew WONG Wang-fat's performance in acting as President of the Legislative Council for the past year and a half, feel that "Uncle Fat" has proven himself to be familiar with the rules of the parliamentary game. As Mr WONG carried out his duties as president, he could act impartially and discharge his duties properly, and is therefore a good referee. At present, we do not see any reason to doubt the impartiality of "Uncle Fat" when he needs to make decisions about matters concerning the provisional legislature while at the same time acting as President of the Legislative Council.

Mr President, some friends of mine in the political arena think there may be a role overlap and conflict for Mr Andrew WONG as he is also a member of the provisional legislature. Hence, it is not appropriate for him to act as president any more. Indeed, if one is to be classified by the attitude and stance one holds about the provisional legislature, present Members can be divided into two classes: for or against. Most of those who support it have joined it, whereas most of those who disapprove of it have joined the "United Front Against the Provisional Legislature" (the United Front). According to the logic of these friends in the political arena, those Members who are members of the provisional legislature should not act as president, nor should those who are members of the United Front. In that case, it seems that no one in the Legislative Council is qualified to act as president.

It has been the view of the ADPL that the system which has proven to be effective before 1 July 1997 should be continued through after that date. On that basis, the ADPL had put forward an alternative plan for a through-train so that existing Members could continue their term of office as long as they could meet the requirements of the Basic Law. Unfortunately, talks between China and Britain failed and there was no through-train for the legislature. The Chinese side set up a provisional legislature to fill a legal vacuum. The position of the ADPL in regard to the provisional legislature is that existing Members should take part in the work of the provisional legislature as far as possible to ensure that system which that have proven to be effective before 1 July 1997 can continue after then. So, we extend our support to those Members, Mr President

included, who have been selected to be members of the provisional legislature because this will be conducive to the convergence and continuity of the two legislatures. This is a responsible attitude towards Hong Kong.

On 4 December 1996, through a motion I put forward, this Council called on the candidates for the election of the provisional legislature to fulfil, as target of their participation in political affairs, the principles of "one country, two systems", given the absence of a through-train and the inevitable reality of a provisional legislature. So, it can be seen that this Council encourages those target at materializing "one country, two systems" to run for the provisional legislature. Thus, the ADPL is of the view that the added identity of Mr Andrew WONG as a member of the provisional legislature does not contradict the position of this Council.

So, on behalf of the ADPL, I support the amendment of the Honourable David CHU.

MR TSANG KIN-SHING (in Cantonese): Mr President, first of all I would like to respond to what the Honourable Allen LEE has just said. He said that no one could throw you out. Mr President, as you are an elected Legislative Councillor returned by the voters in Sha Tin, no one can prohibit you from being a legislator. Your position as the President of this Council is also endorsed by our votes. But unfortunately, we had no crystal ball at that time. The Honourable IP Kwok-him said that it would be very different had we got a crystal ball at that time. Yes, I share with his view. It would make a difference if we had a crystal ball to foresee the future at that time. If I could foresee that you would join the provisional legislature, I would certainly have not voted for you. By the same token, the voters in Sha Tin would have re-considered whether they should vote for you if they knew that you would join the provisional legislature.

Mr Allen LEE mentioned time and again the voters. But the fact is that the provisional legislature does not have the mandate of the voters. Among the six million people, only 400 people have the privilege to vote. This privilege is not given by the six million people but are given by Beijing, which has

hand-picked them and delegated them this privilege. This privilege not only empowers these 400 people to select the members of the provisional legislature, it also empowers them to select the Chief Executive (Designate). What kind of world are we in? All important issues in Hong Kong are determined by these 400 people. What role can the six million people play? If the illegal provisional legislature is elected and returned by the six million people, I will certainly recognize its legitimacy. Yet, they have no confidence in themselves either and dare not convene meetings in Hong Kong. Does the provisional legislature dare to convene meetings in Hong Kong? Please tell me the legal basis.

The Honourable David CHU has mentioned rubber stamps. If we are mere rubber stamps hindering the function of the Administration, I hope Mr CHU can consider one point very carefully: the formation of the illegal provisional legislature and the selection of the Chief Executive (Design) are determined by 400 Selection Committee members who are hand-picked puppets. If they are not just great puppets, what else can they be regarded? Their existence represents a giant rubber stamp which indicates the merging of the executive and the legislature. In other words, Hong Kong affairs have become somebody's domestic affairs.

Just now, the Honourable LEE Cheuk-yan has mentioned the old lady Mrs WONG in the advertisement of the Park'n Shop. I am sure that if Mrs WONG is holding a knife to screen the goods, those which do not meet the quality standard will be screened out from the shop. But Mr LEE Cheuk-yan did not refer to that Mrs WONG and Hong Kong is not Taiwan. We will only express our views by discussions and debates. Originally I was not prepared to speak. But seeing that the Honourable Bruce LIU is so overwhelmed by the victory and hearing his nonsense words which aim at flattering some people and his song showing a sense of victory, I am also full of zest. Mr President, please let me sing a song too. This song is called "boot-licking" and it goes like this, "Do whatever you can to make a living, but see how awkward you are when facing demonstrations." This song is sung for the 33 illegitimate legislators (designate). Mr President, for you, the number 33 is also an unlucky one which make you lose out to Mrs FAN. I do not want to say too much to make you feel embarrassed. But the fact is that the 33 people are totally in line with the Beijing authorities. We 27 people have become the minority. Yet we are upright and

will continue to express our dissenting opinions until the very end. Try to tell the 60 members of the illegal body to convene meetings in Hong Kong if they have guts. Also tell me on which day and I will fight to the very end. From the right beginning to the end, anything which is illegal will remain illegal and the legal will remain legal.

