

# **OFFICIAL RECORD OF PROCEEDINGS**

**Wednesday, 21 May 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 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 YEUNG SUM

THE HONOURABLE HOWARD YOUNG, J.P.

THE HONOURABLE ZACHARY WONG WAI-YIN

THE HONOURABLE CHRISTINE LOH KUNG-WAI

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 CHENG YIU-TONG

DR THE HONOURABLE ANTHONY CHEUNG BING-LEUNG

THE HONOURABLE CHOY KAN-PUI, J.P.

THE HONOURABLE DAVID CHU YU-LIN

THE HONOURABLE ALBERT HO CHUN-YAN

THE HONOURABLE IP KWOK-HIM

THE HONOURABLE LAU CHIN-SHEK

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

DR THE HONOURABLE LAW CHEUNG-KWOK

THE HONOURABLE LAW CHI-KWONG

THE HONOURABLE LEE KAI-MING

THE HONOURABLE LEUNG YIU-CHUNG

THE HONOURABLE BRUCE LIU SING-LEE

THE HONOURABLE LO SUK-CHING

THE HONOURABLE MOK YING-FAN

THE HONOURABLE MARGARET NG

THE HONOURABLE NGAN KAM-CHUEN

THE HONOURABLE SIN CHUNG-KAI

THE HONOURABLE TSANG KIN-SHING

DR THE HONOURABLE JOHN TSE WING-LING

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

THE HONOURABLE LAWRENCE YUM SIN-LING

**MEMBERS ABSENT:**

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

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

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

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

DR THE HONOURABLE PHILIP WONG YU-HONG

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

THE HONOURABLE PAUL CHENG MING-FUN

THE HONOURABLE CHEUNG HON-CHUNG

## **PUBLIC OFFICERS ATTENDING:**

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

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

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

MR CHAU TAK-HAY, C.B.E., J.P.  
SECRETARY FOR BROADCASTING, CULTURE AND SPORT

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

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

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SECRETARY FOR HOUSING

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

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

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

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

**CLERKS IN ATTENDANCE:**

MR RICKY FUNG CHOI-CHEUNG, SECRETARY GENERAL

MR LAW KAM-SANG, DEPUTY SECRETARY GENERAL

MRS JUSTINA LAM CHENG BO-LING, ASSISTANT SECRETARY  
GENERAL

MR RAY CHAN YUM-MOU, ASSISTANT SECRETARY GENERAL

**PAPERS**

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

*Subject*

Subsidiary Legislation	<i>L.N. No.</i>
Shipping and Port Control (Amendment) Regulation 1997 .....	228/97
Women and Young Persons (Industry) (Amendment) Regulation 1997 .....	229/97
Control of Chemicals (Amendment) Regulation 1997 .....	230/97
Waste Disposal (Charges for Disposal of Chemical Waste) (Amendment) Regulation 1997 .....	231/97
Grant Schools Provident Fund (Amendment) Rules 1997 .....	232/97
Subsidized Schools Provident Fund (Amendment) Rules 1997 .....	233/97
Building (Planning) (Amendment) Regulation 1997 .....	239/97
Building (Construction) (Amendment) Regulation 1997 .....	240/97
Building (Administration) (Amendment) Regulation 1997 .....	241/97
Building (Standards of Sanitary Fitments, Plumbing, Drainage Works and Latrines) (Amendment) Regulation 1997 .....	242/97

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Road Traffic (Construction and Maintenance of Vehicles) (Amendment) (No. 3) Regulation 1997.....	243/97
Tsing Ma Control Area (General) Regulation .....	244/97
Import and Export (Fees) (Amendment) Regulation 1997 .....	245/97
Import and Export (General) Regulations (Amendment of Schedules) Order 1997 .....	246/97
Import and Export (Strategic Commodities) Regulations (Amendment of Schedules 1 and 2) Order 1997.....	247/97
Companies (Specification of Names) (Amendment) Order 1997.....	248/97
Official Languages (Alteration of Text) (Housing Ordinance) Order 1997.....	249/97
Official Languages (Alteration of Text) (Drug Addicts Treatment and Rehabilitation Ordinance) Order 1997.....	250/97
Official Languages (Alteration of Text) (Supreme Court Ordinance) Order 1997 .....	251/97
Official Languages (Alteration of Text) (Commodities Trading Ordinance) Order 1997.....	252/97
Official Languages (Alteration of Text) (Securities Ordinance) Order 1997 .....	253/97
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Official Languages (Alteration of Text Under Section 4D) (No. 18) Order 1997.....	255/97
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Official Languages (Alteration of Text Under Section 4D) (No. 21) Order 1997.....	258/97
Rectification of Errors Order 1997.....	259/97
Places for Autopsies Order.....	260/97
Coroners Rules.....	261/97
Coroners (Forms) Rules.....	262/97
Coroners (Fees) Rules .....	263/97
Non-Local Higher and Professional Education (Appeal Board) Rules.....	264/97
Non-Local Higher and Professional Education (Regulation) Rules.....	265/97
Supreme Court Civil Procedure (Use of Language) Rules .....	266/97
Tax Reserve Certificates (Rate of Interest) Notice 1997 .....	267/97
Minor Employment Claims Adjudication Board Ordinance (Amendment of Schedule) Notice 1997...	268/97



Tsing Ma Control Area Ordinance (2 of 1997) (Commencement) Notice 1997 .....	269/97
Arbitration (Appointment of Arbitrators and Umpires) Rules.....	270/97
Enduring Powers of Attorney (Prescribed Form) Regulation .....	271/97
Official Languages (Authentic Chinese Text) (United Kingdom Designs (Protection) Ordinance) Order.....	(C) 137/97
Official Languages (Authentic Chinese Text) (Hop Yat Church of the Church of Christ in China Incorporation Ordinance) Order .....	(C) 138/97
Official Languages (Authentic Chinese Text) (Irish Province of the Order of Franciscans Minor Incorporation Ordinance) Order .....	(C) 139/97
Official Languages (Authentic Chinese Text) (Union Church Incorporation Ordinance) Order .....	(C) 140/97
Official Languages (Authentic Chinese Text) (Trade Marks (Emergency) Ordinance) Order.....	(C) 141/97
Official Languages (Authentic Chinese Text) (Exchanges (Special Levy) Ordinance) Order.....	(C) 142/97
Official Languages (Authentic Chinese Text) (Soeurs De Saint Paul de Chartres Incorporation Ordinance) Order .....	(C)143/97
Official Languages (Authentic Chinese Text) (Young Men's Christian Association Ordinance) Order.....	(C) 144/97

Official Languages (Authentic Chinese Text) (Zetland Hall Trustees Incorporation Ordinance) Order.....	(C) 145/97
Official Languages (Authentic Chinese Text) (Institute of the Marist Brothers of the Schools Incorporation Ordinance) Order.....	(C) 146/97
Official Languages (Authentic Chinese Text) (Tsimshatsui Baptist Church Incorporation Ordinance) Order.....	(C) 147/97
Official Languages (Authentic Chinese Text) (Tsung Tsin Mission of Hong Kong Incorporation Ordinance) Order.....	(C) 148/97
Official Languages (Authentic Chinese Text) (The Methodist Church, Hong Kong, Incorporation Ordinance) Order.....	(C) 149/97
Official Languages (Authentic Chinese Text) (Essential Services Corps Ordinance) Order .....	(C) 150/97
Official Languages (Authentic Chinese Text) (Telephone Ordinance) Order .....	(C) 151/97
Official Languages (Authentic Chinese Text) (Hong Kong Airport (Regulations) Ordinance) Order.....	(C) 152/97
Official Languages (Authentic Chinese Text) (Crown Proceedings Ordinance) Order .....	(C) 153/97
Official Languages (Authentic Chinese Text) (Drug Addicts Treatment and Rehabilitation Ordinance) Order.....	(C) 154/97

Official Languages (Authentic Chinese Text) (Stock Exchanges Unification Ordinance) Order .....	(C) 155/97
Official Languages (Authentic Chinese Text) (The Spiritual Assembly of the Bahá'ís of Hong Kong Incorporation Ordinance) Order.....	(C) 156/97
Official Languages (Authentic Chinese Text) (Protection of Investors Ordinance) Order .....	(C) 157/97
Official Languages (Authentic Chinese Text) (Housing Ordinance) Order.....	(C) 158/97
Official Languages (Authentic Chinese Text) (Telecommunication Ordinance) Order .....	(C) 159/97
Official Languages (Authentic Chinese Text) (Medical Registration Ordinance) Order .....	(C) 160/97
Official Languages (Authentic Chinese Text) (Coroners Ordinance) Order .....	(C) 161/97
Official Languages (Authentic Chinese Text) (Securities and Futures Commission (Levy) (Securities) Order) Order .....	(C) 162/97
Official Languages (Authentic Chinese Text) (Dutiable Commodities Ordinance) Order.....	(C) 163/97
Official Languages (Authentic Chinese Text) (Registration of Patents Ordinance) Order .....	(C) 164/97
Official Languages (Authentic Chinese Text) (Town Planning Ordinance) Order .....	(C) 165/97

Official Languages (Authentic Chinese Text) (Merchant Shipping (Liability of Shipowners and Others) (Calculation of Tonnage) (Hong Kong) Order) Order .....	(C) 166/97
Official Languages (Authentic Chinese Text) (Air Transport (Licensing of Air Services) Regulations and Hong Kong Civil Aviation (Investigation of Accidents) Regulations) Order.....	(C) 167/97
Official Languages (Authentic Chinese Text) (Carriage of Goods by Sea (Parties to Convention) Order 1985) Order.....	(C) 168/97
Official Languages (Authentic Chinese Text) (Bishop of Victoria Incorporation Ordinance) Order .....	(C) 169/97
Official Languages (Authentic Chinese Text) (The Chinese University of Hong Kong (Declaration of Shaw College) Ordinance) Order .....	(C) 170/97
Official Languages (Authentic Chinese Text) (Chinese Anglican Church Body Incorporation Ordinance) Order.....	(C) 171/97
Official Languages (Authentic Chinese Text) (The Chinese University of Hong Kong Ordinance) Order.....	(C) 172/97
Official Languages (Authentic Chinese Text) (Securities (Disclosure of Interests) Ordinance) Order.....	(C) 173/97
Official Languages (Authentic Chinese Text) (Trade Marks Ordinance) Order.....	(C) 174/97

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Official Languages (Authentic Chinese Text) (Securities Ordinance) Order .....	(C) 175/97
Official Languages (Authentic Chinese Text) (Commodities Trading Ordinance) Order.....	(C) 176/97
Official Languages (Authentic Chinese Text) (Supreme Court Ordinance) Order.....	(C) 177/97

### Sessional Paper 1996-97

No. 99 — Report of the Independent Police Complaints Council 1996

### Miscellaneous

Technical Memorandum on Noise from Percussive Piling

Technical Memorandum for the Assessment of Noise from Places other than Domestic Premises, Public Places or Construction Sites

Technical Memorandum on Environmental Impact Assessment Process

## ADDRESS

**PRESIDENT** (in Cantonese): The Council now starts today's Session. First of all, Dr LEONG Che-hung is to speak on the Independent Police Complaints Council's Annual Report for 1996.

Pursuant to Standing Order 14(5), Members shall not debate on the speech but I may allow you to bring up short questions on the speech to seek clarification. Dr LEONG Che-hung.

**Report of the Independent Police Complaints Council 1996**

**DR LEONG CHE-HUNG:** Mr President, on behalf of the Independent Police Complaints Council (IPCC), may I present the IPCC's Annual Report for 1996.

The IPCC is an independent advisory body appointed by the Governor to monitor and review the investigation of public complaints against the police. Whilst the investigatory work is carried out by the Complaints Against Police Office (CAPO) of the Royal Hong Kong Police Force, case files and documents are examined in depth by the IPCC, which is supported by a full-time secretariat. A case will not be finalized until the IPCC has endorsed its investigation results.

In 1996, the IPCC reviewed and endorsed a total of 3 419 complaint cases involving 5 052 allegations. Of these, assault, over-bearing/impolite conduct/abusive language, neglect of duty/improper action, unnecessary use of authority and fabrication of evidence constituted the bulk of the complaints with assault cases topping the list, representing 31.7% of the total number. Of the 5 052 allegations endorsed, 972 were resolved by informal resolution; 113 classified as "Substantiated" or "Substantiated other than Reported"; 38 as "Not Fully Substantiated"; 804 as "Unsubstantiated"/"Curtailed"; 100 as "False"; 2 909 as "Withdrawn/Not Pursuable" and 116 as "No Fault".

The IPCC often raises queries on CAPO's investigation reports in the course of its deliberations. A total of 688 queries were raised in 1996, some of which led to the reclassification of 48 allegations. Arising from the investigation results endorsed by the IPCC, criminal proceedings, disciplinary and other forms of internal action were taken against 191 police officers in 1996.

Turning to more general issues, the Tripartite Study Group comprising representatives of the IPCC, the Security Branch and the Police completed its comparative study on overseas police complaints systems in 1996. Five police jurisdictions in Australia, Japan and Singapore were visited.

In early 1996, the Administration appointed a directorate Administrative Officer to conduct an in-depth review of CAPO procedures and the interface between CAPO and the IPCC.

The reports of the Tripartite Study Group as well as the Review Officer's were accepted by the Administration. Implementation of the recommendations contained in these reports are being actively pursued by an interdepartmental group comprising representatives from the Administration, the IPCC Secretariat and the police. The group has concluded that the recommendations should be implemented in phases. Within the IPCC, five special committees tasked to examine the following areas of work have also been formed to propose how the recommendations should best be taken forward:

- (a) the monitoring of serious complaints;
- (b) the extension of Informal Resolution Scheme;
- (c) the IPCC attendance at district board meetings;
- (d) the IPCC publicity programme/surveys; and
- (e) the opening of part of IPCC meetings to the public.

The special committees for tasks (a), (b) and (d) have come up with implementation proposals towards the end of 1996.

In July 1996, the IPCC Bill was introduced into the Legislative Council. The proposed legislation seeks to provide statutory framework for the monitoring and review of police complaint investigations with which the IPCC may effectively operate. This Bill is being examined by the Bills Committee of the Council and is expected to be presented for Second Reading in 1996-97 Session. Obviously, we in the IPCC do hope this Bill could be passed as early as possible to give us the statutory effect that we do need.

The IPCC continued to interview witnesses in 1996 to clarify matters directly with them. In 1996, a total of 18 witnesses were invited to attend the interviews and 11 subsequently turned up. In April last year, the IPCC Observers Scheme was introduced for a trial period of 12 months. Under the scheme, IPCC members can participate in observing CAPO's investigation process, which includes mainly interviews, statement taking and actual scene visits.

In 1996, the IPCC also participated in the "Courteous Police Officer Selection Scheme" organized by the police, which has become an annual event. It is our hope that the Scheme will go some way towards preventing complaints against the police.

Moving on to 1997, since January this year, IPCC members have been giving talks on the work of the IPCC to Station Sergeants and newly promoted Superintendents in training courses organized by the police. I would also like to report that the Governor has recently appointed, with effect from May this year, five new IPCC members and one of our colleagues, the Honourable Bruce LIU, as an additional Vice-Chairman, we welcome him on board into the IPCC. With an enlarged membership, I believe that IPCC will be able to discharge its functions more effectively.

Before I end my presentation, I would like to express my appreciation, on behalf of the IPCC, of the valuable contribution made by Dr Fanny CHEUNG who had resigned since 20 May 1996 upon her appointment as Chairperson of the Equal Opportunities Commission and Miss Oi-si Elsie LEUNG, who resigned on 1 April 1997 upon her appointment as the Secretary of Justice (Designate) of the Hong Kong Special Administrative Region, and I would also like to thank the Commissioner of Police and his staff in CAPO for their co-operation during this year.

Thank you.

## ORAL ANSWERS TO QUESTIONS

### Visa Applications from Taiwanese Visitors

1. **MR HOWARD YOUNG** asked (in Cantonese): *Regarding the processing time for visa applications from Taiwanese visitors, will the Government inform this Council:*

- (a) *of the current target time for processing such applications, and*
- (b) *whether the target time in (a) above is being met; if not, of the total number of cases in which the target time was not met in the past two years and the reasons therefor?*



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

- (a) For multiple visit permits issued to Taiwan residents for a stay of 14 days or less, the performance standard is to issue a permit within five working days. For single visit permits for a stay of more than 14 days and up to three months, the performance standard is that 80% of the permits will be issued within 15 working days.
- (b) *Multiple visit permits*

In 1995, 760 430 applications were processed and 97.35% of the them were completed within the standard time. In 1996, 853 268 applications were processed and 87.70% of them were completed within the standard time. The standard was generally met in most months of that year, except in July and December due to the seasonal rush of Taiwanese visitors.

*Single visit permits*

In 1995, 168 applications were processed and the standard was met. In 1996, 123 applications were processed, and 77% of the applicants issued with permits within the standard time. Most of applications which took more than 15 working days to process were caused by the slow response of the applicant's local sponsors in furnishing the required sponsorship forms.

**MR HOWARD YOUNG:** *Mr President, according to the answer given in (b), the percentage of applicants being processed within the target time dropped from 97.35% in 1995 to 87.70% in 1996. For single visit permits, although the number of applications dropped, the percentage of being met correspondingly dropped actually from 100% to 77%. I would like to ask, Mr President, whether this is an indication of a trend or whether, in addition to the reasons given in the reply, there is a resource problem which, if solved, might enable us to reach the standards at an even higher level?*

**SECRETARY FOR SECURITY:** Mr President, first of all, on single entry permits, the number of such applications as Honourable Members will notice is in fact very small. It is not, I repeat, not a question of resources. As I mentioned in my main reply, most of the cases which exceeded the standard time are because of the time taken by the local sponsor to put in their sponsorship form.

As regards the multiple visit permits which form the bulk of the applications, as again I have mentioned in the main reply, the reason why we fall short of the target, particularly in 1996, was that there is the bulge of very large numbers of applications during the months of July and December which are the favourite months for visitors of Taiwan origin. The shortfall in those months of course had dragged the average figure of standard time for the whole of the year. I will give you an example. In July 1996, 92 726 applications were processed of which 45% were finalized within the standard period. In December 1996, a substantial portion of the 72 279 applications processed were received very close to the Christmas holidays and 66% of the applications met the standards processing time. For those which failed to meet the standard processing time of five days, the majority of these cases were finalized within six days, that is only one day's difference, and the longest processing time was only seven days, that is an extra day's difference.

We of course constantly look at the deployment of resources in the Immigration Department to deal with a whole range of issues, and we strive constantly to redeploy resources to deal with peak periods of one sort or another and I hope we will be able to do rather better next year. But obviously given this kind of very large fluctuation within a matter of one month or two during the peak season, it is always difficult to achieve a standard of performance which we can achieve in normal circumstances.

**MR CHIM PUI-CHUNG** (in Cantonese): *Mr President, has the Hong Kong Government considered doing away with the requirement for surety in respect of incoming Taiwanese travellers with effect from 1 July so that they can have seven days' exemption period, just like transit travellers from mainland China? If not, why not?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, at present only individual applications seeking single visits of up to three months' stays require sponsorship forms. They are very few. Most travellers from Taiwan apply for multiple visit permits, which do not require sponsorship forms. Regulation on incoming Taiwanese travellers after 1 July 1997 naturally will have to be determined by the then Hong Kong Special Administrative Region (SAR) Government. At present we have no special plan for major change.

**MR JAMES TO** (in Cantonese): *Mr President, today the Director of Immigration went to Beijing with the SAR Chief Executive, seemingly going to have discussions on issues including the one on foreigners entering Hong Kong without the need for entry visas. Would the Secretary for Security tell us whether dealing with Taiwanese travellers' entry into Hong Kong after 1 July 1997, according to the understanding of the Hong Kong Government about the Basic Law, falls within its policy autonomy and can be determined by the Immigration Department?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, though I do not have the Basic Law on hand, as far as I can remember, the Basic Law stipulates that the future immigration control of the SAR shall be the responsibility of the relevant department of the SAR.

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

**MR JAMES TO** (in Cantonese): *Mr President, I do not know how you interpret the Government's reply. Can the policy on Taiwanese travellers visiting Hong Kong be entirely determined by the Immigration Department of Hong Kong? I do not know how you, Mr President, interpret the meaning of the Secretary for Security. Was the answer in the affirmative or was he just quoting a provision without further answering my question? I want to leave the determination to you, Mr President.*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, as the provision clearly states that the SAR shall be responsible, I believe that when every Taiwanese traveller comes in, the traveller will need an entry permit issued by the SAR Immigration Department, with the conditions and duration of stay stipulated.

**MR HOWARD YOUNG:** *Mr President, instead of getting around the edges of being ruled out of order by expanding the question, I wish to come back to the question of how to deal with the peaks and standards. In the reply to my supplementary question, the Secretary pointed out that there was a huge amount of applications within two weeks in December. Since these multiple visit permits are valid for two years, by logic, in two years' time, we would have the same peak of these people choosing to renew on time. That being the case, is the Secretary still convinced that there is absolutely no resource problem to deal with the peak or does he think that there might be ways of preventing this same peak from occurring again by the same people who need to renew their permits in exactly two years' time?*

**SECRETARY FOR SECURITY:** Mr President, there are two points. First of all, I think every Honourable Member would know in matters relating to immigration and nationality, inevitably from time to time there are peaks and troughs and we would try our best to redeploy resources to cope with those peaks. I cannot of course believe that the answer lies in providing so much resources that the Immigration Department will be able to deal with all the peaks that occur in all sorts of applications or entry from outside Hong Kong or whatever. However, there is a degree of flexibility in the Immigration Department task force concept which is a group of Immigration Officers who, while in the main are deployed to tackle law enforcement duties, in particular, the enforcement of law against illegal employment, are able to be redeployed from time to time to deal with peaks and troughs of entry into Hong Kong, for example, and they will be available to deal with peaks of other sorts if necessary.

Secondly, I notice that the Honourable Howard YOUNG referred to the fact that the two-year multiple visit permits would become invalid after two years and the holders would have to apply again. I should just like to point out that as from January 1996, the validity of two-year multiple visit permit has been further

extended to three years without any increase in fees. In other words, since January 1996, the multiple visit permits would be valid for three years. Since that date, the validity of a multiple permit has been extended and they do not need to have the multiple permits renewed as frequently as in the past.

### **British Soldier Suspect in Homicide Case**

2. **MR ALLEN LEE** asked (in Cantonese): *Regarding a recent case in which a British soldier allegedly committed homicide in Hong Kong, will the Government inform this Council:*

- (a) whether the above incident occurred when the soldier concerned was off duty;*
- (b) whether the case is being investigated by the British Garrison or the Hong Kong Police Force, and whether the investigation has been completed; if so, what the outcome is; and*
- (c) whether the soldier concerned has been transferred out of Hong Kong after the incident; if so, who made the decision to make such a transfer and whether the decision requires the approval of the Governor; to uphold the rule of law in the territory, what action the Government will take to recall the soldier concerned and to prevent soldiers stationed in Hong Kong from being transferred out of Hong Kong before the completion of the investigation into the crimes involving them?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, as regards part (a) of the question, the suspect was off duty when the incident took place on 20 April 1997.

As regards part (b) of the question, the case is being investigated by the Hong Kong Police and the British Garrison is offering its full assistance to them. The suspect was arrested in the United Kingdom on 9 May pursuant to a provisional warrant of arrest pending a request for his extradition. He was granted conditional bail. The suspect appeared in court again on 16 May when

the court fixed a date of 25 June for receipt of the formal request for extradition and supporting evidence from Hong Kong. It is anticipated that on that day, a date will be set for the extradition committal hearing.

As regards part (c) of the question, the British serviceman concerned left Hong Kong on 22 April, as part of the long planned withdrawal of the British Garrison. His particular departure date had been fixed as far back as July 1996 and the decision did not require the Governor's approval. At the time he left neither the police nor the military authorities were aware that he was the suspect of the case. There are several other British servicemen who either witnessed or became aware of the incident. Although they too had all been due to be posted out of Hong Kong, the Garrison has postponed their departure at the request of the Police so that the investigation can continue. Had the British Forces been aware of the suspect's involvement in the incident, his departure would have been similarly delayed. The military authorities cannot legally order the suspect to return to Hong Kong to face criminal proceedings, since the offence was committed while the suspect was off-duty and there is no military reason to order him to return. Unless he volunteers to come back, a request for his extradition from the United Kingdom has to be sought. His legal rights in this respect are exactly the same as any other individuals.

**MR ALLEN LEE** (in Cantonese): *Mr President, it is sure that on 22 April, the day on which the British serviceman who is suspect in the case was transferred out of Hong Kong, a British garrison was posted out of Hong Kong. As the case was serious, I want to find out from the Secretary for Security how many British soldiers were transferred out of Hong Kong together with the British serviceman who is the suspect. Secondly, the Secretary for Security said that several British servicemen either witnessed or became aware of the incident. According to the main reply of the Secretary for Security, those British servicemen apparently had made no report about the incident of 20 April to the British forces nor to the police. Are those British servicemen also suspects in the crime?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, with regard to the two enquiries from Mr LEE, first of all, I do not have with me information on the number of British servicemen posted out of Hong Kong together with that

suspect on the day when he was transferred from Hong Kong. I will answer this enquiry of Mr LEE in writing. (Annex I)

With regard to his second enquiry concerning the several British servicemen who either witnessed or became aware of the incident, I understand that British army law stipulates that every soldier or sergeant shall have a common duty to help prevent crimes, or find the suspect after the occurrence of a crime. Those British servicemen who either witnessed or became aware of the incident are still in Hong Kong, and the police are carrying out investigation. It is our hope to finalize the investigation within this week. Then, if necessary, the police will consult the Attorney General to determine whether or not those British servicemen involved in the case had breached any criminal law.

**MR JAMES TO** (in Cantonese): *Mr President, since there is no confirmed extradition arrangement between the SAR Government and the United Kingdom and the Chinese Government will resume sovereignty in a few dozen days, does the Secretary for Security expect the formal extradition request mentioned in paragraph 2 of the main reply to get finalized before the hand-over of sovereignty so as to extradite the suspect back to Hong Kong? Our worry is that after 1 July the relevant extradition request might lapse, which might then lead to legal difficulty.*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, on 14 May the British Government presented to the British Parliament a Privy Council order, the main contents of which are that, if the order goes into effect, all extradition requests made by Hong Kong before 1st July 1997 should be allowed to complete extradition proceedings in court after the hand-over of sovereignty. As for the arrangements following 1997, new arrangements will be required after 1997 because the United Kingdom is still Hong Kong's sovereign country now. We have entered into discussions with the British Government. A consensus on the post-1997 extradition agreement between the United Kingdom and Hong Kong has been reached. The draft containing our consensus has also been referred to the Sino-British Joint Liaison Group for consideration.

**MISS EMILY LAU** (in Cantonese): *Mr President, with regard to the Privy Council order presented to Parliament on 14 May, would the Secretary for*

*Security tell us whether it is necessary for Hong Kong to take some legislative steps in following up? Is it that, with the British Government and British Parliament handling the matters themselves, there will be no problems for cases before 1 July? If something has to be done by Hong Kong, has the Government initiated the procedures?*

**SECRETARY FOR SECURITY** (in Cantonese): Mr President, as far as I know, there is no special need for the Hong Kong Government to make legislative arrangement. However, I will further discuss the matter with relevant officers of the Legal Department and then let Miss LAU know whether the reply is true and correct. (Annex II)

### **Redevelopment Projects in Western and Tsuen Wan Districts**

3. **DR HUANG CHEN-YA** asked (in Cantonese): *Regarding the redevelopment projects at "five streets" in Western District and the "seven streets" in Tsuen Wan which are given priority under the new urban renewal policy, will the Government inform this Council whether:*

- (a) *it knows if the Hong Kong Housing Society (HS) has reserved flats in its rental housing estates to rehouse the affected residents; if so, please provide a breakdown of these housing estates by name, age, existing number of vacant flats and expected number of vacant flats;*
- (b) *the number of reserved flats mentioned in the answer to (a) above is sufficient to achieve the objective of rehousing the affected residents in the same district; if not, whether the Housing Authority and the Land Development Corporation will provide rental flats to assist the HS in rehousing the affected residents; and*
- (c) *the property owners concerned have suffered losses arising from the eight-year delay in the two redevelopment projects, which has resulted in their flats being left vacant for a long period and lapsing into a state of disrepair; if so, whether the Government will compensate such owners for their losses?*



*Mr President, as I read it from the text of the reply, the Government, in fact, has not answered parts (a) and (c) of my question.*

**PRESIDENT** (in Cantonese): This is the time for oral answers to oral questions. How can you say that he will read from the text as he has yet to reply? Questions have to be read as written, but not so for replies.

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

- (a) The Housing Society (HS) currently has 21 rental estates. Vacant flats becoming available in 17 of the estates can be offered for rehousing the affected residents from the two projects in Western and Tsuen Wan Districts. The Society has already started to reserve such vacant flats. So far over 200 vacant flats have been reserved. It is envisaged that in the course of next year, more than 1 200 flats will be available. The Society will endeavour to provide rental housing for eligible clearerees referred to it by the Land Development Corporation (LDC).
- (b) In view of the fact that the rental estates of the HS are located in various districts, it will not be possible to rehouse the affected residents in Western and Tsuen Wan Districts alone. Although the LDC has just completed a freezing survey, it still has to carry out further screening to ascertain the number of tenanted households eligible for rehousing. The final rehousing arrangements will be affected by the number of eligible households, the number of those opting for rehousing, the number of households opting for cash compensation and the programme of acquisition and clearance. The LDC and the HS are working closely to ensure that adequate rehousing arrangements are made, and the Government is monitoring their progress.

The Housing Authority is not a rehousing agent under the urban renewal policy and as such has not been tasked to provide resources for rehousing those affected. Its task and priority are to meet the demand for public rental housing under the General Waiting List and from families affected by other clearance programmes.

Nevertheless, the Housing Authority is ready to assist by allowing for advance rehousing of eligible residents in the Tsuen Wan and Western projects who have already applied for public rental housing under the Waiting List and are anticipated to be due for allocation within 12 months.

The LDC at present does not have any rental flats for the provision of rehousing for the affected tenants of the two redevelopment projects.

- (c) The LDC will make offers to the owners for the acquisition of their properties on terms that are fair and reasonable.

**DR HUANG CHEN-YA** (in Cantonese): *Mr President, the Government in fact has not replied to the lower half of part (a) and the whole of part (c). He did not ask what was replied to.*

**PRESIDENT** (in Cantonese): Do you mean "not replying to what was asked"?

**DR HUANG CHEN-YA** (in Cantonese): *Yes, I mean "not replying to what was asked." (Laughter) Mr President, will you ask the Government to answer at least part (c) first before I raise my follow-up question?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, do you mean I should answer part (c) of the question first? Mr President, in fact I have already replied. According to the arrangement for urban redevelopment, if it is a Land Development Corporation (LDC) project, acquisition of the premises from the landlords will be compensated on the basis of such principle, which is fair and reasonable. As for the prices of such acquisition, normally two independent surveyors will be commissioned to assess the value of the premises and the higher value will be taken. In any case, should the landlord be unhappy with the acquisition price, he may appeal to the LDC Appeal Board. On the part of the Government, since the project was brought up by the Hong Kong Housing Society (HS), and now

the redevelopment project is being taken over by LDC the Government will not offer any compensation to the landlords involved in this urban redevelopment project.

**PRESIDENT** (in Cantonese): Dr HUANG Chen-ya, are you claiming that your question has not been answered?

**DR HUANG CHEN-YA** (in Cantonese): *No, I just want to raise follow-up questions. He might have replied, though not to the point. I want to follow up on part (a) of the question. Apparently the Government has not supplied the figures and names sought by me in respect of those estates. It seems that the Government is unable to provide them. The reason is that the HS has not provide the Government with the information in respect of those flats either. How can the Government believe that the HS really has those flats? Is it possible that the 200 flats mentioned by the HS are in fact the flats that Kwun Loong Lau residents have been waiting for in anticipation of moving in? How can the Government know there are really other flats? Will the Government delay the whole redevelopment project if the HS is unable to supply enough flats, and then punish the HS for this?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, it is very cumbersome to state the vacant flats estate by estate when giving oral reply. Even if we had such information, the information could be of no help to the matter, because, as I have just mentioned, there are now some 200 reserved vacant flats and next year there will be another 1 000-odd flats. Maybe more flats will be available in the year following the next. So the relevant figures fluctuate from week to week or month to month. They will also change. As for the flats available now, they are of course insufficient because the redevelopment project has just begun. I, therefore, decided to let Honourable Members have approximate and forecast figures, which are sufficient to explain the situation. Dr HUANG asks about the Kwun Loong Lau case. I have mentioned that the HS at present has 21 rental estates, of which 17 have reserved vacant flats for rehousing. This move will not affect the redevelopment project of Kwun Loong Lau. After reading the supplementary information from the HS, we do not think that the redevelopment projects of Western District and Tsuen Wan will affect or delay the

redevelopment of Kwun Loong Lau. Finally, on the forecast of the reserved vacant flats by the HS, the figures are based on the experience gained by the Society over the years in building public housing as well as on the information it has on hand. Initially, we find the forecast acceptable for the time being. However, we will keep a close watch on the quantity in which the flats will be made available as well as on the speed at which they are to be made available.

**MR LO SUK-CHING** (in Cantonese): *Mr President, according to my understanding, the Government has a policy designed to ensure that nobody will go homeless as a result of redevelopment or relocation for demolition. Will the Government inform this Council how many people are opting for rehousing and whether that policy of the Government can be effected with regard to the redevelopment projects for the "five streets" in Western District and the "seven streets" in Tsuen Wan?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, at present we are unable to supply such information. The main reasons have been mentioned in my main reply. As the information with the LDC is just that from a freezing survey, it is necessary to have further screening to ascertain the number of eligible households. It will also be determined by the number of households opting for cash compensation, the actual number of households and other arrangements. I believe that the figure will be far clearer in a few months.

**PRESIDENT** (in Cantonese): Six more Honourable Members are going to ask supplementary questions. I will draw a line there, unless Dr HUANG wants to ask one more question.

**DR HUANG CHEN-YA** (in Cantonese): *I want to ask one more supplementary question.*

**PRESIDENT** (in Cantonese): So Dr HUANG Chen-ya will be added to the list.

**MR SIN CHUNG-KAI** (in Cantonese): *Mr President, I want to ask the Secretary for Planning, Environment, and Lands what the plans of the LDC and HS are if not enough flats are available by the time of clearance.*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I cannot answer this hypothetical question because I have just explained that it is necessary to carry out further screening and arrange allocation, and there might be tenants opting for cash compensation in lieu of rehousing. However, according to the information and forecast from the HS, there are enough reserved vacant flats to accommodate affected households.

**MR SIN CHUNG-KAI** (in Cantonese): *He has not replied to my question because .....*

**PRESIDENT** (in Cantonese): Mr SIN Chung-kai, it is very clear. You think he has not replied to your question.

**MR SIN CHUNG-KAI** (in Cantonese): *The reason is that this is not a hypothetical question. This is a question that might come true because following the freezing survey by HS, there are already more than 3 100 households. If 90% of the households opt for rehousing, then at least some 2 700 households require rehousing. Yet only 1 200 flats can be made available in a year. Then, according to the information now released, the situation that I mentioned is most likely to come true. If the LDC and HS are unable to make enough flats available, what will the Government do?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I still consider the question to be a hypothetical one, because I do not know how Mr SIN came to know that 90% of the households require rehousing. In fact, up to the present moment, the LDC has yet to conduct further screening to ascertain the relevant figures and the eligibility of the households, and the HS has yet to arrange allocation of flats. According to the past experience of the HS, 56% of the residents affected by urban redevelopment projects will accept cash compensation. In term of percentage,

these two districts might be very different, but until the conclusion of their eligibility screening for further registration, we just do not know the actual numbers.

**MR IP KWOK-HIM** (in Cantonese): *Mr President, residents involved in the redevelopment projects of the "five streets" in Western District and the "seven streets" in Tsuen Wan have long been living in poor conditions because of the delay by the HS. With regard to these redevelopment projects, has the HS discharged its duty of rehousing affected residents in accordance with the consultation paper on urban redevelopment previously released by the Government? If the answer is in the affirmative, is there any specific arrangement for households not eligible for rehousing? If the answer is in the negative, will the HS, for reasons of moral obligation, guarantee that all eligible households will be rehoused?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, for these two redevelopment projects, the HS has indeed taken up its obligation to rehouse the residents in future. However, the second question asked by the Honourable IP Kwok-him is about how to rehouse some ineligible residents. First of all, I have to clarify what ineligible residents are. At present, if at the time of a freezing survey, a household is staying in a building and does not have any property or another residence, or most of its members have been living in Hong Kong for seven consecutive years, the household is eligible. On the contrary, if the household has property or another residence, that household is not eligible. For those households, the justification for their rehousing needs is very weak.

**MR ALBERT CHAN** (in Cantonese): *Mr President, according to the Secretary for Planning, Environment, and Lands when he replied to the Honourable SIN Chung-kai's question, flats reserved by the HS are sufficient for rehousing. I think that is also a hypothetical reply because a survey conducted by the Tsuen Wan Branch of the Democratic Party for the seven streets shows that 90% of the residents ask for rehousing or rehousing in the same district. According to the present analysis, this is definitely not a hypothesis. Mr President, this is a question to be faced. After dealing with the redevelopment of Kwun Loong Lau,*

*the HS will be left with just a few flats. In taking charge of the redevelopment projects, the Secretary for Planning, Environment, and Lands .....*

**PRESIDENT** (in Cantonese): Mr Albert CHAN, discussion of this issue is probably more appropriate at Panel meetings. Obviously, all parties have different hypotheses, under which different conclusion will naturally result.

**MR ALBERT CHAN** (in Cantonese): *Mr President, I am just about to ask my question. When making plans for the redevelopment project, the Secretary for Planning, Environment, and Lands should, with regard to rehousing, ensure that there are enough rehousing flats so that the residents will not go homeless. When the flats to be provided by the HS fall short, what measures and means will the Secretary for Planning, Environment, and Lands adopt to help the thousands of residents get reasonable rehousing?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I have already replied to this question.

**MR ALBERT CHAN** (in Cantonese): *I am asking him what measures he will adopt to ensure that the thousands of residents can get reasonable rehousing.*

**PRESIDENT** (in Cantonese): He did reply that it was enough. If it is enough, then no other measures are required. As you have different hypotheses, you cannot say that that is a hypothetical answer. With a different hypothesis, he thinks that the problem can be solved. If you want to discuss, please do so at a Panel meeting.

**MR ALBERT CHAN** (in Cantonese): *Perhaps I ask you, Mr President, to rule that he has not replied to my question. I ask him what measures there are. He has every right to say in reply that there is none.*

**PRESIDENT** (in Cantonese): He has replied because he thinks that there is no need to reply to you.

**MR ALBERT CHAN** (in Cantonese): *Mr President, this is not discussion; I ask you to rule that he has not answered my question.*

**PRESIDENT** (in Cantonese): It is you who asked me to make a ruling.

**MR ALBERT CHAN** (in Cantonese): *This is your reply. I ask the Secretary for Planning, Environment, and Lands to tell me in reply whether there are other measures.*

**PRESIDENT** (in Cantonese): He has said that there is no other measures are necessary.

**MR ALBERT CHAN** (in Cantonese): *He did not state so. It was you who did.*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, let me repeat the reply I have made. We have received some figures from the HS in respect of the flats available according to forecast. At present, we are of the view that in the years to come the HS will have enough flats to rehouse eligible residents. However, we do not know the final result until the further in-depth screening on the eligible residents conducted by the LDC, together with their intention on the options for rehousing or cash compensation, and the signing of relevant documents.