Mr Allen LEE said that we have a choice. If we really had a choice, the provisional legislature would not have been formed and people would not have objected to it. But the stark truth is that the members of the provisional legislature are hand-picked puppets who are manipulated by Beijing. They are not elected by the six million people in Hong Kong. So when democratic elections are here again, that will be the time when they are no longer manipulated and stand still like a log, speechless and motionless. I support Mrs WONG's motion. The old lady Mrs WONG will hand over some "of FANce" women to Judge BAO.

Thank you, Mr President.

PRESIDENT (in Cantonese): I now ask the Honourable Mrs Elizabeth WONG to speak on her amendment. Mrs Elizabeth WONG, you have five minutes to speak.

MRS ELIZABETH WONG (in Cantonese): Mr President, I would like to thank my colleagues for debating on this motion on the basis of what their conscience dictates. As Members have presented poetic and rhymed verses or even sung, they have given our debate today some light touches. We all know that we have QIAN Qichen in China and CHIEN Chi-lien in Hong Kong, as my surname is actually CHIEN. Today, people call me old Mrs WONG or Mrs WONG, I hope that they have not offended the real old Mrs WONG or the wife of Mr President. If they have, I would be very regretful.

There is a point I have to clarify and reverse. This is a serious point which I hope to take this opportunity to reverse. The views expressed by some

Members of this Council with legal background astonished me. They said that the wording of my motion would lead to the reversion of the division of power. I find that this does not comply with the Common Law and am astonished that even people with legal background say so. Before I submit the wording of my motion, I have consulted the opinions of many people in the legal field, checked the written version and sought the advice of the consultants in the legal field and even that of the Legal Adviser of the Legislative Council. Therefore, I would like to clarify three points here, that there are many aspects to the issue of the division of power among the legislature, the executive and the supervisory organ. The division of power includes balancing the operation of the Government through the courts. Therefore, we now have the so-called judicial examination and verification to balance the operation of the Government. This is a widely recognized idea. Under the Common Law, requesting the Government to file an application for obtaining the decision of the court, the so-called "declaration" is not the same as interfering in legislating as anybody can make his declaration and an ordinary member of the public can also indicate his position, file an application through the court for its advice, and get the decision of the court. The public can also file a so-called "*locus standi*" request for interference by the court. In my opinion, the crux of the problem is that, the issue that the Honourable Andrew WONG as Mr President has a conflict of interest is a legal one which is not natural and it is not an issue regarding the operation of the Legislative Council. The issue is not related to the operation of the Legislative Council. Members have spoken before having verified the facts and they casually make Hong Kong people think that this motion debate would invite the executive-led Government to interfere in the actions of the Legislative Council. This is not acceptable to me and is also not the principle of this motion debate. This motion is totally unrelated to the operation of the Legislative Council but it is related to Mr Andrew WONG himself.

As to the amendment of the Honourable David CHU, I appreciate his Cantonese, which is pounding very strongly at me because I also have the Shanghainese accent. However, he has a much stronger accent than mine, and therefore, he has greatly encouraged me. He proved by way of his speech that the Legislative Council might have fallen, it would not allow impartial debates any more and it would not be able to exert influence on the impartial stand of an individual. It has gone to such an extreme that it would allude filing a request with the court through the executive body to "invite a wolf into the house".

Therefore, I am sure that I would speak again on this legal issue when I have a chance later.

Question on the amendment put.

Voice vote taken.

PRESIDENT (in Cantonese): Council shall proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the motion moved by Mrs Elizabeth WONG as amended by Mr David CHU be approved.

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

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

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted for the amendment.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr

LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amendment.

THE PRESIDENT announced that there were 29 votes in favour of the amendment and 23 votes against it. He therefore declared that the amendment was carried.

PRESIDENT (in Cantonese): Mrs Elizabeth WONG, you are now entitled to your final reply and you have three minutes 25 seconds out of your original 15 minutes.

MRS ELIZABETH WONG: Mr President, I am grateful for all the time that I have got. In three minutes, I would like to speak in English what I said in Cantonese a minute earlier. In appreciating the Honourable David CHU's endeavour in speaking Cantonese, I shall try better next time. But I think on legal terms, I prefer to use English because legal terms are not readily translatable.

I feel that there is sensational nonsense expressed in this Council by Members, and I am rather surprised that many of them have legal background. I am sorry to have to disabuse them of their misguided notion that the wording of the motion is to attract intervention, inviting the executive-led Government into this sacred Chamber. There is nothing more nonsensical than the argument put forward by many Honourable Members in this Council.

Now I have actually sought legal advice, and legal opinions have been given to me not just from one source but on good authority from eminent lawyers and practitioners in Hong Kong, on a declaration judgment which states the rights of the parties without affecting their actual rights. You will notice, Mr President, I have not asked the Government to sack the President or to change the procedure. This is because a declaration, unlike the other prerogative orders, is not coercive in nature, which means a disregard of the judgment is not a contempt of court. Under the common law system — it is not in our ordinances,

my dear friends in this Council, somebody has been asking me which ordinance, I said it is not in the Crimes Ordinance; it is under the common law system — a declaration is also a wide-ranging remedy available both in the private law and public law at the discretion of the court. The fact that you apply for it does not mean the court would rule on it. Certainly in the absence of civil servants at present on this particular issue, it appears whether the motion carries or not has no bearing on the executive which is leading indeed.