**MR CHAN WING-CHAN** (in Cantonese): *Mr President, according to part (b) of the reply, the HS indicates that it will not rehouse the affected residents in Western District and Tsuen Wan in the same districts. I understand that there are many old people in these two districts. Does the HS have any plan in place*



*to give priority to, and provide rehousing in the same district for the aged and the disabled? If not, why not?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I do not think we have with us information for us to analyse affected the age or physical conditions of the affected residents. Anyway, the estates that the HS can provide are those that it now has. Those estates are located in different districts. The HS at least has to make one commitment, namely, to make every effort to rehouse on the Hong Kong Island affected residents from the Western District. As for the residents in Tsuen Wan, the HS does not have many rental estates there, so the residents will have to move to other HKHS estates.

**MR CHOY KAN-PUI** (in Cantonese): *Mr President, many tenants in the "five streets" in Western District and the "seven streets" in Tsuen Wan are living in roof-top huts, on mezzanine floors and in structures with front portions being used as shops and the rears as residences. They are just like other tenants affected by the redevelopment projects. Can the Government inform this Council whether the HS or the LDC will rehouse these tenants, who are occupying rooftop huts, mezzanine floors and structures with front portions being used as shops and the rears as residences?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, when conducting registration of residents, the LDC did not distinguish them as occupants of roof-top huts, structures with front portions being used as shops and the rears as residences, or mezzanine floors. All residents and families in affected buildings have been registered.

**MR CHAN KAM-LAM** (in Cantonese): *Mr President, there are many affected households in the "five streets" in Western District and the "Seven streets" in Tsuen Wan. If it is eventually discovered that neither properties owned by the LDC that can be made available for rehousing nor HS flats are sufficient, will*

*the government consider adopting other measures so that the whole redevelopment project can proceed as scheduled?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, the reply is just like my reply made previously. Judging from the information furnished by the HS, they have enough flats available for rehousing these residents. Let me point out one thing. I also mentioned in the main reply that if residents are already on the Waiting List of public housing and can satisfy all the requirements, the Housing Authority will let them have advance rehousing. However, for the time being we do not know the number of such residents. If they move to the housing estates of the Housing Authority, the number of families to be rehoused by the HS will diminish correspondingly. The redevelopment projects were announced just a few weeks ago, and the freezing survey was just concluded, in other words, the two projects have just started. As stated by me a little earlier, the situation will become clearer in a few months.

**DR HUANG CHEN-YA** (in Cantonese): *Mr President, first of all, I would like the Secretary for Planning, Environment, and Lands to forward to us the written information that he got from the HS. But we have noted that the HS says there are 200 flats. Obviously, that does not include the existing flats in Phase I of Kwun Loong Lau as flats there far exceed 3 200. Judging from this, the HS is not wholeheartedly helping the redevelopment with its existing resources. If it is allowed to go on like that, the whole redevelopment will be delayed. Can the Government inform this Council whether it is true that the HS is allowed to delay the redevelopment projects freely because no timetable has been set for the redevelopment?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, with regard to part 1 of the supplementary question, we will do our best to provide Honourable Members with a written reply detailing the information supplied by the HS. (Annex III) With regard to part 2 of the question, that is why we do not rehouse Western District residents

affected by the redevelopment with the flats available at Kwun Loong Lau, I find it a self-contradiction. As I have explained, Kwun Loong Lau will undergo clearance and it is unreasonable to ask residents to move in and then move out again a few months later. Thirdly, regarding whether the Government will let the HS delay the project further, it is a far cry from what we want. However, after the proposals for redevelopment were made, the HS came to notice that they were unable to cope with the two projects in respect of rehousing, and, in particular, compensation and population growth. Therefore, last year we sought a way out by inviting the LDC to take over the two redevelopment projects and also granting land for them to carry out connected site developments. Only in this way can the two redevelopment projects become financially feasible. It also reflects that we do not want any institution or organization to keep on delaying the two redevelopment projects.

**DR HUANG CHEN-YA** (in Cantonese): *Can I clarify some information? Does the Government know that as some 100 Kwun Loong Lau households are unwilling to move out of Phase 1 of Kwun Loong Lau, the HS has already promised them that Phase 1 of Kwun Loong Lau will not be demolished until they can be rehoused? As those people are not willing to move out, Phase 1 of Kwun Loong Lau cannot be demolished. Hence there will be about 300 extra flats for rehousing the residents from the "five streets" in Western District and the "seven streets" in Tsuen Wan.*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr President, I do not have with me the information mentioned by Dr HUANG. Therefore, I still think that the redevelopment of Kwun Loong Lau and that of the "five streets" in Western District are two separate issues. I am sorry that I cannot answer this question.

### **Traffic Accidents Caused by Pedestrians**

4. **MR YUM SIN-LING** asked (in Cantonese): *Regarding traffic accidents caused by pedestrians, will the Government inform this Council:*

- (a) of the number of traffic accidents arising from pedestrians' negligence or non-compliance with traffic regulations, as well as the proportion of such accidents to the total number of traffic accidents, in the past three years;*
- (b) of the districts which have a relatively higher incidence of accidents caused by pedestrians, and whether the Government has stepped up road safety publicity and prosecution in these districts;*
- (c) of the number of pedestrians who were prosecuted for breaching traffic regulations in the past three years; and*
- (d) of the penalties currently prescribed for violation of traffic regulations by pedestrians and whether such penalties are an effective deterrent; and whether consideration will be given to incorporating into the penalties a stipulation that offenders are required to receive education and test on road safety on a compulsory basis?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, over the past three years, there was a reduction in the number of accidents involving pedestrians at fault. In 1994, there were 2 950 such accidents. The number decreased to 2 504 in 1995 and further to 2 356 in 1996. As to the proportion of such accidents to the total number of accidents, the figures also dropped from 19% in 1994 to 17% in 1995 and 16.4% in 1996.

Accidents involving pedestrians at fault tend to occur at road junctions in congested areas where both vehicular and pedestrian traffic are heavy. The districts with the highest number of such accidents are Kwun Tong, Eastern, Wan Chai, Kowloon City and Central and Western,

There are on-going publicity activities on pedestrian safety. In fact in 1996-97 and 1997-98 the main theme of the Road Safety Campaign is pedestrian safety. We have mounted both territory-wide publicity and safety campaigns that are district based.

On the territory-wide level, a publicity package comprising TV Announcement on Public Interest, posters and leaflets was produced in 1996 to publicise the importance of safety in crossing roads, particularly focusing on the elderly and the young children. A leaflet on Road Crossing Code called "Captain Safety" will also be issued widely in the latter half of 1997 to remind pedestrians to observe crossing rules.

At the district level, the police also organises road safety campaigns in conjunction with the District Boards and the Road Safety Association. Each police region has its own road safety team to conduct on street road safety education activities. Such activities take various forms and scales, and include carnivals, variety shows, quizzes and competition, exhibitions, vehicle parades, distribution of leaflets and seminars at schools and community centres.

In 1996 special attention was paid to the accident black spots where pedestrian offences were high. Pedestrian black spot signs are erected at junctions with relatively higher number of accidents to warn pedestrians.

The number of pedestrians prosecuted were 13 921 in 1994, 14 476 in 1995 and 14 805 in 1996. The offences included crossing the road within the controlled area next to a zebra crossing, crossing within 15m of a light signal crossing or of footbridge or subway, climbing over or through a fence or central reservation, and using the road negligently thus endangering his own life or that of others.

Under the Road Traffic Ordinance, a pedestrian who commits offences of jaywalking in the vicinity of crossings or footbridge/subway, climbing over barrier fence and failing to comply with traffic signs is liable to a maximum fine of \$2,000. Such penalties do have a deterrent effect, given adequate enforcement and prosecutions by the Police. At present, we have no plans to incorporate into the penalties a stipulation that offenders have to be educated and tested on the subject of road safety. Instead, we shall continue to carry out road safety campaigns and other on-going publicity activities on pedestrian safety.

Road safety education should best start at an early age. Road safety education is now an integral part of the school curriculum starting from kindergartens. It is also included in primary school and junior secondary school levels.

**MR YUM SIN-LING** (in Cantonese): *Mr President, paragraph 2 of the main reply mentions that there are many accidents in five congested districts where vehicular and pedestrian traffic are heavy. Has the Government reviewed whether there is a reasonable balance between the time allowed for vehicles to move on and the time allowed for pedestrians to cross?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, at busy road junctions where both vehicles and pedestrians are using the road simultaneously, the Government will use pedestrian traffic lights. There is a professional guideline to determine the time allowed for vehicles and that for pedestrians. We actually have to go to the spot to collect statistics on vehicular and pedestrian flows before we can decide on the pattern to be used for allocation of time. Those patterns of allocation vary from area to area.

**MRS MIRIAM LAU** (in Cantonese): *Mr President, according to paragraph 2 of the main reply, the road junctions in five districts often have this kind of traffic accidents. Will the Government consider adopting some measures specific to the situations, such as building footbridges or subways and widening the sidewalks, at those road junctions so as to improve the situation? If footbridges or subways have already been built for the road junctions, will the Government adopt some measures to ensure that the pedestrians make use of those facilities when crossing?*

**SECRETARY FOR TRANSPORT** (in Cantonese): Mr President, we have made efforts. As just mentioned by me, at black spots already provided with sidewalks and footbridges, members of the police in fact have been bringing charges against pedestrians jaywalking or climbing over barrier fences. As for other spots, the main problem in Hong Kong is that there is far too limited road surface whilst there are far too many people and vehicles. Even if we sometimes think of building a footbridge right across a highway, it is not easy to identify spots where the footbridge may stand. Over the past few years, and especially in districts with black spots, both the Government and district boards concerned have been building segregation footbridge of this kind whenever suitable sites can be identified.

**MR CHOY KAN-PUI** (in Cantonese): *Mr President, can the Government inform us of the percentage of new immigrants among the pedestrians involved in accidents as a result of negligence in road safety?*

**PRESIDENT** (in Cantonese): This question is marginally acceptable, if you, Secretary for Transport, have these figures.

**SECRETARY FOR TRANSPORT** (in Cantonese): Sorry, Mr President. I do not have the figures. When I go back, I will have to study the figures provided by the police first to see if there is such a category, as well as the definition for "new immigrants". (Annex IV)

**PRESIDENT** (in Cantonese): I allowed the question just raised because Mr CHOY probably wants to know if that is due to new immigrants' not having had road safety education.

### **Criteria for Admission to Accident and Emergency Departments**

5. **MR IP KWOK-HIM** asked (in Cantonese): *Does the Government know:*

- (a) *of the current criteria adopted by the accident and emergency departments of public hospitals for admitting patients (in particular pregnant women); and*
- (b) *whether the Hospital Authority will review the above admission criteria; if so, what the details are?*

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

- (a) The decision whether to admit into hospital a patient, including pregnant woman, attending the accident and emergency (A&E) department of public hospitals, depends on the clinical judgement of

the attending doctor on the condition of the patient at the time of consultation. For example, for patients suffering from fracture, which is a common condition among A&E patients, only those who require surgical operation are normally recommended for hospitalisation. As for pregnant women, patients found or suspected to have definitive signs of pre-mature labour, convulsion, or fetal distress, are usually recommended for admission. However, I have to emphasise that each case may have its unique features, and the final decision is one of professional judgement by the attending doctor.

- (b) The policy and procedures on hospital admission are centrally reviewed by the Accident and Emergency Expert Speciality Co-ordinating Committee of the Hospital Authority (HA) on a regular basis. The Committee comprises a member of the HA Head Office and heads of all accident and emergency departments in public hospitals. It is responsible for formulating policy on the delivery of A and E service and its developments, setting and monitoring operational standards, and issuing guidelines on staff training and development requirements.

At the hospital level, sample cases are regularly reviewed by medical audit meetings in the A&E department, chaired by a Consultant or Senior Medical Officer. Apart from providing an opportunity for learning by staff, the meetings help to identify improvements to operation, and cases for which follow-up action is required.

Thank you, Mr President.

**MR IP KWOK-HIM** (in Cantonese): *Mr President, the appearance of a situation in which a pregnant woman gave birth to a baby in a bus is just the tip of an iceberg. With regard to the arrangements for admission of patients into hospital, will some administrative measures, such as limiting daily in-take, be adopted because of insufficient funding for medical care? If so, please provide some specific figures. If not, please provide the percentage of patient attendance against hospital admission regarding the current daily situation of the A&E departments.*



**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Perhaps I can reply to the second part of the question first. In 1996, the A&E departments altogether handled some two million emergency cases, of which 20% or 380 000 patients were recommended for hospitalization.

We have enough A&E departments and medical care staff to cope with patients requiring hospitalization. There is no need to reject patients requiring hospitalization because of insufficient bed spaces or inadequate medical care staff. It is always the attending doctor's responsibility to determine on the basis of a patient's conditions whether the patient requires hospitalization. This is the doctor's professional judgement.

**DR LEONG CHE-HUNG** (in Cantonese): *Mr President, according to the Secretary for Health and Welfare, whether a patient should be arranged for hospitalization is determined by the attending doctor on the basis of the conditions of the patient at the time of consultation. There, of course, is nothing wrong with this. Can the Secretary for Health and Welfare, nevertheless, let us know whether there are enough experienced medical care staff in the A&E departments of public hospitals who can determine clinical conditions to ensure that no patients who require hospitalization will be rejected?*

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Mr President, first, A&E departments are adequately staffed. Second, A&E service is a speciality. Medical care officers working in A&E departments have to receive special training, and every doctor has to attain a standard of medical proficiency set by the Medical Council before he can register for medical practice in Hong Kong.

With regard to the operation of A&E departments, we have been using a streaming system since 1993 to ensure that priority is given to patients requiring emergency treatments. Ever since its initial implementation, the system has been found to be quite satisfactory. It enables patients requiring immediate attention most urgently to get the treatment they need.

**Public Housing Units Used for Storage Purposes**

6. **MR CHOY KAN-PUI** asked (in Cantonese): *Does the Government know:*

- (a) *whether there are any units in the housing estates under the management of the Housing Authority or the Hong Kong Housing Society that are currently being used for storage purposes;*
- (b) *whether the authorities concerned have received complaints from the residents in housing estates about the above situation in the past three years; if so, of the number of complaints received each year and the housing estates which were the main targets of such complaints; and*
- (c) *of the measures put in place by the authorities concerned to ensure that the safety of residents in housing estates will not be threatened by potential fire hazards arising from certain units being used for storage purposes?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, all residential flats managed by the Housing Authority and the Housing Society are let to tenants for residential use. In the past three years, no complaints have been received about unauthorized use for storage purposes.

There are 4 490 units in public rental estates designated by the Housing Authority (4 400 units) and the Housing Society (90 units) for letting out to residents or commercial tenants as storerooms. In the past three years, the Housing Authority received eight minor complaints about the use of these storerooms, mainly regarding cleanliness, water pipe leakage and noise. Details are at Annex. No complaints were received for storerooms managed by the Housing Society.

In order to ensure the safety of public housing residents against fire hazards, the Housing Authority and the Housing Society stipulate in tenancy agreements that residential flats should only be used for residential purposes: tenants are prohibited from using these flats for storing goods. As regards

designated storerooms, the licences prohibit the storage of goods of an inflammable or explosive nature.

Estate staff carry out regular inspections to ensure that tenants comply with the safety restrictions. Tenants are encouraged to report suspected cases of improper use of residential flats or storerooms to estate staff. If any irregularity is found, warnings are issued to tenants concerned. Those who fail to rectify the irregularity will have their tenancies or licences terminated.

#### Annex

#### Complaints about the use of storerooms managed by the Housing Authority

<i>Estate</i>	<i>1994-95</i>	<i>1995-96</i>	<i>1996-97</i>	<i>Nature of complaint</i>
Tung Tau (Wong Tai Sin)	0	0	1	Cleanliness
Upper Wong Tai Sin (Wong Tai Sin)	0	0	1	Water pipe leakage
Chak On (Sham Shui Po)	0	0	1	Noise created by the loading and unloading of goods
Yiu On (Ma On Shan)	0	0	1	Cleanliness
Shan King (Tuen Mun)	1	1	1	Noise created by the unauthorized use of storeroom as workshop
Kwai Shing East (Kwai Chung)	0	1	0	Noise created by the unauthorized use of storeroom as lodging place
Total	1	2	5	

**MR CHOY KAN-PUI** (in Cantonese): *Mr President, so far have there been any cases in which residential flats in public rental estates were converted to storage uses without permission?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, we so far have received neither reports nor complaints in respect of cases of this kind.

**MISS EMILY LAU** (in Cantonese): *Mr President, according to the Secretary for Housing's main reply, 4 490 units are being let out to tenants for use as storerooms. Does the Secretary for Housing know why there is such a situation? At present, many people have been waiting for allocation of public housing and they have to wait for a long time. How should rental units be let out for storage purposes? The Housing Authority is not the Hospital Authority, I suppose?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, these let out units are located either in commercial shopping centres or on the ground floors of public housing estates. They are mainly let out to shop-operators for storing goods to facilitate their commercial activities. A few of them are let out to tenants. These units are generally small ones, not equivalent to residential flats in area.

**MISS CHAN YUEN-HAN** (in Cantonese): *Mr President, according to paragraph 4 of the Secretary for Housing's main reply, those who fail to rectify the irregularities will have their tenancies or licences terminated. How many warnings will be given before the enforcement of the terms of the tenancies or licences?*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, generally speaking, it depends on how serious the situation is. Of course, following the issue of the first warning, the residents or tenants concerned will deal with the problem. In past cases, the tenants ended the irregularities themselves on

receipt of warnings. So, in principle, there is no need to give warnings repeatedly.

**PRESIDENT** (in Cantonese): Miss CHAN Yuen-han, are you claiming that your question has not been fully answered?

**MISS CHAN YUEN-HAN** (in Cantonese): *The Secretary for Housing has answered my question. The actual situation, however, is not like what he states. Quite often, those tenants do not rectify the irregularities even after warnings have been issued by the Housing Department. The Administration does not follow up the cases, either. So I want to know how many warnings will be issued before the decision for termination of tenancies or licences is made.*

**SECRETARY FOR HOUSING** (in Cantonese): Mr President, the original question is on units being let out for storage uses. With regard to cases concerning these units, we in fact have received eight complaints only. Tenants involved in these eight complaints were warned. They also immediately took remedies and ended the irregularities. So, basically, situation mentioned by Miss CHAN has not cropped up.

## WRITTEN ANSWERS TO QUESTIONS

### Illegal Immigrants Granted Permission to Stay

7. **MR BRUCE LIU** asked (in Chinese): *It is learnt that according to the definition of "permanent resident of and the right of abode in the Hong Kong Special Administrative Region" announced recently by the Chinese authorities, those illegal immigrants who have been granted permission to stay in Hong Kong by the Director of Immigration are not regarded as ordinarily residing in Hong Kong, and they cannot therefore obtain the right of abode in the Hong Kong Special Administrative Region even if they have lived in the territory for seven years. In this connection, will the Government inform this Council:*

- (a) *whether it agrees to the above definition; if not, whether this matter is among the items concerning the right of abode issue on which the Chinese and British sides in the Sino-British Joint Liaison Group have failed to reach a consensus;*
- (b) *of the number of illegal immigrants who have been granted permission to stay in Hong Kong by the Director of Immigration since January 1990, and the number of such persons who are still staying in the territory; and*
- (c) *of the nationalities of the persons mentioned in (b) above, and the number of those who are of Chinese nationality?*

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

- (a) It is our understanding that the definition of "ordinary residence" which will apply from 1 July 1997 for the purpose of determining right of abode in Hong Kong is that illegal immigrants whom the Director of Immigration will grant permission to stay and contract workers (such as foreign domestic workers and workers imported under the various Importation of Labour Schemes) will not be considered as ordinarily resident. The decisions reached by the Director of Immigration prior to 1 July 1997 over the immigration status of both legal and illegal immigrants in Hong Kong will continue to apply. Matters concerning the definition of "ordinary residence" after 30 June 1997 will need to be further discussed with the Chinese side.
- (b) The number of illegal immigrants who have been granted permission to stay in Hong Kong by the Director of Immigration since January 1990 are as follows:

<i>Year</i>	<i>Number of IIs granted stay</i>
1990	81 (46)
1991	96 (80)
1992	200 (90)
1993	210 (134)

1994	84 (77)
1995	117 (87)
1996	114 (82)
1997	49 (31)
(January-April)	

(Figures in brackets denote illegal immigrants from China. Detailed breakdown of the place of origin of illegal immigrants other than from mainland China is at Annex.)

(c) We do not keep record of the whereabouts of these persons.

#### Annex

##### IIs Granted Stay (Other than China IIs)

<i>Place of Origin/Year</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i> <i>(January-April)</i>	<i>Total</i>
Macau	19	11	100	73	6	28	29	16	282
Taiwan	4	0	2	1	0	1	1	0	9
Vietnam	3	2	3	0	0	0	0	0	8
Laos	0	2	0	0	0	0	0	0	2
Thailand	7	1	0	2	1	0	1	2	14
Indonesia	1	0	2	0	0	0	0	0	3
Philippines	1	0	3	0	0	0	1	0	6
Panama	0	0	0	0	0	1	0	0	1
Total	35	16	110	76	7	30	32	18	324

#### MTR East Kowloon and North Island Lines

8. **MR LAU CHIN-SHEK** asked (in Chinese): *In February this year, the Mass Transit Railway Corporation disclosed that it planned to build the East Kowloon Line (which will connect Diamond Hill with Hung Hom and extend to Wan Chai) and the North Island Line (which will run between North Point and Tamar) which were expected to come into operation in 2006. In this connection,*

*will the Government inform this Council:*

- (a) whether the Government is aware of the above projects; if so, whether the Government is supportive of the projects;*
- (b) of the procedures involved and the length of time required for the departments concerned and the Executive Council to vet and approve the above projects; and*
- (c) given the current traffic congestion in the Kowloon City District, whether the Government will expedite the vetting and approval of the above projects, so as to enable the East Kowloon Line and the North Island Line to become operational before 2006?*

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

- (a) The Railway Development Strategy (RDS) announced in December 1994 recognizes the need in the longer term to build the East Kowloon Line (EKL) from Diamond Hill to Hung Hom, and the North Hong Kong Island Line (NHKIL) along the north shore of Hong Kong Island. The implementation of EKL will depend on the reclamation plan for Southeast Kowloon and the development plan for the Kai Tak Airport site, while that of the NHKIL will depend on the reclamation programme for Central and Wan Chai. We shall consider how and when to implement these two projects in the next phase of the RDS review. The Government has therefore not decided yet which organisation will construct and operate the two railways.

We understand that the Mass Transit Railway Corporation is conducting preliminary studies of the two projects. However, the Government has not received any formal proposals from the Corporation. When we do, we will consider them in the context of the next phase of the overall review of the RDS.

- (b) The procedures for considering railway projects are no different from those for major infrastructural projects, that is deliberations



within the Administration, followed by extensive public consultation before submitting recommendations to the Executive Council for consideration. The time required will depend on the scale of the project, the complexity of the issues involved, and public reactions to the proposals.

- (c) We appreciate the concern over the traffic situation of the Kowloon City area and recognize the importance of the two proposals concerned. In the next phase of the study on RDS, we will consider how the provision of mass transit service could resolve the traffic problem in the Kowloon City area.

### Security in Paediatric Wards

9. **MR MICHAEL HO** asked (in Chinese): *In regard to the incident several weeks ago in which a child patient in the paediatric ward in Yan Chai Hospital was allegedly taken away from the ward by a press reporter for interview and photo-taking, does the Government know:*

- (a) *whether the Hospital Authority will review the security measures in paediatric wards; if so, what the details are;*
- (b) *how the Hospital Authority ensures that the strengthening of security measures in paediatric wards will not cause inconvenience to the family members of child patients and the staff working in the wards; and*
- (c) *whether prosecution will be instituted against those persons who intentionally defy the security measures in the wards and take child patients away from the wards without permission?*

**SECRETARY FOR HEALTH AND WELFARE** (in Chinese): Many public hospitals have installed various security measures in their paediatric wards, such as electronic digital door locks, electronic tagging system and closed circuit television, to safeguard the patients against unauthorized intrusions. The

adequacy of these measures is regularly reviewed by the Hospital Authority's Security Steering Committee which meets quarterly, and at the operational level, by the hospital's security officer. Additional measures, including short-term means to cope with special situations, will be introduced whenever necessary.

To ensure that any inconvenience caused to the staff and the family members of the patients will be kept to the minimal, detailed planning and staff consultations are carried out prior to implementing any measures to strengthen the security within the hospital. As security measures are intended to protect the interest of patients, they have been generally well received by the staff, the patients and the visitors.

Police assistance will be summoned to deal with perpetrator who wilfully violates security measures in public hospitals. The Hospital Authority Bylaws can also be used to deal with such violations, if necessary.

### **Unemployment Rate of Local Workers (Excluding Foreign Workers)**

10. **MR CHENG YIU-TONG** asked (in Chinese): *The unemployment rate currently released by the Government is worked out on the basis of the entire labour force in the territory (including all foreign workers). In this connection, can the Government provide the unemployment rate of local workers (excluding foreign workers) in each of the past three years; if not, why not, and whether it will consider collecting such information and publishing it on a regular basis?*

**SECRETARY FOR FINANCIAL SERVICES** (in Chinese): Figures on the unemployment rate specifically for local workers are not available. It is not possible to distinguish between local workers and foreign workers whether amongst the employed or unemployed in the General Household Survey (GHS) data, as nationality is not an item of enquiry in that survey. This item is considered to be particularly sensitive to be enumerated in an on-going household enquiry. Its inclusion could adversely affect the response to the GHS as a whole.

While there are a variety of administrative data on the number of foreigners admitted to work in Hong Kong under the relevant Government policies and schemes, the coverage is far from complete. In particular, figures are not available on the actual number of expatriates working in Hong Kong at any one time under the normal immigration policy for employment. Nor is it possible to derive that number from the number of employment visas issued, as the period of stay for each employment visa varies from case to case. Moreover, up till recently, some of the expatriates are exempted from the employment visa requirement.

In practice, delineating the status of a person as local or non-local may be not that straightforward. For example, there are persons who have emigrated earlier but have since come back to stay and work in Hong Kong. There are also foreigners who have stayed in Hong Kong for a long time, say for more than seven years. The lack of a straightforward means of delineation in this regard inevitably poses problems in compiling the relevant statistics, whether from surveys or from administrative data sources.

For the above reasons, it is not feasible in practice, and the Government therefore has no plan to compile a separate unemployment rate specifically for local workers.

### **Rental Values of Factory Buildings**

11. **MR HENRY TANG** asked (in Chinese): *In view of the general decline in the rental values of factory buildings in recent years, will the Government inform this Council of:*

- (a) *the actual impact of the latest revaluation of rateable values on the rental values of factory buildings in general; and*
- (b) *a breakdown of the average rental values and rates payable in respect of large, medium and small-sized units in factory buildings located in various industrial districts, including Tsuen Wan, Kwai Chung, Cheung Sha Wan, Kwun Tong and Island South, together with a comparison of these figures with the corresponding figures immediately before the revaluation in 1993?*

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

- (a) The rateable values of factory premises have, in overall terms, decreased by about 9% after the current general revaluation. With the rates concession as announced in the Budget, there is an average reduction of 17% in the rates payable for factory premises in 1997-98. In effect, nearly 96% of the factory premises have their rates reduced.
- (b) The average rental values for flatted factories in main industrial districts at the 1994-95 and the 1997-98 general revaluations and the rates payable before and after the general revaluations are set out below:

<i>Industrial district</i>	<i>Average monthly rent/m<sup>2</sup> in July 1993</i>	<i>Average monthly rent/m<sup>2</sup> in July 1996</i>	<i>Average monthly rates/unit in 1994-95</i>			<i>Average monthly rates/unit in 1997-98</i>		
	<i>(\$)</i>	<i>(\$)</i>	<i>(\$)</i>			<i>(\$)</i>		
			<i>Below 100m<sup>2</sup></i>	<i>100-500m<sup>2</sup></i>	<i>Above 500m<sup>2</sup></i>	<i>Below 100m<sup>2</sup></i>	<i>100-500m<sup>2</sup></i>	<i>Above 500m<sup>2</sup></i>
Aberdeen	104	107	334 (+33)	1,183 (+132)	4,241 (+273)	306 (-24)	973 (-167)	3,616 (-814)
Cheung Sha Wan	120	128	381 (+58)	1,614 (+234)	5,514 (+715)	355 (-113)	1,334 (-392)	4,303 (-1,496)
Kwun Tong	91	91	446 (+69)	1,061 (+110)	3,818 (+279)	414 (-88)	884 (-208)	2,966 (-910)
Tsuen Wan	86	76	360 (+57)	941 (+91)	4,264 (+206)	335 (-66)	773 (-213)	3,257 (-1,014)
Kwai Chung	79	81	371 (+57)	980 (+90)	4,189 (+271)	331 (-61)	776 (-222)	3,056 (-1,105)

Note :

- (1) For the 1997-98 revaluation, the new rateable values were based on rents at around the designated valuation reference date of 1 July 1996. For the 1994-95 revaluation, the reference date was 1 July 1993.

- (2) The floor area for factory accommodation is its internal floor area, measured to the internal face of enclosing external and/or party walls.
- (3) Average monthly increases or reductions in rates per unit over the preceding year are shown in brackets.
- (4) The average rental figures were compiled based on the market rents of premises reported to the Rating and Valuation Department. The premises included in the analysis in respect of July 1993 and July 1996 were different in terms of size, age, quality of construction and location. The average rental figures in July 1993 and July 1996 therefore do not directly reflect the rental movement of the same flatted factories between 1993 and 1996 and the overall changes in rateable value for flatted factories in the district during the period.

### **Building Complex in Ma On Shan**

12. **DR JOHN TSE** (in Chinese): *Will the Government inform this Council whether it knows if the authorities concerned have any plan to construct a building complex in the Ma On Shan district, containing library and indoor stadium facilities as well as youth and children centres?*

**SECRETARY FOR BROADCASTING, CULTURE AND SPORT** (in Chinese): Mr President, the Regional Council (RC) has included in its Capital Works Programme the provision of an indoor recreation centre (IRC) cum library complex at the junction of On Yuen Street and On Chun Street to the north of the Ma On Shan town centre. The proposed scope of facilities of the complex has been endorsed by the RC and a sketch design is now under preparation. Construction of the project is scheduled to start in 1997-98 for completion in 1999-2000.

The IRC cum library complex covers an area of about 0.94 hectares. The IRC will contain one permanent indoor tennis court, and a multi-propose arena comprising two basketball courts, two volleyball courts, one handball court and eight badminton courts. Ancillary facilities will include four squash courts, two activity and dance rooms, a fitness training room, a children's play room and a refreshment kiosk.

The proposed library will be 2 200 sq m in size. It will provide an adult library, a junior library, a quick reference section, an audio-visual library, a newspapers and periodicals section, an extension activities room, a students'

study room, a microcomputer room and some other ancillary facilities.

### Long Term Housing Strategy Review Consultative Document

13. **MISS CHRISTINE LOH** asked: *According to the Long Term Housing Strategy Review Consultative Document, it is estimated that 85 000 flats will be produced each year to meet the territory's housing demand during the period from 1995 to 2001. The Review also states that sufficient land has been identified for this purpose. In this connection, will the Government inform this Council of:*

- (a) *the estimated and actual production of flats, together with a breakdown of the estimated and actual number of flats demolished, in 1995 and 1996 respectively; and*
- (b) *the estimated production of flats in each of the years from 1997 to 2001, together with a breakdown of the estimated annual number of flats demolished during the same period?*

**SECRETARY FOR HOUSING:** Mr President, the information required is given at the Annex. Estimates of private flats to be completed from 1999 to 2001 are not available. Estimates of private flats to be demolished during the seven-year period are also not available as the timing of demolition is a business decision for property developers.

Annex

Table A - Annual production of flats and flats demolished

	<i>Private housing</i>			
	<i>1995</i>		<i>1996</i>	
	<i>Estimated</i>	<i>Actual</i>	<i>Estimated</i>	<i>Actual</i>
Flats completed	26 164 <sup>1</sup>	22 621	19 095 <sup>1</sup>	19 875
Flats demolished	N.A.	2 416	N.A.	1 552
	<i>Public housing</i>			
	<i>1995-96</i>		<i>1996-97</i>	
	<i>Estimated</i>	<i>Actual</i>	<i>Estimated</i>	<i>Actual</i>

*Flats completed*

Public rental	14 474	14 828	18 563	15 917
Subsidized home ownership	23 010	21 928	17 878	16 878

*Flats demolished*

Public rental	16 500	16 418	14 500	14 535
Subsidized home ownership	0	0	0	0

<sup>1</sup> According to the Hong Kong Property Review published by the Rating and Valuation Department at the beginning of the year.

N.A. = not available

Table B - Estimated annual production of flats and flats to be demolished

*Private housing*

	<i>1997</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>
Flats to be completed	22 000	36 000	N.A.	N.A.	N.A.
Flats to be demolished	N.A.	N.A.	N.A.	N.A.	N.A.

*Public housing*

	<i>1997-98</i>	<i>1998-99</i>	<i>1999-00</i>	<i>2000-01</i>
<i>Flats to be completed</i>				
Public rental	22 200	16 500	26 200	48 900
Subsidized home ownership	20 500	22 700	25 100	68 000
<i>Flats to be demolished</i>				
Public rental	17 700	13 700	9 900	32 400
Subsidized home ownership	0	0	0	0

N.A. = not available

**Planting Vegetation on Stabilized Slopes**

14. **MISS EMILY LAU** asked (in Chinese): *At the special meeting of the Finance Committee held on 25 March this year to examine the draft Estimates of Expenditure for 1997-98, the Secretary for Works indicated that, in order to reduce the impact of slope stabilization works on the environment, the departments concerned would plant vegetation on the affected slopes once the slope stabilization works were completed. However, the Secretary also pointed out that not all of these slopes were suitable for planting vegetation. In this connection, will the Government inform this Council of:*

- (a) the categories of slopes which have undergone stabilization works but are not suitable for planting vegetation, and the reasons therefor; and*
- (b) the total number of slopes in the territory which have undergone stabilization works and are suitable for planting vegetation but have not yet been resurfaced; and the expected completion dates of all such resurfacing works?*

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

- (a) It is Government's policy to plant vegetation wherever possible on affected government slopes on the completion of permanent slope stabilization works.

The following situations are exceptions:

- (i) At locations with highly fractured rock surfaces or oversteep slope gradients, the use of hard surface treatment is unavoidable. Shotcrete is considered to be the most practical remedy.
- (ii) In the case of emergency repairs to slopes after landslips,



shotcrete has to be used because we need a quick and secure method to remove the immediate danger posed to the public and to avoid prolonged closure causing inconvenience to the occupants of affected buildings and users of busy roads.

- (iii) In recent years, dilapidated chunam surface protection to existing slopes has been replaced with shotcrete as part of routine maintenance work by the Government to provide a more effective and durable protection against water erosion and infiltration. After application, the shotcrete surface is visually unattractive, however the surface colour soon becomes darker and blends with the surrounding environment in the course of time.
- (b) At this moment, the Government has practically completed vegetation planting at all government slopes associated with new projects or after major maintenance works. The exceptions are those locations mentioned in (a) above. As regards the existing chunam or shotcreted slopes, we do not have an exact number of this type of slopes because the new slope catalogue registering all sizeable man-made slopes in Hong Kong is still being prepared. We therefore do not know how many of these slopes are suitable for planting vegetation. However, when we carry out upgrading works or maintenance works to these chunamed or shotcreted slopes, we would consider in each case:
  - (i) the feasibility of providing planting pits on slopes;
  - (ii) the provision of toe wall planters space permitting; and
  - (iii) the feasibility of surface colour treatment and other planting measures,

in order to reduce the visual impact of the hard surface treatment. For example, we have in the past year applied colours on more than 100 shotcreted slopes; and in the coming three months, over 50 slopes will be included in a trial on planting creepers on shotcreted slopes.

**Slippage of Ting Kau Bridge (Route 3) Works**

15. **MR WONG WAI-YIN** asked (in Chinese): *It is learnt that the Country Park Section of the Route 3 project undertaken by a private sector consortium will be completed ahead of schedule, while the completion of the Ting Kau Bridge Section of the Route 3 project undertaken by the Government will fall behind schedule. In this connection, will the Government inform this Council:*

- (a) of the respective completion dates for these two projects according to the latest estimates, as well as the respective periods of early completion and slippage as compared to the original scheduled completion dates;*
- (b) of the respective reasons for the early completion and slippage of these two projects; and*
- (c) whether it has considered speeding up the construction of the Ting Kau Bridge Section so as to complete it within the original scheduled date; if so, what the details are?*

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

- (a) The completion date for the Route 3 (Country Park Section), based on the franchisee's approved works programme is 31 July 1998. The franchisee is presently ahead of this programme, but he has not submitted a revised programme to the Administration indicating an earlier completion date.

The substantial completion date for the Ting Kau Bridge based on the contract's current proposed works programme is 31 December 1997. There is a slippage of six months when compared with the original contract completion date of 23 June 1997.

- (b) As regard the Route 3 (Country Park Section), we do not have a revised programme on the earlier opening of the Route. The franchisee should be in a better position to predict the opening date

after the coming wet season.

As regards the Ting Kau Bridge, the slippage is mainly due to complexity of its design. Detailed reasons for the delay are as follows:

- (i) delay to the construction, due to unexpectedly difficult seabed conditions, of the ship impact protection system forming the platform for the construction of the main (centre) tower of the Ting Kau Bridge;
  - (ii) the delay by the contractor in procuring the structural steelwork sub-contract for commercial considerations due to the need of the contractor to revisit the design of the cable stayed Ting Kau Bridge following the results of wind tunnel tests;
  - (iii) the failure of the structural steelwork sub-contractor to produce to the required standard of quality the components necessary for the superstructure of the cable stayed Ting Kau Bridge; and
  - (iv) the recently identified failure of welds in a key item of temporary works necessary to erect the pair of steel tower heads for the main (centre) tower;
- (c) Irrecoverable delay in completing the project on time became known to the Director of Highways in October 1996. He has since then worked closely with the contractor to find ways to complete the bridge on the original date of 23 June 1997, but this is not possible because of technical reasons. In order to secure substantial completion by 31 December 1997, the contractor has taken the following recovery measures:
- (i) The contractor has worked with his structural steelwork sub-contractor to eliminate any further delay arising from the supply and quality of steelwork, including deployment of a strengthened supervision team of steelwork specialists at the

assembly yard in Shekou, China, and tripling the areas for the assembly of deck units required for the Bridge;

- (ii) The contractor has revised the erection sequence of the Ting Kau Bridge and deployed additional labour resources and cranes to implement all the practicable measures available to expedite completion; and
- (iii) The contractor has worked round the clock to rectify the weld failures and revised the method of lifting the tower heads to mitigate the delay.

## **Breast Cancer**

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

- (a) *whether it knows of the number of patients suffering from breast cancer admitted into various public hospitals for treatment in each of the past five years, as well as their age profile and clinical stages;*
- (b) *of the resources allocated by the Department of Health in the current financial year for the promotion of health education on breast cancer so as to assist the female in the prevention and early detection of the cancer; and whether it is aware of the allocation of resources by the Hospital Authority (HA) in the current financial year in this regard;*
- (c) *whether, over the past five years, there has been any data indicating that the patients themselves have been able to detect the cancer at an early stage; if not, what measures does the Government have to strengthen the health education currently provided by the Department of Health so as to facilitate the early detection of the cancer by the patients themselves; and*

- (d) *whether it is aware of the plans put in place by the HA to reduce the waiting time of patients suffering from breast cancer for treatment?*

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

- (a) A total of 799, 986 and 1 135 patients were admitted into public hospitals for treatment of breast cancer during the three years from 1992-1994 respectively. Information on their age profile and clinical stages are not readily available as they are not captured in the Hospital Authority's Medical Record Abstract System.