It is said that there is no limit to the powers of the court to award a declaration except such limits as the court may impose upon itself. So from my very extensive research, even before I put in the wording which was essentially intended for adjournment debate, it appears that the courts will not intervene in cases in relation to the internal proceedings of this particular Chamber, this legislature. So there is no question of interference of any kind.

Thank you.

Question on the amended motion put.

Voice vote taken.

PRESIDENT (in Cantonese): Council will now proceed to a division.

PRESIDENT (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that Mr David CHU's amendment be made to Mrs Elizabeth WONG's motion.

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

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

Mr Allen LEE, Mrs Selina CHOW, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr Frederick FUNG, Mr Eric LI, Mr Henry TANG, Dr Philip WONG, Mr Howard YOUNG, Mr James TIEN, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr Paul CHENG, Mr CHENG Yiu-tong, Mr CHEUNG Hon-chung, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Mr Ambrose LAU, Dr LAW Cheung-kwok, Mr LEE Kai-ming, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted for the amended motion.

Mr SZETO Wah, Mr Albert CHAN, Mr CHEUNG Man-kwong, Mr Michael HO, Dr HUANG Chen-ya, Miss Emily LAU, Mr LEE Wing-tat, Mr Fred LI, Mr James TO, Dr YEUNG Sum, Mr WONG Wai-Yin, Miss Christine LOH, Mr LEE Cheuk-Yan, Mr Andrew CHENG, Dr Anthony CHEUNG, Mr Albert HO, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Miss Margaret NG, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted against the amended motion.

THE PRESIDENT announced that there were 29 votes in favour of the amended motion and 23 votes against it. He therefore declared that the amended motion was carried.

CONSULTATION PAPER ON COPYRIGHT BILL

MR HENRY TANG to move the following motion:

"That this Council urges the Government to consider carefully all views put forward on the Copyright Bill consultation document so as to ensure that the right and equitable balance of interest is struck between the copyright owner, the exclusive licensee, the parallel importer and the consumer."

MR HENRY TANG (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

Mr President, people may find the wording in the motion debate I move on the Copyright Bill Consultation Paper today relatively wide and mild, as I only

urge the Government to consider carefully all views put forward on the consultation document so as to ensure that the right and equitable balance of interest is struck between the copyright owner, the exclusive licensee, the parallel importer and the consumer. The wording is indeed not very controversial. However, since apparent confrontation is already formed among parties of different interests and stands in the industry, if the Government is really able to meet the request as set out in the wording, the complicated and antagonistic situation can be mitigated and the problem will thus be solved.

Ever since the consultation document was published, heated arguments were sparked in various circles and the greatest divergence among them is the issue of parallel importation. I have to clarify here that "parallel import" does not equal "fake" or "counterfeit". "Parallel imports" are the copyright products produced legitimately abroad with the consent of the copyright owner. If such products are imported into Hong Kong without the approval of the local exclusive licensee (that is, the agent), they are then called "parallel imports".

Among the views in response to the consultation document, we obviously hear two opposing voices: on one side are the retailers introducing parallel imports who object to any legal measures restricting parallel importation and demand the total opening up of the parallel importation market; on the other side are the organizations representing the creators or the exclusive licensees who think that parallel imports have to be banned completely and the importers should be brought to criminal trials.

The argument put forward by the people who support parallel importation is: parallel imports are products produced with the approval of the copyright owner and they have paid the copyright fee, whereas the products they import are often those which cannot be produced by the local industry or are not provided by the local agents, and therefore, if parallel importation is banned, the consumers' right of choice will be deprived.

Parallel importation has its merits in terms of price, variety and time of introduction. For example, after Singapore opened up its parallel importation market in 1994, the variety of music has increased by 5.5% while the retail price has fallen by 3.6%. The parallel importation supporters also think that restricting parallel importation will undermine free trade and, as a result, the

agents can monopolize the market while the interests of the retailers and consumers will be adversely affected.

As for the people who oppose the decriminalization of parallel importation, they think that the relaxing of parallel importation will inflict fatal impacts on local creators. With a relatively small market in Hong Kong, the copyright owners have to rely on developing the China and overseas markets to maintain their competitive edge. However, since the productivity of many regions falls below that of Hong Kong, the copyright prices there have to be lower than that in the territory. For example, when a film is made into video tapes and laser discs, its copyright fee in Hong Kong is about \$1 million to \$2 million whereas it is reduced to US\$7,000 to US\$10,000 in China. If the overseas distributors mass-produce the film and sell it back to Hong Kong at a low price, the local distributors will face a very difficult situation and their survival will be totally denied when they lose their competitiveness completely.

The relaxation of parallel importation will also trigger off the emergence of "pirate goods" because the relevant authorities may not be able to afford the abundant manpower and time to patrol and check the products in order to tell "parallel imports" from "very carefully" produced "pirate goods". But at the same time, if parallel imports are banned totally and the need of the people is not met, a gap favourable to "pirate goods" may also appear in the market. Therefore, we have to strike a balance between the two.

With regard to "pirate goods", which means "fake" or "counterfeit", I believe that the Hong Kong market is already distressed by it to a certain extent. For example, the Honourable Mrs Selina CHOW has this watch of a famous brand and she says the area around Theatre Lane in Central abounds with it — but they are all "fakes". The society of Hong Kong should absolutely not tolerate such situation; we have to crack it down and increase the penalty.

Moreover, censorship standards differ in different countries and regions. Let us take films as an example: if video tapes or laser discs are parallel imported, the duration, content and footages added or deleted may not be the same as those of the local version.

Summing up the above opinions, I come to understand that, in the ordinance, we have to allow retailers to develop in various areas and let

consumers enjoy sufficient right of choice at reasonable prices, while at the same time the copyright owners and exclusive licensees should get a reasonable return after they have invested a large amount of money in the production, distribution and promotion of the products.