The data on breast cancer patients admitted into public hospitals in 1995 and 1996 are still being compiled.

- (b) The information requested are not readily available as the Department of Health and the HA both adopt an integrated approach in health promotion and education and it has not been possible to separately identify the resources spent on health education on breast cancer alone.
- (c) Again, data indicating how many breast cancer patients have been able to detect the disease at an early stage are not readily available as such information are not routinely recorded. Over the years, the Department of Health has implemented through its Central Health Education Unit and three Women Health Centres (WHCs) a number of initiatives including the Women Health Ambassador Programme and a hotline service to educate the female on prevention and early detection of breast cancer. As an on-going review of existing services, the Department is considering widening the clientele of WHCs and integrating such centres into its Maternal and Child Health Centres.
- (d) HA has put in place a screening system to ensure that suspected breast cancer patients are given an earliest possible appointment at the relevant specialist outpatient clinic. Where radiotherapy is required, the average waiting time for receiving treatment is less

than one week. Patients diagnosed as requiring surgical intervention normally receive their operations within four weeks. The Government and HA will continue to monitor the needs of breast cancer patients and provide sufficient resources to ensure that they are treated without delay.

### **Noise Emission from Pump Rooms in Buildings**

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

- (a) *of the criteria adopted in 1973 for determining the noise emission standard for pump rooms in buildings;*
- (b) *of the rationale for the Government applying the same standard in regulating noise emission from pump rooms in buildings completed before and after 1973; and*
- (c) *whether the Government has considered amending the relevant regulations with a view to applying different standards in regulating noise emission from pump rooms in buildings completed before and after 1973; if so, what the details are?*

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

- (a) The Noise Control Ordinance came into operation only in 1989. Prior to that, noise emissions from pump rooms in buildings were not subject to legislative control. Hence, no noise emission standard was applied to pump rooms in 1973.
- (b) The acceptable noise levels applicable to industrial and commercial activities and building services facilities including pump rooms are set out in the Technical Memorandum for the Assessment of Noise from Places Other Than Domestic Premises, Public Places or

Construction Sites issued under the Noise Control Ordinance. They are determined in terms of the noise impacts from such facilities on the neighbourhood. The year of completion of a building is not a relevant factor. The reasons for applying the same standard in regulating noise from pump rooms in buildings completed before and after 1973 are:

- (i) noisy pump rooms in buildings, irrespective of their age, cause serious nuisance to their neighbourhood. It is necessary to protect noise sensitive receivers from such excessive noise impacts;
  - (ii) excessive noise from pump rooms is usually caused by malfunctioning systems or inferior design and can be mitigated by practicable measures such as proper management, regular maintenance or improved design; and
  - (iii) owners or operators of the facilities which cause unacceptable noise impacts on the neighbourhood will be given reasonable time according to the complexity of the necessary abatement work to comply with the relevant noise limits. Prosecution will only be initiated if the owner or operator concerned fails to implement the necessary improvements.
- (c) As explained above, the time of completion of a building has no bearing on the determination of the acceptable noise levels for pump rooms. To protect residents from excessive noise impacts, we do not consider it appropriate to relax the noise requirements for pump rooms in buildings completed before 1973.

### **Contaminated Local Marine Fish**

18. **MR HOWARD YOUNG** asked: *In view of the increasing number of complaints about local marine fish being infected with a foul taste, will the Government inform this Council whether the Agriculture and Fisheries Department carries out regular checks on the territory's marine-culture establishments to ascertain if the local marine fish is being adversely affected by pollution?*

**SECRETARY FOR ECONOMIC SERVICES:** Mr President, marine fish culture is undertaken in fish culture zones designated by the Director of Agriculture and Fisheries under the Marine Fish Culture Ordinance. Such zones are located in clean waters, away from sources of pollution. Their water quality is checked regularly by the Agriculture and Fisheries Department, which will also investigate any reports of contamination of the waters. Marine-culturists themselves are keen to ensure that their fish are not affected by pollution and will report any change in the water quality or other abnormality to the Department. The Department has received no indication that consumers are dissatisfied with the quality of the fish produced in local fish culture zones.

#### **Notification on Establishment of Societies**

19. **MR BRUCE LIU** asked (in Chinese): *Will the Government inform this Council of:*

- (a) *the number of societies which, upon establishment, have sent notifications in writing to the Societies Officer in accordance with the provisions of the Societies (Amendment) Ordinance since its implementation in 1992;*
- (b) *the number of societies in respect of which the Secretary for Security has made orders under the above Ordinance to prohibit their operation or their continued operation since 1992, and the grounds on which the Secretary based his decision to make such orders; and*
- (c) *the number of societies in (b) above which have lodged appeals to the Governor in Council against the orders made by the Secretary for Security, and the outcome of such appeals?*

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



- (a) As at 30 April 1997, 4 731 societies have sent notifications in writing to the Societies Officer in accordance with the provisions of the Societies (Amendment) Ordinance since its implementation on 17 July 1992.

(b) and (c)

The Secretary for Security has not made any order under the above-mentioned Ordinance to prohibit the operation or continued operation of any society, and therefore there has been no appeal to the Governor in Council in this respect.

### **Pamela Youde Nethersole Eastern Hospital Helipad**

20. **MR MICHAEL HO** asked (in Chinese): *The Government is planning to build a helipad at Siu Sai Wan to facilitate the provision of A-type casualty evacuation services by the Pamela Youde Nethersole Eastern Hospital. It is learnt that the rooftop helipad of the Pamela Youde Nethersole Eastern Hospital has never been put to use. In this connection, will the Government inform this Council whether the rooftop helipad of the Hospital not being put to use is due to problems in the design of the rooftop helipad; if not, what the reasons are; if so, what the specific problems are and how the Government will ensure that new hospitals to be built in future will not have similar problems?*

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Chinese): Mr President, the Government's plan to build a helipad at Siu Sai Wan instead of using the rooftop helipad of the Pamela Youde Nethersole Eastern Hospital (PYNEH) is because the current helicopters operated by the Government Flying Services (GFS), namely S70 and S76, are not certified to land on elevated helipads on safety and Civil Aviation Regulation grounds.

The decision to build a rooftop helipad at the PYNEH was taken some time ago with regard to the anticipated need at the time. The original design criteria were prepared more than 11 years ago by the Royal Hong Kong Auxiliary Air Force (RHKAAF), which was a military organization to which a number of civil aviation rules did not apply. There are no design problems with the PYNEH helipad since it is effective for those helicopters which are able to use it. However, as explained above, the current fleet of helicopters operated by GFS are not permitted to use any elevated helipads in Hong Kong. The requirements of GFS will be taken into account should it be necessary to design helipads in future hospital compounds.

**GOVERNMENT MOTION****TELEVISION ORDINANCE**

***THE SECRETARY FOR BROADCASTING, CULTURE AND SPORT to move the following motion:***

"That the Television (Advertising) Regulation and the Television (Programmes) Regulation, made by the Governor in Council on 22 April 1997, be approved."

**SECRETARY FOR BROADCASTING, CULTURE AND SPORT** (in Cantonese): Mr President, I move the motion standing in my name on the Order Paper.

Following the passage of the Television (Amendment) Ordinance on 19 March, it is now necessary to make consequential regulations to complete the regulatory framework for video-on-demand programme services. Governor in Council therefore made the Television (Advertising) Regulation and the Television (Programmes) Regulation on 22 April 1997.

The Television (Advertising) Regulation will extend the rules on governing advertising by commercial television licensees to both programme service licensees and subscription television licensees, which will also be permitted to carry advertising.

In addition, section 4(2) of this regulation extends the existing restrictions on commercial sponsorship of educational and religious programmes to include all material broadcast at the direction of the Broadcasting Authority under section 8(2)(b)(i) of the Television Ordinance. We do not consider it appropriate for such material to be subject to commercial sponsorship because the material is provided by the Government, and not produced or purchased by the television broadcasting licensee concerned. Such material might, for example, include an address by the Governor.

The Television (Programmes) Regulation extends existing provisions governing television programmes to programme service licensees. The only exception is that the programme service licensees will not be obliged to broadcast news programmes, as they will only be offering pre-recorded programmes.

Section 6 in the previous Television (Programmes) Regulation is no longer included in this Regulation as it has become redundant since the repeal of the previous section 4 in 1995.

Thank you, Mr President.

*Question on the motion proposed.*

**MR NGAN KAM-CHUEN** (in Cantonese): Mr President, a subcommittee, chaired by me, was formed to study the resolution. The Subcommittee held a meeting with the Administration on 2 May 1997.

The Subcommittee is satisfied with the Administration's explanation on the policy intent of and clarification on points raised on the Television (Advertising) Regulation and Television (Programmes) Regulation.

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

*Question on the motion put and agreed to.*

## **GOVERNMENT BILLS**

### **Second Reading of Bills**

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

### **JUSTICES OF THE PEACE BILL**

**Resumption of debate on Second Reading which was moved on 19 March 1997**

**MR IP KWOK-HIM** (in Cantonese): Mr President, I rise to speak in the capacity as Chairman of the Bills Committee to study the Justices of the Peace Bill. The Bill is designed to regulate the appointment, duties, resignation, and removal from office of Justices of the Peace.

I would like to outline the key points studied by the Committee.

At present, apart from paying visits and inspections to custodial institutions and other types of institutions, Justices of the Peace are vested with the power to perform certain judicial and quasi-judicial duties such as signing and issuing warrants or orders, and administering oaths and declarations. The Bill proposes to take from Justices of the Peace obsolete judicial and quasi-judicial functions, and to transfer from Justices of the Peace to commissioners for oaths the powers to administer oaths and declarations. The reason is that people can get the service at relevant government departments or district offices, and it has been infrequent for Justices of the Peace to administer oaths or declarations. The Bills Committee is not against taking away from Justices of the Peace judicial and quasi-judicial duties. However, to benefit members of the public to the largest extent, the Committee holds that Justices of the Peace should retain the power to administer oaths and declarations in simple and direct matters involving people's livelihood so as to provide another avenue for the public to get an existing service when so needed.

After consideration, the Administration agreed to retain the power of Justices of the Peace under the Oaths and Declarations Ordinance (Cap. 11) to administer oaths and declarations, as the retention of this general power of Justices of the Peace will bring maximum benefit to the community. The reason is that the arrangement is applicable to all members of the public and caters for all circumstances in which an individual might have to make declaration for personal reasons. However, the Administration explained that as people can now take oaths or make declarations through other channels, provisions specifying certain types of declarations and oaths to be administered by Justices of the Peace under other ordinances as shown in schedule 3 of the Bill are now obsolete, inappropriate or unnecessary. The Bills Committee, therefore, is of the view that the arrangement is acceptable.

In the course of studying the Bill, the Bills Committee noticed that the Administration proposed to retain the reference to Justices of the Peace in section 211(3) of the Supreme Court Ordinance (Cap. 4) as it preserves the power of the Supreme Court to issue mandamus when needed to compel Justices of the Peace to carry out statutory duties of office prescribed by the Bill. As Justices of the Peace are appointed by the Governor, the Governor ought to have the power to compel Justices of the Peace to carry out their statutory duties, and to remove them from office when really so required. Then the judicial and quasi-judicial powers of Justices of the Peace will be taken away. The Bills Committee, therefore, asked the Administration to consider the need to retain such a provision. After consideration, the Administration agreed with the opinion of the Bills Committee to remove from the Supreme Court Ordinance the provision on the reference to Justices of the Peace.

The Bill also proposes to retain the category of Justices of the Peace in the New Territories. As verified Justices of the Peace in the New Territories can serve as Heung Yee Kuk members, the Bills Committee asked the Administration to clarify whether the work in Heung Yee Kuk of a Justice of the Peace in the New Territories might be affected if that person is not an indigenous villager. According to the explanation from the Administration, the criteria adopted by the Secretary for Home Affairs in appointing a person to be a Justice of the Peace in the New Territories are that the person must have taken the New Territories as his base, have shown *bona fide* interest in rural affairs, have served or made contributions to the New Territories residents for at least 10 years, and be accepted by Heung Yee Kuk, and, preferably, by fellow villagers too. Whether a Justice of the Peace in the New Territories is an indigenous villager is not as important as that person's previous record of service to the New Territories residents. Nor will it affect that person's work as an *ex-officio* member of Heung Yee Kuk. The Committee has learned that the Administration will adopt more or less the same criteria to determine whether a Justice of the Peace is qualified for appointment as Justice of the Peace in New Territories under the Bill.

Mr President, subject to the amendments to the Bill I mentioned earlier, as well as other technical amendments, I recommend the Bill to fellow Members. These are my remarks.

**CHIEF SECRETARY:** Mr President, I would like to thank the Honourable IP Kwok-him, Chairman of the Bills Committee, and the other members of the Committee for their hard work and constructive comments during the process of examining this Bill. I shall move a number of amendments during the Committee stage which are designed to meet the concerns expressed by members of the Bills Committee.

The Bill seeks to provide a local statutory basis for the appointment of Justices of the Peace (JPs) and to update their powers and functions. The Bills Committee agreed that the Bill should be enacted to provide a Hong Kong-based JP system. The Bill will empower the Governor to appoint any person whom he considers to be fit and proper to be a JP and to revoke the appointment of any JP under certain specified conditions.

The Bills Committee also agreed that the obsolete judicial and quasi-judicial functions of JPs should be removed. With the establishment of a professional judiciary, it is no longer necessary or appropriate for JPs to exercise these powers.

Members of the Bills Committee did, however, suggest that it would be in the public interest if the power of JPs to administer oaths and declarations could be retained as far as possible, particularly for matters that are simple and straightforward in nature and are related to people's livelihood. After careful consideration of members' views, we have agreed to retain the power of JPs to administer oaths and declarations under the Oaths and Declarations Ordinance, (Cap. 11). We consider that the retention of this general power will most effectively meet the concern expressed by members as it applies to all members of the community and caters for all circumstances in which a person is required to take an oath or make a declaration for personal reasons. I will, therefore, be moving a Committee stage amendment to effect this change.

However, we continue to believe that it is appropriate to remove or transfer the power of JPs to administer the various kinds of statutory declarations specified under the other Ordinances listed in Schedule 3 to the Bill. The requirement for these declarations, which are usually of a technical nature, to be made before a JP is either obsolete, inappropriate or unnecessary. There are already other suitable means of making such declarations. The Bills Committee

agreed with this view.

I shall also be moving a number of other Committee stage amendments. Most of these are technical in nature. I will explain them in more detail at the Committee stage.

Mr President, the Bills Committee has indicated its support for the Bill and all the amendments which I shall move during the Committee stage. I hope, therefore, that Members of this Council will support the Bill and our proposed amendments.

*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).*

## **ESTATE AGENTS BILL**

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

**MR ANDREW CHENG** (in Cantonese): Mr President, in the capacity as Chairman of the Bills Committee to study the Estate Agents Bill, I am reporting to Honourable Members the deliberations of the Bills Committee.

The purpose of the Bill is to prescribe a regulatory system for performing estate agents' work, to set up a licensing system, and to establish the Estate Agents Authority, which is to be responsible for regulatory and licensing matters. Ever since its establishment in December 1995, the Committee has held 32 meetings, rendering it the Bills Committee of the Legislative Council having held the largest number of meetings in the 1995. It has carried out in-depth discussions with the Administration, representatives of estate agencies and members of the public who have made submissions to the Bills Committee. It has also studied 52 written representations submitted by 33 organizations or individuals.



As the purpose of the Bill is to set up a licensing system and to regulate business practices of estate agents, and that the trade has been in operation in Hong Kong without any form of statutory control for a long time, provisions in the Bill have naturally aroused extensive reaction in the society, with particularly strong reaction coming from members of the trade. According to the Administration, there are some 5 000 estate agents and 17 000 sales representatives in the trade. I will only outline the key issues that are of concern to members of the trade and the Bills Committee.

### *Guiding principle*

Mr President, though members of the trade accept the point that there is a need to set up a regulatory system, they are of the view that the main body of the ordinance should not cover operational details, but should only prescribe policy guidelines and general instructions. The Committee shares such a view and understands that estate agents are engaged in a trade, not a profession. So, even though for the protection of consumers' rights and privileges it is really necessary to set up some standards and lay down some form of control for the trade, it is also important to take into account the practicability of the proposed regulatory system. The Administration should refrain from exercising too much control which may adversely affect the efficiency of the trade. This is the guiding principle adopted by the Bills Committee in studying the Bill.

### *Providing property information (clause 37)*

### *Offences (clause 56)*

Mr President, with regard to the clauses of the Bill, I, first of all, want to talk about the most controversial parts, namely, the two inter-related clauses on "providing property information" and "offences", which prescribe several requirements for estate agents, including informing clients of all the main clauses, and accurately providing property information in respect of current property ownership, valid charges on title, area, year of completion, limitation on uses, and length of lease. Estate agents or sales representatives failing to comply with the aforesaid requirements without reasonable defence and explanation are, upon conviction, liable to a fine of \$50,000 to \$200,000 and/or a prison term ranging from three months to one year.

These requirements have aroused strong objection in two aspects. In the first place, members of the trade opined that acts breaching the requirements should be referred to the Estate Agents Authority for disciplinary actions instead of being handled by the courts under criminal proceedings. In the second place, they pointed out the actual difficulty in getting accurate property information. At present, there is not a centralized place for estate agents to obtain property information and therefore they must go to different government departments to make searches. As the trade requires very high efficiency in business, the Bill will seriously affect operations in the trade. Representatives from various organizations, therefore, suggested setting up a central databank for the supply of property information, and adding into the Bill clauses on due diligence so that estate agents who have made all reasonable efforts to obtain property information can be free from unreasonable punishment. They were also of the view that it would be necessary to specify the types of property information required so as to eliminate any ambiguity.

Mr President, a study commissioned by the Bills Committee also proves that there is indeed difficulty in obtaining property information. Members find the situation most undesirable, and urge the Administration to rectify such shortcomings.

In response to the requests made by the Bills Committee, the Administration has beefed up the computer systems in relevant departments to improve the situation. Furthermore, the Administration has given the undertaking that the Estate Agents Authority will draw up regulations so as to specify the kinds of property information required to be provided by estate agents and, at the same time, formulate codes of practice so as to help estate agents comply with the clauses in the Bill. As these measures have greatly relieved members of the trade of their worries, members of the Bills Committee therefore accept the ideas of the Administration. However, given the fact that the trade places much emphasis on efficiency in operations, and that the volume of property transactions in Hong Kong is so big, the Bills Committee still firmly adheres to the view that the Administration should not shun its responsibility to set up a central databank for properties. The Bills Committee, therefore, reiterates that the government, as a long-term target, should set up the central databank.

Mr President, with regard to criminal liability, an issue that receives even more extensive attention, the Administration has finally agreed that acts in breach of the statutory duty to provide property information need not be classified as criminal liability, and that disciplinary actions should suffice. Criminal sanctions will still apply to serious offences, such as operating as estate agents or sales representatives while unlicensed, making false or misleading statement for the purpose of applying for or renewing a licence, and failure to reimburse a client. Also accepting suggestions from members of the trade, the Administration has agreed to draw up clauses on due diligence to cater for situations in which estate agents have really taken reasonable steps to obtain the required information.

Only after lengthy discussions between the Bills Committee and the Administration were the above agreements arrived at. The Committee was indeed pleased that the Administration eventually had taken appropriate measures in response to points of concern raised by members of the trade and Honourable Members.

*Estate Agent Licence (clauses 19 and 57)*

Mr President, another area of great concern to members of the trade is the provision on "academic qualifications and experience" laid down by the Estate Agents Authority. Though serving members of the trade do not have very high academic qualifications, they have been able to fully discharge their duties effectively. The Bills Committee, therefore, is of the view that, on the one hand, the Administration should amend the wording to be "academic qualifications or other qualifications with experience, or both" so as to make the provision more flexible; on the other hand, emphasis should be placed on the point that the Estate Agents Authority ought to organise training courses for estate agents so as to give them proper training to perform their duties. To accomplish this target, the Administration agreed to move amendments.

*Instructions from the Secretary for Housing (clause 7)*

*Investigation power (clauses 29 and 55)*

Mr President, the Bill gives the Secretary for Housing the authority to

issue instructions to the Estate Agents Authority for reason of public interests. However, the Bills Committee is of the view that, in order not to undermine the independence of the Authority, the Secretary for Housing should not be vested with such extensive authority. The Administration accepted the suggestion and will move an amendment to stipulate that such instructions have to be issued by the Governor, not by the Secretary for Housing.

The Bills Committee is also concerned that if the Estate Agents Authority has reason to believe that the licensee has failed to observe, or has breached, provisions of the Bill, the Authority may carry out an investigation. The Administration has agreed to move an amendment to specify the grounds on which investigation power can be exercised, to define the status of the investigator, to require that information collected in the course of investigation be kept confidential, and to delete provisions pernicious to the right to remain silent.

#### *Advertising (clause 47)*

Mr President, clause 47 stipulates that before an estate agent advertises a property for a seller, the agent must obtain the seller's written consent in advance. Members of the trade think that the measure is not practicable and runs counter to existing practice. Although the Bills Committee understands the concern of members of the trade, it is still inclined to agree with the Administration and holds that, in order to protect consumer's interests and regulate the practices on the part of members of the trade, it is necessary to obtain written consent from the seller in advance.

#### *Composition of the Authority (Schedule)*

Mr President, according to the Schedule for the composition of the Estate Agents Authority, the Governor may appoint the chairman, the vice-chairman and not more than 18 ordinary members to the Authority. One-third of its membership must be members of the trade, with two-thirds of its membership coming from relevant professionals and members of the public.

Though some members of the Committee had no objection to the proposed composition of the Authority, some other members thought otherwise and proposed that the number of representatives from the trade be reduced. The

Honourable LEE Wing-tat of the Democratic Party will move an amendment to prescribe that at least half of the members of Authority should be members of the public and that the remaining half be evenly shared by representatives of the trade and relevant professionals. In this way, the number of representatives from the trade in the Authority will be reduced from one third to one quarter. The Administration does not agree to this modified composition. There is also no consensus among members of the Bills Committee with regard to the amendment proposed by Mr LEE Wing-tat.

### *Implementation*

Mr President, with regard to implementation, the Administration has indicated that the Bill will cover estate agent activities involving properties in Hong Kong and overseas, and the provisions on different types of properties will be implemented by stages. It is expected that the Estate Agents Authority will be established within three months following the passage of the Bill. The parties concerned will then start working to formulate a large number of regulations and codes of practice so as to implement the regulatory system.

I wish to make some additional remarks now on the provisional sale and purchase agreement. Strictly speaking, the issue on provisional sale and purchase agreement does not fall within the Bill. The Bills Committee, therefore, has not discussed the issue. Notwithstanding this, the Honourable Miss Margaret NG did express the concern of the legal profession with regard to the legal validity of such agreements handled by estate agents. I, therefore, take this opportunity to urge the Administration to ask the Estate Agents Authority to specifically study this issue upon its establishment.

### *Closing remarks*

Mr President, stated above are the main clauses of the Bill and the more significant Committee Stage amendments. In addition, the Administration will move other amendments, mainly of a technical nature.

Before ending my speech, I wish to stress that the Bill marks an important milestone in the history of the estate agent trade in Hong Kong. I firmly believe that the various clauses of the Bill will lead the trade onto the right track on the march to the 21st century and beyond. The work of the Bills Committee

transcended three years, in the course of which members of the Bills Committee made a lot of valuable contribution, and representatives from the Administration also made continuous efforts to respond positively to views expressed by Honourable Members and relevant organizations. I am here to thank the Government, Honourable Members and relevant organizations.

Mr President, with these remarks, I support the Bill subject to the amendments to be moved by the Secretary for Housing.

**MR NGAN KAM-CHUEN** (in Cantonese): Mr President, after the long course of deliberation and revision that lasted a year and a half, the Estate Agents Bill today at last resumes its Second Reading debate. The Democratic Alliance for the Betterment of Hong Kong (DAB) has actively taken part in the deliberation of the Bill, with three of our six Members sitting on the Bills Committee. We, therefore, are quite happy that 11 amendments have been secured from the government regarding major policies of the Bill. The 11 amendments fall into the following three main areas, namely, "obligations and duties of estate agents", "the regulatory system for estate agents", and "powers of the Authority".

With regard to "obligations and duties of estate agents": (1) Amendments have been made to the provisions on "offences" so that members of the trade violating provisions on property information and professional ability are not subject to criminal liability but to disciplinary actions of the Authority. The concept of "due diligence" is also introduced to serve as a defence for a member of the trade who has performed his duties. (2) The ambiguous and impractical wording, "to discharge duties in ways that are open, honest and fair", has been deleted. Instead, an estate agent's work is specifically prescribed in the code of practice and guidelines to be drawn up by the Authority. (3) Clause 38 of the original Bill has been deleted so that estate agents need not submit business reports prepared by accountants because other clauses have already provided clients with sufficient protection.

Secondly, regarding "the regulatory system for estate agents", the amendments include (1) more clearly specifying the targets to be monitored under the Bill; (2) deleting from clause 27 of the original Bill the provisions for setting up a mechanism for objections to avoid delaying the processing procedures of licence applications and prevent adverse competition within the

trade; (3) adding provisions to guard against abuses in respect of the mechanism to deal with disputes concerning commission and to allow members of the public to appeal to district courts against the decision of the Authority; and (4) amending the provisions on "offences" so that members of the trade do not have to bear criminal liability for relatively minor offences, such as failure to report change of address, change of employment and change of business, so as not to be too strict.

With regard to "powers of the Authority", amendments made by the Government in due response include: (1) transferring from the Secretary for Housing to the Governor the power to issue to the Authority mandatory instructions; (2) imposing stricter restrictions on the Authority's investigation power and improving the transparency of investigation; (3) imposing stricter restrictions on the Authority's power to effect disciplinary actions and giving members of the trade sufficient opportunity to present submission or defence before being disciplined.

To sum up, parts of the original proposal indeed are too demanding on members of the trade. The DAB is of the view that with these 11 major policy amendments, the situation can be relieved and the transparency of the regulatory system improved. It is, therefore, more in line with the principles proposed by the Working Group on the Regulation of Estate Agents in August 1994, namely, (a) the regulatory system should not significantly increase the expenses and time required for property transactions; (b) it should not lead to acute shortage of estate agents to meet people's demand; and (c) it should be fair and reasonable to all parties concerned.

However, in certain areas, especially the areas concerning academic qualifications and transition period, the Government has not accepted the proposals of the DAB, which aimed to more effectively protect consumers' interests and look after the actual difficulties faced by the trade. Though the Government has amended the original Bill to make it possible for licence applicants to get licensed by gaining a recognized qualification, the Government has not made any commitment with regard to the level of academic requirement, or actively developed professional training courses; nor has it agreed to have a transition period of two years, as requested by the DAB, to allow members of the trade to have enough preparation to satisfy the requirements. As a result, many serving members of the trade who are diligent, honest and well-experienced after

long service in the trade, but with relatively lower academic qualifications, still have to worry about the possibility of losing their jobs soon because of the excessively high academic qualification requirements.

Mr President, the DAB also takes this opportunity to urge the Government again to actively set up a central databank for the supply of property information, and improve the service efficiency of the Rating and Valuation Department, the Land Registry and the Buildings Department. Moreover, it is necessary to carry out as soon as possible the legislative proposals made by the Law Reform Commission for regulating sales brochure, and monitor property sales outside the territory so as to protect consumers' interests.

On the other hand, time spent to consider this Bill amounted to a year and a half. One of the reasons is that provisions in the Bill were different from the recommendations made by the Working Group on the Regulation of Estate Agents in 1994. The original Bill's specific regulations on estate agents were too strict and harsh, seemingly running counter to the original legislative intention, which was formulated on the basis of actual surveys conducted. As such, the Government has to make extensive amendments at the Committee stage, and therefore a lot of time has been wasted. The DAB hopes that the Government will pay attention to such a phenomenon and avoid wasting resources in this way again. This is particularly important because in the past year or so, there have always been some 20 or 30 Bills awaiting consideration in succession.

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

**MR LEE WING-TAT** (in Cantonese): Mr President, on behalf of the Democratic Party, I rise to support the resumption of the Second Reading of the Estate Agents Bill.

Mr President, we have on average 120 000 to 150 000 transactions in real estate every year, most of which are conducted through a estate agent as the intermediary, and the number of people affected is in tens of thousands, and the amount of money involved is, in many cases, a person's savings of the whole life. The amounts they pay to the estate agents add up to hundreds of millions dollars every year. To the consumers or people in the trade, this Estate Agents Bill can



provide a healthier environment for real estate transactions in Hong Kong, which is very important.

Mr President, I remember that in 1992, when I was chairman of the Panel on Housing, there was already discussion as to whether there should be some sort of control over the operation of the estate agents in Hong Kong. At that time, the Secretary for Planning, Environment and Lands was in charge of policy in this regard, and the post of the Secretary for Housing was not yet created. The attitude of the Administration was that there was no need for a licensing system to regulate this trade. After two years of debate, the Administration began to accept the views of many of our colleagues, including those from various political parties, that a positive licensing system, instead of a negative licensing system or a laissez-faire policy, is a more effective way to monitor the operation of the trade.

Mr President, in the past few years, although there were not frequently many problems in the many transactions, every time when problems did arise in a transaction, due to the huge amount of money and the very complicated issues involved, the citizens were made to suffer great loss. We all know that in the real estate agency business, many estate agents are putting all their minds into serving their clients, but very often some estate agents, as reported in the media, have not served their clients properly in the transactions. The black sheep in the herd often give the public an impression that what the estate agents care about is making money, rather than delivering a professional and comprehensive service to the clients. I have received complaints, be they from the Consumer Council or our own offices, that the agents have not provided accurate, or have even given incorrect, information regarding property transactions. For example, there were complaints that the agents themselves were parties to transactions, or had engaged in speculation activities, without informing their clients, thus compromising the interests of the clients. Some agents were also complained of providing false property information to cheat potential buyers, who were then told that no such property was available and lured into buying more expensive properties. Some agents were complained of failing to provide proper service, making the clients suffer loss as a result of fraud. Some people complained that the agents charged too high a commission which the clients considered not commensurate with the services they provided. Mr President, all these

complaints reflect the dissatisfaction the public have of the estate agents and that the public cannot accept a situation where the trade can be free of any regulation. The Democratic Party therefore fully supports the passage of the Estate Agents Bill.

Meanwhile, I would like to point out a few issues that indicate the views of the Democratic Party on this question. On the issue of agency, the first big question is whether an estate agent should represent the interests of both the vendor and the purchaser. At present, we let the client decide whether the estate agent is to act on behalf of the client himself or on both parties in the course of the transaction. Virtually all real estate transactions in Hong Kong are conducted with the estate agent acting for both parties, like a go-between coupling the two parties in a transaction. However, at times, after some analysis, one would find it hard to accept that an estate agent, while acting for the best interest of the vendor, can also act for the best interest of the purchaser. While supposedly acting for the best interest of a purchaser, an estate agent would be expected to strive for the lowest price possible, but when he is an agent for the vendor, he would have to get the highest price from the other party. It is therefore logically not possible in a transaction for a vendor and a purchaser to be able to achieve a price that is to their greatest benefits. The Democratic Party has been studying whether Hong Kong should adopt a new mode of operation in property transactions, that is, with the agent acting for one party only. Of course, we understand that this would appropriately increase the cost of a transaction, but given the increasingly high value in property transaction, we believe that, as long as there is an efficient free market, the increase would not be as high as people in the trade have claimed. If conducted this way, the whole operation will be more professional and the representation of each party's interest will be clearer. We see that an agent, acting for both parties and keen to close a transaction, would try to please both parties by hiding some information from them so that the transaction can be completed in as short a time as possible, but this transaction may end up to be unfair to one of the parties.

Mr President, the second important question is on whether real estate agency is a profession or a trade. Apparently real estate agency is currently not considered a profession. There is no qualification requirement for anyone joining this field. In the debates on the Bill, it has been seen that other than the estate agent who must meet certain academic and professional requirements,

there is virtually no qualification requirement whatsoever with regard to the salesmen of an estate agent. In other words, in a most extreme case, a person having not even had primary education and incapable of making sense of a provisional sales and purchase agreement or the formal sales and purchase agreement, but having gained sufficient experience in the trade, could be a salesperson of an estate agent. We think that this is a very unsatisfactory situation. The Democratic Party certainly has taken into consideration the current situation of the trade, and we therefore accept that, at the present stage, those real estate salesman who have been working in the trade may continue with what they are doing. However, we think that in the long run, if a professional or a better image is to be established for estate agents, we should have more courses and professional examination so that real estate agency can gradually become a respectable and professional trade. I hope that the Housing Branch and the Estate Agents Authority to be established later can work together in this regard with the post-secondary institutes. Actually some of the post-secondary institutes have already offered certificate or degree courses in estate agency.

The third question is that on information, which some of my colleagues have just talked about. Many estate agents have expressed to us that much of the information that is given to them on their requests by the various government departments is inaccurate. I concur with such views. It is because when the Bills Committee was studying this Bill, we had used a lot of time asking the government departments what sort of information they could give the public or the estate agents. The departments that an estate agent may approach include the Housing Department, Lands Department, Fire Services Department, and even the Land Registry and many other departments. The information database of these departments has not been completely modernised. We understand that some of the information is so dated that it can only be referred to manually. We see that members of the trade have their worries. They fear that being required by law to provide so much information, they may be found guilty for not having obtained all the necessary information or for failing to provide comprehensive service to the clients. In the course of the debates, the Democratic Party welcome the promise of the Housing Branch and a number of departments in improving the provision of information. The estate agents should now feel more at ease. If they exercise due diligence in getting what the law requires, and obtain what they can possibly get, then they should be free from any legal proceedings. However, I agree with two of my colleagues that the relevant government departments, including the Housing Branch, should in the long run

set up a central database, so that the consumers and the real estate agents can easily get what they want.

Mr President, the fourth most debated question is on criminal liability. From the past experience, other than those cases with an obvious element of fraud, few estate agents have to face criminal prosecution. But with this Bill enacted, they will find that they are operating in a new environment, where their operation is regulated by law; they may have to bear criminal liability for certain actions. Of course, we have heard many estate agents express that the penalty for some offences is not appropriate. After much debate, the Administration and the Bills Committee agree to change some of the criminal offences into disciplinary actions. I find that such a change fits the actual situation and we therefore will support it.

Mr President, I would like to talk about the composition of the Estate agent Authority. I have already said that at the moment real estate agency is not yet a profession like the legal, medical or architectural professions; it is just a trade. We want to have a balance within the regulatory authority of a trade. This balance must be so struck that on the one hand the Authority must be able to understand the operation of the trade and make and enforce appropriate regulations for the trade, and on the other, the public must be allowed to participate to represent their interests.

The Democratic Party cannot accept the proposal made by the Administration in respect of the constitution of the Authority. Under its proposal, the Authority is constituted with one third of its members being representatives of the trade, another one third being representatives of professions related to that trade, and a further one third being representatives of the general public. We think that if representatives of the trade and people related to it together make up two-thirds of the Authority, the interests of the public may not be properly protected. I shall therefore propose on behalf of the Democratic Party an amendment, whereby half of the membership of the Authority shall be made up of representatives of the general public, with representatives of the trade and people related to the trade each taking up a quarter of the membership.

Mr President, the Democratic Party has actually raised two questions on this Bill but they have not been looked into. The first question is whether the

developers should be regulated as well when they make first-hand sale of their properties. Legally speaking, as this Bill is concerned with transactions done through the mediation of an estate agent, it seems that developers making first-hand sale do not fall into the scope of the Bill. However, we feel that with 30 000 to 35 000 units put on the market without any form of regulation, it is a situation no one would feel easy with. Though the Secretary for Housing has time and again said that the bill that is meant to control the brochures distributed in the course of property transaction should be introduced into the Legislative Council before the end of this year, we feel that the Provisional Legislative Council will not treat it as an indispensable item and will let the bill drag on. I hope that if the Secretary for Housing cannot introduce this bill by the end of this year as promised, he should actively consider other ways to deal with the matter.

On the issue of property sale advertisement request forms, many in trade have voiced their worries. As there will be debate on the issue at the Committee Stage later, I shall talk more on this at that time.

Mr President, in summing up, I want to point out that after years of work, we begin to have a new milestone today. A trade which helps close hundreds of thousands property deals every year and involves the life savings of many people finally has its legislative control. I hope that not only will this control make the trade meet better the needs of the public, it will also help the trade establish gradually its professional image and protect the interests of the consumers, thus continuous improvement can be seen in the trade and its image in the public will also change, making the trade worthy of the respect and support of the society.

Mr President, these are my remarks and I support the resumption of the Second Reading.

**MR EDWARD HO** (in Cantonese): Mr President, the discussion on the Estate Agents Ordinance, as the Honourable LEE Wing-tat said just now, has been going on in the Legislative Council for more than two years, or for at least five years. I find that a number of matters are quite unusual. At first, the Administration opposed to any licensing system, but at the end it decided that there should be such a system. I was taken by surprise when the Bill was first introduced into the Legislative Council. Firstly, for a number of years, the Administration had been opposing this, but now it suddenly takes the initiative to

introduce this Bill. What is more, this Bill has put down a lot of requirements, and the Bill itself is also very complicated. Many groups and bodies have voiced their views to us. The trade is afraid that their interest may be affected in the future or that they may not be treated fairly. The Bills Committee therefore, as the Honourable Andrew CHENG said, has spent much time in holding meetings with the Administration on the Bill.

Another unusual matter is that after 32 meetings, the Administration finally adopted a more open attitude and listened to the views of the Members. That is why we have such a thick wad of paper detailing the amendments for the Committee stage amendments. With these amendments agreed to, we should be able to happily approve the Bill.

Mr President, I do not want to repeat what Mr CHENG or Mr LEE have said, but I just want to comment on the information requirement. Just now a number of Members also talked on this. They felt that this so-called central database was very important. When we studied this Bill, colleagues from the Research and Library Services Division of the Legislative Council had tried to find the information concerned themselves. After weeks of work, they gave us a report. We find that some of the information could not even be obtained by them, and the time they spent on this was about three to four weeks. The information concerned is stored in various government departments. Some of the departments, such as the Land Registry, have already been computerised, and many other departments are in the process of computerisation. However, with other departments like the Buildings Department, where plan files are not computerised yet, it may take weeks for approved persons like us to obtain a Record Plan. However, quite often an estate transaction cannot wait that long, but I think such information is very important. Though we make it clear that the agent concerned will not be criminally liable or will not be found to be in default if he has exercised due diligence in obtaining such information, from a consumer's point of view, such information is indispensable as, for example, he must know about the legality of the property he is going to buy. Such information can only be ascertained with a professional going over, referring to or inspecting the records of the Buildings Department or the Architectural Services Department. We therefore consider that it is fair if an estate agent has exercised due diligence and, after a period of time, still cannot obtain the

necessary information, he should not be held for default. However, from the consumers' point of view, I think they should have such information. I hope that the Administration can do its best to set up the central database.

There is another issue I want to comment on. Now, we see that streets are lined with estate agent shops, so the number of people employed must be in tens of thousands. A lot of them will be affected when this Bill is passed into law. I hope that the Administration can as soon as possible ask the post-secondary institutes to organize more training courses for these people so that they can achieve the qualification for obtaining the necessary licence, and the whole trade will not be affected with the closing of many agencies. However, one thing should not be left without mentioning. If we require the estate agencies or their employees to provide more professional service so that the consumers can be duly protected, the agents will definitely have more to attend to and the commission they charge will be higher. The exact level will solely be decided by the market, but I feel that this is an inevitable trend. With the large number of estate transactions conducted in Hong Kong and the huge amount of money involved, I think that if the consumers or purchasers have to pay a bit more in commission because of the fact that the agents are required to be licensed, it is just appropriate.

Mr President, finally on the composition of the Authority, the Liberal Party and I myself feel that the proposal as put forth by the Administration has achieved the right balance. Under the Administration's proposal, one third of the members shall be from members of the trade, another one third, who must be experienced and knowledgeable professionals, shall be appointed by the Government, and the remaining one third shall come from the public. There's no need to increase the proportion of representation from the public because there is only one third from members of the trade.

Mr President, I support this Bill, especially after it is been amended.

**SECRETARY FOR HOUSING:** Mr President, the estate agent trade has expanded rapidly in recent years, both in terms of number of agencies and type of services provided. Despite the size of the trade and its importance to property transactions, there is no specific legislation in Hong Kong to regulate the conduct and operation of estate agents. Public opinion is strongly in favour of a

regulatory system. It was against this background that the Administration decided to introduce the Estate Agents Bill into this Council 18 months ago. Since then, the Bill has been the subject of close scrutiny and public interest. Many petitions were also received. Understandably so because, on the one hand the Bill aims to improve the competence and professional conduct of estate agents, and on the other, it gives greater protection to consumers involved in property transactions.

The proposed establishment of a statutory Estate Agents Authority and the setting up of a licensing and regulatory system for the trade is timely and will be a new milestone in the development of estate agency work in Hong Kong. I am very grateful to the Honourable Andrew CHENG and members of the Bills Committee for their advice, useful comments and the numerous meetings and considerable amount of time spent in scrutinizing the Bill. Comments from the public, the trade and professional bodies have also been considered. The whole process has been constructive and has helped the Administration to improve on the Bill and to ensure that the legislation to be passed will be practical and acceptable. I shall, therefore, be moving a number of amendments during the Committee stage and these amendments have already been thoroughly discussed and agreed by the Bills Committee.

Five principal changes are involved. Firstly, we will stipulate clearly that the definition of estate agency work excludes the activities of property owners and developers disposing of their own properties because the regulatory system is targeted at estate agents who acquire or dispose of properties on behalf of other people, and that is third parties.

Secondly, we will amend the Bill to give the Governor the power to issue directions to the Estate Agents Authority if the public interest so requires. This is in line with other similar legislation.

Thirdly, we will amend the Bill to ensure that the Estate Agents Authority, being the regulator of the trade, will exercise its power with appropriate checks and balances.

Fourthly, we will clarify the type of information to be provided by estate agents to clients and will introduce the concept of due diligence to protect estate agents who have taken reasonable steps to obtain and verify the information they



provide. I am sure this amendment will satisfy many people and put their minds at ease.

Fifthly, criminal liability has emerged as perhaps the most controversial part of the Bill. We remain of the view that criminal sanctions should apply but only to very serious offences, such as giving false information in order to obtain a licence or acting as an estate agent without a licence, but we will amend the Bill so that the penalty for some offences will be reduced to a fine or a discipline action by the Estate Agents Authority.

I shall also be moving other amendments to address the concerns of the trade and to reflect the consensus reached at the Bills Committee. In addition, Mr President, I would like to make one important point. The proposed licensing and regulatory system will be introduced in a gradual and planned manner so that no disruption of service will be caused to the public and that sufficient time will be allowed for estate agents to improve themselves and to comply with the full licensing requirements to be set by the Estate Agents Authority.

I am sure that the new system will benefit all concerned, property owners, home buyers, landlords, tenants and the trade itself. Mr President, I recommend the Estate Agents Bill to this Council.

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

Bill read the Second time.

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

## **CHILD ABDUCTION AND CUSTODY BILL**

**Resumption of debate on Second Reading which was moved on 30 April 1997**

*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).*

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**THE OPEN LEARNING INSTITUTE OF HONG KONG (AMENDMENT)  
BILL 1997**

**Resumption of debate on Second Reading which was moved on 30 April 1997**

*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).*

**TRANSFER OF SENTENCED PERSONS BILL**

**Resumption of debate on Second Reading which was moved on 9 April 1997**

*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.

**JUSTICES OF THE PEACE BILL**

Clauses 1 to 4 and 6 to 10 were agreed to.

### Clause 5

**CHIEF SECRETARY:** Mr Chairman, I moved that clause 5 be amended as set out under my name in the paper circulated to Members. The amendments to clause 5(1) are in response to Members' view that the power of JPs to administer oaths and declarations should be retained as far as possible. The amendments will have the effect of retaining the power of JPs to administer oaths and declarations under the Oaths and Declarations Ordinance. These amendments have been agreed by the Bills Committee.

### *Proposed amendment*

### **Clause 5**

That clause 5(1) be amended —

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

(b) by adding -

"(ab) to take and receive declarations and to perform any other functions under the Oaths and Declarations Ordinance (Cap. 11); and".

That clause 5(2) be amended —

(a) by deleting "提名" and substituting "指定".

(b) by deleting "(1)" and substituting "(1)(a) or (b)".

*Question on the amendment put and agreed to.*

*Question on clause 5, as amended, put and agreed to.*

Schedules 1 and 2 were agreed to.

### Schedule 3

**CHIEF SECRETARY:** Mr Chairman, I move that Schedule 3 be amended as set out under my name in the paper circulated to Members. One of the amendments to item 2 seeks to remove the provision for the High Court to issue an order of mandamus to compel JPs to carry out their statutory duties under section 21I(3) of the Supreme Court Ordinance.

After consideration of the views expressed by members of the Bills Committee we agreed that, since under the Bill the Governor has the power to compel JPs to perform their statutory duties and to revoke their appointment if circumstances warrant, there is no need to retain this provision in the Supreme Court Ordinance.

The amendment to item 7 will have the effect of retaining the power of JPs to administer oaths and declarations under the Oaths and Declarations Ordinance.

The proposed new item 9A seeks to remove the reference to JP's in section 289(2) of the Companies Ordinance which, like the other items in the Schedule, is related to the obsolete judicial power of JPs.

The rest of the amendments are mostly technical and minor in nature. Most of them seek to amend the Chinese text of the consequential amendments proposed in the Bill as a result of the recent publication in the Gazette of the authentic Chinese version of the respective Ordinances.

All the amendments have been agreed by the Bills Committee.

### *Proposed amendment*

### **Schedule 3**

That Schedule 3 be amended —

(a) in item 2 -

(i) by adding before paragraph (a) -

"(aa) In section 21I(3), repeal "justices of the peace,"."

(ii) in the Chinese text, in paragraph (a), by deleting " "**Judges**" 標題" and substituting " "**大法官**" 標題".

(b) in the Chinese text, in item 3, by deleting the proposed amendment and substituting -

"在附錄 A 的表格 99 中，廢除 "一名太平紳士（或司法常務官）" 而代以 "司法常務官" 。".

(c) in the Chinese text, by deleting item 4 and substituting -

<p>"4. 《最高法院訴訟人 儲存金規則》（第 4 章，附屬法例）</p>	<p>在附表的表格 6 中，廢除 "<u>太平紳士</u>、" 。".</p>
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(d) by deleting item 7.

(e) by adding -

<p>"9A. Companies Ordinance (Cap. 32)</p>	<p>In section 289(2), repeal "justices,"."</p>
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(f) by deleting item 10.

(g) in the Chinese text, by deleting item 12 and substituting -

<p>"12. 《商標規則》（第 43 章，附屬法例</p>	<p>在第 106(1)(a)條中，廢除 "太平紳士、" 。".</p>
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(h) in the Chinese text, in item 20, by deleting the proposed amendment and substituting -

"在第 6 條中，廢除兩度出現的 "或太平紳士" 。".

- (i) in the Chinese text, in item 21, by deleting the proposed amendment and substituting -

"在附表 1 中—

(a) 在第 7(a)條中，廢除“太平紳士”而代以“監誓員”；

(b) 在第 13(2)(a)條中，廢除“太平紳士”而代以“監誓員”。

- (j) in the Chinese text, by deleting item 22 and substituting -

<p>"22. 《土地註冊規例》 (第 128 章，附屬 法例)</p>	<p>在第 7(a)條中，廢除 “太平紳士”而代以 “監誓員”。</p>
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- (k) in the Chinese text, by deleting item 30 and substituting -

<p>"30. 《醫生（註冊及紀 律處分程序）規例》 (1996 年第 521 號 法律公告)</p>	<p>在第 3(2)(a)及(3)(c)(i) 及 4(2)(a)及(3)(c)(i)條 中、廢除“、監誓員或 太平紳士”而代以“或 監誓員”。</p>
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- (l) by deleting item 35.

- (m) in the Chinese text, in item 37, by deleting the proposed amendment and substituting -

"加入 -

“109I. 判被告人簽保以保證  
遵守法紀的權力

大法官、地方法院法官或裁判官具有藉規定在  
法庭席前的人或其案件在法庭席前審訊的人自簽

擔保或覓人擔保，或自簽擔保兼覓人擔保，以及（如該人不遵從的話）藉將該人交付監獄，而判該人簽保以保證遵守法紀的權力和判該人簽保以保證保持行為良好的權力，而此等權力是附帶於其司法管轄權的。

[比照 1968 c. 69 s. 1 U.K.]” 。”

(n) in the Chinese text, by deleting item 38 and substituting -

"38. 《刑事上訴規則》（第 221 章，附屬法例）

(a) 在第 45 條中 -

(i) 在(a)段中，廢除“一名太平紳士或”；

(ii) 在(b)段中，廢除“或上述的太平紳士”。

(b) 在第 47 條中 -

(i) 在第(1)款中，廢除“及任何太平紳士”；

(ii) 在第(2)款中，廢除“或某太平紳士”。

(c) 在第 48 條中 -

(i) 廢除第(1)款；

(ii) 在第(3)款中，廢除“或太平紳士”。

(d) 在附表的表格 XVI 中，廢除 —

“太平紳士  
或  
懲教署署長  
(視屬何情況而定)”

而代以 —



“懲教署署長” 。”。

- (o) in the Chinese text, in item 69, by deleting the proposed amendment and substituting -

"(a) 在第 10(3)(b)條中，廢除“太平紳士”而代以“監誓員”。

(b) 在第 31(1)條中，廢除“太平紳士”而代以“監誓員”。

(c) 在附表 1 及 2 中，廢除“太平紳士”而代以“監誓員”。”。

*Question on the amendment put and agreed to.*

*Question on Schedule 3, as amended, put and agreed to.*

## **ESTATE AGENTS BILL**

Clauses 1, 3, 4, 5, 9, 13, 14, 16, 17, 25, 26, 36, 41 to 44, 46, 51, 52, 54 and 58 were agreed to.

Clauses 2, 6, 7, 8, 10, 11, 12, 15, 18 to 24, 27 to 35, 37 to 40, 45, 47 to 50, Heading before clause 53 and clauses 53, 55, 56 and 57

**SECRETARY FOR HOUSING:** Mr Chairman, I move that clauses 2, 6, 7, 8, 10, 11, 12, 15, 18 to 24, 27 to 35, 37 to 40, 45, 47 to 50, Part Heading before clause 53 and clauses 53, 55, 56 and 57 be amended as set out in the paper circularized to Members.

I have referred to the major amendments in my speech at the Second Reading debate. The other amendments relate to drafting matters, technical points and consequential amendments of other clauses. All the proposed amendments have been discussed by the Bills Committee and endorsed by it.

Mr Chairman, I beg to move.

*Proposed amendments*

**Clause 2**

That clause 2(1) be amended —

- (a) in the definition of "estate agency agreement" -
  - (i) by deleting ", in relation to a property,";
  - (ii) by deleting "as regards the property" and substituting "for the client, as from time to time varied or supplemented by an agreement made in accordance with regulations made under section 50(4)".
- (b) in the definition of "estate agency work" -
  - (i) by adding "in the course of business" after "any work done";
  - (ii) by deleting paragraphs (a) and (b) and substituting -
    - "(a) being work done in relation to the introduction to the client of a third person who wishes to acquire or dispose of a property, or to the negotiation for the acquisition or disposition of a property by the client; or
    - (b) being work done, after the introduction in the course of that business to the client of a third person who wishes to acquire or dispose of a property or the negotiation in the course of that business for the acquisition or disposition of a property by

the client, in relation to the acquisition or disposition, as the case may be, of the property by the client;"

- (c) in the definition of "purchaser", by adding "means any person to whom a property is or is to be disposed of, and" before "includes".
- (d) in the definition of "the register", by adding ", except in section 10," before "means".
- (e) in the definition of "unexecuted estate agency agreement" -
  - (i) by adding "1 or more written documents embodying" before "a prospective agreement";
  - (ii) by deleting "an executed" and substituting "an".
- (f) in the definition of "vendor", by adding "means any person by whom a property is or is to be disposed of, and" before "includes".
- (g) by adding -

""advertisement" (廣告) includes every form of advertisement, whether to the public or not, and whether -

- (a) in a newspaper or other publication;
- (b) by television or radio;
- (c) by the display of posters, notices, signs, labels, showcards or goods;
- (d) by the distribution of circulars, brochures, catalogues, price lists or any other material;
- (e) by the exhibition of pictures, models or films; or

(f) in any other way,

and any reference to the issue or publication of advertisements shall be construed accordingly;

"building" (建築物) has the meaning assigned to it in section 2 of the Buildings Ordinance (Cap. 123);

"development" (發展) means a development involving the construction of a new building;

"disciplinary committee" (紀律委員會) means a committee established as a standing committee under section 8(1) for the purposes of performing the function of a disciplinary committee under sections 30 and 31;

"group of companies" (公司集團) means a group of companies within the meaning of the Companies Ordinance (Cap. 32);".

That clause 2(2) be amended —

(a) in paragraph (b) -

(i) by adding ", an architect" after "notary public";

(ii) by adding "and acting in furtherance of that course" after "by him".

(b) by adding -

"(ca) in connection with the publication of advertisements or the dissemination of information by any person who does no other work which falls within the definition of "estate agency work" in subsection (1);

(cb) by any person as the vendor or purchaser, or where

there is more than 1 vendor or purchaser, a vendor or purchaser of a property in connection with -

- (i) where the person is the vendor or a vendor of the property, the disposition of the property;
- (ii) where the person is the purchaser or a purchaser of the property, the acquisition of the property;".

(c) in paragraph (d) -

- (i) by adding "in connection with a property" before "pursuant";
- (ii) by deleting everything after "employment" and substituting ", in so far as such thing would have been within the scope of paragraph (cb) if done by his employer;".

(d) by adding -

"(da) by a company in connection with the disposition of a property within the meaning of subsection (4), if -

- (i) the company is a member of the same group of companies of which the vendor or, where there is more than 1 vendor, a vendor of the property is also a member;
- (ii) the company, or a member of the same group of companies of which the company is a member, is a beneficial owner of any of the issued share capital of the vendor or, where there is more than 1 vendor, a vendor of the property; or

- (iii) pursuant to a development agreement within the meaning of subsection (4) which is for the time being in force and entered into by the vendor or, where there is more than 1 vendor, the vendors of the property in relation to the property -
  - (A) the company is to undertake or has undertaken for the vendor or the vendors, as the case may be, the development which is the subject of the development agreement, whether with other companies or not;
  - (B) a member of the same group of companies of which the company is a member is to undertake or has undertaken for the vendor or the vendors, as the case may be, the development which is the subject of the development agreement, whether with other companies or not; or
  - (C) the company, or a member of the same group of companies of which the company is a member, is a beneficial owner of any of the issued share capital of the company which is to undertake or has undertaken for the vendor or the vendors, as the case may be, the development which is the subject of the development agreement, whether with other companies or not;
- (db) by any person in connection with a property pursuant to instructions received by him in the course of his employment, in so far as such thing would have been

within the scope of paragraph (da) if done by his employer; or".

That clause 2(3) be amended —

- (a) by deleting paragraph (a).
- (b) in paragraph (b)(i), by deleting "an auction" and substituting "a disposition by way of auction or tender".

That clause 2 be amended, by adding —

"(4) For the purposes of subsection (2) -

- (a) a reference to a property within the meaning of this subsection shall be a reference to a property which comprises a specified number of undivided shares in any area of land situated in Hong Kong, together with a right to the exclusive possession of a unit or other interest in a development of that area of land where -
  - (i) the development of that area of land has been or is to be undertaken by the vendor or, where there is more than 1 vendor, the vendors of the property as owner of that area of land (whether with other companies or not), or by other company or companies for the vendor or the vendors, as the case may be, pursuant to an agreement, however described, entered into by the vendor or the vendors, as the case may be (whether with other companies or not) for the development of that area of land; and
  - (ii) no assignment or other instrument, other than that in favour of the vendor, or where there is more than 1 vendor, the vendors of the property, has been executed by way of completion of the

sale and purchase of the property as such;

- (b) a reference to a development agreement within the meaning of this subsection, in relation to a property, shall be a reference to an agreement, however described, entered into for the development of the area of land referred to in paragraph (a) in relation to that property;
- (c) a reference to employment shall be a reference to employment under a contract of employment."

### Clause 6

That clause 6(2) be amended —

- (a) by deleting "概括性" and substituting "一般性".
- (b) by deleting the full stop and substituting a semicolon.
- (c) by adding -
  - "(e) settle any dispute referred to the Authority for determination under section 53."

### Clause 7

That clause 7 be amended —

- (a) in the heading, by deleting "**Secretary for Housing**" and substituting "**Governor**".
- (b) by deleting "Secretary" wherever it appears and substituting "Governor".
- (c) in subclause (4)(b), by deleting "constituted under section 27(4) or".



**Clause 8**

That clause 8 be amended —

- (a) in subclause (1), by deleting "standing or other committees" and substituting "any committee, whether as a standing committee or otherwise,".
- (b) by deleting subclause (2)(c) and substituting -
  - "(c) (i) Subject to subparagraph (ii), a committee may include persons who are not members of the Authority.
  - (ii) A majority of the members of a committee established by the Authority as a standing committee shall be members of the Authority."

**Clause 10**

That clause 10 (1) be amended —

- (a) by renumbering it as clause 10(1)(a).
- (b) by adding -
  - "(b) The Authority shall establish and maintain a register for the purposes of this subsection in such form as the Authority shall decide.
  - (c) Where a member of the Authority has declared any interest under this subsection, the Authority shall -
    - (i) where no particulars in respect of such

member has been entered in the register established and maintained under paragraph (b), cause the name of the member, together with the particulars of all interests so declared, to be entered in the register in such manner as the Authority shall determine;

- (ii) where particulars in respect of such member have been entered in the register established and maintained under paragraph (b), cause the particulars of all interests so declared to be entered in the register by amending or adding to the particulars already entered in the register in such manner as the Authority shall determine.

- (d) The Authority shall make the register established and maintained under paragraph (b) available for public inspection at such reasonable time as the Authority shall determine."

### **Clause 11**

That clause 11(1) be amended, by deleting "persons" and substituting "any person as it thinks fit".

### **Clause 12**

That clause 12(2) be amended, by deleting "翔實" and substituting "真實".

### **Clause 15**

That clause 15(1) be amended —

- (a) in paragraph (a), by adding "doing estate agency work as" after "business of".
- (b) in paragraph (c), by deleting "any of the functions of" and substituting "estate agency work as".

That clause 15(2) be amended —

- (a) in paragraph (a), by adding "doing estate agency work as" after "business of".
- (b) in paragraph (c), by deleting "any of the functions of" and substituting "estate agency work as".

## Clause 18

That clause 18 be amended —

- (a) in subclause (1) -
  - (i) in paragraph (a), by adding "to take effect at any time after the grant thereof and within the relevant period" after "estate agent's licence";
  - (ii) in paragraph (b), by adding "to take effect at any time after the grant thereof and within the relevant period" after "salesperson's licence";
  - (iii) by deleting ", subject to section 27,".
- (b) by deleting subclause (2) and substituting -
  - "(2) (a) No person making an application in accordance with subsection (1) shall be entitled to be granted the licence sought in the application unless the Authority considers that -

- (i) the person is a fit and proper person to hold the licence; and
  - (ii) in the case of a company making an application for the grant of an estate agent's licence, each of the company's directors for the time being is a fit and proper person for the purposes of this Ordinance.
- (b) In determining whether a person is fit and proper for the purposes of paragraph (a)(i) the Authority shall have regard to -
  - (i) in the case of an individual making an application for the grant of an estate agent's licence, the matters described in section 19(2)(a), (c) and (d);
  - (ii) in the case of a company making an application for the grant of an estate agent's licence, the matters described in section 20(2)(a);
  - (iii) in the case of an individual making an application for the grant of a salesperson's licence, the matters described in section 21(3)(c).
- (c) In determining whether a person who is a director of a company making an application for the grant of an estate agent's licence is a fit and proper person for the purposes of this Ordinance, the Authority shall have regard to the matters

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described in section 20(3)(a), (c) and (d).".

### **Clause 19**

That clause 19 be amended —

- (a) in subclause (1)(b)(ii), by deleting "and experience" and substituting "or experience or both".
- (b) in subclause (2)(e), by adding "in respect of which he has been sentenced to imprisonment, whether the sentence is suspended or not" after "Ordinance".

### **Clause 20**

That clause 20 be amended —

- (a) in subclause (1)(a), by adding "or proportion" after "number".
- (b) in subclause (3)(e), by adding "in respect of which he has been sentenced to imprisonment, whether the sentence is suspended or not" after "Ordinance".

### **Clause 21**

That clause 21 be amended —

- (a) in the heading, by deleting "**salespersons**" and substituting "**salesperson's**".
- (b) in subclause (2)(b)(ii), by deleting "and experience" and substituting "or experience or both".
- (c) in subclause (3)(e), by adding "in respect of which he has been sentenced to imprisonment, whether the sentence is suspended or

not" after "Ordinance".

### **Clause 22**

That clause 22 be amended, by deleting subclauses (2) and (3).

### **Clause 23**

That clause 23 be amended —

- (a) by deleting subclauses (3) and (4).
- (b) in subclause (5), by deleting "may grant" and substituting "shall, where the licence whose renewal is sought has expired, grant".

### **Clause 24**

That clause 24(1) be amended, by deleting everything after "otherwise satisfied" and substituting a full stop.

### **Clause 27**

That clause 27 be amended, by deleting the clause.

### **Clause 28**

That clause 28 be amended —

- (a) in subclause (2)(b), by deleting "the licence" and substituting "a salesperson's licence within the meaning of section 21(2)(c)".
- (b) in subclause (5)(a)(ii), by deleting "manner described in section 22(2)" and substituting "Gazette".

- (c) in subclause (7) -
  - (i) in paragraph (a)(ii), by deleting "manner described in section 22(2)" and substituting "Gazette";
  - (ii) in paragraph (b), by adding "pursuant to paragraph (a)(ii)" after "published".

## Clause 29

That clause 29 be amended —

- (a) in subclause (1), by deleting everything after "or 1 or more" and substituting "professional accountants, or both ("the investigator") to conduct such investigation as the Authority considers necessary."
- (b) by adding -

"(2A) The Authority shall inform in writing the licensee under investigation the reasons for which the investigation is conducted in relation to him as soon as reasonably practicable after the appointment of the investigator."
- (c) in subclause (4) -
  - (i) in paragraph (a), by adding "if reasonably required by the investigator," before "produce to";
  - (ii) in paragraph (b), by adding "reasonably" before "required";
  - (iii) in paragraph (c), by adding "if reasonably required by the investigator," before "give to".

(d) in subclause (6) -

(i) in paragraph (b), by deleting "Authority should consider exercising powers under section 31" and substituting "exercise of powers under section 31 should be considered".

(ii) by adding -

"(c) The Authority shall, as soon as reasonably practicable after the receipt of any final report made to it under paragraph (a), inform the licensee under investigation, in such manner as the Authority thinks fit, of  
-

(i) the result of the investigation;

(ii) any recommendations made by the investigator as to whether exercise of powers under section 31 should be considered; and

(iii) such other comments arising from the investigation as the Authority thinks fit to make.".

(e) by adding -

"(7A) (a) Subject to paragraph (b) and except in the performance of a function under this section, the investigator and the Authority and any person who performs or assists the investigator or the Authority in the performance of a function under



this section shall maintain confidentiality in respect of all matters and information produced or given or otherwise furnished for the purposes of an investigation under this section.

(b) Nothing in paragraph (a) shall prevent the disclosure of information -

- (i) with a view to the institution or otherwise for the purposes of any criminal proceedings or any investigation in connection therewith, whether under this Ordinance or otherwise, in Hong Kong;
- (ii) in connection with any civil proceedings to which the Authority is a party;
- (iii) in connection with any inquiry conducted pursuant to section 30;
- (iv) in connection with the exercise of any power under section 31;
- (v) in connection with any appeal conducted pursuant to section 32;
- (vi) in connection with the proceedings of a determination of any dispute under section 53."

(f) by deleting subclause (9) and substituting -

"(9) In this section, "produce" (交出), in relation to any record or other document, includes produce by way of supply of a reproduction of the record or other document, or, where the record or other document is kept otherwise than in a

legible form, produce by way of supply of a reproduction of the record of other document in a legible form."

### **Clause 30**

That clause 30 be amended —

(a) in subclause (1) -

(i) by deleting paragraph (b) and substituting -

"(b) is not eligible to hold or continue to hold a licence under section 19, 20, or 21, or is not entitled to be granted a licence under section 18, as the case may be;"

(ii) by deleting everything after "shall be made to" and substituting "the Authority which may, in its discretion, deal with the matter itself or refer the matter to a disciplinary committee".

(b) in subclause (2), by deleting "appoint a committee or other person to deal with it" and substituting "refer the matter to a disciplinary committee".

(c) in subclause (3) -

(i) by deleting "a committee or other person appointed" and substituting "the disciplinary committee to which the matter is referred";

(ii) by deleting "or he".

### **Clause 31**

That clause 31 be amended —

(a) in subclause (1) -

- (i) in paragraph (a)(i), by deleting "it should consider exercising its powers under this section" and substituting "exercise of powers under this section should be considered";
- (ii) in paragraph (a)(ii), by adding "or, where the Authority refers the matter to a disciplinary committee, the disciplinary committee" after "Authority";
- (iii) in paragraph (b)(i), by deleting "committee or other person appointed under section 30" and substituting "disciplinary committee";
- (iv) in paragraph (b)(ii), by deleting "committee or other person so appointed" and substituting "disciplinary committee";
- (v) by deleting "committee or other person may exercise such of the following powers as it or he" and substituting "disciplinary committee may, subject to this section, exercise such of the following powers as it";
- (v) by adding -
  - "(va) impose a fine of a specified amount not exceeding \$300,000;";
- (vii) in paragraph (vi), by deleting "or he" and "or his".

(b) by adding -

"(1A) Before any power is exercised under subsection

(1), the licensee concerned and any other person against whom the power is exercised shall be given a reasonable opportunity of being heard.

(1B) No power shall be exercised under subsection (1) against a licensee, if the licensee shows -

- (a) in a case where subsection (1)(a) applies, that he had taken all reasonable steps and exercised all due diligence to avoid the non-compliance or contravention which is the subject of the investigation in question;
- (b) in a case where subsection (1)(b) applies, that he had taken all reasonable steps and exercised all due diligence to avoid the occurrence of the matter which is the subject of the complaint or submission (as the case may be) in question.

(1C) Without limiting the generality of subsection (1B), where the investigation or the complaint or submission in question relates to non-compliance with or contravention of section 37(1)(a)(ii), the licensee concerned shall, for the purposes of that subsection, be regarded as having shown that he had taken all reasonable steps and exercised all due diligence to avoid such non-compliance or contravention, if he shows that -

- (a) he relied on information obtained from a source prescribed for the purposes of this subsection in respect of such information;
- (b) it was reasonable for him to have relied on such information; and

- (c) he had taken all steps reasonably open to him to avoid the non-compliance or contravention."
- (c) in subclause (2)(a) -
  - (i) by deleting "shall -" and substituting a dash;
  - (ii) in subparagraph (i), by adding "shall" before "within";
  - (iii) by deleting subparagraph (ii) and substituting -
    - "(ii) (A) shall, where any of the powers are exercised under any of the provisions of subsection (1)(ii) to (v), publish notice of the decision in the Gazette;
    - (B) may, where none of the powers are exercised under any of the provisions of subsection (1)(ii) to (v), publish notice of the decision in such manner as it thinks fit."
- (d) in subclause (2)(b), by adding "或發布（視屬何情況而定）" after "刊登".
- (e) in subclause (4) -
  - (i) by deleting "committee or other person appointed under section 30" and substituting "disciplinary committee";
  - (ii) by deleting "such committee or other person" and substituting "the disciplinary committee".
- (f) in subclause (5) -

- (i) by deleting "Costs" and substituting "Any fine imposed by virtue of subsection (1) and any costs";
- (ii) by deleting "subsection (1)" and substituting "that subsection".

### **Clause 32**

That clause 32(2) be amended, by deleting "manner specified in section 22(2)" and substituting "Gazette".

### **Clause 33**

That clause 33 be amended —

- (a) by adding -

"(6A) Where a person appeals under section 32, the chairman of the panel shall -

- (a) fix the date, time and place for the hearing of the appeal so as to enable the hearing to commence as soon as reasonably practicable; and
- (b) not less than 28 days before the date so fixed, give the parties to the appeal, and any person who is entitled to be heard or represented at the appeal pursuant to section 32(3)(b), a notice of the date, time and place so fixed in such form as he may determine."

- (b) by deleting subclause (10).

**Clause 34**

That clause 34 be amended —

- (a) in subclause (1) -
  - (i) by deleting "27 or";
  - (ii) in paragraph (i) -
    - (A) by deleting "an objector,";
    - (B) by adding "the Authority," before "or any other person".
- (b) in subclause (2) -
  - (i) by renumbering it as subclause (2)(a);
  - (ii) in paragraph (a), by adding ", subject to any order made by the tribunal concerned under subsection (2A)," after "shall";
  - (iii) by adding -
    - "(b) For the purposes of paragraph (a), where a party in the proceedings mentioned in subsection (1) is a company, the party shall be regarded as participating in the proceedings in person if it participates through any of its directors."
- (c) by adding -
  - "(2A) (a) Subject to paragraphs (b) and (c), the proceedings mentioned in subsection (1) shall be conducted in public.
  - (b) Where the tribunal concerned, after consulting the parties to the appeal, is satisfied that it is

desirable to do so, it may by order -

- (i) direct that the proceedings or a part or parts of the proceedings shall take place in private and give directions as to the persons who may be present;
  - (ii) give directions prohibiting or restricting the publication or disclosure by any or all of the parties to the appeal, or by any or all of the persons who may be present, of any evidence given at the proceedings or of any matter contained in any document or thing produced or received in evidence for the purposes of the proceedings.
- (c) Without limiting the generality of paragraph (b), the tribunal concerned shall, in determining whether or not it is desirable to make an order under that paragraph, take into account any views of the parties to the appeal, including the private interests of and any claim as to privilege by any of those parties.
- (d) For the purposes of this subsection, any question in relation to a claim by any party as to privilege shall be a question of law."

### **Clause 35**

That clause 35 be amended —

- (a) in subclause (1) -



- 
- (i) by deleting ", committee or other person" and substituting "or, as the case may be, the disciplinary committee";
  - (ii) in paragraph (b), by adding "and" at the end;
  - (iii) by deleting paragraph (c);
  - (iv) in paragraph (d), by deleting "or a committee or other such person" and substituting "or, as the case may be, the disciplinary committee".
- (b) by deleting subclause (2) and substituting -
- "(2) A summons under this section shall be in the prescribed form and shall be signed by -
- (a) in case the inquiry is conducted by the Authority, the Chairman;
  - (b) in case the inquiry is conducted by a disciplinary committee, the chairman of the disciplinary committee."
- (c) by deleting subclause (4) and substituting -
- "(4) (a) Subject to paragraphs (b) and (c), an inquiry under section 30 shall be conducted in public.
- (b) Where the Authority or, as the case may be, the disciplinary committee conducting an inquiry under section 30, after consulting the complainant and the licensee to whom the inquiry relates, is satisfied that it is desirable to do so, it may by order -
- (i) direct that the inquiry or a part or parts of the inquiry shall

take place in private and give directions as to the persons who may be present;

- (ii) give directions prohibiting or restricting the publication or disclosure by any or all of the persons who may be present (including the complainant and the licensee to whom the inquiry relates) of any evidence given at the inquiry or of any matter contained in any document or thing produced or received in evidence for the purposes of the inquiry.
- (c) Without limiting the generality of paragraph (b), the Authority or the disciplinary committee conducting an inquiry under section 30 shall, in determining whether or not it is desirable to make an order under that paragraph, take into account any views of the complainant and the licensee to whom the inquiry relates, including the private interests of and any claim as to privilege by any of those persons.
- (d) For the purposes of this subsection, any question in relation to a claim by any person as to privilege shall be a question of law."

### **Clause 37**

That clause 37 be amended —

- (a) in subclause (1)(a) -

- 
- (i) by deleting "sections 40(3) and 48" and substituting "section 40(3)";
  - (ii) by deleting "executed an estate agency agreement" and substituting "entered into an estate agency agreement";
  - (iii) in subparagraph (v), by deleting everything after "at which" and substituting "the client expressly instructs him not to do so, or that at which under or pursuant to any provision of the estate agency agreement with the client the requirement to do so on longer applies to him, whichever is the earlier";
  - (iv) in subparagraph (vii), by deleting everything after "purchaser" and substituting -
    - "-
    - (A) inform both of such clients that he is so acting; and
    - (B) without affecting any of the requirements applicable to him, including those in respect of the supply of information, under any of the foregoing subparagraphs, provide to either of such clients at the request of that client any information provided by the other client as regards the property concerned, unless he has been expressly instructed by that other client not to do so."
- (b) in subclause (2) -
- (i) by deleting "but subject to section 48, information referred to in subsection (1)(a) may, as regards every"

and substituting ", information prescribed for the purposes of subsection (1)(a) in relation to any";

(ii) by deleting "executed an estate agency agreement" and substituting "entered into an estate agency agreement, or in relation to any property which is of a prescribed class or description of such properties";

(iii) by deleting paragraph (a) and substituting -

"(a) particulars of current ownership and subsisting encumbrances in respect of the relevant property, as recorded in records or other documents which are of a class or description prescribed for the purposes of this paragraph and extracted in a manner prescribed for the purposes of this paragraph;"

(iv) in paragraphs (b) and (d), by deleting "every particular such" and substituting "the relevant";

(v) in paragraph (c) -

(A) by adding "or period" after "year";

(B) by deleting "a particular such" and substituting "the relevant";

(vi) in paragraph (d), by deleting everything after "imposed" and substituting "by any document which is of a class or description prescribed for the purposes of this paragraph";

(vii) in paragraph (e), by deleting "and particulars of the covenants contained therein" and "and if so particulars of that right";

- 
- (viii) in paragraph (f), by deleting "a particular such" and substituting "the relevant".
- (c) in subclause (3) -
- (i) by deleting "Where a licensee" and substituting "Subject to section 40(3), where a licensee who is not a licensed estate agent to which subsection (1) applies but who";
  - (ii) in paragraph (a), by deleting "subparagraph (v) or (vi)" and substituting "subparagraphs (v), (vi) and (vii)";
  - (iii) by deleting paragraph (b);
  - (iv) in paragraph (c), by deleting "or he fails to comply with a requirement of paragraph (b)".
- (d) by deleting subclause (4).
- (e) in subclause (5), by deleting "or fails to comply with a requirement of subsection (4)".
- (f) in subclause (6) -
- (i) by deleting paragraph (a) (i);
  - (ii) in paragraph (a)(ii), by deleting "(1)(c)" and substituting "(1)(a)(iii)";
  - (iii) by adding -
    - "(aa) (i) In any proceedings to which this subsection applies, it shall be a defence for a defendant to show that he had taken all reasonable steps and exercised all due diligence to avoid the failure to which the proceedings relate.

(ii) Without limiting the generality of subparagraph (i), in the case of failure to comply with a requirement under subsection (1)(a)(ii) in respect of any information, the defendant shall, for the purposes of that subparagraph, be regarded as having shown that he had taken all reasonable steps and exercised all due diligence to avoid the failure, if he shows that -

(A) he relied on information obtained from a source prescribed for the purposes of this subparagraph in respect of such information;

(B) it was reasonable for him to have relied on such information; and

(C) he had taken all steps reasonably open to him to avoid the failure."

(g) in subclause (8) -

(i) by deleting "Nothing" and substituting "Without limiting or diminishing any liability which a licensed estate agent or a vendor may incur under the general law, it is hereby declared that nothing";

(ii) by deleting "by him".

That clause 38 be amended, by deleting the clause.

### **Clause 39**

That clause 39 be amended —

- (a) by deleting subclause (3).
- (b) in subclause (4), by deleting "Subject to their being consistent with section 48, regulations" and substituting "Regulations".
- (c) in subclause (5) -
  - (i) in paragraph (a), by adding "all or any prescribed class or description of" before "the moneys";
  - (ii) in paragraph (b), by deleting "the moneys so received" and substituting "such moneys".
- (d) in subclause (6), by adding "any of "before "the moneys".
- (e) by deleting subclause (8).

### **Clause 40**

That clause 40 be amended —

- (a) in subclause (1) -
  - (i) in paragraph (a), by deleting "section 48" and substituting "paragraph (d)";
  - (ii) by adding -
    - "(d) Where a licensed estate agent is employed or appointed by another estate agent, and,

in the course of his employment or appointment, does estate agency work as a salesperson, then to the extent that he does such work, paragraph (a) shall not apply to him."

(b) in subclause (3) -

(i) in paragraph (a) -

(A) by deleting "and (iii)";

(B) by deleting "executed" and substituting "entered into";

(ii) by deleting paragraph (b).

(c) by deleting subclause (4)(a)(i)(A).

#### **Clause 45**

That clause 45 be amended, by deleting the clause.

#### **Clause 47**

That clause 47 be amended —

(a) in subclause (1), by deleting everything after "appropriate" and substituting a full stop.

(b) in subclause (2) -

(i) by deleting "概括性" and substituting "一般性";

(ii) by adding before paragraph (a) -

"(aa) prohibit the inclusion by licensed estate



agents in advertisements issued by them or on their behalf, and relating wholly or partly to their estate agency business, statements or particulars which are false or misleading in a material particular;

- (ab) prohibit the issue by licensed estate agents or on their behalf of advertisements as regards a particular property unless the vendor concerned has previously agreed to such issue and the terms of the agreement are contained in an estate agency agreement, whether entered into with such licensed estate agents or otherwise;"

#### **Clause 48**

That clause 48 be amended, by deleting the clause.

#### **Clause 49**

That clause 49 be amended —

- (a) in subclause (1) -
  - (i) by adding "(in this section referred to as "the agent")" before "proposes";
  - (ii) by deleting "as regards any property" and substituting", whether as regards a particular property or not";
  - (iii) by deleting "the person" where it twice appears and substituting "the agent";
  - (iv) in paragraph (a) -

- (A) by adding "between the agent and the client" after "being an agreement";
  - (B) by adding "entered into and, in the case of a written document," before "properly executed";
  - (v) in paragraph (b), by adding "entered into and" before "executed".
- (b) in subclause (2) -
- (i) by adding "to perform estate agency work for a client as" before "described";
  - (ii) in paragraph (a) -
    - (A) by deleting "there is a properly executed estate agency agreement" and substituting "an estate agency agreement between the agent and the client";
    - (B) by adding "has been entered into and, in the case of a written document, properly executed" after "this section";
  - (iii) in paragraph (b), by adding "entered into and" before "executed";
  - (iv) by deleting "由代理" where it twice appears and substituting "由該代理".
- (c) in subclause (3), by deleting "an agent" and substituting "the agent".