When the exclusive licensees cannot serve the consumers' needs in terms of choice and price, I think that the interests of consumers can be protected if parallel importation is allowed. However, since the bill is targeted at intellectual property instead of ordinary commodities, we have to ensure that the local creation industry of performing arts, art, literature and music are protected to a certain extent because these local productions have certainly enriched the life of the community in the days gone by. If we let the industry wither and die out, not only will our entertainment and cultural life be affected, the workers in the industry will also be forced out of work and a large number of unemployed will flood the market.

Therefore, I agree with the Government that the copyright owners' right to take civil action should be maintained so that they can claim compensations from those who infringe their copyright by means of various measures such as peremptory mandamus or damages. The rationale for decriminalization is that the matter itself is an issue of commercial arrangement. That is to say, the problem is created due to the allotment of agency rights by the copyright owner, so it is reasonable to solve the problem through civil action.

However, as for the present stipulation that the exclusive licensee has to act together with the copyright owner to be the plaintiff or the defendant, I think that the Government can consider allowing the copyright owner to make an accusation independently, while the exclusive licensee still has to act together with the copyright owner to sue. This measure would better protect the copyright owner.

Mr President, the bill will be tabled for examination by the Legislative Council in February. I hope that all views put forward on it can be fully conveyed through the Bills Committee. At the same time, the Government should consider carefully all the views, whether they are collected during the consultation period or in the Bills Committee, so that the ultimate objective of the motion debate today can be achieved — that is, to ensure that the right and equitable balance of interest is struck between the copyright owner, the exclusive licensee (the agent), the parallel importer, the retailer and the consumer.

Mr President, with these remarks, I beg to move.

Question on the motion proposed.

At this juncture, quite a number of Members left the Chamber.

CHAIRMAN (in Cantonese): Would Members please remain silent when leaving the Chamber.

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

DR HUANG CHEN-YA (in Cantonese): Mr Deputy, parallel imports are not pirated goods. They are copyright goods although they have not been imported through authorized agents. Why then do we have "parallel imports"? There can only be one answer: when there are different prices for the same commodity, traders will naturally purchase the commodity from the region where they can pay a lower price, and then sell it in a region where they can get a higher price so as to make profits. Through the working of the free market mechanism, the different prices of that commodity in the two regions will finally be brought to the same level.

At present, the trading of parallel imports in Hong Kong is illegal. Nonetheless, in the financial market, arbitrage is a very common investment technique, the principle of which is no different from that of the trading of parallel imports. Let us take an example. Arbitrage will come in when there is a profitable price difference between the Hong Kong stocks listed in the London market and the Hong Kong Stocks Exchange. Finally, the two prices will come very close to each other. Of course, we cannot simply equate arbitrage in the financial market with the trading of parallel imports because the production of goods involve numerous aspects such as intellectual property, manufacturing and so on. We however cannot deny that free trading of parallel imports is the best way to adjust price differences.

Mr Deputy, the main reason leading to price differences is the arbitrary division of markets. For example, some multinational enterprises purposely sell their commodities at high prices to countries where the standard of living is higher in order to reap bigger profits. However, in countries where the standard of living is lower, they will instead employ the strategy of small profits but quick turnover to sell the same commodity. Restricting the trading of parallel imports will ensure that these enterprises can make the biggest profit by employing different pricing strategies (known as price discrimination) successfully. However, to consumers who have to pay a higher price, why should they be denied reasonable prices as a result of the monopolized supply of those enterprises?

A few years ago, the prices of mobile phones in Hong Kong were a few times higher than those in foreign countries. As a result, there was an influx of parallel imports which led to price competition. The prices of legally imported mobile phones thus dropped correspondingly to a reasonable level. At present, for movies and records which have been released overseas for a long time, Hong Kong people have to wait for months or pay high prices for them. If there can be a relaxation of parallel importation, this unfavourable situation for the consumers will be improved. Consumers can then have more choices and can pay less. As regards the authorized importers, are they going to suffer as a result? This may not be the case as they can ask the original manufacturers to lower the prices they are asking from them so that they can make reasonable profits.

The Hong Kong Government proposes that parallel imports be decriminalized. This proposal has attracted criticism from people of the local movie industry and record industry. As they are also exporters of Hong Kong, they worry that once restriction on parallel imports is relaxed, products from other regions where prices are lower, such as mainland China, will flow back into Hong Kong. This will strike a blow on the investors' desire to invest in the industries, causing them to dwindle. We can understand why the traders put up their opposition. We are however afraid that they may be "over-worried" to the extent that consumers' interests have been neglected. Since there is a difference in the standard of living between Hong Kong and China, companies adopt the strategy of small profits but quick turnover to open up the market. At present, copyright products are sold in China at prices much lower than the prices they are

sold in Hong Kong. This difference in prices can be as high as 50% and represents a tremendous attraction to people buying and selling parallel imports. However, as China is only importing a limited number of audio-visual products at the moment, the problem of parallel imports is not yet serious. Nonetheless, in the long run, as China is the major market for such products, parallel imports are bound to flow back into Hong Kong if this price difference continues to grow. The prices of audio-visual products sold in Hong Kong will fall correspondingly, thus benefiting the consumers of Hong Kong. Under such circumstances, will manufacturers necessarily become victims? The answer is in the negative. The profits made by the companies in Hong Kong may experience a drop but Hong Kong is only one of their markets. The opening up of the China market will boost their profits. In fact, both copyright goods and parallel imports are products of the company and so there should be an increase in the company's overall profit margin. As the sales volume increases, the company can better enjoy a lower cost made possible by economy of scale. Therefore, there exists no factor of parallel imports causing the industry to dwindle.