## Clause 50

That clause 50 be amended —

- 
- (a) in subclause (1), by adding ", and any agreement made in accordance with regulations made under subsection (4) to vary or supplement any such documents" after "documents".
  - (b) in subclause (2) -
    - (i) by deleting "documents embodying";
    - (ii) in paragraph (b) -
      - (A) by deleting "and, where appropriate, the rate" and substituting "or the rate, as the case may be,";
      - (B) by deleting "and" at the end.
  - (c) in subclause (3) -
    - (i) by deleting "every estate" and substituting "an estate";
    - (ii) in paragraph (a), by deleting "and, where appropriate, the rate" and substituting "or the rate, as the case may be,";
    - (iii) in paragraph (b) (iv), by adding "or its rate, as the case may be," after "its amount";
    - (iv) in paragraph (e), by deleting "by the licensed estate agent concerned".
  - (d) in subclause (4)(d), by adding "the terms and conditions of or any prescribed class or description of the terms and conditions of" after "supplement".
  - (e) in subclause (5) -
    - (i) by renumbering it as subclause (5)(a);
    - (ii) in paragraph (a), by deleting "spouse" wherever it appears and substituting "specified relative";

(iii) by adding -

"(b) In this subsection -

"brother or sister" (兄弟或姊妹), in relation to a person, includes any child of a parent of the person;

"child" (子女) includes a child who is illegitimate or adopted and a step child, and "parent" (父母) shall be construed accordingly;

"specified relative" (指明親屬), in relation to a person, means the spouse, parent, child, brother or sister of the person;

"spouse" (配偶), in relation to a person, means any person to whom the first-mentioned person is, by reason of the form of marriage contracted, lawfully married."

### **Part Heading before clause 53**

That the Part Heading before clause 53 be amended, by deleting "MISCELLANEOUS" and substituting "DISPUTES AS REGARDS COMMISSION, ETC."

### **Clause 53**

That clause 53 be amended, by deleting subclause (2) and substituting —

"(2) The Authority may at any time, whether before or after commencement of the proceedings conducted for the purposes of a determination under this section, either of its own motion or upon the

application of any of the parties who referred the dispute to the Authority under this section, decline jurisdiction if -

- (a) the amount of the commission or other fee in dispute exceeds the amount prescribed for the purposes of this subsection; or
  - (b) it is otherwise of the opinion that for any reason the dispute should not be determined by it.
- (3) (a) The practice and procedure to be adopted in the proceedings of a determination by the Authority under this section shall, subject to this section and to any regulation made hereunder, be determined by the Authority.
- (b) The Authority may, with the approval of the Secretary, by regulation regulate the practice and procedure to be adopted in the proceedings of a determination under this section or otherwise relating to such proceedings."

## Clause 55

That clause 55 be amended —

- (a) in subclause (2) (a) -
  - (i) by deleting "概括性" and substituting "一般性";
  - (ii) in subparagraph (ii) -
    - (A) by deleting "committee or other person appointed by it" and substituting "disciplinary committee";
    - (B) by deleting "or" at the end;

- (iii) in subparagraph (iii), by deleting "27 or 33." and substituting "33; or";
- (iv) by adding -
  - "(iv) proceedings of a determination by the Authority of any dispute under section 53."
- (b) by deleting subclause (2)(d).
- (c) in subclause (2)(e), by deleting "Subject to paragraph (d), as regards an investigation under section 29, an inquiry under section 30 or proceedings under section 27 or 33" and substituting "As regards any investigation, inquiry or proceedings referred to in paragraph (a)".
- (d) by deleting subclause (3).

## **Clause 56**

That clause 56 be amended —

- (a) in subclause (1)(c) and (d) -
  - (i) by deleting "false or misleading" where it twice appears;
  - (ii) by adding ", which is false or misleading in a material particular," after "information".
- (b) in subclause (1), by adding -
  - "(ea) fails to comply with section 29(7A);".
- (c) by deleting subclause (1)(g) and substituting -
  - "(g) makes any statement or furnishes any information, which is false or misleading in a material particular -

- (i) in purported compliance with any requirement imposed on him under or pursuant to section 29(4);
  - (ii) in purported compliance with any requirement imposed on him for the purposes of an inquiry conducted by the Authority or a disciplinary committee under section 30;
  - (iii) pursuant to or by virtue of section 31(1A);
  - (iv) in purported compliance with any requirement imposed on him for the purposes of proceedings conducted by a tribunal under section 33; or
  - (v) in purported compliance with any requirement imposed on him for the purposes of the proceedings of a determination by the Authority of any dispute under section 53;".
- (d) in subclause (1)(h), by deleting "other provision of this Ordinance or any regulation thereunder" and substituting "provision of this Ordinance".
- (e) by deleting subclause (2)(a), (c), (d), (e), (f), (h) and (i).
- (f) in subclause (3)(b), by adding "(ea)," after "(e),".
- (g) in subclause (4) -
  - (i) by deleting paragraph (a);
  - (ii) in paragraph (b), by deleting "(c), (d), (e), (f),";
  - (iii) in paragraph (c), by deleting ", (g), (h) or (i)" and

substituting "or (g)".

- (h) in subclause (5) -
  - (i) by deleting paragraph (a);
  - (ii) in paragraph (b), by deleting "(d) or";
  - (iii) in paragraph (c), by deleting ", (h) or (i)".

### **Clause 57**

That clause 57 be amended —

- (a) in subclause (1) -
  - (i) by deleting paragraph (d) and substituting -

"(d) prescribe any educational qualifications or experience or both required to be held for the purposes of section 18, 19 or 21;"
  - (ii) by deleting paragraph (g) and substituting -

"(g) prescribe requirements for the purposes of section 19(1)(b)(iii), 20(1)(d) or 21(2)(b)(iii);".
- (b) by adding -

"(1A) Any regulation made under this section or any other provision of this Ordinance may provide for the exercise or performance by the Authority of any powers or functions under the regulations."
- (c) in subclause (2), by adding "this section or any other provision of" before "this Ordinance".



**MR ANDREW CHENG** (in Cantonese): Mr Chairman, in the view of the Bills Committee and the Administration, today's Estate Agents Bill can be said to have taken care of the interests of the consumers and the estate agents, but the estate agents still hold different views in respect of certain clauses of the Bill. Although we do not see hundreds of estate agents protesting outside today, this does not mean that they are hundred percent happy with this Bill. Mr Chairman, on behalf of the estate agency business, I want to express their views and worries in respect of clauses 29, 37 and 47 of the Bill.

First of all, clause 29 of the Bill states that any estate agent or other persons in respect of whom investigation is carried out and who is prosecuted and convicted of an offence may be ordered to pay for all or part of the investigation costs or expenses of the Authority. The trade expresses that, under the current laws in Hong Kong, no convicted person is made to pay for investigation costs. Why must the Administration single them out by laying down such a requirement? After all, the monetary involvement an estate agent may have is their commission, but investigation costs can add up to a very large sum; such a requirement is not fair to the estate agents.

As to clause 37 of the Estate Agents Bill, in order to deal with the problem of inaccurate information that often occurred in the past, an estate agent has to provide detail information of every property he deals with, and the information includes title, area and age of the property. As far as the protection of consumer interests is concerned, this clause has its merit. However, in actual enforcement, lots of problems will emerge. The Administration has promised that it would set up a central database, from which an estate agent can retrieve very quickly accurate information about each property. However, we are still far away from having such a database. An estate agent has to check the required information with such government departments as the Land Registry and the Buildings Department, which, very often takes a long time and the information obtained is still insufficient.

In fact, if the Administration could set up the central database promptly, we would not have to squabble over this issue, and the liability issue of agency work can also be resolved easily. As long as an estate agent has checked the

required information with this central database, his obligation in checking the information is already discharged, otherwise he would be held liable. This would save the trouble of having to resort to the defence of "exercising due diligence". Therefore, on behalf of the trade, I strongly request that the Government should set up the central database as soon as possible.

Lastly, with respect to clause 47 of the Bill, an estate agent cannot advertise the sale of a property unless he has obtained the consent of the owner. According to clause 49 of the Bill, on accepting an owner's request for sale, an estate agent must sign an estate agency agreement. The original intention of this requirement was to stamp out the bad practices of the past when estate agents often indiscriminately put up sales advertisements or arbitrarily changed the content of the advertisements to mislead the consumers. But let us think about this: if every owner, when entrusting his property to an estate agent for sale, has to sign such an agreement, the owner will not, like what we are now having, post his property with as many estate agents as he likes; instead, he would select only those agents with a lot of branches and wide geographical representation. We all know that currently the property market is dominated by a number of large-scale estate agencies. Many of the medium-sized agencies are merging to counter the big ones. This leaves very little room for the small ones to operate. Upon the enactment of this Bill, the estate agency market would undoubtedly be monopolized by a number of large agencies. Should estate agency work become monopolised, competition within the trade will diminish and the commission that consumers have to pay will not be kept low by competitions. The eventual losers will be the general consumers.

Mr Chairman, even when an estate agency agreement is signed, in actual practice, there are still loopholes that cannot be plugged easily and the interests of the consumers may not be protected. An estate agent may use such vague words as "the owner may consider," "probably" or "or" to make oral representation to his clients. Problems like these cannot be wholly eradicated just with an estate agency agreement. Moreover, the trade has roughly estimated that if the estate agency agreement becomes a practice, all the owners will have to spend millions of hours to handle matters related with it, and estate agents will have to bear additional costs reaching \$120 million. Balancing the pros and cons, the trade feel that the estate agency agreement should not be

adopted.

Finally, it should be mentioned that some members of the trade have proposed using a "registry of authorization" and "confirmation of property information" to take the place of estate agency agreement. Well, such are the views and worries of the trade which I have made on behalf of the trade to the Administration.

Mr Chairman, these are my remarks.

**MR LEE WING-TAT** (in Cantonese): Mr Chairman, I rise to speak on clause 47 of the Bill. The question actually is on whether there should be a written authorization when a property owner engages an estate agent. This question was studied for quite a long time by the Bills Committee. Such a requirement actually has its merit. In the past, estate agents were criticised because when they advertised some properties, people doubted the authenticity of these properties and the accuracy of the wording in the advertisements.

In order to do away with all these problems, I agree that the Housing Branch should make such a requirement. All estate agents are required by law that when they put up advertisements for the sale of a property, they must first obtain written authorization. I agree that this requirement may incur more work for the estate agents, but I feel that with the trade gradually coming under legislative control and becoming more professional and gaining the respect of the public, such a requirement is necessary. There were all sorts of complaints in the past, including what the Consumer Council said "fabricated properties", or there were problems in the transactions, they could all be attributed to the fact that the estate agents received their authorizations orally from the owners, and such oral authorizations gave rise to all sorts of disputes.

Mr Chairman, I do not agree that this Bill would give rise to the consequences expressed by the estate agents. I think that there is an element of exaggeration in what they expressed. Last week an advertisement in the newspapers said that the Estate Agents Bill was a death trap. I think using such description is a bit too much, and although I believe that more time and energy will be needed in an estate transaction, I feel that this is the starting point for the

trade to turn more professional. Moreover, an appropriate equilibrium will come about as a result. What this equilibrium means is that if authorization is still done orally, the endless squabble that we saw in the past will continue.

Secondly, I cannot accept that if the estate agency agreement is implemented, some of the agents will have to fold their businesses. We all know that whenever a business has to face a new operating condition, every operator of his business within the trade will adopt the strategy that he thinks will best attract more businesses. We agree that large agencies, with more branches and wider network and more comprehensive information, will find it easier to attract clients. However, we should not belittle the small agencies which usually operate with greater flexibility, especially on the amount of commission charged. I believe they can attract clients more easily than the large agencies. Some people have analysed that, when this Bill is enacted, some small agencies will form themselves into an associated body to appropriately extend their business network. I believe that our society will have ways to enable companies, big or small, to survive. I think that the Housing Branch should monitor closely the market to see whether, upon the enactment of the Bill, some 400 companies would closed down, just as some of the agents have predicted. This is a very pessimistic estimation to which I do not agree. Of course, we are all making all sorts of prediction, so what has to be done is that, on the Bill being passed into law, the Secretary for Housing should monitor closely to see if there is such a situation in the market, or if businesses would, as said by the small and medium agencies, gradually be monopolized by the few large agencies. Such a situation is certainly not what we would like to see. Should such situation arise, I believe that the Estate Agents Authority will have appropriate measures to handle it. Mr Chairman, I support the Bill. Thank you.

**SECRETARY FOR HOUSING** (in Cantonese): Mr Chairman, I would like to respond to two points made by the Honourable Andrew CHENG. He said that investigation fees should not be borne by an estate agent. With regard to the current situation in Hong Kong, he said, it was an extremely rare practice, or even non-existent. However, in my understanding, there are actually similar legislation and provisions that expressly require that the person investigated is to bear the investigation fees. For example, the ordinances related to the Securities and Futures Commission, Leveraged Foreign Exchange Trading Ordinance, Company Ordinance, Tour Agent Ordinance and legislation relating

to accountants have conferred similar power. Thus, in this respect, the Administration is not setting a precedent with the estate agents.

Secondly, he mentioned that a central databank be established as soon as possible. This is certainly a long term goal of the Administration, but it does not mean that without a central databank, the Estate Agent Bill would not operate properly as the various government departments have already in place a pretty complete data store. Recently we have also processed and updated the data kept in various government departments, for example, the land records in the Land Registry have been computerized. Improvement in other services is also underway, and the Rates and Valuation Department has also provided a number of information services. I believe that improvement has already been made to the existing government services, which can provide the property information required in the legislation. Of course, we shall continue improving the service in this regard.

Thank you, Mr Chairman.

*Question on the amendments put and agreed to.*

*Question on clauses 2, 6, 7, 8, 10, 11, 12, 15, 18 to 24, 27 to 35, 37 to 40, 45, 47 to 50, Heading before clause 53 and clauses 53, 55, 56 and 57, as amended, put and agreed to.*

New clause 53A	Appeals to District Court
New clause 53B	Jurisdiction of District Court on appeal
New clause 53C	Determinations of Authority may be registered in District Court
New Part Heading before clause 54	PART VIIA MISCELLANEOUS
Heading before New clause 59 and New clause 59	Small Claims Tribunal Ordinance Jurisdiction of Tribunal

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

**SECRETARY FOR HOUSING:** Mr Chairman, I move that new clauses 53(A), 53(B) and 53(C), new Part Heading before clause 54, Heading before new clause 59 and new clause 59 as set out in the paper circularized to Members be read the Second time.

New clause 53(A) provides for appeals against the determinations of the Estate Agents Authority in relation to disputes over commission to be made to the District Court.

New clause 53(B) seeks to give the District Court the jurisdiction to hear and determine any appeal under clause 53(A), notwithstanding the fact that the amount claimed may exceed the sum mentioned in section 33 of the District Court Ordinance.

New clause 53(C) provides that a determination by the Estate Agents Authority under clause 53 may be registered in the District Court and become for all purposes a judgment of the District Court and may be enforced accordingly.

New Part Heading before clause 54 is a consequential amendment as a result of the change in the Heading before clause 53. The Heading before new clause 59 is added as a result of new clause 59. New clause 59 makes a consequential amendment of the Schedule to the Small Claims Tribunal Ordinance so as to stipulate that the Small Claims Tribunal shall not have jurisdiction over any action submitted to the Estate Agents Authority under clause 53 in which the Authority has not declined jurisdiction.

Mr Chairman, I beg to move.

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

Headings and clauses read the Second time.

**SECRETARY FOR HOUSING:** Mr Chairman, I move that new clauses 53A,

53B, 53C, new Part Heading before clause 54, Heading before new clause 59 and new clause 59 be added to the Bill.

*Proposed additions*

**New clauses 53A, 53B and 53C**

That the Bill be amended, by adding —

**"53A. Appeals to District Court**

(1) Subject to this section, an appeal shall lie to the District Court from any determination of the Authority under section 53.

(2) (a) No appeal shall lie from a determination of the Authority under section 53 after the expiry of 14 days from the date of such determination.

(b) The District Court may, if it thinks fit, extend the period within which to appeal under this section, whether or not the period within which to so appeal has expired.

(3) On an appeal under this section, the District Court may confirm, vary or reverse any determination of the Authority under section 53 and may make such order as to costs as it may think fit.

(4) On an appeal under this section, a decision of the District Court shall be final.

(5) An appeal which is pending determination under this section shall not operate as a stay of execution of a determination by the Authority under section 53, unless the District

Court otherwise orders, and any stay of execution may be subject to such conditions as to costs, the giving of security or otherwise as the District Court may think fit.

**53B. Jurisdiction of District Court on appeal**

(1) Save as is provided in this Ordinance, the District Court shall, upon or in connection with any question to be determined on an appeal under section 53A, have all the powers and jurisdictions exercisable by it in or in connection with civil actions before it in the like manner as if it had by the District Court Ordinance (Cap. 336) been empowered to determine an appeal under section 53A whatever the amount involved, and the law, rules and practice relating to such civil actions and to the enforcement of judgements and orders of the District Court shall *mutatis mutandis* apply.

(2) The District Court shall have jurisdiction to hear and determine any appeal under section 53A notwithstanding that the amount claimed exceeds the sum mentioned in section 33 of the District Court Ordinance (Cap. 336).

(3) The District Court may, in any proceedings brought in the District Court on an appeal under section 53A, order that there shall be included in the sum for which an order for payment is made interest at such rate as it thinks fit on the whole or any part of such sum for the whole or any part of the period between the date when the cause of action arose and the date of the order.

**53C. Determinations of Authority may be registered in District Court**

After the period within which to appeal under section 53A has expired, a determination by the Authority of any dispute under this section may, where no appeal under that section is pending determination, be registered, in such manner as may be specified by the Registrar of the District Court, in the District Court



and shall, on such registration, become for all purposes a judgment of the District Court and may be enforced accordingly, notwithstanding that the amount for which the determination has been given is otherwise not within the jurisdiction of the District Court."

**New Part Heading before clause 54**

That the Bill be amended, by adding before clause 54 —

"PART VIIA  
MISCELLANEOUS".

**Heading before new clause 59 and new clause 59**

That the Bill be amended, by adding —

**"Small Claims Tribunal Ordinance**

**59. Jurisdiction of Tribunal**

Paragraph 1 of the Schedule to the Small Claims Tribunal Ordinance (Cap. 338) is amended in the proviso by adding -

"(e) any action which is submitted to the jurisdiction of the Estate Agents Authority established by section 4 of the Estate Agents Ordinance ( of 1997) and in respect of which the Estate Agents Authority has not declined jurisdiction, under or pursuant to section 53 of that Ordinance."."

*Question on the addition of the new clauses 53A, 53B, 53C, new Part Heading before clause 54, Heading before new clause 59 and new clause 59 proposed, put and agreed to.*

Schedule

**SECRETARY FOR HOUSING:** Mr Chairman, I move that the Schedule be amended as set out in the paper circularized to Members. The amendments will ensure that people appointed to the Estate Agents Authority under the category of estate agents are practising estate agency work at the time of employment and that the validity of any proceedings of the Estate Agents Authority will not be affected by any defect in appointment, absence of any member, vacancy in the membership or a minor irregularity in the convening of any meeting.

Mr Chairman, I beg to move.

*Proposed amendment*

**Schedule**

That Schedule be amended, in section 3 —

- (a) in subsection (1)(c)(ii)(A), by deleting ", or at any time prior to their appointment did,";
- (b) in subsection (3), by adding "隨時" after "可";
- (c) by adding -

"(14) The validity of any proceedings of the Authority shall not be affected by -

- (a) any defect in the appointment or qualification of any person purporting to be a member of the Authority;
- (b) the absence of any member of the Authority from the meeting at which any such proceedings are conducted;

- (c) any vacancy in the membership of the Authority;
- (d) any minor irregularity in the convening of any meeting of the Authority."

*Question on the amendment put and agreed to.*

**MR LEE WING-TAT** (in Cantonese): Mr Chairman, I move to make further amendment to the Schedule as set out in the paper circularized to Members.

Mr Chairman, as I have said on the resumption of Second Reading, I now move to amend the composition of the Authority. The present proposal is to divide the membership into three categories: Category A is made up of people engaging in estate agency work; Category B is made up of people not belonging to Category A, but who are experienced in property development, general administration or consumer affairs; and Category C is made up of individuals from the general public who do not belong to Category A or Category B.

Mr Chairman, I have already said just now that estate agency itself is not a profession, but a trade which has just come under some sort of legislative control. The image that most people have of the trade is that it is intermingled with good and bad elements. People may worry that if one third of the members of the Authority are representatives of the trade, and another one third being representatives related to the trade, then the two thirds coming together may lead to biased decision when subsidiary legislation, rules or even codes of practice are made, or when investigation is carried out, or even when disciplinary action is taken. I think that at its initial stage, the Estate Agents Authority should have more representatives being members of the public who are not related in whatever way with the estate agency trade, so that the public can have greater confidence in it.

I have heard members of the trade said that if half of the Authority is made up of individuals from the general public, the whole Authority may not fully

understand the operation of the trade when subsidiary legislation and rules are considered, or when investigation of the trade is carried out. This view is actually groundless. The 18-member Authority, after its composition amended, will have one quarter of its members, that is four to five, having comprehensive experience of the whole trade, and this number is sufficient to provide the necessary information about the operation of the trade. After all, another one quarter of the membership is also related to estate agency.

Mr Chairman, I have also heard another view that as the original Bill stipulates that one third of the Authority shall be made up of representatives of the trade, many associations and organizations of the trade have been set up in recent years. I believe that at present there are a lot of people representing any one of these associations or organizations, and these people may not all hold the same view on matters pertaining to their trade. If the Government or some people of the trade say that there would be less argument if the Authority has more representatives of the trade, this is groundless. It is most important that the Governor makes his appointment on the basis of the experience of the appointees and whether they can act fairly. I believe that even if an individual of the general public is appointed, as long as he can act fairly in matters pertaining to the Authority, the interests of both the trade and the consumers will be taken care of.

Mr Chairman, I propose to further amend the content of the Schedule. Thank you.

*Proposed amendment*

**Schedule**

That Schedule be further amended —

- (a) in section 3(1)(c)(ii)(C), by adding "("persons of Category C")" after "the Authority"
- (b) in section 3(1)(c)(iv), by deleting everything after "or their making," and substituting -

"not less than one half of the members of the Authority (excluding

the Chairman and the Vice-chairman) are persons of Category C and the remaining members should, as far as possible, be equally represented by persons of Category A and persons of Category B."

(c) by deleting section 3(1)(e) and substituting -

"(e) Where the total number of members of the Authority (excluding the Chairman and the Vice-chairman) for the time being is not an even number, then for, but only for, the purposes of determining the number of persons appointed to Category C under paragraph (c)(iv), that total number shall be regarded as having being increased by 1."

**MR EDWARD HO** (in Cantonese): Mr Chairman, I have just said that I am not going to support this amendment, because I feel that the original requirement that one third of the members be representatives of the trade is already too small a number. If this number is to be further reduced to one quarter, the representation will be nominal.

The Honourable LEE Wing-tat said that estate agency itself is not a profession, and is intermingled with good and bad elements. I feel that this is not a very good reason. I feel that we should have trust in the Government. When the Governor appoints someone to the Authority, he will certainly find people who have the respect of the trade, and are experienced and even professional. I feel that in the regulating authority of any trade, there must be self-discipline in it. Just as Mr LEE has said, we hope that the estate agency will become more professional. I therefore feel that at the present stage it is not appropriate to further reduce the proportion of trade representatives in the Authority. I will not support this amendment.

**MR NGAN KAM-CHUEN** (in Cantonese): Mr Chairman, the Estate Agents Bill prescribes that the Authority shall be constituted with at most one third of the members (Category A) being members of the trade, with people related to the trade (Category B) and individuals from the general public (Category C) each take up half of the remainder. The amendment proposed by the Honourable LEE Wing-tat requires that at least half of the members shall be individuals from the general public, with representatives of the trade and people related to the

trade each taking up a quarter of the membership.

Because of the following five reasons, the Democratic Alliance for the Betterment of Hong Kong (DAB) thinks that there is insufficient ground for us to support the amendment of Mr LEE Wing-tat:

- (1) To prevent the Authority from protecting only the interests of the trade at the expense of the needs of the whole society, the most important thing is to have in place a comprehensive monitor system and a regime for declaring interests. With respect to these two, firstly, the rules and regulations made by the Authority must be examined by the Legislative Council. Secondly, clause 10 of the Bill also requires that members of the Authority must declare their interests. In the future, the Authority must have a registry recording the interests of its members, and the registry must be open for public inspection. This requirement also meets the proposal made in March by the committee of Legislative Council that reviewed the consultative organization and the statutory bodies with a view to enhancing the transparency of these statutory bodies.
- (2) If the proportion of individuals from the general public is increased to one half, but those in the trade and those related to the trade are reduced accordingly, the DAB worries that this will affect the professional development of the Estate Agents Ordinance. As the work of the future Authority will touch on the specific mode of operation of the trade, the Authority should have members who have working knowledge of estate agency.
- (3) If the proportion of members from the trade is reduced to one quarter, the quota of that category could easily be taken up by representatives mainly from the major estate agents. The voice of small estate agents will not be fully expressed. Consequently, the development of the whole trade will be affected and the interests of the consumers will suffer.
- (4) The Bill provides that the Chairman and Vice-Chairman of the Authority shall not be members of the trade to avoid conflict of interests.

- (5) The Consumer Council, which has been looking after the interests of the consumers, also considers the composition as detailed in the Bill appropriate.

Mr LEE proposes the amendment mainly because the Democratic Party considers that the Category B persons, including such professionals as lawyers, accountants, architects and surveyors, inevitably have "common interests" with members of the estate business and that if the two groups together account for more than half of the membership of the Authority, it may give rise to a situation in which the Authority would only look after the interests of the trade and neglect the needs of the whole society. These words are taken from the statement submitted by the Democratic Party to the Bills Committee.

Mr Chairman, I want to point out that by deeming all professionals within Category B as people invariably having common interest with members of the estate business, who would act in unison "without any regard to the needs of the whole society", the Democratic Party is only making an either-black-or-white dichotomic deduction, which is too arbitrary and insulting to the conduct of the professionals.

Mr Chairman, I speak on behalf of the DAB against the Committee stage amendment proposed by Mr LEE Wing-tat.

**MR ANDREW CHENG** (in Cantonese): Mr Chairman, I want to speak on behalf of the estate agents in respect of the amendment proposed by the Honourable LEE Wing-tat.

The wording used in the amendment proposed by Mr LEE is a bit general. He put it as this: "Everything after 'members (excluding the Chairman and the Vice-Chairman) of the Authority' shall be substituted by 'with not less than one half of the members being Category C persons'", that is the public, "'and the rest of the membership shall as far as possible be evenly constituted by Category A and Category B persons'", that is members and non-members of the trade shall as far as possible evenly constitute the remaining half.

Mr Chairman, on behalf of the trade, I still hope that if the amendment of Mr LEE Wing-tat is passed, they can still have at least one third of the

membership of the Authority. It is because in Mr LEE Wing-tat's amendment, he said "as far as possible be evenly constituted". That is to say, if, in the future, the Housing Branch and the Authority think that — as it should have noted views of Members from other political parties — members from the trade should still be kept at one third, it should be noted that we have already expressed the views of the trade, and we hope that that proportion should as far as possible be one third, but not one quarter as proposed in Mr LEE Wing-tat's amendment. The amendment has not put it very clearly; it only says "as far as possible".

I have thus expressed the view of the trade that members from the trade in the Authority should be kept at one third as far as possible.

Thank you.

**DR LAW CHEUNG-KWOK** (in Cantonese): Mr Chairman, the purposes of establishing the Estate Agents Authority are two folds: first, to protect the interests of the users; second, to promote the development of the trade. If, according to the amendment of the Honourable LEE Wing-tat, the proportion of members from the trade is reduced from one third to one quarter, we think that it will be detrimental to any effort to promote professional development of the trade.

Moreover, there are other clauses in the Bill that empower the Governor to give direction to the Authority on the grounds of public interests. I think that such an arrangement has already provided additional protection to the users. The Hong Kong Association for Democracy and People's Livelihood therefore thinks that there is no need to amend the original proposal of the Government. We will not support the amendments of Mr LEE Wing-tat which seek to reduce the proportion to one quarter.

Thank you, Mr Chairman.

**SECRETARY FOR HOUSING:** Mr Chairman, the Administration objects to the amendments moved by the Honourable LEE Wing-tat to reduce the representation of the estate agent trade and of related professions on the Estate



Agents Authority. The Bill itself provides that the 18 ordinary members of the Estate Agents Authority shall come from three broad categories: (1) individuals who are practising estate agency work; (2) individuals who are not persons of the trade but who have knowledge in estate agency work because of their professional or occupational experience; and (3) individuals from the community who are not persons of the trade or related fields, in other words, ordinary people.

In order to safeguard public interests, the Administration has already stipulated in the Bill that representation from the trade is restricted to not more than one third of ordinary members and that the trade shall not be eligible for appointment as Chairman or Vice-Chairman. The intention is that the other two categories of membership will each comprise of one third of ordinary members. This composition is a balanced and equitable one.

Again the Bill already contains other mechanisms to safeguard public interests. All the regulations and rules to be made by the Estate Agents Authority are subject to the approval of the Government and the negative vetting of this Council. I would stress also the negative vetting of this Council. And the Governor may, if the public interest so requires, give general directions to the Estate Agents Authority on the performance of any of its functions and the Authority shall comply with such directions.

For the reasons I have outlined, Mr Chairman, Mr LEE Wing-tat's proposal to further reduce the representation of the trade and related fields from one third each to about one quarter each and to increase the representation from the community to one half is ill-conceived, particularly because the balance of the tripartite composition will be upset. The trade will be reduced to a very small minority, that is, four out of 18 ordinary members, excluding the Chairman and Vice-Chairman.

This is unreasonable, having regard to the fact that the work of the Estate Agents Authority will have an important impact on the trade itself and its proper development. The small number seats for the trade cannot adequately reflect the views of the trade which comprises estate agencies of different scale, different clientele and different business fields. The quality of work of the Estate Agents Authority will also be hampered because there will be fewer

members of the trade and of related fields to contribute their expertise on policy formulation and operational matters relating to the trade.

In conclusion, Mr Chairman, I submit that it would not be equitable to increase representation from the community to one half in this case, otherwise this category of membership might dominate the decisions of the Estate Agents Authority. On the other hand, the Administration's approach has been endorsed, I repeat endorsed, by the Bills Committee and I urge Honourable Members to vote against Mr LEE Wing-tat's amendment.

Thank you.

**MR LEE WING-TAT** (in Cantonese): Mr Chairman, I would like to respond to the queries of the Secretary for Housing and my colleagues. Firstly, with this Estate Agents Authority, we should first ask ourselves what actually this Authority is meant to do. Basically this Authority has a lot of functions, including the function to make subsidiary legislation and rules for the trade and to handle the comments and complaints of the public on the problems of the estate agency business. The Authority may also have to institute investigation when a *prima facie* case has been established in respect of a complaint. It is very important that the public must have confidence in the Authority. The public's confidence has a great bearing on the credibility of work of the Authority. When I proposed the amendment, I had also considered if the present requirement was sufficient. What I feel insufficient is that public representation is too little; I therefore proposed to have one half of the membership be individuals from the public. Not only should such a proportion be adopted for its actual administrative work, but also in investigation, receipt of comments, complaints, and even follow-up investigation in order to establish the confidence of the public.

Just now some colleagues mentioned that the members of the Authority are subjected to a lot of controls, so there should not be any problem. They actually have got us wrong. We do not think that there is anything wrong with the members. Our concern is whether the work carried out by the Authority can give the public confidence in the Authority. Though some of the work of the

Authority, including the making of subsidiary legislation and rules, has to be approved by the Legislative Council, obviously all work need to be carried out by the people of the Authority at first. If one third of these people are from the trade, and another one third from the professionals who have commercial or working dealings with this trade, how would the public perceive such a situation? What sort of perception the public might have in respect of the Authority which have two thirds of the membership comprising people directly or indirectly related to the trade? Would the interests of the consumers be properly protected? I feel that people would have doubt about such a composition.

Mr Chairman, some of the colleagues might have misunderstood the statement the Democratic Party submitted to the Bills Committee, thinking that we have no trust in people like lawyers and surveyors. In fact, the Honourable NGAN Kam-chuen got us wrong. We are not having no trust in these people. In many of our work, we have to declare our interests, or when we have direct relation with the matter, we have to make the public understand. The question does not lie in whether we have trust in these people. Instead, it lies in how to ensure fairness in the system so that the public can feel that the Authority will fairly carry out its work. Mr Chairman, I think that my amendments are the appropriate measures to establish an image of fairness and to establish the credibility of the Authority.

Thank you, Mr Chairman.

*Question on the amendment put.*

*Voice vote taken.*

THE CHAIRMAN said he thought the "Noes" had it.

Mr LEE Wing-tat and Mr TSANG Kin-shing claimed a division.

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

**CHAIRMAN** (in Cantonese): I would like to remind Members that they are now called upon to vote on the question that the amendment proposed by Mr LEE Wing-tat be passed.

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

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

Mr 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 LAU Chin-shek, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr SIN Chung-kai, Mr TSANG Kin-shing and Dr John TSE voted for the amendment.

Mr Allen LEE, Mr LAU Wong-fat, Mr Edward HO, Mr Ronald ARCULLI, Mrs Miriam LAU, Dr LEONG Che-hung, Mr CHIM Pui-chung, Mr Henry TANG, Mr CHAN Kam-lam, Mr CHAN Wing-chan, Miss CHAN Yuen-han, Mr CHOY Kan-pui, Mr David CHU, Mr IP Kwok-him, Dr LAW Cheung-kwok, Mr Bruce LIU, Mr LO Suk-ching, Mr MOK Ying-fan and Mr NGAN Kam-chuen voted against the amendment.

THE CHAIRMAN announced that there were 22 votes in favour of the amendment and 19 votes against it. He therefore declared that the amendment was carried.

*Question on Schedule, as amended, put and agreed to.*

## **CHILD ABDUCTION AND CUSTODY BILL**

Clauses 1 to 14 were agreed to.

## Schedule 1

**SECRETARY FOR HEALTH AND WELFARE** (in Cantonese): Mr Chairman, I move that Schedule 1 be amended, as set out in the order paper circulated to Members.

Schedule 1 of the Bill sets out those articles of the Convention on Civil Aspects of International Child Abduction which are relevant to the implementation of the Convention in Hong Kong and therefore included in our proposed domestic legislation. The proposed amendments to the Chinese text of Schedule 1 seek to clarify the intent of Articles 8, 12, 16, 30 and 31 of the Convention.

### *Proposed amendment*

## Schedule 1

That schedule 1 be amended —

- (a) in Article 8 -
  - (i) in sub-paragraph (b), by deleting "知悉" and substituting "能予提供";
  - (ii) in sub-paragraph (d), by deleting "現有" and substituting "能予提供的".
- (b) in Article 12, by deleting everything from "而在" to "屆滿" and substituting "而自該不當遷移或扣留當日起計至該兒童身處的締約國家的司法或行政當局開始進行有關程序的當日，未滿一年時間".
- (c) in Article 16, by deleting "的爭議" where it twice appears and substituting "爭議的是非曲直".
- (d) in Article 30, by adding "各" after "均可在".

(e) in Article 31 -

(i) in sub-paragraph (a), by adding "某一" before "地區";

(ii) in sub-paragraph (b) -

(A) by deleting "在";

(B) by adding "在該" before "國家內".

*Question on the amendment put and agreed to.*

*Question on Schedule, as amended, put and agreed to.*

Schedule 2 was agreed to.

**THE OPEN LEARNING INSTITUTE OF HONG KONG (AMENDMENT)  
BILL 1997**

Clauses 1 to 11 and 13 to 29 were agreed to.

Clause 12

**SECRETARY FOR EDUCATION AND MANPOWER** (in Cantonese): Mr Chairman, I move that clause 12 be amended as set out in the paper circularized to Honourable Members.

The purpose of this technical amendment is to enable the Chinese text of the Bill to more clearly reflect the intention of the Bill and achieve consistency in the terms used.

Mr Chairman, I beg to move.

*Proposed amendment*

**Clause 12**

That clause 12(1) be amended —

- (a) in proposed section 8(1)(f)(ii), by deleting "至" and substituting "或".
- (b) in the Chinese text, by deleting proposed section 8(1)(f)(iii) and substituting -

"(iii) 最少 2 位屬總督認為是在香港的其他方面（即工商業或高等教育以外的方面）具有有關經驗的人；".

*Question on the amendment put and agreed to.*

*Question on clause 12, as amended, put and agreed to.*

Schedule was agreed to.

## **TRANSFER OF SENTENCED PERSONS BILL**

Clauses 1 to 5 and 7 to 11 were agreed to.

Clause 6

**SECRETARY FOR SECURITY:** Mr Chairman, I move that the clauses specified be amended as set out in the paper circularized to Honourable Members. This amendment contains the proposed changes to the Transfer of Sentenced Persons Bill which places an obligation on Hong Kong to give effect to any commutation or reduction of sentence by the authorities in the place where the person was sentenced.

To achieve this, we propose the inclusion of an additional subclause to clause 6. Under the new clause 6, where a prisoner has been transferred to Hong Kong the Governor will be obliged to revoke or vary the inward warrant to give effect to any commutation or reduction in the transferring jurisdiction, thus altering the time the prisoner must serve in Hong Kong.

Where a prisoner has been transferred from Hong Kong, the Governor must revoke or vary the outward warrant to reflect any commutation or reduction by the Hong Kong authorities. The authorities in the jurisdiction to which the Hong Kong prisoner has been transferred will then be obliged pursuant to the arrangements to give effect to this revocation or variation.

The proposed amendment reflects obligations in the arrangements we are concluding with other jurisdictions and gives statutory effect to these obligations. And in addition, there are also some technical and clarificatory amendments. They have been discussed in detail by the Bills Committee and have received the Committee's endorsement.

Mr Chairman, I beg to move.

*Proposed amendment*

**Clause 6**

That clause 6 be amended, by deleting the clause and substituting —

**"6. Revocation and variation of warrant**

(1) Subject to subsection (2), the Governor may, by direction in writing, revoke or vary an inward or outward warrant.

(2) Where the term of the sentence imposed on a sentenced person the subject of an inward or outward warrant has been commuted or reduced, the Governor shall under subsection (1) revoke or vary that warrant to give effect to the commutation or reduction, as the case may be."

*Question on the amendment put and agreed to.*

*Question on clause 6, as amended, put and agreed to.*



Schedules 1 and 2 were agreed to.

Council then resumed.

### **Third Reading of Bills**

THE CHIEF SECRETARY reported that the

#### **JUSTICES OF THE PEACE BILL**

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

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

Bill read the Third time and passed.

THE SECRETARY FOR HOUSING reported that the

#### **ESTATE AGENTS BILL**

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

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

Bill read the Third time and passed.

THE SECRETARY FOR HEALTH AND WELFARE reported that the

#### **CHILD ABDUCTION AND CUSTODY BILL**

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

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

Bill read the Third time and passed.

THE SECRETARY FOR EDUCATION AND MANPOWER reported that the

**THE OPEN LEARNING INSTITUTE OF HONG KONG (AMENDMENT)  
BILL 1997**

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

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

Bill read the Third time and passed.

THE SECRETARY FOR SECURITY reported that the

**TRANSFER OF SENTENCED PERSONS BILL**

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

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

Bill read the Third time and passed.

**MEMBERS' MOTIONS**

**PRESIDENT** (in Cantonese): Members' motions, two motions with no legal effect. I have accepted the proposal made by the House Committee in respect of the time allowed for Members' speeches, and Members were also notified of this on 19 May. The Member moving a motion may have 15 minutes for his speech and reply, and other Members will each have seven minutes. Under Standing Order 27A, I shall stop any Member whose speech exceeds the time limit.

## PROMOTION OF BUILDING SAFETY

**MR NGAN KAM-CHUEN** *to move the following motion:*

"That this Council urges the Administration to draw up comprehensive measures to implement in stages the Building Safety Inspection Scheme, so that concrete assistance can be provided to those owners of private property who may need such assistance and that inspection may be carried out on all cantilever-style awning and clearance of all illegal structures be stepped up, thereby raising the safety level of buildings in Hong Kong and protecting the life and property of the citizens."

**MR NGAN KAM-CHUEN** (in Cantonese): Mr President, I move that the motion as set out under my name in the order paper be passed.

At present there are about 50 000 blocks of private buildings in Hong Kong, half of which are over 20 years old and most of them do not have regular inspection or maintenance, thus posing potential danger to the public. Besides buildings falling into disrepair, there are illegal structures around. It is estimated that there may be more than one million illegal structures around Hong Kong. Such structures include grille cages, awnings, sealed exits, altered pipes and structures on rooftops. As no comprehensive survey in this regard has ever been carried out, the Administration has no specific figures about the problem. The actual situation therefore may even be much worse. What is more, there are 180 000 to 200 000 signboards which are not regulated under any legislation.

The problem of illegal structures has worsened over the past two decades, and despite the effort of the Administration, little has been achieved. The Commissioner for Administrative Complaints also thinks that this problem has extensive ramification; with the current manpower of the Buildings Department, there is no way for the problem to be resolved in the foreseeable future. Neither has the Administration any effective measure to keep the buildings under good repair. The problem of aging buildings, therefore, is ever aggravating. According to some professionals, with the current architectural design, and given that Hong Kong is within the sub-tropical region where temperature and

humidity are high, many of the buildings built of concrete can only have a lifespan of 60 years. Ten years later, more than half of the buildings in Hong Kong will be more than 30 years old. If these buildings were still under no proper maintenance, Hong Kong would abound in risks of collapsing buildings everywhere.

The Buildings Department announced in March this year that it would implement by stages the Building Safety Inspection Scheme (BSIS), and starting from April, it would send letters to the owners of 6 400 buildings that were under 20 years old, urging them to engage approved persons to make regular checks on their buildings and carry out maintenance. As to those buildings over 20 years of age, they would be required to carry out regular inspection. The public will be consulted in July on the specific measures to implement the Scheme.

The Administration now announces that the Scheme will be implemented by stages, and hopes that this will improve the "health" and safety of buildings in Hong Kong and ameliorates the decrepit situation of some buildings and protects the life of the citizens. The Democratic Alliance for the Betterment of Hong Kong (DAB) supports the BSIS in principle, but has reservation about the effect of the mandatory procedure and scheme. The idea of a mandatory inspection scheme were discussed in a number of public forum as early as 1986. In 1994, the Administration once again promised that it would study the possibility of implementing regular inspection through legislation. However, the authorities concerned could not assuage the doubt of the public that the Administration was trying to shift to the private owners its responsibility to ensure building safety. The Administration has never announced any measures to implement mandatory inspection. Hence it is all talk but no cider.

If the mandatory inspection scheme can be implemented successfully, the direct result will be the systematic eradication of all illegal structures in a short time. The Buildings Ordinance provides that construction works not approved and endorsed by the Director of the Buildings Department are illegal, and enforcement actions may be taken against them. However, the effort the Administration made in this respect in the past has achieved very limited result. As the current measures of the Administration cannot systematically and comprehensively identify the illegal structures that put the lives and properties of the citizens at risk, tragic incidents occur one after another. Since the incident in which an awning in To Kwa Wan collapsed in 1990, there have been similar

incidents at the San Ho Restaurant in Aberdeen, at Yan Oi Court in Kwun Tong and in Wong's Factory Building in Kwun Tong, which have claimed nine lives in all.

A mandatory inspection scheme will undoubtedly enable the Buildings Department to act more positively in banning illegal structures. However, the promotion of building safety involves not only policy issues but also details in execution. The DAB thinks that in implementing this scheme, three major requirements must be met.

First, to make buildings more safe, it is important that the Administration is determined to clear all illegal structures. Mandatory inspection will solve part of the problem only. The current mechanism for clearing illegal structures must be implemented expeditiously at the same time.

Second, the Government should put in place comprehensive and matching measures and provide substantial assistance to the private property owners in need.

Third, any promotion for building safety must achieve the short-term, mid-term and long-term objectives. In the short term, all illegal awnings and illegal fixture outside buildings must be removed. In the mid-term, all other illegal structures should be cleared. In the long run, regular inspection and maintenance must be carried out on all buildings.

Mr President, to achieve the above objectives, the DAB strongly advises that the Administration should take concrete actions in three major areas to achieve the expected result. These measures include:

1. Administrative coordination and support

- to put in place a system for regular building inspection and compile technical guidelines
- to provide technical assistance to the owners
- to provide more resources to various district offices to promote building management

- to establish a building maintenance resource centre to provide free consultancy services on building safety
  - to raise public awareness on the importance of building maintenance and the importance of building safety
  - to implement the building inspection scheme and carry out extensive community promotion and co-ordination
2. Financial assistance to owners of private buildings
- to deduct from personal income tax assessment expenses on building maintenance or repairs
  - to establish a buildings maintenance fund to provide low-interest loans to qualified owners to carry out building maintenance
3. Controls
- to legislate, in the long term, on mandatory establishment of owners' corporations in private buildings
  - to step up control on illegal construction works
  - to require owners to produce building safety certificate upon conveyance of property
  - to advance the costs for clearing illegal structures, and then recover the costs from the owners
  - to take actions such as "freezing the title deed" to prevent owners from defaulting repayments to the buildings maintenance fund

Building safety is a matter that should be handled with great urgency, but the current actions taken by the Administration on clearing illegal structures do not have the desired preventive effect. The awning that collapsed in Kwun

Tong in March was one outside the purview of the Buildings Department. In the light of this incident, the Administration must complete examination of all cantilever-style awnings in Hong Kong, and improve the control on illegal construction works and dangerous signboards, and the measures may include:

- (1) To conduct as soon as possible a comprehensive review on the extent of illegal construction works;
- (2) To review the Buildings Ordinance and revise the current fines to ensure that the relevant provisions have sufficient deterrent effect;
- (3) To step up the educational and promotional activities targeted at recently completed property development to prevent problems from developing into a state beyond control.
- (4) To extend the definition of construction works and include signboards of substantial sizes into the ambit of the Building Ordinance in order to address the problem of dangerous signboards. As to signboards now in existence, a licensing system should be implemented to ensure that any signboard exceeding a certain size or protruding beyond a certain distance shall have to be proved structurally sound by an approved person before it can be temporarily allowed to remain installed.
- (5) As with squatter huts on rooftops, the Administration should ban all transactions in respect of such illegal structures and carry out survey to ascertain the extent of the problem, the resettlement burden of the Administration and the priority for legal actions. Then with reference to the result of the survey and statistics, the Administration should review the policy of clearing structures on rooftops which have been listed as illegal construction works. As these structures are mainly for residential purpose and not solely illegal structures, new policy should be made accordingly.

As to the improvement on law enforcement at present, the Administration should adopt the following measures:

- (1) Setting specific criteria for determining target structures for

clearance;

- (2) Drawing up a comprehensive territory-wide clearance plan for more active large-scale clearance; and
- (3) The Buildings Department should re-examine buildings where removals have been carried out to prevent re-appearance of any illegal structures.

Only by safeguarding the safety of buildings can the public be assured of a safe and happy living. The DAB therefore urges the Administration to cast its sight further and make comprehensive arrangements to implement the BSIS. I hope that Members of different political affiliation can all give a piece of their mind on this issue so that the safety of the life and property of the citizens can be protected.

Mr President, with these remarks, I move the motion.

*Question on the motion proposed.*

**MR EDWARD HO** (in Cantonese): Mr President, during the Budget Debate this year, I also touched on the topic of today's motion. At present, there are buildings falling into disrepair everywhere in Hong Kong. Not only do they constitute a safety problem, they are also an eyesore to the public. We are redeveloping the old districts not because the buildings are too old, but because the buildings are in such a poor state due to their lack of maintenance that they affect the environment. Such a situation is caused by a number of factors, which include poor building quality, improper design, illegal alteration and unlawful extension. Any of the above factors can pose great danger to the residents and the public. Given that there are tens of thousands of "overage" buildings, I think we are very lucky that we do not have many calamitous incidents, and I think this is the result of the work of the Buildings Department. Nevertheless, there are some incidents in which parts of buildings suddenly collapsed and resulted in casualties. Just now, the Honourable NGAN Kam-chuen pointed out a number of examples. The potential safety problem in our buildings is worth our concern.

Mr NGAN request that comprehensive matching measures be put in place to go with building safety inspection, and to assist owners to remove illegal structures. I also support the proposals he made today. The Hong Kong



Institute of Surveyors has compiled a report titled A New Age for Private Building Maintenance in Hong Kong, which responds to the Administration's decision to pass legislation to make safety inspection of private buildings mandatory. The report contains a lot of precious opinions which I am not going to repeat here. Interested Members can contact the Institute for a copy. Surveyors are of the opinion that if buildings can be maintained to an acceptable standard and improvement is made in the way to remove illegal restructures, the problem can be resolved and accidents can be prevented.

If owners have difficulty in understanding the codes regarding how to carry out proper maintenance and repair, the Administration and the professional bodies can help, and I understand that these professional bodies are willing to render assistance. Obviously buildings can only be properly managed with the assistance and implementation of properly trained professionals.

We must remember that proper maintenance of buildings must begin with the owners and the residents. They must bear the consequence of being negligent, and must be responsible for the safety of the public. Though some people may say that they know nothing about the law and regulations, I think this cannot be an excuse. On the other hand, the Administration should continue with its promotion campaign to educate the public about building maintenance and the relevant law and responsibility.

The Administration should also play the important role of inspecting buildings before they become a risk to the public. Should there be a safety problem, the Administration should ensure that it will exercise the power that it is given by the legislation to take any contingent measures. Of course, if the Administration is to take such measures, it must have the necessary resources, or to put it in another way, the department concerned must have appropriate resources before it can operate effectively.

In his motion, Mr NGAN Kam-chuen stressed the importance of inspection and maintenance, but there are other factors that need to be taken into account in respect of safety, such as incorrect design. I feel that the construction laws passed after 1970s were very stringent and they should be fine. The problem may lie in the previous designs. Moreover, in respect of construction quality, this Council passed the Building (Amendment) (No. 3) Bill, which seeks to improve the registration system of the contractors, authorized persons and engineers and to make additional requirements in works supervision. The relevant technical

memorandum is being drafted, and I hope that it can place appropriate responsibilities on the persons or bodies concerned.

Mr President, there are suggestions that legislation should be passed to make maintenance schemes mandatory. I must point out that before implementing any mandatory maintenance scheme, we must ensure that so doing would not cause too great an impact on the society, and would not bring about insurmountable obstacles to some owners. We must understand that the problem with buildings falling into disrepair are caused by the fact that many buildings or private housing estate do not have their own owners' corporations. I therefore urge the Administration to consider ways to help and promote the establishment of such corporations, and before the relevant laws are enforced, the Administration should give necessary assistance to the owners.

Thank you, Mr President.

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

**MR ALBERT CHAN** (in Cantonese): Mr Deputy, the safety of buildings in Hong Kong, especially the old ones, has been a public concern for many years. In 1989, the Administration already carried out a scheme to inspect the exterior of all private buildings in Hong Kong and classified them in three categories:

The first category were those buildings which, after being inspected, require immediate internal inspection. At that time there were 210 such buildings.

The second category were buildings with suspicious spots on the external wall and they would be scheduled for internal inspection. There were 16 700 such buildings, most of which were built between 1948 and 1960.

The third category were buildings having good external condition and no maintenance would be required in the coming five years. There were more than 38 000 such buildings.

With a number of incidents in recent years in which the awnings of buildings collapsed, the Administration began to look into the safety problem of

old buildings, and the Administration had also floated the idea that small owners of buildings had to provide proof of building safety. At the end of 1994, the Administration considered adopting a maintenance certificate scheme, under which owners were required to engage authorized persons to carry out regular structural inspection of the buildings.

On 16 November 1995, another awning fell in Kwun Tong. The Administration put forth again the proposal, but was met with opposition from different sectors of the society. The reasons for opposing the proposal can be summarized into four areas:

First, the Administration would have difficulty in carrying out the new proposal because buildings that had illegal structures were mainly old buildings, and the owners and residents did not earn very high income. Even if legislation was passed that made inspection mandatory, they would still resist. The Administration also believed that there might not be enough resources to institute prosecutions and removals;

Second, with the ownership scattered among many owners, the Administration's proposal would be hard to carry out;

Third, this proposal would be unfair to those law-abiding owners who did not erect illegal structures on their properties;

Fourth, according to the Buildings Ordinance, the Buildings Department was charged with the responsibility to inspect the safety of the buildings in Hong Kong, but with the new proposal, the Administration shifted that responsibility to the general public.

It is already an indisputable fact that the problem of illegal structures with buildings in Hong Kong has become very serious. The Buildings Department has also admitted that there are more than one million illegal structures throughout the territory.

The Democratic Party thinks that to tackle the problem of illegal structures and to ensure the safety of all, it should not, I stress again, should not, be left to legislation alone as so doing clearly shifts the responsibility to the owners. The Democratic Party thinks that the Buildings Department has already put in place a mechanism to inspect buildings for illegal structures and to institute prosecution

in respect of such structures. If officials of the Buildings Department think that a certain building needs maintenance and repairs, the Department can issue repairs orders, directing the owners of the building to carry out repairs. As the Administration has the power and the responsibility to inspect all buildings in the territory to make sure that they are safe, the Democratic Party therefore opposes any legislation by the Administration to shift to the owners the responsibility of addressing the problem of illegal structures and the related safety problem. As to how to improve the safety of buildings, the Democratic Party has the following proposals to make:

1. *The Administration should step up inspection and examination of buildings*

At present, there are some Building Management Co-ordination Teams established under District Offices. For example, the District Offices of Kwai Tsing and Tsuen Wan set up Industrial Building Management Co-ordination Teams in 1986 and 1988 respectively, and District Offices of Yau Ma Tei and Tsim Sha Tsui, Mong Kok, Wan Chai, Sham Shui Po, Kowloon City, Eastern, Central and Western and Kwun Tong also established their respective Building Management Co-ordination Team between 1985 and 1988. Working with other departments, these teams carry out inspection at target buildings and help them improve building management. As the personnel of these teams are seconded from the Housing Department and are experienced in building management, the target buildings have seen improvement in their management since the establishment of these teams.

We think that the Administration should consider expanding these teams and establish similar teams at each administrative district so that regular inspection and examination can be carried out in respect of buildings with suspected problems and that the residents and owners can be given assistance to improve building repairs and maintenance. This arrangement not only reduces the trouble of the Buildings Department personnel having to run around inspecting buildings, it can also help prevent problems.

2. *Residents organizations be strengthened*

The Administration should mobilize the staff of the Home Affairs Department to help residents establish owners' corporations and provide professional assistance on building management at key buildings. Such

professional assistance should cover areas of law, building inspection and repairs.

3. *Active assistance be offered to owners*

In the past, the Administration adopted an open attitude towards releasing building information. When residents and owners take the initiative to make enquiries, the Administration should provide them with the information so that the owners of old buildings may have some guidelines on how to improve the management of old buildings.

4. The Administration should complete inspection of buildings of the second category as soon as possible to ensure the safety of the 16 700 buildings. The Administration should also start a new examination program for buildings of the third category.

Given that the ownership of old buildings are generally scattered, and that the residents organization has limited ability and little knowledge in building management, the Democratic Party thinks that it is not appropriate to make laws in this respect now. We think that the Administration should help and encourage the residents improve the management and maintenance of their buildings.

Thank you, Mr Deputy.

**MR MOK YING-FAN** (in Cantonese): Mr Deputy, the number of private buildings are increasing in Hong Kong and there are more and more incidents of falling awning or illegal structures which all resulted in casualties. I think this is directly related to the geography and climate of Hong Kong, which accelerate the aging process of buildings. Without proper structural maintenance, buildings will exhibit all sorts of problems like the peeling off of the external wall, unstable structure and fire prevention problems. It is the reason why the Buildings Department introduces the Building Safety Inspection Scheme, under which owners and owners' corporations will be sent advice urging them to voluntarily join the Scheme. The Scheme mainly targets at owners of properties

under 20 years old. As it is a voluntary scheme, if the owners just ignore the advice, there is nothing the Buildings Department can do. However, if there is anything wrong with the building structure, the safety of the passers-by and residents will be affected and grave consequence may result. The Hong Kong Association for Democracy and People's Livelihood (ADPL) and I therefore think that the Buildings Department should make building inspection mandatory, especially for those buildings over 10 years old and with cantilever awnings, so as to ensure the safety of the passers-by and residents. I can predict that if we still keep this scheme voluntary, the situation would remain the same after a century.

In implementing the Scheme, the Buildings Department should have in place comprehensive matching measures to provide concrete assistance to private households and owners who are in need. At present such assistance is limited to providing a list of authorized persons, registered structural engineers and general building contractors to the owners for their reference. If an owner wants his property to be inspected, he still faces a lot of problems. We all know that many private buildings do not have any formal residents organizations such as owners' associations or owners' corporations, so they do not have a co-ordinating or decision-making body to carry out any inspection. The management body of some buildings may not be able to collect sufficient funds from the residents to carry out inspection, thus making any plan for building inspection a stillbirth. The ADPL therefore proposes that the Buildings Department should set up a team to oversee the work of building inspection and the related specific arrangement, and, by engaging professionals, to assist with building inspection. The costs involved or the related administrative costs, to be shared by the owners of the property concerned, will be recouped by billing each one of them. We believe that the Administration should shoulder this responsibility. Hong Kong people are law-abiding; I believe that the whole exercise will be more effective if the Administration plays the role of fund-collector, rather than leaving it to the owners' corporations or management companies.

Besides those aging buildings which need to be inspected, all cantilever style awnings also need examination. At the moment, some of these awnings are illegal structures, which are meant to extend the area of the unit concerned. Such extension may have an adverse effect on the structure of the building, and the extended part may exceed the loading capacity of the awning and make the

whole awning fall down, causing casualties. Some of the awnings are used as storage depot for such things as the ventilation unit of large air-conditioners, which again may exceed the loading capacity of the awning. The rumbling of the air-conditioners as well as the water leaking from them may affect the structure of the awning. I believe that the Buildings Department also understands these problems clearly. The ADPL therefore proposes that the Buildings Department should inspect all cantilever awnings in Hong Kong, and that follow-up work such as clearing all heavy objects on these awnings and repairing such awnings should be carried out to ensure that they would not collapse due to overload.

Moreover, the Administration should step up clearance work in respect of all illegal structures so that the structures of buildings will not be affected by them. At present, some of these illegal structures, like squatter huts on rooftops, are used for residential purpose. When removing these structures, the Administration should also consider ways to resettle the people living in them so as not to make them homeless. The Administration should arrange public housing for the affected people. As to those who have not been in Hong Kong for the required seven years, I think the Administration should provide some sort of interim housing for them.

All in all, the ADPL supports the Building Safety Inspection Scheme. To be vigilant during time of peace, this Scheme should be mandatory instead of voluntary, and the Administration should take up all the practical work and pay attention to the resettlement of the affected people.

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

**MR CHOY KAN-PUI** (in Cantonese): Mr Deputy, last month another incident of collapsing awning claimed human lives and caused injury. In fact, in recent years there have been a number of such incidents in which collapsing awnings or falling concrete from external walls of buildings caused casualties to passers-by. Moreover, there were serious loss of life and property resulting from fires caused by improper fire-prevention equipment. Such incidents happened in districts where there is a high concentration of buildings. Half of the private buildings in Hong Kong are over 20 years old and that is closely related to a lack of proper management and maintenance for a long time. On the other hand, there is no mandatory requirement under which owners of buildings that have reached a

certain age must have their property inspected, maintained and repaired. Even when the Buildings Department identifies a dangerous building, it can only issue a removal order to the owner in respect of the illegal structures. As to buildings that have been built to the requirements of law and have been found dangerous, what the Department can do is to issue advice, informing the owner to carry out repairs. Such works therefore proceed very slowly and very often incidents may have already happened before the dangerous building concerned has been dealt with.

The Administration introduced lately the Building Safety Inspection Scheme (BSIS), under which buildings of different ages are put into self-initiated and mandatory schemes. For buildings under 20 years old, the Administration would urge the owners, out of their own initiative, to carry out regular inspection and maintenance of their buildings and then issue safety certificate to buildings that have passed inspection. As to buildings over 20 years old, the Administration would make building inspection mandatory and would issue examination order to problematic buildings, requiring that repairs be undertaken. This Scheme will be put into effect in the middle of next year at the earliest.

Though the owners' self-initiated inspection scheme has been implemented, because it is not legally binding, the owners and the residents are not that spontaneous in carrying out inspection. The Administration therefore must step up promotion of the scheme so as to make the public recognize the importance of building management and maintenance and to make clear to the public their responsibilities. The Administration should provide information to the owners regarding the standard fees charged for building inspection and the repairs costs involved, so that the owners can have an idea of the financial implication and understand that they get good value for the fees and charges paid. Buildings issued with safety certificates may command a higher resale price and rent. Thus, for the good of oneself or other people, the public should actively support the mandatory building inspection scheme. In making the relevant legislation, the Administration should aim at tackling problems such as structural damage to buildings, the peeling off of external walls, illegal structures, and fire hazards in public access created as a result of unauthorized alteration of use of buildings. The Administration should state clearly the legal liabilities of owners in respect of building safety, and the legislation should take effect immediately on completion of the whole legislative process, with heavy penalties imposed on owners who refuse to co-operative, so that in their own interest they can be made



to co-operate with the Administration.

Mr Deputy, Hong Kong has more than 60 000 post-war buildings, most of which have illegal structures. The Buildings Department has carried out a series of examination in districts across Hong Kong, finding that buildings with problematic awnings are in the thousands. However, it takes the Department a very long time to take down all these awnings. I do not know if it is the Administration's intention to include the structural problem of awnings in the bill on the Building Safety Inspection Scheme to be implemented next year, so it drags on taking down these hazardous awnings. I think that if it is really so, it is very irresponsible of the Department and it shows its neglect for public safety. Though the Building Safety Inspection Scheme is worth our support, the relevant legislative work is also very important. However, this cannot be the excuse for going slow in removing such structures; both should proceed at the same time. While making the necessary legislation, the Administration should dispatch more manpower to carry out inspection and issue repairs orders to offending owners so as to accelerate the process of removing all hazardous awnings. The safety of the public will thus be ensured and Hong Kong will not become a city of dangerous buildings.

Mr Deputy, these are my remarks.

**MR IP KWOK-HIM** (in Cantonese): Mr Deputy, everyone in Hong Kong dreams of a comfortable, quiet and safe home, but in real life, when we walk down such old districts as the Central and Western, Yau Ma Tei, Tsim Sha Tsui, Mong Kok and Sham Shui Po, illegally built flowerbeds and awnings are everywhere. We would wonder if Hong Kong people can really have a safe home.

Just now, the Honourable NGAN Kam-chuen cited a lot of examples that deserve our concern. I would like to point out one more thing: the safety of a building, to a large extent, depends on its proper management. On 8 January this year, I moved a motion debate on improving building management, and Members talked about all sorts of problems in building management, which I do not want to repeat here.

Mr Deputy, in recent years the Administration has been resolved to care about the safety of buildings. Besides the plans to inspect the safety of private slopes and to test the power supply of buildings, proposals that call for measures to improve the safety of old-styled commercial buildings have also arouse the

concerns of owners of private buildings about the safety of their properties. However, a mere series of policies without any matching plan to assist their implementation would make these policies that were meant to benefit the public a bother. As the saying goes, "the road to hell is paved with good intention."

Taking the plan to test the power supply as an example, I believe that many Members may have already received a lot of complaints from members of owners' corporations. These owners are not unwilling to do as the law requires. However, they know little about how to choose qualified contractors and the tender procedures. Besides, there is also the funding problem. These members, finding themselves trapped in between, have bucket loads of grievances to pour. For those buildings without an owners' corporation, the problems and obstacles they face are even greater. Now the Administration proposes that the Building Safety Inspection Scheme is to be introduced by stages, and this adds another burden to the helpless owners.

Mr Deputy, the DAB considers that while the policy on building safety is to be carried out, there must be a whole train of matching measures to follow. The DAB considers that the Administration should allocate more resources to the District Offices, strengthen the training of the front-line personnel and provide accurate, clear and efficient help to the owners. At the same time, the Administration or the relevant professional bodies should provide the owners with technical assistance by drawing up a list of qualified contractors and publishing technical guides. The Administration should also set up a resource centre for building maintenance and repairs, which, together with a central-level supporting team comprising various professional bodies with the co-ordination of the Home Affairs Department, can provide more comprehensive and professional consultancy services.

Mr Deputy, to increase knowledge and concern of the general public about building maintenance, the Administration should step up its promotion efforts in the media. It should also promote public awareness for building safety through its community network, such as the district committees under the District Offices. In order to alleviate the owners' financial burden arising from the new policy and to encourage owners to join the scheme voluntarily, the DAB proposes that building maintenance or repair expenses paid by owners should be deductible from personal income tax assessment. The Administration should also set up a building maintenance fund to provide low-interest loans to owners of

owner-occupant property who may find it hard to finance building maintenance works.

Mr Deputy, in the long run, more private buildings should be encouraged to establish their owners' corporations, management of buildings should be improved, and the residents should have greater awareness of building management. These are practical and desirable measures. Moreover, the Administration should show its determination to clear as far as possible all illegal structures, including dangerous signboards, about which we have much debate the other day, so as to minimize the chances of any unexpected calamity.

Mr Deputy, with these remarks, I support the motion of Mr NGAN Kam-chuen.

**DR JOHN TSE** (in Cantonese): Mr Deputy, I want to talk briefly about the problem of dangerous signboards. Just now the Honourable IP Kwok-him reminded me that we talked about this at the meeting of the Panel on Lands and Works two days ago. There are about 200 000 signboards in Hong Kong, all of which pose potential hazards. We may even say that they are under no control at all. These signboards occupy quite a lot of public space. Some of them may extend to a width midway across Nathan Road and may constitute certain danger. Regrettably, the Administration still insists on a double standard — no illegal structure is permitted but signboards are acceptable.

On fees and charges, the Administration has been sticking to the users-pay principle; radio and sewage charges are examples of such a principle. However, on signboards that may pose a hazard to public safety, the Administration has imposed no control at all. In controlling signboards, I believe that the Administration will, in its reply to be given later, say that public safety is taken as a criterion to assess the acceptability of signboards.

I would like the Administration to consider an application system for erecting signboards and consider seriously if rent can be collected in respect of signboards. Some countries collect such rent because the signboards have taken up public space. I think that those signboards that are erected on a wall need not pay any rent, but for signboards that extend outward and occupy a space, I hope the Administration can consider seriously charging rent on them.

Why do I say so? I believe the Administration will, on the grounds of insufficient resources, say that there is great difficulty in controlling signboards. Of course, as a Legislative Councillor, I think that if the Administration says that it does not have enough resources, it should try to find some more. I believe that Members of this Council will be willing to approve more resources to carry out control work in this respect. However, if there is not enough resources and it does not apply for it, the Administration itself will have to find those extra resources. The rent collected in respect of signboards may be enough to pay the necessary expenses, as there are some 200 000 signboards out there. I have made an estimation. If we make a levy of \$1,000 on each signboard, the Administration can get a total of \$200 million, which is certainly a very huge sum. With 200 000 civil servants, we certainly have enough manpower to control such dangerous signboards.

I hope that the Administration will seriously consider my suggestion. I believe that in his reply, the Secretary would say that those signboards on the external walls of buildings were erected with the consent of the owners of the buildings concerned. However, Members who are familiar with old districts know that erecting such signboards in fact need not have the consent of all the owners or owners' corporation of the building concerned. As long as the owner of a unit has given his consent, the signboard can be put up. Even if the owner of that particular unit has moved out, the signboard will stay there. Well, how can we tackle this problem? I hope that in the spirit of the Honourable NGAN Kam-chuen's motion, we can have greater control over such signboards by means of legislation. This is because many owners feel that they are helpless, not knowing who should be responsible for removing such signboards, or who should be responsible for carrying out maintenance, or whether the signs should only be removed until they become a hazard. From the perspective of safety, we should raise our expectation and impose the necessary control.

I hope that the Administration can allocate more resources in this respect, and give due consideration to the suggestion of collecting rent on signboards.

Thank you, Mr Deputy.

**MR JAMES TO** (in Cantonese): Mr Deputy, the Honourable NGAN

Kam-chuen's motion comes at a very opportune time. The Administration proposed to introduce a scheme that requires the owners to carry out "self-inspection" on their own properties; the concept itself is not a new one. At present, electrical devices are required to have inspection certificates, that is, regular examination must be conducted to ensure the safety of these devices. However, I am worried that this scheme may give rise to some side-effects, or may not be able to achieve what it is intended, and the consequence may be very serious.

What is "self-inspection"? How is a building judged to have passed an inspection? I can think of a number of problems that exist generally. Does it mean certificates would only be issued with complete removal? Let me cite a few examples: First, the squatter huts on rooftops, which are obviously illegal. Second, the problem of signboards as pointed out by the Honourable John TSE. Third, illegal additions such as grille cages. Fourth, alterations carried out in some public areas but not protruding from external walls. Fifth, illegal works carried out inside a building, such as illegal alterations within a property. If an inspection scheme is implemented, will the Administration issue certificates only after it is satisfied that none of the problems mentioned above is existent? Otherwise, the Administration would have to impose heavy penalties or resort to other mandatory means. What consequence would that give rise to?

According to the estimates of the Director of the Buildings Department, the number of structures that are illegal but have not yet become dangerous and are therefore still tolerated by the Administration should be over a million. To put it simply, it is a "massive clearing" is necessary. In other words, it is a problem which even the Administration finds intractable has to be tackled by the owners' corporations or owners for the Administration. What means can they adopt? They are not without any means, but are the means practicable? The Secretary or the Director of Buildings Department may simply say that with a civil injunction, they can get some people to demolish the squatter huts on rooftops. However, as the Administration has to deploy teams of policemen to maintain order when it clears a few squatter huts, we can imagine a situation where the bailiff would be in a stand-off with the residents of the squatter huts when he was called to take possession of the huts after the Administration had applied for a civil injunction to clear these huts and the owners' corporations were willing to pay the legal costs. In that case, the Administration might have to call in the police to support the bailiff.

In fact, even if we were to go for other means by leaving the matter to be dealt with by the owners' corporations regardless of the legal costs, the problem could not be resolved. I hope that the Administration has no intention of taking advantage of the owners. Even if it really has such intention, it may not be able to achieve what it aims at through this scheme. I therefore hope that the Administration can consider relaxing the policy a bit by permitting those without posing direct threat to, for example, health and environment not to be cleared immediately. But the Administration should not expect to solve the problem through issuing inspection certificates, and imposing punishments, such as freezing the deed, fines, prosecution and imprisonment, on owners failing to get the document. The Administration should not have this in mind and I want to remind it of this again here.

As mentioned by several Members just now, what can those buildings without an owners' corporation do if the Administration really implements this Scheme? Even with those buildings with an owners' corporation, there is the problem of collecting funds from the owners, which is always the most difficult part of any exercise. I believe that the relevant legislation must be reviewed. Does the current law have sufficient power to deal with situations where, when an owners' corporation collects the funds, like collecting the maintenance fees and the fees for electrical devices, 80% of the owners agreed to the works but the remaining 20% disagreed? If the matter is left to the Small Claims Tribunal to resolve, and the hearing is time and again postponed, and the judge always looks for a compromise, would this be a satisfactory mechanism? I hope that we can consider this carefully. Even if judgement is awarded, how can it be enforced? Does the money that can be obtained worth the money spent on getting it? How much has to be spent to conduct the case? In a word, the lawyer's fee must be paid first for the case to proceed, and then the fees will be recovered later, but not to the full amount. It would be very lucky if 80% to 90% of the fees can be recovered. Will those people who foot the bill feel that they have been treated fairly? How can the owners' corporations have the power to recover the funds from the uncooperative owners?

As to those buildings without owners' corporations, the situation would be even worse. I hope that if the District Office is to issue orders to certain buildings to force their compliance, it should consider whether it has sufficient support, or whether these buildings can be made to establish their owners'

corporations. If the Administration just issues orders without taking some positive moves first, it will be impossible for the buildings concerned to comply. Of course, the Administration may consider paying for the works to meet the requirement of an order first and then force the owners to share the costs. However, this would lead to disputes on the affordability of the owners because the older a building is, the more maintenance it requires. According to statistics, except those owned by some large developers or real estate developers, most of the old buildings are homes or source of income of the old people. Have they the financial means to meet the demands of the Administration? Can they efficiently meet the demands of the Administration without being taken advantage of by the contractors?

I expect that, if this system is to be implemented, the old buildings will have a hefty expense burden, and the price of these buildings will fall as a result. I would like to know if this is the intention of the Administration to indirectly promote urban redevelopment with this scheme. Though I am a member of the Land Development Corporation, I hope that the Administration will not add to the financial burden of the residents through this scheme, thus making them feel that it is not worth the while to spend large amount of money and indirectly forcing down the price of the old buildings and making it easier for private developers and the Land Development Corporation to acquire these old buildings. I hope that this is not the ulterior motive of the Administration.

**MR YUM SIN-LING** (in Cantonese): Mr Deputy, there are 28 000 private buildings in Hong Kong, 12 000 of which are over 20 years old. These buildings are mainly located in the urban districts, and are in need of maintenance and repairs or have illegal structures that need to be removed. Moreover, as the quality of management in these buildings are not as good as that of housing estates, these old single-block buildings have greater potential hazard.

Problems such as illegal structures, illegal structural alteration and insufficient maintenance all pose great threat to the residents and the passers-by. All these are management problems.

In helping multi-storey buildings improve their management, the District Offices have been entrusted with the duty to assist owners to establish their own owners' corporations for their buildings, and to provide guidance after their establishment. The Home Affairs Department is responsible for territory-wide coordination. Whenever a need arises, the participation of other departments

may also be requested, but the result is not satisfactory.

The Building Management Co-ordination Teams of the Home Affairs Department have been responsible for inspecting urban multi-storey buildings and compiling reports in respect of the fire-prevention, structural and management condition of the buildings. Those buildings that have serious management problem would be put in the "target list" for improvement. Over the past decade, thousands of buildings have been put in this list. However, of these "problem buildings", nearly a quarter are still on the list.

In many of the older districts there are buildings, awnings and signboards that have fallen into disrepair. Besides being a problem for the owners, most of the problem can be attributed to the active non-intervention policy of the Administration. For example, signboards are not subject to any sort of control, and in fact the Administration does not want to control them. What is more, the Administration has not been very efficient in law enforcement, and there is insufficient manpower to carry out inspection and to institute prosecution.

Just now Members have already referred to the problem of controlling the signboards. In fact, many of the signboards are erected without the consent of the owners. In his answers to the questions raised by this Council a few months ago, Mr Bowen LEUNG rejected the proposal to control signboards. However, I would like to point out to Mr LEUNG that the middle-class of Hong Kong may not have much to ask of the Administration, but those signboards that have been erected on their properties have caused them much nuisance. For example, the strong light from the signs affect their livelihood, and some signboards have become a security problem as they make it easy for thieves to break in. The middle-class find that the Administration is just practising a laissez-faire policy. No matter which department they turn to for help, they would only meet with rebuff, because the Administration does not have any control over these signboards. After the recent fire at the Garley Building, some Members have once again raised the concern about these signboards and wondered if they might pose any hazard. Despite the urgency and impact of the issue, the Administration still thinks that there is no need to control these signboards.

We hope that the Administration will not see these signboards as things of no great importance. To some people, these signboards are the source of their dissatisfaction with the Government and have caused much grievance among



them. The Administration should review the relevant policy. Some Members have suggested levying rent on or licensing these signboards. If the Administration does nothing, not only will these signboards affect the safety of the buildings concerned, they will also cause trouble to the fire-fighters and traffic. The public may think that the Administration has no means to deal with these signboards, and thus feel greatly dissatisfied with the Government.

These are my remarks. Thank you, Mr Deputy.

**SECRETARY FOR PLANNING, ENVIRONMENT AND LANDS** (in Cantonese): Mr Deputy, "raising the safety level of buildings in Hong Kong and protecting the life and property of the citizens", as mentioned in the Motion, have been the policy objectives of the Administration. The Administration and Members of this Council therefore are of the same mind on this. Today, in response to the motion, I would like to take this opportunity to make a brief report on what the Administration has done and achieved up to this moment and what its future plan is.

First of all, I want to thank all Members who have expressed their views on the Building Safety Inspection Scheme (BSIS) and we certainly will study the Scheme and consider these views carefully. The voluntary BSIS began last month, and up to now we have sent out advisory letters to 36 buildings, involving 1 400 units. In the near future we shall send out advisory letters to about 40 buildings. Buildings affected by this voluntary Scheme are mainly those built in 1978 or thereafter, and there are about 6 500 such buildings. We hope that each year we can have 700 buildings joining this involuntary Scheme. On the other hand, we are making preparation for a public consultation exercise to be conducted in the second half of the year in respect of the mandatory building inspection scheme. The purpose of this mandatory scheme is in principle to deal with buildings built between 1946 and 1977, and there are 16 900 such buildings. Before actually putting together a statutory and administrative framework for the scheme, we shall consider the views of Members and the public.

In general, a successful implementation of the BSIS depends on two factors: first, co-operation from the owners; and second, strict adherence to the inspection requirements by professionals of the construction industry. The

Buildings Department will step up its promotion of this Scheme. Besides promoting through the media, it will organize seminars, distribute pamphlets about buildings maintenance and meet with owners and management bodies of buildings, so that more people will be made aware of and accept this Scheme. After carefully considering and consulting the views of the people concerned, the Buildings Department will prepare an intermediary guideline, detailing all the inspection items and ways to conduct the inspection, so that professionals of the construction industry will know what to do. The Buildings Department has also made special staff arrangement and resource provision so that its staff can answer any question raised by the public and professionals of the construction industry in respect of this Scheme.

I understand that difficulties may be encountered in organizing owners of buildings with common ownership to carry out inspection and maintenance of common areas of their buildings. To resolve this problem, the Secretary for Home Affairs has proposed to amend the Buildings Management Ordinance and many items will be amended, but items that have direct relevance to today's motion include: the owner shares required to oppose and repeal the order of the Secretary for Home Affairs to convene an owners' meeting to appoint a management committee will be increased from the present 10% to 30%. In other words, this will increase the percentage of minor owners required to oppose this order. Moreover, an amendment will also expressly require that after the owners have passed a resolution to renovate, improve or maintain the common areas of a building, the owners' corporation shall have the power to commence such work immediately.

Some Members are concerned about the inspection fees the owners have to bear. I am afraid that such fees are unavoidable. It is part and parcel of owning a property; that is, with rights, there are duties as well. After all, it is their personal property, and the owners should have the responsibility to keep their buildings in proper repair. Properties having been repaired can command higher value. Notwithstanding all this, we shall carefully study all the responses gathered from public consultation and consider if there is the need to provide technical or financial assistance to those people who are in real difficulty.