Mr Deputy, the Democratic Party attaches much importance to the interests of the manufacturing industry of Hong Kong. We should enhance the competitiveness of our enterprises so that they can face up to the challenges of markets both at home and abroad. We should not however create a sheltered workshop for them. One of the reasons why Japan is experiencing an economic downturn is that the Japanese Government is over-protecting certain local enterprises, rendering them unable to compete. The negative effect of such a measure which resembles drinking poison to quench thirst finally appears today. The movie and record industries of Hong Kong have made their places in the regional and world markets, and products "Produced in Hong Kong" become known throughout the world. All these have been achieved without the assistance of the Government. This is really something we can take proud in. So, in helping the development of the service industries, the Government should channel its efforts into areas which require assistance so as to enhance the productivity of these industry. While decriminalizing parallel imports, the Government should also step up protection for intellectual property and combat pirating activity.

With these remarks, I support the motion.

MR CHAN KAM-LAM (in Cantonese): Mr Deputy, the Democratic Alliance for Betterment of Hong Kong (DAB) supports the Honourable Henry TANG's motion today to "ensure that the right and equitable balance of interest is struck between the copyright owner, the exclusive licensee, the parallel importer and the consumer."

The DAB has always attached much importance to the operation of the market under a free economy. We think that in all commercial activities the interests of the operator and those of the consumer should be protected by law, as long as these activities are carried out legally.

In today's discussion, I want to focus my speech on the issue of decriminalization of parallel importation mentioned in the consultation paper. In principle, the DAB supports parallel importation. Undoubtedly, allowing parallel importation would adversely affect existing agents, in particular the distribution system of films and records. However, we must understand clearly that parallel imports are goods legitimately produced and legally imported. Royalties of such goods have been paid to copyright owners. So, parallel imports are completely different from pirated goods. Moreover, the emergence of parallel imports and the room for their survival are resulted from the failure of agents to provide sufficient goods or their latest models to the market. Moreover, consumers sometimes find that parallel imports are more attractive in terms of price and quality. Under these circumstances, the impact of parallel imports on the market is understandable. If operators of parallel imports can provide consumers with a choice in which quality goods are sold at competitive prices, we do not see any reason why parallel imports which are legitimate goods should be rejected.

The exclusive licence for a product is obtained by an agent through a commercial agreement with the copyright owner. This relationship is purely one between the product manufacturer and the promoter. In fact, in considering the promotion of their products, the copyright owner or the manufacturer has the right to grant one or more than one licence for their products. They may even choose not to grant any licence to anybody but leave their products open to all interested retailers on the market. All such decisions are commercial decisions with the ultimate goal of securing the best way as deemed fit by the manufacturer to sell a product to the consumer after it is made.

Mr Deputy, it can be easily seen that the impact of parallel imports on the interests of the exclusive licensee is an inevitable conflict resulting from the operation of the market in a free economy. It is wrong for an agent to request the Government to make laws to protect its interests because laws can only protect an invention of a commercial item and intellectual property but not a commercial decision. In this connection, I think exclusive licensees should hold discussions with copyright owners to come to a solution on product sales.

The DAB fully understand that some industries such as the movies industry and the records industry are being affected by parallel importation. This, however, is a phenomenon arising from keen competition and the high costs of production for the local market. The DAB is of the view that the relevant industries should conduct an in-depth research into their distribution system and strategy for market-sharing to avoid unhealthy operations within the market and to make the operations of the industries fairer and more reasonable. After considering the balance that has to be struck between operator interests and consumers interests in the market, the DAB supports parallel importation activities.

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

MR YUM SIN-LING (in Cantonese): Mr Deputy, the thrust of today's motion is "parallel imports". Parallel importation operators emerge from a gap in the market. They notice a difference in the price of goods sold overseas and that of goods sold locally. Thus, by importing such goods profits can be made from part of the price difference. In fact, the business is similar to a general import business and forms part of the free market. The only difference is that parallel importation operators may infringe "copyrights". Whether they have done so depends on whether local laws allow the commercial distributors to own the same exclusive rights as "copyrights" or agency agreements to confer such rights, which are not to be infringed.

However, there are several points to note. Firstly, parallel imports are legitimate goods, not pirated ones. They even help fight against pirated goods. Secondly, parallel imports are bought from authorised manufacturers or authorised dealers abroad. So, parallel imports will only affect part of the interests of local authorised manufacturers or local authorised dealers but will not

affect the interests of consumers. On the contrary, parallel imports benefit consumers, who can thus purchase the same goods at lower prices. Thirdly, operators of parallel importation will introduce models of merchandises not sold by local authorised dealers. In other words, consumers may obtain more choices. However, consumers have certain costs to pay. They will need to face questionable product quality and the risks of being deprived of after-sale services. If the risks are higher than the difference in price, consumers will choose "proper goods". If not, they will choose "parallel imports". Proper dealers may need to incur higher costs than operators of parallel importation due to the advertising expenses they need to shoulder, but this factor will be off-set by risks to be borne by the consumer. Fourthly, to the real owner of the copyright, his or her interests will basically remain unchanged.

In the absence of fair trading laws, the introduction of parallel imports can enhance competition in the market and prevent monopoly by authorised traders. Furthermore, this may improve efficiency and rationalise profits as "parallel imports" would replace "proper goods" in bulk if prices were not kept low by local authorised traders through enhancing their efficiency or reducing their excessive profits. On the other hand, if the price difference between local goods and goods imported from overseas falls to a certain level, operators of parallel importation would not be able to survive. In the actual operation of the market, it is not necessary for the Government to impose restrictions on operators of parallel imports because copyright owners can discourage the influx of parallel imports through controlling overseas authorised manufacturers or distributors by strict commercial contracts.

In balancing the interests of various parties, the point of balance should rest on parallel imports being allowed to a certain degree rather than the beneficiaries of commercial contracts being guaranteed for higher profits at the expense of consumer interests.

Mr Deputy, the Honourable Henry TANG's motion is a balanced one. I find it difficult to reject. With these remarks, I support the motion.

MRS SELINA CHOW (in Cantonese): Mr Deputy, the Government has published a Copyright Bill Consultation Paper. If the Government's policy

objectives stated in the paper, including the balance of interests, can indeed be achieved, I believe that most of the proposals will be widely supported. However, according to the views that were submitted to me by the trade, there are clearly two areas which have aroused their concern. I will concentrate my speech on these two areas.

The first question is about the regulation of parallel importation.

Apparently, the Government finds itself in an awkward position. On the one hand, it wants to encourage competition and increase the choice of consumers. On the other hand, it is concerned that with a total lift of restrictions on parallel importation, it will be accused of condoning the practice of infringing copyright. As a result, the Government could only try to find a compromise, which is to remove the criminal liability while maintaining civil sanctions. At the same time, it will strengthen the legal status of exclusive licensees and expressly provide for their right to take civil action against parallel importers.

Of course, it is seldom easy to be on both sides of the fence. By trying to please the exclusive licensees and parallel importers at the same time, the Government ends up pleasing neither.

Those who are against decriminalization include the exclusive licensees and local record and film industry operators. They fear that this would encourage non-exclusive licensees who would then have nothing to fear and take chances recklessly by ordering large quantities of parallel imports. It is true that exclusive licensees can take civil action if they suspect any infringement or breach of exclusive licence agreements. However, even if they win, the parallel importers will at most have to pay damages. If not, they can just pocket their profit. Exclusive licensees also fear that by the time the legal proceedings end, the parallel imports such as records and video cassettes will all have been sold. Even if they are able to obtain compensation, the damage done is irreparable.

This problem has a particularly direct impact on the local record, film and television industry. The majority of records, films and video cassettes being sold in Hong Kong are local productions, of which they are the copyright owners. It is understandable that they should feel their own interests threatened.

However, on the other hand, the Retail Management Association and certain large record retailers strongly demand the removal of all regulation on parallel importation, arguing that it would give consumers more choices and competitive prices. When exclusive licensees fail to satisfy the market demand, parallel importation can fill the gap and consumer interests will be further safeguarded. They are strongly opposed to the Government's proposal to give exclusive licensees the remedy of civil action, since they fear that this would allow exclusive licensees to obstruct the operation of the free market. To put it more bluntly, it would allow them to "put a spoke in the wheel" of importers.

Another issue which some members of the industries are concerned about is that the regulation on copyright of intellectual properties may be extended to apply to the regulation of other products. In particular, if the packaging of products involves copyright, this will probably be applied. The Government says that experience has shown this problem to be unrealistic and improbable. However, since the Government does not want to cover this or create this evil consequence in legislating, steps should be taken to improve the drafting of the Bill in this respect now in order to dispel such fears. If the Government were to amend it only after the Bill has been submitted to this Council, this consultation exercise would have been wasted.

Mr Deputy, I agree that Hong Kong should follow the international trend of decriminalizing parallel importation as a means to protect the interests of copyright owners. As regards their legal right, it should be easy to exercise. Instead of going through unnecessary and complicated procedures, copyright owners should be able to take action against parallel importation easily.

Under the principle of opening up the market, exclusive licensees should not have the same legal remedies against parallel importation as copyright owners have. However, in order to protect their interests, the Government should simplify the legal procedures for overseas copyright owners, so as to make it easier for exclusive licensees to take joint action with overseas copyright owners in order to ensure that their mutual interests will not suffer as a result of parallel importation.

Some people argue that if parallel importation is not restricted, no one would be willing to serve as distributor or exclusive licensee, which would have an adverse effect on the marketing of products and consumer protection in

various respects. However, if we think of parallel importation in the market which does not involve intellectual properties, distributors are not protected by law either. Yet there is no sign of their backing out as a result.

As for copyright owners of local products, since they have a legitimate right to take action against parallel importation, their rights should be protected.

Some local industrialists stress their concern that the decriminalization of parallel importation would result in forged products entering the Hong Kong market under the name of parallel imports. It is difficult to stop such products from mainland China and the neighbouring South East Asian region. Therefore the Government must look into the matter soon to see if there are any loopholes in existing laws.

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

SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr Deputy, I would like to explain that Miss Denise YU has departed for Switzerland to attend the World Economic Forum (WEF Annual Meeting) and that is why I take her place in tonight's debate. I have listened carefully to Members' views on various legislative proposals contained in the Consultation Paper on Copyright Bill published in November last year. In my response, I will explain the policy objective of the Government in the copyright law reform and respond to two controversial issues of parallel importation and combating piracy activities.

Background and Policy Objectives

Mr Deputy, the existing copyright law in Hong Kong is based on the copyright law in the United Kingdom. There is a need to establish an independent copyright protection system before 1 July 1997. There is also a need to modernize copyright law to cater for technological advances, to reflect the prevailing international standard of intellectual property protection and to gear to the local circumstances.