As to the inspection of cantilever-type canopies, I already told this Council last time that the Buildings Department carried out a survey of cantilever-type

canopies in 1995 and prepared a list of 1 200 such canopies that extended beyond 1.5 m, which all require further investigation of the consultants and staff of the Buildings Department. After completing the preparatory work for setting up a Works Planning System, desktop study and investigation method, actual investigation has already begun early this year. Up to now the Buildings Department has investigated about 130 canopies, of which three show immediate danger and 20 are potentially hazardous. We have already taken appropriate action in respect of these canopies.

Some Members may feel that the progress of inspection work carried out in respect of these 1 200 cantilever-type canopies may be a bit too slow. I must correct some misunderstanding. These canopies are selected for inspection with respect to their size and design. We should not assume that these are all problematic canopies that require immediate attention. We must set down priorities for our enforcement actions. In fact for 1996-1997, we allocated resources to follow-up on the result of a consultancy report, which was conducted in respect of buildings built between 1946 and 1958. We have dealt with 2 259 buildings and issued 161 statutory orders, and therefore actions have actually been carried out against most of the aged buildings that have structural problems. We have also taken actions against some of the hazardous canopies. We reckon that by the end of next March we can complete the investigation of all 1 200 canopies.

The last part of the motion is about the treatment of illegal structures. First of all, I want to point out that from what Members said, I can see that Members have misunderstood the BSIS. It is not the aim of the Scheme to deal with illegal or unauthorized structures; rather it is our principle and aim to deal with the structural safety of buildings. We have never thought of using this Scheme to require the owners to prove that they have not erected any illegal structure. I would therefore like to make a counter proposal: we should focus on the safety of structures, instead of listing a structure as hazardous because it is illegal. As I have mentioned earlier, the consultancy study of the 1 300 buildings built between 1946 and 1958 has been completed and the Buildings Department is doing follow-up work on the result of the study. This study actually provides very valuable information on the aging process and general structural problems of buildings, and is of great assistance to us in setting technical standard and law enforcement policy in the future.

Finally, Members may be interested to know that we have already stepped up our law enforcement action. The total number of illegal structures removed has increased from 6 680 in 1992 to 9 586 in 1996. The Buildings Department is also taking more stern action against owners who do not comply with any statutory order. The number of convictions has increased from 40 in 1995 to 125 in 1996. We shall continue with our firm actions in order to make buildings in Hong Kong safer and better maintained.

At the end I would also like to point out that many Members have expressed their views on the signboards. Though nothing is mentioned in the motion about such signboards, I feel that Members have great misunderstanding about this issue and have assumed that all these signboards are hazardous. I want to point out that the situation is not like this. In the suggestions Members made that such signboards should be subject to regulation, rent payment and licence requirement, they have made an assumption and that is, if the Government want to do so, it can take retrospective action against such signboards. We shall consider the views of Members, but I hope that, in proposing any method, Members can also consider whether it is appropriate to introduce retrospective laws in Hong Kong.

Some Members have also mentioned the problem of building fires, especially the one at Garley Building might involve signboards. I want to put simply that we have conducted careful investigation into the fire at Garley Building, and the cause had nothing to do with signboards.

Thank you, Mr Deputy.

THE PRESIDENT resumed the Chair.

**PRESIDENT** (in Cantonese): Mr NGAN Kam-chuen, you may now give your reply. You have four minutes 20 seconds out of your original 15 minutes.

**MR NGAN KAM-CHUEN** (in Cantonese): Mr President, I would like to thank Members who have expressed their views to the Administration in respect of my motion to promote building safety. Whether in support of or against this mandatory building inspection scheme, Members think unanimously that promoting building safety cannot rely on mandatory measures alone, and the

Government must also strengthen the residents organizations and be more forthcoming in assisting property owners.

Owners should have the responsibility to promote building safety. Under this principle, the DAB has never denied that it proposes this motion debate with a view to reminding the Administration that in implementing a mandatory building safety inspection scheme to resolve the long-lasting problem of illegal structures, which the Administration has never been able to control, it must bear in mind the necessity of having proper matching measures. Otherwise, the expected result will not be achieved, and the scheme may even cause "disturbance" and "harm" to the public.

However, the prospect does not seem promising. As many Members have put it, building management has become an intractable problem. Even buildings with owners' corporations encounter much difficulty when maintenance works are to be carried out, so it is easy to perceive the problem faced by the 45 000 buildings without owners' corporations. In dealing with illegal building works, the Administration just adheres to the old ways; in respect of the signboards, the Administration has not taken any positive or direct action. As to the "user-pays" licensing system proposed by Members, the Administration has adopted a very negative attitude. The Legislative Council Panel on Planning and Lands passed a motion yesterday, reprimanding the Administration for dragging its feet in respect of control of signboards. This is surely a warning to the Administration.

I hope that the Administration will seriously heed the views of Members and mine, and take effective measures immediately to encourage and assist owners to take part in the building inspection scheme, so that with the co-operation of the Administration and the public, Hong Kong would not become a city of dangerous buildings.

Thank you, Mr President.

*Question on the motion put and agreed to.*

**1989 PRO-DEMOCRACY MOVEMENT 4 JUNE INCIDENT**

***MR SZETO WAH moves the following motion:***

"That this Council considers that the 4 June incident of 1989 must be rehabilitated."

**MR SZETO WAH** (in Cantonese): Mr President, MAO Zedong said, "Those who suppress the student movement will certainly come to no good end."

LIN Biao also said, "Every phrase is truth. One phrase equals ten thousand phrases. Those who understand it have to follow and act upon it; those who do not still have to do so."

LIN Biao's words of course were absurd. However, his absurdity should not be entirely denounced. That line from *MAO's Quotations* has some truth in it. With respect to the "Strict Adherence to the Four Principles", one of which is strict adherence to Marxism, Leninism and Mao Ze-dong's thoughts. As to the so-called MAO Ze-dong's Thought, does it include this line from *MAO's Quotations*?

In the contemporary history of China, from the May-fourth Movement down to the December-ninth Movement, and down to the Movement of "Anti-hunger, Anti-Civil War", every student movement heralded a new era and reflected the conscience of the society, and drove history forward. As suppressers of student movements were reactionaries and scum of the time, society and history, how can they come to any good end?

A nation that forgets its history is a nation without hope. Take history to heart is to learn from it so as to move forward. A car with no "rear view mirror" is prone to deadly accidents. Rehabilitating the June 4 incident is not just looking back to history, it also means looking forward and further development. It embodies three layers of significance and is the first step in strengthening China.

Firstly, rehabilitating the 4 June incident means that while China continues with its economic reforms, it is determined to carry out political reform and go down the road that human rights are respected and democracy developed.

Secondly, one of the most important demands of the 4 June Incident was anti-corruption. It has been eight years since the bloody suppression, and corruption has become more rampant. Rehabilitating the 4 June Incident shows that the Government is sincere in tackling corruption with great determination.

Thirdly, rehabilitating the 4 June Incident will bring together a greater solidarity of the entire Chinese race. This incident has been a fast knot in the hearts of many overseas Chinese. Only by untying this knot can that force of solidarity be brought into play.

We all know that even if the motion is passed, it does not mean that the June 4th Incident will be rehabilitated immediately. Neither does rejecting this motion mean that the Incident will not be rehabilitated. However, most of us know fairly well that, no matter how far off that day would be, the 4 June Incident will be rehabilitated one day. My moving this motion today is to leave a record in history so that all 60 Members of this Council can have their stand on this historical event noted in a historical record. Comparing this historical record with their stand eight years ago, and then comparing further this historical record with their stand when this incident is rehabilitated in the future. It will make a very meaning exercise.

Mr President, with these remarks, I move the motion.

*Question on the motion proposed.*

**MISS MARGARET NG:** Mr President, I rise to support the motion. I am grateful to the Honourable SZETO Wah for providing us with the occasion to tell the world that we, in Hong Kong, have not forgotten 4 June. Nor shall we forget it, until the wrong that has been done in labelling that democratic movement a "disturbance" is righted. Those who risked or gave their lives in peaceful demonstration so that China may have democracy must not be called criminals.

Mr President, we have been told, let bygones be bygones, let us look towards the future. Do not let the past burden us, whatever the right or wrong. But how can we do that? Unless the past is vindicated, we remain unsure of our

future.

We have been told, "let water from the river keep clear of water from the well" — meaning Hong Kong people should not interfere with the affairs of Mainland, or the Mainland will not keep off Hong Kong's affairs.

But this is impossible. It is precisely the 4 June event which awoke the deep sense of Chinese identity in numerous people in Hong Kong. It is the democratic movement in China which set an example for our own aspiration to democracy. The patriotism of those who fought so single-mindedly for democracy for China made us feel proud of being Chinese. We want to bind our fate with theirs. We know that there are not two destinies for Hong Kong and for China, but only one.

We do not have to think selfishly, that if the Chinese Government is prepared to deal harshly with democrats in the Mainland, it will not be likely to be indulgent to us. It is not just in fear of Hong Kong's future that we cry for China. We do so because we realize we, too, are Chinese. And being Chinese, we, too, want the best things to happen to China, including a clean and democratic government, protection for human rights and freedom for all.

And so every year we celebrate our Chineseness. Every year, as members of the great Chinese people, we demand that our history be put right. Mr President, the cry for justice will not be silenced. It will not die just because it is ignored year after year. For as many times as it is ignored it will be renewed, as today's debate demonstrates.

Mr President, as I thought about today's motion, an old poem we learned in childhood suggests itself to me, and I freely translate:

You live at Yang-Tze's head  
I live at Yang-Tze's mouth  
Daily I miss you, I cannot reach you  
Our lips yet share the same river's flow.

When will Yang-Tze run dry  
When will my sorrow cease



Would that your thoughts were like my thoughts  
This longing will not in vain be.

Thank you, Mr President.

**MR ALLEN LEE** (in Cantonese): Mr President, not long ago I went to see the film "The Gate of Heavenly Peace". The 4 June incident has a certain impact on the people of Hong Kong. I remember I met you on the day I saw the film. We watched this documentary together. It was made by an American. Though many people were very concerned in 1989 about what happened during that spring up until 4 June at Tiananmen, I was surprised that there was not much promotion about this documentary. I also wrote an article in Oriental Daily discussing the Tiananmen incident. Indeed, the incident has a great impact on the people of Hong Kong.

After watching this three-hour film, all sorts of feeling came welling up in me. My first reflection was that when the student movement began in early April 1989 it was about anti-corruption and anti-dictatorship but unfortunately it later turned into anti-government, advocating overthrowing the Deng-Li-Yang Clique. My second reflection was that the film revealed the internal power struggle within the Communist Party leadership. As a result of the 4 June incident, ZHAO Zi yang and his faction were ousted. I have another reflection about CHAI Ling, one of the leaders of the 4 June movement, who came to Hong Kong recently. She also admitted — and we saw that on the film that the students were at fault, the government were at fault too. With such a tragic happening in China, we should be awakened. I believe the Chinese leaders will not forget the 4 June incident.

However, concerning today's debate in this Council, must 4 June incident be rehabilitated? I feel that the Chinese leaders also need to think about this. It is unfortunate that the 4 June incident has happened. Looking back into history, can we rehabilitate the incident? A question always comes to my mind: had the government at that time not done what it did, what would the situation have been? Of course there is no way to know it today. However, what we see today is that over the eight years since the 4 June incident, the Chinese Government has not changed its open policy and there is great improvement in the standard of living of the Chinese people. I therefore believe that there is no way to settle the debate in the short term.

The 4 June incident has become an emotional complex of Hong Kong people. During my visit to the United States in February, I talked to the director of the Asian Research Institute of Stanford University, who is also from Hong Kong. He asked me how Hong Kong would be affected by the rehabilitation of the 4 June incident. I thought that it would do Hong Kong much good. However, would China do so? I have no idea.

Though today's debate is a political one initiated by the Honourable SZETO Wah's motion, we still have to revisit all that had happened. I feel that we can only use "unfortunate" to describe that part of history. The Liberal Party has considered very carefully today's motion, and many of us have seen the film, feeling that it is hard to come to a conclusion and to pin down who was right and who was wrong. CHAI Ling is one of the persons involved in it. She is now in Hong Kong and she also says that both parties involved were at fault. Therefore, in today's debate, we choose to abstain from voting.

**MR LAU CHIN-SHEK** (in Cantonese): Mr President, the Honourable Allen LEE is courageous enough to stay behind. Many Members have found excuses to disappear from this Chamber. However, I still wish to comment on a statement made by CHAI Ling to which Mr Allen LEE has just referred (I am not sure if it was Mr Allen LEE's oversight, or he left it out on purpose). She has clearly pointed out a very important statement: the government was wrong and so was the students, but when the government took the action to kill, it was committing a crime which was 100% wrong. I wish that Mr Allen LEE noted where the emphasis of CHAI Ling was when he quoted her. She said that both sides were at fault, but the government was 100% wrong when it began to take action to kill.

Mr President, the 4 June incident of 1989 was not only an internal conflict in the history of China, it was also a wound in the heart of every Chinese. Chinese all round the world could not forget the pain although eight years lapsed and the 4 June incident has not been rehabilitated.

The demand for the rehabilitation of the 4 June incident comes from our passion for our compatriots. Though the people who were killed in the 4 June incident have turned into ashes, their souls can never rest in peace. Some compatriots who became handicapped in the incident have to bear the scar of it.

They have nowhere to voice their grievances and lead a life of poverty. Furthermore, those who witnessed the tragedy unfolded are tortured mentally and live in nightmares. They are disturbed mentally. Many compatriots are held in prison because of the 4 June incident, and some are made exile by China. People who once involved in the incident find that they cannot continue with their proper career and academic pursuits. Even their families are affected.

WANG Dan is the fine young gentleman who has us worried the most. Between the age of 21 and 28, he celebrated six of his birthdays in prison. Today is the second anniversary of his second imprisonment since the 4 June incident. When we think of this fine young compatriot whose democratic ideals and strength of character are so admirable, how can we not feel despondent?

To rehabilitate the 4 June incident is like playing a piece of requiem, singing a song of freedom and writing a consolation verse. If the Chinese Government wants it, it can be done easily. A few words would be like a medicinal plaster that can soothe the souls of those people whose lives have been affected, and would also be like a drink that cleanses the pain of every Chinese compatriot who is concerned about the 4 June incident.

Our debate on rehabilitating the 4 June incident today has great symbolic significance. Hong Kong will soon be handed over to China. The directly elected Legislative Council will soon be replaced by an indirectly appointed Provisional Legislature. This debate on this rehabilitation issue perhaps will be the last one in the Legislature of Hong Kong. Similarly, the present session is also the last chance for Members to declare their conscience. Today, whether you are a person with conscience or one who tries to cover up something, you will find yourself fully exposed in broad daylight.

Surely today's debate is not just a chance for us to declare our stand and bare our conscience, it is our demand for the rehabilitation of the 4 June incident, which will bring justice to China, give Hong Kong greater assurance on its return to China and give greater credibility to the promise China makes to Hong Kong.

I believe all these merits spring from rehabilitating the 4 June incident. Mr President, I hope that one day I can witness the rehabilitation of the 4 June incident. I sincerely hope that this day will not be very far away.

With these remarks, I support the motion.

**MR YUM SIN-LING** (in Cantonese): Mr President, any Chinese with conscience will not forget the 4 June incident. CHAI Ling pointed out that this year's 4 June anniversary has special significance because it is the first after DENG Xiaoping's death. Those people who were not yet in power in 1989 will use people and events related to the incident to embarrass their political opponents so as to get some benefits. News about ZHAO Zi-yang and BAO Tong, for example, has already been circulated recently. We believe that this will gradually lead to the rehabilitation of the 4 June incident. People who hold a more pessimistic view will think that it would be a couple of decades before the incident could be rehabilitated, just like the rehabilitation of the 28 February incident in Taiwan. Some other people reckon that if the present ruler can maintain a stable rule for some more years, he may rehabilitate the 4 June incident to dispel any resentment of the people. Whether it takes a few years or a few decades, the 4 June incident will be rehabilitated, and like what DENG Xiao-ping said during the 4 June incident, if anything has to happen, it will happen and cannot be changed by one's subjective wish.

Seventy years before the 4 June was the May-Fourth Movement. The democratic condition around the world was much worse than what we have today. The democratic China established by Dr SUN Yat sen was seized by the warlords. However, even the Northern Warlords at that time did not dare to carry out such bloody suppression as that happened on 4 June 1989. As a result, the final victory belonged to patriotic students and the people. Over these 70 years, people around the world show great improvement in their political awareness, and the Chinese also show heightened political awareness. The suppression, however, plunges China into a situation worse than it was 70 years ago. Leaving the 4 June incident not rehabilitated is against the natural law of social development. An undercurrent will lurk beneath the sea of humanity. Any intelligent leader should rehabilitate the 4 incident to ensure long-lasting stability.

All Chinese with conscience should demand that the 4 June incident be rehabilitated. Though Hong Kong no longer has the spectacle of having one million people marching onto the streets, it does not mean that these people have disappeared. It is impossible for them to forget the 4 June incident. Some of

them may have migrated overseas, mixing with the overseas Chinese communities who in 1989 were greatly impressed by Hong Kong's support shown in this democratic movement. Among the tens of millions of overseas Chinese, some still show great concern about China and cannot forget the 4 June incident. The scar of the bloody massacre that ended the 1989 democratic movement remains to be a talking point among most overseas Chinese. If the 4 June incident cannot be rehabilitated in the near future, many parents and teachers will hand down this tragedy to their young generation through words of mouth. Tens of millions or even more than a billion of overseas Chinese will do the same. This will be the greatest oral history campaign in the whole human history. It will not stop, and with China becoming more and more open economically, and with more students returning to China, and more exchanges between local and overseas Chinese, the scar of the 4 June incident will not fade. Instead, it will be rehashed again and again. If the 4 June incident is not rehabilitated directly by the people who ordered the suppression, it will be rehabilitated by the ones who oust them. If the communist system does not rehabilitate it, people will take the initiative. The energy that demands the rehabilitation will never be dissipated, and this energy will abide by the law of conservation of energy. Evading the issue will not relieve any resentment in the people aroused by the incident. We believe that the tide of history cannot be stopped and the undercurrent of people's resentment will never dissipate. The 4 June incident therefore must be rehabilitated so that the Chinese can live with dignity.

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

**MR CHEUNG MAN-KWONG** (in Cantonese): Mr President, today I come to this debate of conscience in this Council with a heart of sincerity. We demand that the Chinese Government should rehabilitate the 4 June incident, as the dignity of the people who had given their lives for the movement, the liberty of those who still keep on fighting for democracy even though they are kept in prison, and the destiny and direction of Chinese as a nation hinges on this incident being rehabilitated. We should, therefore, keep up with the fight.

Mr President, we believe in history. Despite that eight years has elapsed, I definitely have not forgotten the 1989 democratic movement. I still remember those young men at Tiananmen Square fighting for democracy and freedom. I

can still remember one million people shouting on Chang'An Street and the reverberating cries of all patriotic overseas Chinese. I certainly remember the gunshots and the tracks of the tanks that had crushed the conscience of the Chinese. All these were part of the 4 June incident — a nightmare, a debt of blood and a historical wound that cries for rehabilitation.

Throughout these eight years, the fights around the issue of the 4 June incident are not limited to mourning, marches and protests. It is a struggle between forgetting and not to forget. Many people said that the incident has become history, and let it be judged by the future. Their saying so is to make us give up our fight today, and let time make us forget and clear us of our memory. Mr President, I will not forget. Misery begins when misery is forgotten. The 4 June incident demonstrates clearly what is right and wrong — the students were protesting against corruption and striving for democratic freedom. Those fine young men, demonstrating peacefully, should not be so suppressed and killed even though they might be at fault. This is a crime, and unpardonable crime. To rehabilitate the 4 June incident enables us to face squarely this part of history and learn a lesson from this historical tragedy.

Mr President, we believe in the present. Despite that eight years has elapsed, people are still on our side. Many people say that the number of mourners is decreasing, and Hong Kong will not see one million people marching or 150 000 people attending the candlelight vigil. This is normal. Every one has a living to live and cannot always put the incident before one's livelihood. However, no one has abandoned his conscience; no one has given up the judgement for what is right and what is wrong. People who have supported the incident with sincerity know how to be patient and persistent and keep on waiting; they believe that the 4 June incident will be rehabilitated one day.

Mr President, I remember a story occurred at Czechoslovakia. In 1968, when the Union of Soviet Socialist Republics put down the democratic movement there, many anonymous people lit up candles at the Square of Prague. They kept the flame alight. The passers-by certainly knew that the candlelight represented the hopes of the people of Czechoslovakia. Twenty years had passed, and finally the dream came true. I think anyone whose heart was once

touched by the 4 June incident would have a place for a candle. Burning slowly, the flame will never die. This is the power of people's spirit.

Mr President, we believe in the future. We are still young. Youthfulness does not stop at age; it covers passion and hopes as well. Throughout these eight years, among those who suppressed the democratic movement, some have died, some have been ousted, some have been involved in corruption, some have been arrested and some have grown senile. If you look around the prisons all over China, there are so many young and noble youths, so many fighters who have suffered much hardship of life. How can you say that there is no hope in Chinese Democracy? How can you say that the 4 June incident would not be rehabilitated? Even if the whole of China were a man-made prison, it would not stop us from reaching the sky of freedom and getting the news of spring.

After all, we are still embracing the whole world. Please take a look at the trends of the world — Democracy and Freedom have swept away the iron curtains of Eastern Europe and the Berlin Wall. Can China, a nation that must march towards the world, be an exception? China is apprehensive that it will be made to undergo peaceful change, but she has not heeded that fortresses are always taken from within. Though China is still under heavy-handed rule, the clamour for rehabilitating the 4 June incident has never stopped. It can be imagined that, like the 28 February incident of Taiwan and Kuangju incident of South Korea, history definitely would do people justice. We are waiting for that day to come.

Mr President, the Honourable SZETO Wah's motion is for rehabilitating the 4 June incident. But I really miss the young men in prison. Recently, I have read a book written by WANG Dan, called *Memoir from the Prison*. The book was written in extremely difficult situation. In it is a poem called — "I believe". I would like to read it loud because it stands for our shared belief:

Believe in history,  
For history is a tunnel dug out of bronze:  
Believe in the Present,  
For the Present is a passage to the ocean:  
Believe in the Future,  
For the Future is a never-ending Folk Song

That Accompanies Man's Existence.

Other than sadness and silence,  
We believe in everything.  
Therefore between dawn and dusk  
We savour  
What is the reward of time,  
What is the joy of waiting.

Mr President, what is the reward of time? What is the joy of waiting? What is our true belief? The answer is: the rehabilitation of the 4 June incident.

Mr President, with these remarks, I support Mr SZETO Wah's motion.

**MR LEUNG YIU-CHUNG** (in Cantonese): Mr President, eight years ago, more than a million Hong Kong people broke their silence and marched onto the streets to support the Beijing students' fight for democracy, to protest against the imposition of curfew by the ruling Chinese Communist Party and to oppose military suppression. I believe many of us here in this Council were among the million. On that day, we were anxious about the safety of the students and residents of Beijing. We were angry at the harsh policies of the ruling Communist Party, but at the same time we felt that dawn came upon China. We anticipated that democracy and liberty would take root in China. What linked Hong Kong people and even the people of the world together was the innocent heart of the students and residents of Beijing, and the human yearning for democracy and liberty. Those heroic and moving events eight years ago have become part of our collective memory. To most people in Hong Kong, those events are still fresh in our memory.

Reviewing history often makes one feel uncomfortable, because, besides touching on historical wounds, it also gives rise to pangs of pain. What is more important is that some of us are unashamedly trampling on history.

Though the bodies of the dead are scarcely cold yet, and the bloodstain on Beijing streets are yet to dry, some people are already hurriedly decorating the



executioners' caps with feathers. They have sold their souls to those in power and gloss over the atrocities of the Chinese Communist Party with all sorts of excuses. They argue that because of foreign intervention and internal faction strife within the Party, the Chinese Communist Party must take decisive action or else the country might disintegrate and the people would be in dire situation.

Some people choose to bury their heads in the sand in the face of history. They defend the government by saying that there are still a lot of gaps that need to be filled about the democratic movement and the 4 June killing, and it is better to leave them to be decided by future generations. Whether they prefer to blatantly side with the bigwigs, or to bury their heads in the sand, they are trampling on history rudely.

History is not just a record of "who did what on which date and where he did it", more importantly, it is about how we interpret it. Interpretation itself is already a struggle of political powers and a battle of different ideologies. Today's debate is a struggle of political powers, a battle of ideologies, and also a process with which we create history. What is reflected in today's debate is a historical struggle between repression and anti-repression, domination and anti-domination, evil and righteousness, darkness and light.

Rehabilitating the 4 June incident marks the fight on morality, power, conscience and integrity between the Chinese people and those in power.

Whoever tramples on history today will be trampled down by history tomorrow.

Mr President, these are my remarks. I support that we should rehabilitate the 4 June incident, insist on investigating and holding those who ordered massacre responsible, fight for an end to one-party dictatorship and commit to building a democratic China.

**DR ANTHONY CHEUNG** (in Cantonese): Mr President, I support the motion of the Honourable SZETO Wah.

It is a thing of special significance for the Council to discuss the rehabilitation of the 4 June incident. Firstly, our discussion on this issue shows that we are not afraid of "our accounts being squared after the autumn harvest"

and that we are not afraid of being politically incorrect, and that we would not shy away from discussing the issue because the political environment will change with the handover. With this debate, we want to tell the people of Hong Kong that they should not have any fear, they should not shy away from voicing their thoughts and views out of fear, and they do not have to follow what is dubbed as "politically correct".

People who have advocated that the 4 June incident be rehabilitated should have the right to continue to protest loudly. We hope that after 1 July the incoming legislature will maintain our present freedom of speech, continue to hold debates on issues that are the concern of the public. The legislature will still be "an assembly for exchanging views".

Hong Kong people have not yet forgotten the 4 June incident. It has been eight years since the suppression on 4 June 1989. After eight years, our reflection and discussion on the incident should be of greater breadth and depth than that done eight years earlier. The Honourable Allen LEE just mentioned the film "The Gate of Heavenly Peace". Many Members, I believe, have seen it. I have seen it too. It has triggered a train of thoughts in me.

During her recent visit to Hong Kong, CHAI Ling expressed her views about the 4 June incident. She acknowledged that the students were at fault too. Then some people asked: if the students were at fault, why the student activists and democratic advocates "fail to back off when the situation was not too bad"? Why did they fail to give the government "a platform to step down"? Such views seem to imply that the stubbornness of the student and democratic movement leaders was the cause that led to the subsequent suppression. However, these people failed to question why the government did not give the students a way to back off? Why were the students not given "a platform to step down"? Why could a government that claimed it cared for its people use military force to crack down a peaceful movement that aimed at striving for democracy and against corruption?

The cause of the 4 June incident came from the Chinese government itself, from the classification the Government and the Communist leadership made of democratic movement. Once the movement was classified as "counter-revolutionary rebellion", it was no longer contradictions among the people and could be subjected to complete suppression. When we demand that the 4 June incident be rehabilitated, we want justice be done to history, and hold

those gave the orders responsible. No matter what fault the students might have in their action, tactic and judgement, or even they might have committed one hundred mistakes, the Government should not have used force to crush them. The Government must bear the responsibility for suppressing the 4 June incident.

Mr President, the call for rehabilitating the June 4th incident also embodies the concern of Hong Kong people to see that justice be done to the democratic movement. Some people claim that if at that time the people in Hong Kong did not support the democratic movement, did not donate money and tents, the students would retreat from Tiananmen Square, and there would be no military suppression. It is this view that underpins the argument that "well water should not spill into river water". Is the attitude of the people of Hong Kong that horrible? By attributing the responsibility of the incident, the suppression on 4 June, to the people of Hong Kong, to the Hong Kong Alliance for the Support of Democratic Movements in China, they are actually ignoring history and putting the cart before the horse.

Mr President, with Hong Kong soon to be returned to China, we want to reiterate that the 4 June incident must be rehabilitated. This is the demand of most people in Hong Kong. It is a knot in most people's heart that the shadow of the incident would not go away unless this knot is untied. The deep-seated frustration cannot be eradicated with advice like "look ahead", "forget the 4 June incident" and "do not get tangled up with history".

Perhaps some people have changed their attitude and shifted their positions. There may be people, who, like what a well-known person said on 4 June 1990, say that he was not the person who gave his signature in a signature campaign that rallied against the 4 June suppression. He by chance shared the same name. Some people were afraid of "their accounts being squared after the autumn harvest", afraid to face history, so they excuse themselves for a while. However, most people in Hong Kong and the majority of Chinese have not forgotten the event.

Mr President, the Chinese leadership always says that the Chinese people have a good memory of history. They are right because they clearly remember the events like the Opium war, Sino' Japanese War and the Incidents over Diaoyu Island. Similarly, I believe the Chinese people will not forget the suppression of the 4 June Incident in 1989.

Mr President, these are my remarks.

**DR LEONG CHE-HUNG:** Mr President, I rise to speak in support of the motion. In supporting the motion, I am not looking at it from a political angle like my Honourable colleague Mr SZETO Wah who has so eloquently spoken. Nor am I speaking or looking at it from a theoretic angle put forward by my honourable friends, Mr LAU Chin-shek and Mr YUM Sin-ling. I support this motion, Mr President, because I am a Chinese, a Chinese who has chosen to stay in Hong Kong to see, to witness and to help Hong Kong to prosper under Chinese rule. In short, like many or like most Chinese around the world, I am looking for a democratically-developed China.

Mr President, I have participated in quite a few marches around June 1989. I participated again because I am a Chinese, and as a Chinese I was hopeful that this country of ours could move into an open, democratic country both in politics and economics. I participated because I was hoping to see China strong, or rather to see China showing the world the greatness this country of ours which holds a quarter of the world's population, that what this country can do. I was hoping that at least as Chinese we can hold our heads high and glorify our country. But I was frustrated and angered that not only did this not happen, but the well wishes of the students were cruelly crushed and wrongly labelled. I cried, actually.

Mr President, these were not just my personal sentiments but those of tens of thousands that marched alongside, and millions of Chinese around the world. Why? Why did we all do that? Because we are all Chinese.

Mr President, many of us today, and I am sure this Council, will continue to discuss whether the students or whether the Chinese Government did the right thing or the wrong thing, and there are obviously arguments one way or the other on both sides. But we are not here to discuss that. We are here to put our seal on what we believe was the reason behind the students' movement of 4 June 1989. For no matter whether the students were right or wrong, they did it not with an aim to overthrow the Government, but to plead their beloved Government to do better for their people and for all of us Chinese. It has to be an honourable task.

**MR TSANG KIN-SHING** (in Cantonese): Mr President, eight years ago today, one million Hong Kong people took to the streets for the first time. Here is a newspaper that I would like to pass to Mr President for filing in the records of this Council. This is *Wen Wei Po*, dated 5 June 1989, in which were photos clearly showing corpses piling up on the streets of Beijing. I want to pass it to Mr President for filing in our records.

Mr President, I am not sure, if you can, whether you will choose to be absent from this Council. I am holding newspaper advertisements put out by "the former politicians", that is those former politicians of Hong Kong, and "the latter politicians" during May, June and July in 1989. Mr President, your name is also here. You love playing soccer. I would like to criticize those "Soccer Star Politicians" who are absent today. Why do I say so? Because they know how to spot the gaps and sneak in. At the drop of a hat, they will "overturn their former selves with today selves", revoking yesterday's right with today's wrong.

Mr President, you put out an advertisement in a paper on 27 May 1989. It reads: "We firmly believe that today's China will be tomorrow's Hong Kong". I now would like to take some time to recount the history of that time. On 16 June, an advertisement put out in the paper by a group of Hong Kong citizens and Urban Council voters accused the Urban Councillors for using tanks to crush the Goddess of Democracy in Hong Kong. Why do I say that? It was because on that day, the Urban Council did not allow the Goddess of Democracy to be put on display at Victoria Park and Sha Tin Town Hall. They used their invisible hands, the invisible tanks, to crush the Goddess that was created by Hong Kong artists in 1989. Yesterday, the Urban Councillors did the same thing again. I do not know how the Honourable MOK Ying-fan voted back in 1989, but I know how he voted yesterday. He voted against the application to erect the "Pillar of Shame" at Urban Council venues because he said that it would affect handover celebrations. In fact, he was worried about his own promotion prospect. If he agreed to such an application, his office might be in jeopardy. Mr MOK Ying-fan, I can only throw my hands up in despair.

Mr President, Mr TAM Yiu-chung is now a favourite of the Chief Executive of Hong Kong Special Administrative Region. On 16 June 1989, he was one of the signatories of a joint announcement, which said, "What could we do? Over the past few months, we have been closely watching the development of the student movement in Beijing. We are extremely worried what turn this movement will take. We are shocked and distressed. The bloodstains on the

streets of Beijing are yet to dry, but massive countrywide arrests are underway already." Among the signatories was Mr CHEUNG Kam-chuen, who already passed away. The second signatory was Mr TAM Yiu-chung, then followed by Mr SZETO Wah, Mr Edward HO, Mr PANG Chun-hoi, Mr NGAI Shiu-kit, Mrs Peggy LAM, Mr LEUNG Chun-ying, Mr Dennis CHANG, Mr NG Hong-man, Mr CHENG Yiu-tong, Mr Gary CHENG, Mr HO Chung-tai, Mr Federick FUNG, Dr WU Wai-yung, Dr Anthony CHEUNG and Dr YEUNG Sum, all of whom are celebrities. Please take a look at today's Council. Where have some of these people gone? They cannot face their conscience. They do not dare to face the people and justify their action. Do they dare to vote? I always respect the Liberal Party. They do not have any position on this issue. However, the FTU did not vote in 1989. I would like to read out the advertisement put out by the FTU.

I first read what Mr LEUNG Chun-ying said in his advertisement, which was published in *Wen Wei Po* on 5 June 1989, "I want to express my deepest sorrow for those patriotic compatriots in Beijing who have died a heroic death. I strongly condemn the Communist leadership for bloodily suppressing and massacring the Chinese people. I salute to all the members of Wen Wei Po." This was put out because *Wen Wei Po* left its editorial section blank, and out of grief, Mr LEUNG Chun-ying put this out on 5 June, 1989. The FTU did the same. Sometime afterwards, the Honourable Albert CHAN will give this book to the Secretariat to be kept in the Time Capsule as a testimony of the time.

Where have the foxes and the "political tourists" gone? Do they dare to come back and vote? I can tell you now if the 4 June incident is rehabilitated, they will claim that they have offered the support and demanded the rehabilitation. They are wolves and foxes with a head of a human being, they are lice on foxes, I also have .....

**PRESIDENT** (in Cantonese): Mr TSANG Kin-shing, can you use other words?

**MR TSANG KIN-SHING** (in Cantonese): I can. But you have delayed me for four seconds, you have to give me back four seconds.

**PRESIDENT** (in Cantonese): I will.

**MR TSANG KIN-SHING** (in Cantonese): Mr President, I advise people of Hong Kong to see through these beasts in human form.

**PRESIDENT** (in Cantonese): Mr TSANG Kin-shing, could you again use other words?

**MR TSANG KIN SHING** (in Cantonese): What words do you think I can use to describe them? I feel that they are a group of "Maradonna Politicians", knowing how to spot the gap and sneak in. Mr WONG Siu-yi is also one of them. When I think of these people, I really feel that the Beijing students have died an undeserved death.

Mr President, though you are not eligible to vote, I hope that during voting you can give me a sign. If you support Mr SZETO Wah, please show me a "√", otherwise a "x".

Thank you, Mr President.

**PRESIDENT** (in Cantonese): You have overrun by 27 seconds.

**MR LEE CHEUK-YAN** (in Cantonese): Mr President, eight years have passed since the 4 June Massacre. I believe you all agree with me that the events of the 1989 democratic movement and the 4 June Massacre are still very fresh and alive in our memories. I think we can still recall those days when we glued to the televisions and radios daily for news of the movement. I think we can still recall those days when we made banners, flyers, Tee-shirts and stickers. I think we can still recall the day when a million people walking hand in hand onto the streets. We can still recall the day when we marched despite that typhoon signal no. 8 was up. We can still recall the "Songs of Democracy for China" that was staged in Happy Valley. We can still recall those days when the

students of Beijing staged hunger strikes at Tiananmen Square. We can still recall the day when the Goddess of Democracy was crushed to pieces. We can still recall the day when people fell on Chang'An Street and the day of the Black Mass Sit-in to commemorate the dead.

I read in a newspaper that the Honourable IP Kwok-him said that he did not have the same starting point as the Honourable SZETO Wah. Could the overwhelming support for the democratic movement shown by the people of Hong Kong not be our common starting point? If Mr IP Kwok-him forgot what he had said, let us look at those 1 677 political advertisements published between 24 May and 2 October in 1989. They are historical evidence and everlasting records of the patriotism shown by the people of Hong Kong, including many of us in this Chamber. Mr YIP Kwok-him had once said in an advertisement, "but if turmoil is to be avoided and get back the support of the people, the Government cannot shirk its duties".

On 23 May, the Chinese Manufacturers' Association of Hong Kong and the Chinese General Chamber of Commerce, Hong Kong jointly put out an advertisement, opposing the use of force and appealing to the Chinese Government not to resort to military suppression. On 24 May, there was an urgent appeal issued jointly by various Hong Kong and Macau community bodies. It stated, "Force should never be used to suppress the students and citizens of Beijing". The appeal represents a huge rally of different sectors of Hong Kong. In the advertisement were such household names as NGAI Shiu-kit, Stanley HO, LI Ka-shing, CHENG Yu-tong, LEE Shau-ki, LO Tak-shing, Vincent LO, KWOK Bing-sheung, KWOK Bing-kong, KWOK Bing-luen, CHENG Yiu-tong, Raymond CHIEN, James TIEN, Henry TANG, LEUNG Oi-sie, LEUNG Chun-ying, Ronald ARCULLI, Gary CHENG, TSANG Yok-sing, LEUNG Kam-chung and WONG Siu-yi, and also many people who are members of the Hong Kong Alliance in Support of China Democratic Movement. It demonstrates the solidarity of the people of Hong Kong.

After the suppression on 4 June, the Hong Kong Federation of Trade Unions issued a statement that "strongly condemn the Beijing leadership for resorting to bloody suppression and using violence against the students on 4 June. The Chinese Manufacturers' Association of Hong Kong and the Chinese General Chamber of Commerce, Hong Kong also issued statements. The Chinese



General Chamber of Commerce stated, "We are deeply shocked and enraged by the bloody massacre of students and citizens in Beijing by the small group of Chinese leaders. We strongly condemn such atrocities committed by this small group of Chinese leaders and express our deepest condolences to the dead." Then on 16 June there was another advertisement of solidarity: "What should we do?" It said, "We will remain steadfast in our patriotic stand and continue to strive for democratic freedom". Now, we have to show our steadfast patriotic stand. Now let us strive together for democratic freedom. I hope that all of us will use our votes to express our stand — we will indeed continue to stand steadfast.

Some people say that the 4 June incident is not an if-not-white-then-black issue. If the Government could open fire on unarmed citizens, was it not a matter that showed clearly what was black and what was white? Some say that the students were also at fault and they did not know when to stop. The students did not know when to stop just because the Chinese leadership had never allowed people the freedom. They had never had the opportunity to form associations; they never had the space of a civil society. Under such a situation, how could the students know when to stop in face of such a sudden development? Could the government be absolved from opening fire on the students because the students did not know when to stop? Some say that both the students and the Government were at fault, and both should given "fifty strokes". Could opening fire be only punished with fifty strokes? Could the government gloss over its fault just by saying "the students are also at fault" and relieve itself of any liability in committing the massacre?