The Law Reform Commission published the Report on Law Relating to the Reform of Copyright in January 1994 after extensive public consultation. The Law Reform Commission recommended that Hong Kong should have its own copyright law modelled on the United Kingdom's 1988 Copyright, Design and Copyright Act with modification to suit local circumstances.

The Basic Law provides that the Hong Kong Special Administrative Region should formulate its own policy on intellectual property rights and protect those rights by law. Hong Kong is obliged to provide copyright protection under the major international intellectual property treaties which will continue to be applied in Hong Kong after 30 June 1997. We also reached agreement with the Chinese side in the Joint Liaison Group in November 1995 on the proposal for localizing the copyright law in Hong Kong.

On that basis, we have drafted a comprehensive Copyright Bill with a view to achieve four policy objectives, namely, localization of law, modernization of law, compliance with international obligation, and balance of interests. As regards the last policy objective, I would like to stress that we are conscious of the need to ensure that copyright owners and exclusive licensees are adequately protected so that they can enjoy the full benefits of copyright products in Hong Kong. At the same time, we need to ensure that consumers of copyright products can enjoy access to a wide range of genuine legal products at reasonable prices.

Parallel Importation

Mr President, on parallel importation, that is the point Members spoke mostly on, I am sure Members appreciate that striking the right balance is not an easy task. Parallel importation has aroused much debates in copyright-related industries over the past year. The existing law provides for both criminal and civil sanctions against parallel importation. Just now, Mr Henry TANG and other Members have explained that. Broadly speaking, parallel imports, which are not illegal products, refer to copyright products, namely, computer programmes, books, sound recording products and films, that are lawfully

manufactured in overseas countries and bought with the consent of the overseas copyright owners but are imported without the authorization from the copyright owners or the exclusive licensees in Hong Kong.

We have been carefully examining the arguments both for and against parallel importation. We note that there is so far no international standard or consensus on the issue of parallel importation. Most developed countries with high standard of copyright protection and with net export of intellectual property products prohibit parallel importation. For example, the United States' copyright law gives a copyright owner the exclusive right to distribute his copyright works and empowers him to seek remedies for infringement of the distribution right. The European Union Member States maintain restriction against parallel imports from outside the Union although they have abolished restriction on parallel imports among the Member States in line with the European single market concept. Australia maintain criminal and civil sanctions against parallel importation in general, but allows direct importation of books under specified circumstances. It is also examining the question of deregulation of parallel importation for sound recording products under specified circumstances.

Members have also mentioned Singapore which has chosen to allow parallel importation. I have been told that this has assisted the cinema trade and increase the range of overseas copyright products available in the country. However, we note that Singapore does not face the risk of great damage towards its economy from flow back of lower-priced copyright products from adjacent market, given that its exports of copyright works, unlike Hong Kong, are not a major factor in Singapore's economic prosperity.

Mr Deputy, Hong Kong needs a high standard of copyright protection to ensure that investment on the production and distribution of films (Hong Kong being the second largest exporter of films by value in the world), sound recording products, books and computer softwares will continue to prosper and flourish. We believe a total deregulation, that is the total abolition of criminal and civil sanctions against parallel importation, will encourage merchants to grab profit by taking unfair advantage over the substantial investment of the copyright owners and exclusive licensees in importation, promotion and marketing in Hong Kong. We also perceive a high risk from total abolition of control that Hong Kong

products published or distributed in the region, China in particular, at a lower price than in Hong Kong would flow back into Hong Kong. This will seriously undermine our sound recording and film production industry.

However, we are also conscious of the need for competition in the interests of the consumers. We all concern that importation rights in respect of copyright works would possibly be extended to apply to trade mark goods or goods incorporating registered design which are also incidentally capable of copyright protection. We should continue to consider how to limit the chance of any possible broad application of copyright to prevent parallel importation of other types of goods.

On balance, our view is that we should adopt the Law Reform Commission's recommendation to decriminalize parallel importation but maintain civil remedies. We believe that this approach would strike the best balance between protecting the interests of copyright owners and exclusive licensees on the one hand and those of the consumers on the other.

Measures to Combat Piracy Activities

Mr Deputy, I would like to turn to the enforcement of intellectual property rights, in particular, measures to tackle copyright piracy. Let me start by stressing again that the Administration is strongly determined to do its utmost to put in place the best intellectual property regime and enforce the regime strictly. This is important for us to promote trade, investment, technological innovation and exchanges. We have always acted and will continue to act decisively against infringement of intellectual property rights within the laws of Hong Kong. We should continue to work together with copyright owners and seek active support from them in our efforts to enforce against piracy activities such as by testifying in our courts of law.

We have taken the following measures to combat copyright piracy with good results:

- (a) closer liaison with intellectual property infringement enforcement authorities in China to stop pirated copyright products from entering Hong Kong;
- (b) rigorous enforcement action at the retail, distribution and importation level;

- (c) legislative measure to strengthen enforcement capability;
- (d) introduction of deterrent penalties; and
- (e) closer liaison and co-operation with copyright owners in taking enforcement and prosecution actions.

As a result, the quantity and value of seizure in connection with copyright offences in 1996 increased by 186% and 21.6% respectively when compared with those for 1995. While these enforcement figures reflect the result of our intensified enforcement efforts, they also show that we are still facing an arduous challenge against copyright piracy activities.

Mr Deputy, some Honourable Members ask why those infamous "black spots" in some shopping arcades selling pirated CDs, CD ROMs and VCDs have not yet been not closed down despite the rigorous enforcement efforts of our Customs officers. I wish to point that our rigorous enforcement actions can seek only to the extent that we have full co-operation from the copyright owners in bringing evidence to courts. Further success in combating piracy hinges on increasing their co-operation. Major manufacturers have in recent years been extremely helpful. But there are those who are less prepared to come forward and give evidence. Their products unfortunately feature prominently in the shops of the more notorious black spots.

Mr Deputy, in order to address these specific problems, we seek Honourable Members' support for including a number of new legislative measures in the Copyright Bill. Specifically we propose:

- (a) to double the maximum penalty on first conviction for the possession of pirated copyright products and places for making pirated copyright products;
- (b) to introduce modified procedural provisions to facilitate proof of copyright existence and ownership; and
- (c) to introduce provisions to enable Customs to exercise power of forfeiture, oversee suspected pirated copyright works to enhance

enforcement capability and to facilitate better co-operation with copyright owners and enforcement authorities of other countries.

Mr Deputy, I wish to point out that should the copyright piracy situation in Hong Kong remain rampant following implementation of the proposed legislative measures in the Copyright Bill when enacted for a period of time, we will consider introducing further legislative measures, such as, the making of closure order by the courts on premises found to be involved in repeated piracy activities. We realize that these are severe measures and would require careful consideration of the impact on legitimate businessmen and landlords. Nevertheless we are prepared to take such bold steps when Hong Kong's international reputation as a responsible trading partner is at stake.

In conclusion, I wish to reassure Honourable Members that the Government will consider carefully all the views put forward on the drafted Copyright Bill. This is the theme of Mr Henry TANG's motion. The Government does not have to vote for the motion but we are all in support of Mr Henry TANG's motion. We will certainly abide by that motion and consider all the views and balance of interests.

Thank you, Mr President.

THE PRESIDENT resumed the Chair.

PRESIDENT (in Cantonese): I need to clarify one doubtful point. Mr TAM, are you speaking in the capacity of Secretary for Trade and Industry?

ACTING SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Yes, Mr President.

PRESIDENT (in Cantonese): According to section 4C of the Standing Orders, "The public officer whose office is stated in respect of a particular item of business in an Order Paper or an agenda for a sitting and a public officer who has notified the Clerk before the sitting that his attendance is required in respect of a particular item of business may attend at that sitting." Miss Denise YU attended

the earlier part of the sitting and now Mr TAM Wing-pong is here. Have you been appointed as the Acting Secretary for Trade and Industry? Why have you not informed the Secretariat in advance?

ACTING SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Mr President, I speak in the capacity of Acting Secretary for Trade and Industry and I have already informed the Secretariat that Miss YU would not be able to attend the meeting during this present hour.

PRESIDENT (in Cantonese): But I have checked that there is no such notice that you have become the Acting Secretary for Trade and Industry starting from a certain point of time. According to section 4C of the Standing Orders, prior notice should be given before the sitting. If it is an urgent matter and an acting officer has to be appointed for a particular occasion, you should inform the Secretariat at the earliest opportunity.

ACTING SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Miss YU was to attend the sitting but she did not know when this motion debate would start. On this point, we have already informed the Secretariat that Miss YU might not be able to attend the debate. In that case, the Acting Secretary will take her place. The crucial point is that all along she has been prepared to attend this meeting. I have already informed the Secretariat that Miss YU might not be able to attend the meeting.

PRESIDENT (in Cantonese): Was it a written notice?

ACTING SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): No, it was a verbal notice.

PRESIDENT (in Cantonese): Which secretary of the Council was informed?

ACTING SECRETARY FOR TRADE AND INDUSTRY(in Cantonese): We gave notice through the Director of Administration and so I have no idea who was contacted.

PRESIDENT (in Cantonese): I believe Mr TAM Wing-pong has told the truth in respect of his capacity. But in case similar situation does occur in future, please inform the Secretariat because it is provided in section 4C of the Standing Orders that notice should be given prior to the sitting.

ACTING SECRETARY FOR TRADE AND INDUSTRY (in Cantonese): Yes, I take note of your advice.

PRESIDENT (in Cantonese): Mr Henry TANG, now you can make a speech in reply. Originally you can take 15 minutes to speak, now you have six minutes 55 seconds left.

MR HENRY TANG (in Cantonese): Mr President, merely an hour ago, the Honourable Mrs Elizabeth WONG moved a debate on the motion concerning you, and Members were engaged in intense argument. When I turned to talk about economic matters, I was very happy to see Members speak enthusiastically from the perspective of consumer interests and support that parallel import would safeguard consumer rights. As to illegal products such as forged products, Members obviously detested them and so we had little to argue about. The Government, the Democratic Party, the Honourable CHAN Kam-lam representing the Democratic Alliance for Betterment of Hong Kong, and the Honourable YAM Sin-ling who is not representing any party, or is actually representing the 123 Democratic Alliance, supported that we should vigorously combat illegal products, the so-called forged products. Therefore, after this motion debate, we hope that the Government can continue to listen to different views within the Bills Committee. I also take this opportunity to tell the merchants engaged in parallel importation not to worry as we seldom prohibit parallel importation. If we were to do so, I do not believe that there would be sufficient votes in support of it. As for the some authorized sales agents who look for the prohibition of all parallel imports, I believe they should not cherish such an extravagant hope. I am grateful to Members for having spoken on this

point. Lastly, I do not want to waste time quibbling further over an issue on which Members have already reached consensus. Thank you, Mr President.

Question on the motion put and agreed to.

ADJOURNMENT AND NEXT SITTING

PRESIDENT (in Cantonese): In accordance with Standing Orders, I now adjourn the Council until 2.30 pm on Wednesday, 19 February 1997.

Adjourned accordingly at two minutes to nine o'clock.