Today, when we look back to the 4 June incident, we find that the basic nature of the incident has not changed a bit. It is still clearly a black-or-white matter. What has changed is the heart of those who "shift their position". When one's interests and status are threatened, staying steadfast in one's stand will have to pay a hefty price. They therefore shift their stand, and finally interests override patriotism. What is in the greatest contradiction now is in the destiny of WANG Dan. His pure patriotism has suppressed his pursuit for personal happiness. He has given up his own happiness. For the ideal of establishing a democratic China, he delivered up his own liberty. The democratic movement in 1989 has become the burden of his life.

We must also salute to WANG Dan's mother. She suffers because her son has made a moral choice. She wrote in a letter, "He is totally calm and confident of himself. Using his own words, he is like a tree standing up to reality. Every month we toiled very hard on the trip between Beijing and Jinzhou, undeterred by frosty winters and sweaty summers. We neither had complaints or regrets. On the eleventh day of this month, I visited my son for the sixth time. Coincidentally, that day was Mother's Day. While heading east in a train, I felt that all sorts of emotion were welling up in me, I do not know how to describe it. A mother's pains and joy are connected with those of her children. It is the greatest of sufferings to have to suffer for one's children, but it is also the greatest of happiness to feel happy for one's children." She has not forgotten mothers all over the world and wishes them all happy.

WANG Dan and his mother are like trees that stand in face of the reality. But what should we do? Should we be fickle like swaying reeds? We believe that rehabilitating the 4 June incident is the first crucial step in China's heading towards democracy and freedom.

With these remarks, I support the motion.

**MR ALBERT HO** (in Cantonese): Mr President, the 1989 democratic movement in China was a patriotic democratic movement started spontaneously by the Chinese people, and it is certainly not "a pre-planned, premeditated turmoil" as described by the *People's Daily* in its editorial on April 26, and it is definitely not a "counter-revolutionary rebellion" as declared by the Government after the bloody suppression on 4 June.

The very nature of the movement is both patriotic and democratic. This is the conclusion drawn from the conscience of the people and the decision to be announced by history.

The whole democratic movement of 1989 was basically conducted in a peaceful non-violent manner. What the people asked for was that stern measures be taken against corruption and that democratic reform be introduced. The Government could not and dare not openly say no to these objectives. However, this peaceful movement, though having a broadly based public opinion, ended in a bloody suppression that made one feel sad and enraged!

Anyone with any rational and righteous thinking would undoubtedly raise a series of questions:

1. Why should armoured cars and tanks be used to wreck the sincere hope of the people and the reasonable demands of the people be answered with ammunition?
2. Why should such a bloody means be adopted to suppress the peaceful and unarmed people? Why should this option be taken instead of making use of this opportunity when the Chinese Government could reform its systems with the supportive enthusiasm of the people?
3. Why could not the government engage in sincere and open dialogue with the representatives of the people so that a consensus could be reached to achieve a mutually agreed goal? Could it be that the Chinese Government would topple with any such dialogue? Could it be that if the Chinese Government listened to the demands for reform, its credibility would be discredited and could not keep pushing on with its reform programme?
4. Why has the government, instead of learning a lesson from the 4 June incident and reflecting on what it has done, to cover up the fact of the suppression, to refuse to publish the number of people killed and their names, to ban free report and public discussion of the

incident, and to force the people to accept the official version of the 4 June incident?

Mr President, glossing things over cannot change the historical fact, nor can evading talking about it confuse the right from the wrong. Time will not make people forget, and mere power cannot replace truth and let a government shirk its responsibility.

Mr President, the debate today mainly aims at the government and those in power, as the people have already come to their conclusion, and history certainly will also pass a verdict on the incident. What we aim at, therefore, is the Government, those in power, those who cannot face up to the reality, those who show no conscience whatsoever, and those who try to evade the truth. We want them to declare their stand.

We want the Chinese Government to do justice to the people in respect of the 4 June incident! We want Members of this Council to make a fair statement with their conscience and courage!

They should not rebuff us by saying that we are not sure of the fact and we do not have the whole truth. They should not tell us that this Council should not mess with any affair of the Central, and should not let "well water mix with river water". They should not make preposterous remarks such as both the students and the government are in the wrong, so there should not be such thing as rehabilitation. They should not say that the matter is over and what is gone is gone, and let us look to the future. Some of my colleagues have given forceful response to such remarks. A deeper analysis of these words will show that those who utter them are only insulting their personality, wisdom and conscience. History will leave a record of what everyone of us says and how we vote. Regrettably, those who hold different views do not even have that courage to stay here and raise their objection. This is a great regret.

Mr President, any race or country cannot erase or forget their own history. They must have the courage to face up to the facts of history and reflect on what they have done wrong and admit their mistakes. By so doing, they can learn

their lesson from history and make correction and carry out reform and drive progress. That is where the race shows its vitality, with which it can thrive and prosper.

We firmly believe that the Chinese race is one with hope and vitality. We therefore firmly believe that the day when the 4 June incident is rehabilitated is not far off. These are my remarks and I support the motion of the Honourable SZETO Wah.

**MR SIN CHUNG-KAI** (in Cantonese): Mr President, what is a "good government"? A good government is one that would admit the wrong it has done. A government that would not admit its wrong would only go down the path of destruction or be replaced by a new government.

The governments of a number of Asian countries have also carried out bloody suppression. What have they come to now? Because of the Kuangju incident that took place in 1979 and 1980 in South Korea, Chun Dou Huan and Roh Tae Woo, both presidents at that time, are given respectively life sentence and 14-year imprisonment. Kuomintang started the 28 February incident on Taiwan in 1946, but 50 years later, Kuomintang has to give a public apology. Though the South African white government practised apartheid, the policies of the white government came to an end when election was introduced.

History told us that the 4 June would be rehabilitated; it is just a matter of when. History teaches us that we must admit the wrong we have done and make correction.

Our motion today is about rehabilitating the 4 June incident. In the past, China also worked to rehabilitate many of its wrong doings, and the Chinese Government has also assessed the right and wrong of MAO Zedong. The Chinese Government waged a number of political campaigns, with the latter ones

revoking the previous ones. When will there be a political campaign to rehabilitate the 4 June incident?

If the 4 June incident was to be rehabilitated with another political campaign, the social impact that it would give rise to would be greater than having the ruler to review the incident and admit to the people that he has done wrong. The consequence of starting a political campaign to revoke the previous ones just cause too much harm to the state and the people.

The ruler that ordered the massacre in 1989 has now gone to meet the Almighty. His successor should grasp this opportunity to prevent any political campaign and to make the government admit being responsible for the wrong it did, thus ameliorating the pain caused to the people and the State.

Mr President, I want to stress again what a good government should be. A good government is one that would admit the wrong it has done, and only with such admission can it lead the country to prosperity and national strength.

Mr President, with these remarks I support the motion.

**MR ANDREW CHENG** (in Cantonese): Mr President, I read in a newspaper that after watching "The Gate of Heavenly Peace". The Honourable IP Kwok-him of the Democratic Alliance for Betterment of Hong Kong (DAB) said he held different view on the 4 June incident, and that he dare not and would not rush to cast a supporting vote. The Honourable Allen LEE of the Liberal Party even negated the significance of the 4 June incident in a newspaper article by putting the blame on the ignorance of the students. I am enraged by the views of these two persons.

The crux of the matter is whether blood was shed, whether the government had killed our compatriot. I wonder if those of us here today, who are not going to support the motion, or have no courage to stand up and say that they are in

support of or against the motion or will abstain from voting, are of the view that it was the naive and impulsive of the students that pushed the situation at Tiananmen beyond control, thus giving the government the right to send the tanks out to suppress and open fire on those unarmed students.

Mr President, how can those Members from the so-called patriotic party keep on shamelessly criticizing those students who were killed in the incident but dare not say anything righteous in respect of the rehabilitation of the 4 June incident to the Communist rule that only knew to use relentless force to suppress its own people?

Mr President, I really cannot realize why it is so hard to say that the 4 June incident must be rehabilitated. Those who do not think that or even dare not say that the incident should be rehabilitated may have two reasons on their minds. Firstly, they must have already seen through what is behind the whole incident. Secondly, the students, and they themselves as well, might have acted too impulsively at that time. Some people say that the eight years since the incident have already cooled many people's enthusiasm and these people should begin to see the truth behind it. I would like to know, among those Members who do not have the courage to face up to the motion, if what they say reflects the sort of truth they hold in their minds, or if they are speaking against their conscience. I believe that their trying to understand the truth is only an excuse; what they really want is to be close to the bigwigs. Apprehensive of offending those in power, and looking forward to a continued survival under this regime, or even hoping to be given an official post, they can put aside their principles and betray the ideals and patriotism of the compatriots. They can thus be seen as an accomplice of the massacre.

On the view that the students were acting on impulse, I think that if, in May and June of 1989, hundreds of thousands of people, including students, farmers and workers, out of their patriotism, could march on to the streets, shouting simple slogan "Down with corruption!" and hoping that those in power could listen to the voice of the people, they certainly would not be acting on

impulse. Even if some of the students might have acted impulsively, they did so out of their love for the country. However, they were treated callously by the State in return. If we were not to reprimand those in power, not to ask for rehabilitation, but instead to rebuke the students for stirring up troubles, we certainly would have let down the tens of millions of Chinese who are hoping for a strong and prosperous China, and would even find it hard to face those martyrs who have died for this cause!

Mr President, members from a number of political parties disapproved of putting the Pillar of Shame on display at Urban Council venues. This makes me believe firmly that even works of art about the 4 June democratic movement and sculpture that represents China's democratic process are suppressed. We can never expect this group of pro-China Members, who also say that they are patriotic, have the courage to say anything to rehabilitate the 4 June incident. With this logic, we can never expect this group of pro-China Members to fight on behalf of the Hong Kong people for democracy and their rightful interests!

Mr President, when we marched onto the streets, we often sang the song "China Dream", in which there are the lines: "five thousand years of innumerable China dreams remain the same one dream", "let every Chinese have happiness, and their smile be always with the Yellow River". What we mean by "China Dream" is a strong and prosperous China, which is a very simple dream. These few lines reflect the sort of hardship the Chinese people have endured over the past five thousand years, and they can only find their happiness and smile in their dreams. Can those in power not feel ashamed? If we cannot even stand up to support a democratic movement which has sprung forth spontaneously from the hearts of the people, how can we keep on fighting for our China dream? In that case, we may have to keep on dreaming our China dream.

Mr President, I am asking here those Members who have disappeared from this Chamber or who are not here to return to cast their vote of conscience, and to step out that first step for turning that dream of tens of millions of Chinese into reality! Thank you, Mr President.

**MR CHIM PUI-CHUNG** (in Cantonese): Mr President, I did not intend to speak today, but after the barrage from Members and friends from the Democratic Party that we have to face the truth, I would like to express my views on this.



Firstly, I have some reservation in respect of today's motion because it refers to the 4 June incident in 1989 as a democratic movement, but I think that "Tiananmen incident" is a more appropriate word. To call it "democratic movement" would need a court or someone to ascertain the facts. Of course, the Honourable SZETO Wah is entitled to expressing his views, but my views are different.

Recalling the time just before the 4 June, I myself was not interested in anything political. As one living in Hong Kong, however, I was also aware of what is going on around us. In respect of the 4 June incident, I hold the following four views:

Firstly, among the leadership of the Chinese Communist Party, ideological strife, that is, people holding different views on things, has been rampant. Secondly, the mass media and technology have made great progress. Thirdly, undoubtedly, there was some foreign influences. Fourthly, the Chinese leadership was inexperienced. The above four reasons have given rise to the following consequence:

Firstly, on the ideological strife within the leadership of the Chinese Communist Party, we can see that since its liberating China in 1949, the Chinese Communist Party has been subjected to a lot of pressure, which includes "the movement against the three evils", "the movement against the five evils", the anti-rightist struggle in 1957 and the Cultural Revolution in the sixties. From all these, it can be seen that there must be two parties that held different ideologies. From the recent television series, we can see that, as Deng Xiaoping put it, whatever that has to come will come, but as to how it comes, that is where different people would hold different views.

Secondly, the response of the mass media may be too quick. This can be attributed to the progress in technology. In the Cultural Revolution in 1967, innumerable people were killed. Could there be democratic movement or student struggle? How much do we know? As the technology at that time was not as advanced as that of today, the public or the politicians were not as affected by the media as people are today.

Thirdly, on foreign influences, we can see that many of the students were about to leave the Tiananmen Square. However, with material or spiritual support from certain people, their confidence of the movement was fanned up again. I would not say that it is some kind of movement. If you think that it is right, you may think so. I do not hold any view on this. I think that we must calmly analyse everything and not be biased towards any side.

Fourthly, I think that the Chinese leadership lacked determined action in the incident. This is a fact. Yang Shangkun, Chairman of the People's Republic of China, before the army entered Beijing, said in a television interview that the army was to keep law and order and was not meant to go against the students. Things turned out that action was required to clear the Tiananmen Square. We saw on television that the situation in Beijing at that time had got out of control. I feel that Yang Shangkun should have gone on to the television again to explain to the whole of China, to the students in Tiananmen Square and the media of the world that the army was to maintain order in Beijing. We could see that there was no order at all at Tiananmen. There were people about to revolt, so as a leader, he had to take appropriate action. Anyone who did not leave Tiananmen within a specified period of time and stated his reasonable demand, was already committing an act of treason or revolt. In such a case the mass media, the Chinese people and the world then apparently could not put all responsibilities on the Chinese authorities. By so doing, he at least had discharged his duties, but the fact is he had not done so.

Whether the Chinese Government is a good one or a bad one, it is all up to one's view. Before liberation, or before the Japanese invasion, at the time of the Qing Dynasty, all Chinese had to carry a pig-tail. However, within a few years, China made remarkable progress. From the perspective of a foreign country, China would not enjoy the status it has today without the progress it has made. Whenever we criticize or attack anything, we must have the whole picture in view. We should not let our bias or subjective view colour our views, and think that oneself is always correct. Being such a big country, China has a lot of problems to overcome.

Of course, the Chinese Government does not need me to defend it. It just happens that I hold different views. I hope that the one million marchers will know that there are still millions of people who opt to remain silent. We cannot

say that they are all wrong. Mr President, I hope that we can assess everything with a cool mind.

These are my remarks.

**DR YEUNG SUM** (in Cantonese): Mr President, it was my intention to stay on and be the last one to speak so that I could refute those who are against the motion, and therefore I have not prepared any speech. Up to this point, only the Honourable Allen LEE has spoken and the Honourable CHIM Pui-chung has rambled something, I really do not know how to give my refutation.

I would like to make a response to a few points raised by Mr Allen LEE. Mr President, I remember when I was still a member of Meeting Point, I met Mr XU Jiatun, former Director of Xinhua News Agency, on a number of occasion. He liked to lecture me like an elder, saying that we Chinese must look to the future. He told us that China had suffered bitterly during the Cultural Revolution, the movement against the three evils and the movement against the five evils and so it would certainly learn something; we therefore must view things with a Chinese perspective, and there would be a bright future for China. He also mentioned one other thing, saying that we were beach-goers on the wave of history: when the wave hit upon the beach, the kids playing there would bob with the breaking wave; sometimes the wave would wet our feet, sometimes not. We, the democrats, certainly are not fit to be the surfers of this historical wave because we are born with stiff bones, that is, we stick to our principles. However, it may be the irony of history that we are still here, but Mr XU Jiatun has already left his own country.

We Chinese always say that we have to look forward to the future, which, actually, is a very dangerous thing because it prevents us learning from history. Being unwilling to learn from history, China has witnessed the recurrence of its past tragedies time and again. History just keeps repeating itself.

There are three basic causes that led to the 4 June massacre. If these three causes are not to be dealt with, many more tragedies will occur in the future. The first one is the dictatorship of the Communist Party. The Chinese

Communist Party started revolution in the name of the people, but when it came to rule, it installed itself on the heads of the people and put the people underneath its feet. It placed itself high on the throne. It treated its people as its political pawn. Once gaining rule of the country, it forgot the interests of the people that it said it would protect. To the communists, people were just the tool for seizing power. When the students demonstrated peacefully, asking for democracy and freedom and the eradication of corruption, it thought that the people were challenging the dictatorship of the Party. That is why it resorted to such cruel means as sending out tanks and guns to mow down the students.

Secondly, the Chinese Communist Party does not care about human rights at all. Though they talk about their white paper on human rights, and the so-called "Asian values", I do not quite understand what they are talking about. All in all, they want us to maintain law and order, to respect our pecking order, to perform our obligations but not to ask for our rights, to succumb to authority and live a life under authoritarianism. These so-called "Asian values" basically do not encompass the concept of human rights. The concept of human rights that they hold is the right of survival. However, we have already accepted that everyone is born with certain basic rights, which cannot be arbitrarily taken away and are not any different across national boundaries. I therefore hope that the Chinese Communist Party will not turn the Chinese into a second class race, thinking that we do not deserve any human rights, or thinking that we only need to have our right of survival. We cannot accept such views. Mr President, we feel that there is no national boundary with human rights; everyone is born equal. People's dignity will not differ because of their social status, colour of the skin, race or sex.

Today, a number of Members have referred to the movie "The Gate of Heavenly Peace", whose director, Carma Hinton, I know personally. Her father is an expert in agriculture and has helped in Chinese agricultural work from very early days. Carma grew up in China and can speak Putonghua very well. Without looking at her, you may have mistaken her for a Beijing resident. When she visited Hong Kong, I had a chat with her. She said that she admired the democrats, because we stood at the forefront of history. She was only a recorder of history. I told her that she had given a cool treatment to this movie; though she mentioned that the students were also in the wrong, her basic stand was that students being massacred by the government was a historical record which could not be wiped away. Her movie is a historical documentary. I

believe that if the Chinese Communist Party cannot learn a lesson from this incident, tragedies will continue to happen in future.

We often say that the students were also in the wrong, and the Honourable CHIM Pui-chung mentioned party struggles, saying that the incident was too complicated, and its judgement should be left to history. We in fact should not have resorted to all sorts of excuses for fear of criticising the Chinese Communist Party. Some of us dare not criticize the Chinese Government possibly because we are afraid that we may be brought to account or have to pay for something we have said. However, no matter what excuse we use, it will not make any difference. It would be an inexcusable mistake when the government or Deng Xiaoping ordered that the students be put down. The Chinese Government must bear the historical responsibility for killing the students.

Just now Mr Allen LEE said that China now fares pretty well economically, and the society is also very stable. His saying so seems to imply that the suppression and massacring the students was wrong. Mr President, I want to remind all here that until this very moment, China has not undergone any political reform, and many of the activists of the democratic movement are still kept in prison. We can all see that what miserable consequence has befallen Wang Dan and Wei Jingsheng. Economic reform has not brought about political reform. Without any political reform, problems that plague China now will remain unchanged.

Mr President, finally, I want to say that we should never let ourselves be amnesiac of history, assuming that nothing has ever happened. Should we be like that, we would be persons without root, having no historical responsibility, and we shall not have the courage to change the status quo.

These are my remarks, and I support the motion.

**MRS ELIZABETH WONG:** Mr President, I rise to support the motion. I think the debate today is a debate to invoke the conscience of China and the Chinese people. To support the motion is to support the good conscience of a

modern China.

I did not want to speak first because there were so many speakers who have spoken with such eloquence, but I want to rise to the challenge of the Honourable SZETO Wah who said "we should record our thoughts, put them on record in Hansard so that years later people will know what this legislature stands for". So, despite of my lame eloquence, or lack of it, I rise to express a few thoughts which I would like to reinforce in terms of the statements made by Dr the Honourable YEUNG Sum.

For those of us who have studied Chinese history we know that Chinese history is potted with tragedies of young students in movements being crushed, of idealistic people being put into prison, of people who laid down their lives for ideas, for progress. Behind every ideal, behind every idea, there lies a life. I think we should learn from history. It appears to me that up to today the only thing we have learned from history is that we have not learned from history. So, let us take lesson today, and I want to support Dr YEUNG Sum's statement. Let us learn from the past. Let us begin now a bright future.

It is a great tragedy that the peaceful demonstration in 1989 before the Gate of Heavenly Peace was cruelly suppressed. I think everybody saw that. I was not a member of the people who marched in the street in 1989 because I was in a hospital. I broke my back. I watched the whole incident on TV. I was in Queen Mary Hospital and you will realize I never marched on 4 June. But I would march today because it is a question of unity of a vision for the future. I hope for a clean China, a peaceful China, a China without pandemic corruption, a China without cataclysmic upheavals, so that all Chinese can truly live in peace and lift up our heads and become reliable partners in the modern civilization of respect for human rights and maintenance of democracy for all peoples under the spirit of the rule of law.

I would like to put these simple thoughts on record for Hansard. Thank you, Mr President.

**MR EDWARD HO** (in Cantonese): Mr President, though I may not often hold the same political views as the Honourable colleagues from the Democratic Party, I have great respect for them, apart from one, Mr TSANG Kin-shing, on whom I

cannot use the word "respect". Just now I was having a snack upstairs and was not inside the Chamber (Mr President, some Members of the Democratic Party were also eating upstairs, and this is not improper), but on television, I heard that Mr TSANG mentioned my name and used some insulting words. As I was not inside the Chamber, I cannot invoke section 31(4) of the Standing Order to ask you, Mr President, to adjudge if the word "beast" which he used to refer to Members of this Council is insulting.

In respect of the 4 June incident, I have also signed my name to show my sympathy for the students and ordinary people of the democratic movement in China. I still have sympathy for them now .....

**PRESIDENT** (in Cantonese): Mr TSANG Kin-shing, is it a point of order?

**MR TSANG KIN-SHING** (in Cantonese): Mr President, since he has already mentioned my name, I would like to clarify what I have said. I have said that I am not referring to any member of the Liberal Party. I therefore hope that Mr Edward HO would not try to pigeonhole himself into my statement.

**PRESIDENT** (in Cantonese): You want to explain that you are not referring to members of the Liberal Party. Please sit down.

**MR EDWARD HO** (in Cantonese): I want to ask Mr TSANG Kin-shing whether he deems me not a member of the Liberal Party, because just now he really said "Edward HO".

**MR TSANG KIN-SHING** (in Cantonese): Mr President, in my speech I have also referred to Mr SZETO Wah, Mr YEUNG Sum and Mr CHEUNG Bing-leung. Have they shown any change of stand? I am only referring to those people who have shown a change of stand.

**PRESIDENT** (in Cantonese): Mr TSANG Kin-shing, in the advertisements you read, there was the name of "Edward HO". Later you said "beast", which refer to the group of Members. I therefore remind to mind your language. You said

"the group", but others may not know to which group you are referring. It is better to show some reservation in your language. Later you made a change by referring to placing oneself in a better position like that in a soccer game. For this once, I shall let you off.

**MR EDWARD HO** (in Cantonese): Mr President, I would like to continue with my speech.

**PRESIDENT** (in Cantonese): Please continue.

**MR EDWARD HO** (in Cantonese): Just now I said that I have great sympathy for them. I think no one would show no sympathy for them. Of course, at that time we might not know what had happened exactly, and today we may not know as well. However, today when I watch the movie "The Gate of Heavenly Peace", I still have sympathy for them. I remember the day when the march was held (I have not taken part though), my daughter saw a number of Members of this Council. Some of them were from the Democratic Party or others. Some people asked the public to donate, and my daughter had also made donation. We are not to have different feelings towards this incident just because we are of different political affiliation or political parties. I think that we are all Chinese and would like to see China becoming more and more democratic. However, I feel that we should give China time, and this issue should be resolved by China itself and should be left to the judgment of history. I do not want to repeat what the Honourable Allen LEE has just said. He has also explained why we shall abstain from voting, but this does not mean that we do not have the courage to cast our votes here. We have our own views on this incident.

Mr President, I just want to talk about this incident and voice my feelings about it. I also hope that China will have a democratic system which we all shall feel proud of, and that it will be a economically developed country. We hope that the return of Hong Kong is only the first step to the unification of China and the Chinese people, so that we can all be proud of being Chinese.

Thank you, Mr President.

**MR BRUCE LIU** (in Cantonese): Mr President, the saying "Do not want to remember, but dare not forget" aptly shows the pain felt by the people of Hong Kong for the democratic movement in 1989. It has been eight years already.



Instead of positively facing up to the demand for democracy advocated by the 1989 democratic movement and rehabilitating the 4 June incident, the Chinese Government just wishfully hopes that people would, with the passage of time, forget their fervent demand for democracy.

To quiet down social dissatisfaction after the 4 June incident, the Chinese Government actively develop its economy to raise the standard of living of the people. However, any deepening in economic development will ultimately require reform in the political system, which was also the ideal of the 1989 democratic movement. Rehabilitating the 4 June incident is a must for political reform to begin and economic reform to take roots. In general, it works to the benefit of the Chinese Government as well as that of the Chinese people.

"Whoever started it should undo it," the Hong Kong Association for Democracy and People's Livelihood (ADPL) hopes that the Chinese Government should stop distorting the significance of the 1989 democratic movement; instead, it should seriously reflect on its past mistakes and, on this eighth anniversary day of the 4 June incident, respond to the demand for democracy of the Chinese people. Politically, it should rehabilitate the democratic movement of the 1989. In law, it should trace the people who should be responsible. It should also release those people who have been imprisoned because of the democratic movement, thus righting the wrong that has been done to those who died in the incident.

Mr President, I have been sitting here for a long time and reflecting on the debate about the 4 June incident. I would like to take this opportunity to talk about my views on the incident.

Firstly, as a Chinese, should a person be staying or leaving? Among the student leaders of the 1989 democratic movement, I have the highest regard for Wang Dan. At the most critical moment, he chose to remain in China. I am deeply moved by such great courage and he has set for me an example. "Only in cold weather can one find the worthiness of the pine and cedar which stand unfaded all year round." I have used this to goad myself, and feel that I should stay in Hong Kong and keep to what I am doing. This has been a great encouragement to me.

Secondly, I agree with CAI Ling that both the students and the Chinese Government have been in the wrong. On the part of the Chinese Government, it is certainly a sin to have opened fire on the students. CAI Ling admitted that

the students had also been in the wrong, and this has become clearer recently. I have been thinking what the students have done wrong, and how we can avoid the same mistakes. My understanding of the whole incident, like most of you, came from the newspapers, television broadcasts and books. CAI Ling has not stated clearly what mistakes the students had made. As far as I know, the students should not have staged such aggressive action at Tiananmen. Instead they should have resorted to gentler action. However, they stepped up even more aggressive action and had opted for it. The leadership and progress of the whole movement finally lost their direction; there was no way for the movement to backtrack or make further progress. I have reminded myself that if any movement is to start in Hong Kong, we should conduct it with a cool mind instead of any aggressive action, tolerance instead of rejection, and mutual respect instead of "putting labels" on others. Just now the Honourable TSANG Kin-shing has referred to the Honourable MOK Ying-fan, and I would like to say a few words on behalf of Mr MOK.

At yesterday's meeting of the Urban Council, the ADPL adopted two approaches in casting its vote. In respect of the application for use of a venue, we voted for it because we think that we should have that freedom of assembly for reflection, but as to where to put a certain piece of art, the Urban Council should have its own consideration. If an application is made to put a piece of art in an art museum, I think the ADPL will support it. As to the details, I think it is better to leave it to Mr MOK Ying-fan as he himself is an Urban Councillor. This is the position of the ADPL; I hope that no one will get us wrong. This is a meeting of the Legislative Council and we should not have discussed debates of the Urban Council.

Mr President, a lesson from history is that very often we do not learn from history. The mistake made by the students is a very minor one, but we have to learn the lesson and not to repeat it again.

Thirdly, the demands of the 1989 democratic movement are also my demands. However, it is an enormous task to build a democratic China. How should we begin? There are a multitude of tasks involved. Just with one's meagre effort, there is little one can do, and at most, we can only begin with what we have been doing. We therefore should begin our work here in Hong Kong, by making Hong Kong a place where corruption is not tolerated and where democracy is something we all strive for. We should keep Hong Kong a place

of tolerance, where no labelling is allowed and democracy is promoted through rational and tolerant culture. These are my views.

Finally, Mr President, on behalf of the ADPL, I support the motion of the Honourable SZETO Wah.

**MR LEE WING-TAT** (in Cantonese): Mr President, just now the Honourable Bruce LIU, on behalf of the Hong Kong Association for Democracy and People's Livelihood (ADPL), supports the motion of the Honourable SZETO Wah, but I think that all political parties or individuals should be consistent in their stand and act. Mr Bruce LIU mentioned that when the Urban Council was deciding whether a piece of political artwork about June 4 June should be put on display, the Urban Councillors handled the matter according to the relevant rules. However, anyone with eyes to see can see that this is a highly political decision. The Urban Council has never staged such a political debate on the question of displaying works of art in any of its venues. The reason behind is that this piece of art not only touches on politics, but also conveys a political view and message apparently different from that of the people in power in China now. In fact, it is unnecessary to use procedure and rules to conceal one's change in stand. If you have changed your stand, say so; if you think that such an expression may be a bit too antagonistic, simply say that it is unacceptable because it is too antagonistic. There is no need to use procedures or rules to evade making known the stand of the party to which one belongs on this issue.

Mr President, man will not forget history. Mr President, I want to state again in this Chamber my stand: the 4 June incident should be rehabilitated.

Mr President, I want to express again my respect for those who took part in the 4 June incident in 1989, and I want to express my respect for the young leaders of the democratic movement such as Wang Dan and others who, despite being subjected to all sorts of pressure, still insist on their stand. I feel proud that today we can again debate on the topic that the June 4th incident should be rehabilitated, because I believe that of all the Chinese communities around the world, this Legislative Council is the only forum that has held the most debate on the 4 June incident and the release of democrats. I feel proud of this and I shall continue with this.

Mr President, this debate is yet to be the greatest challenge. The other challenge to come is whether we can continue to stage similar debates after the first Legislative Council is elected. Would those who evade today's debate gather together and use procedure to prevent any such debate, or even be shameless enough to vote against such debate? Even so, we shall continue to propose such debate until the June 4th incident is rehabilitated.

Mr President, Members from many political parties have negated the whole democratic movement on the grounds of the minor mistakes the students made. Of course, the Communist Party would hold different views, and stage political struggles, and the democratic movement may even be used as a pawn in the struggles. These assumptions may be true, but should the rulers, who have power in their hands, consider some other more peaceful means to resolve these problems, instead of using guns and tanks to massacre the people? This is a question of right or wrong. The Government is wrong; it has committed a crime. This is very clear.

Mr President, I have not forgotten that during May and June in 1989, I marched with a million people, shouting slogans like "Down with LI Peng", "Down with the DENG-LI-YANG clique." My referring to these slogans here again in this Chamber is to leave a historical record. A race will only have hope if it has the courage to recognise history, and the race is more forthright compared with others who only ask the people to be dumb, to be forgetful, or even to twist facts in ways to deny one's history.

Mr President, I believe that the 4 June incident will be rehabilitated. In the flux of the world, events like the Cultural Revolution of 1967, the Tiananmen incident on 5 April, 1976, the 28 February incident in Taiwan, and even the Kuangju incident in Korea, all show that the history as penned by the rulers will be righted. Mr President, I have confidence that such a moment will come.

Mr President, these are my remarks, and I support the motion of the Honourable SZETO Wah.

**MR MOK YING-FAN** (in Cantonese): Mr President, today at this Council my name have been mentioned twice by Members. I, therefore, would like to respond to the decision made by the Hong Kong Association for Democracy and

People's Livelihood (ADPL) at yesterday's Urban Council meeting in respect of venue application. We explained the issue very clearly at the Urban Council's meeting. I hope I can explain this matter again here today so that everybody knows exactly what the situation was. We think that we should comment on matters and not persons, and we should not act on impulse. I think that we should respect each other in this Council, and I also respect every one here.

With respect to yesterday's decision, firstly we fully support the application for holding activities at the Statue Square. We therefore think that when the Recreation Committee rejected the application, it gave the impression that it was some kind of censorship, to which we do not agree. As to that sculpture "Pillar of Shame", we have received two Chinese names in respect of it. Before the ADPL came to its final decision yesterday, we had gathered public views about it. Firstly, *Ming Pao* conducted a survey asking the public whether the sculpture should be put on display. The result was 44% "not in favour", 25% "no opinion" and 31% "in favour". By analysing this scientific survey, we feel that the majority of Hong Kong people do not agree to displaying the sculpture at the venues of the Urban Council.

Secondly, we received a letter from four organizations, namely Social Democratic Front, Democratic Party, Frontier and Hong Kong Alliance in Support of Patriotic Movements of China. In the fourth paragraph of the letter, please allow me to read out this paragraph as it is one of the important factors that underpinned our decision, it says, "This sculpture is called "Pillar of Shame" by the Dane Jens GALSCHOT. He pointed out that his placing this sculpture in Hong Kong was to test whether the new leaders would protect human rights and the freedom of expression." Being elected members of the Urban Council, we have the responsibility to ensure that the Urban Council will implement what the electorates want us to do. Our duty is to help the Urban Council formulate policy. On the issue of venue application, our decision is based on how the Urban Council is to utilize its venues and the limits set upon such utilization. Our judgement is based on the following. Firstly, the majority of the people do not favour it. Secondly, from the letter we believe that this is a piece of art with a political message as it is meant to test if the incoming ruler will protect human rights and freedom of expression. We think that we would be setting a precedence. If similar situation arises in future, should we also approve such applications? We based our decision on these two reasons. Of course, whether it is a correct judgement, we, as Urban Council Members from the

ADPL, must bear the responsibility and the public of Hong Kong will give their verdict.

Finally, I would like to make a point. This morning I listened to an interview of one of my colleagues at the Urban Council on the radio. He mentioned that after Mr YIP Kwok-chung, Deputy Chairman of the Urban Council and member of the Democratic Alliance for Betterment of Hong Kong (DAB), went out with four of us, we changed our position. I would like to make a clarification of the matter. Firstly, we made the decision before 8.30 am. Secondly, we did not change our position because of our talk with Mr YIP Kwok-chung of the DAB. The ADPL Urban Councillors had already made up their minds before 8.30. I personally regret the remarks made by this Urban Councillor.

Thank you, Mr President.

**PRESIDENT** (in Cantonese): Just now I permitted Mr MOK Ying-fan to speak because he is one of the four members of the ADPL and his name has been mentioned by other Members in the debate. However, he seems to talk more about matters happened at the Urban Council. As this is not a meeting of the Urban Council, I hope that Mr Fred LI will not dwell on the happenings of the Urban Council when he speaks.

**MR FRED LI** (in Cantonese): Mr President, since you have allowed the Honourable MOK Ying-fan to talk about matters of the Urban Council, I think you will allow me to do so as well. Mr President, on that day the Honourable SZETO Wah and I attended the meeting. I would like to point out some of the problems, but I do not want to go into the details here. At first I only wanted to listen to the debate on the motion over rehabilitating the June 4th incident. Personally, I do not intend to talk about this particular issue because my thoughts have been expressed by many of my colleagues.

I want to express my disappointment with the Hong Kong Association for Democracy and People's Livelihood (ADPL) because they have not clearly expressed their position. Just now the Honourable Bruce LEE said that the

work of art should be allowed to display at any of the art venues. However, the Honourable MOK Ying-fan said he opposed the application out of political consideration. They are fundamentally "out of step" with each other. Is "Pillar of Shame" a work of art or an exhibit of politics? Mr MOK Ying-fan and Mr Bruce LEE have two different sets of explanations. Yesterday at the Urban Council meeting, no ADPL members mentioned that any work of art should be displayed in an art venue. Moreover, the ADPL members did not vote unanimously - three of them supported the Recreation Committee's decision that the "Pillar of Shame" should not be displayed at venues of the Urban Council; one member abstained. For this reason, I do not know what is going on within the ADPL but I know that there is some internal conflict within it.

I would like to talk about the "Pillar of Shame" which is related to today's motion. Works of arts always reflect a country's history which might embody a lot of bloodshed, revolutions and conflicts. For example, many works of art were created with the collapse of Communism in Eastern Europe. While visiting many Chinese museums, I find that many exhibits reflect the struggles against the British Empire and United States Imperialism and they were works of art. To a certain extent these works of art fully reflect the history of that time.

The 4 June incident, which is the topic of today's debate, took place eight years ago. Some people may not know what the incident was about. Some may think that both sides have made mistakes; therefore each side should be given fifty strokes and then let the whole issue die away. But I believe all of us will never forget the scenes on television that soldiers fired on the people at midnight on 3 June. That night, I received a call from my friend in Canada who also witnessed these scenes on television. He asked me whether I was frightened and would consider leaving Hong Kong. These scenes actually made me think for the first time about migration. That night was the only time I thought of leaving Hong Kong. After that night, I was too busy to have time to ponder over the idea of leaving because I was heavily involved in the work of Democratic Alliance and planning marches. But that night was too horrible. It was indeed the only time in my life that I thought of leaving Hong Kong. I was worried about the future of Hong Kong. That night my confidence in China was completely shattered.

Even today we are still hoping that the 4 June incident will be rehabilitated. We are still young. We can still wait for that day to come. We do not intend to put the responsibility on anyone, nor do we want anyone to face the "firing

squad" or suffer "caning" punishment. To me, the 4 June incident resembles the taking back of Hong Kong in that the Chinese Government is irresponsible to the people and does not give to us any sense of security or confidence. The Chinese Government often advocates that stability should be an overriding concern because it has no confidence in its own rule. "Patriotic Education for the entire Country", as advocated by JIANG Zemin, is something no other society will adopt. Such education is introduced because the Government is feeble and has no confidence in its rule. What is more, the Government itself is not elected, but it is ruling over the country. Such education is introduced with the hope that the people will love the country, love the Communist Party and then the communists can get on with their rule.

Today's debate is very simple because it can tell whether Members still remember or forget the 4 June Massacre — it is a tragedy, a blemish in Chinese history and Chinese Communist rule. We have not seen any member from the DAB, the Hong Kong Federation of Trade Unions and the Hong Kong Progressive Alliance present in today's debate. Where are they? This is a very good question. I suggest it should be registered in the Council Proceedings. Some day they must tell us whether they dare not face the debate or reveal their position.

I have listened to the Honourable TSANG Kin-shing's speech, I know that he was not against the Liberal Party; nor did he mean to refer to the Honourable Edward HO. Therefore, I hope Mr Edward HO will continue to treat us, including Mr TSANG Kin-shing, with respect. The adjectives that Mr President asked him to withdraw were not meant to refer to Mr Edward HO or any member from the Liberal Party.

With these remarks, I support Mr SZETO Wah's motion.

**MR ALBERT CHAN** (in Cantonese): Mr President, I like very much the speech of the Honourable Edward HO. I think he is speaking from the depth of his heart, especially after eight years, he still has sympathy for the patriotic students and the people of China who took part in the democratic movement. It must be a speech that has been suppressed in him for years. I am pleased to have this opportunity to hear it and I also admire our friends from the Liberal Party, who can deliver such a speech on this occasion.



The response made by the Honourable Bruce LIU and the Honourable MOK Ying-fan only reinforce my impression of the Hong Kong Association for Democracy and People's Livelihood (ADPL). In fact, over the past eight years, we all know what they are. On the one hand, they speak with the force of justice, but on the other hand, they resort to some very despicable tricks. This may be the sort of two-prong approach of the ADPL— "engaging in talks but keep fighting".

**PRESIDENT** (in Cantonese): Dr LAW Cheung-kwok, is it a point of order?

**DR LAW CHEUNG-KWOK** (in Cantonese): Yes, it is.

**PRESIDENT** (in Cantonese): Please raise it.

**DR LAW CHEUNG-KWOK** (in Cantonese): Mr President, could you please ask Mr Albert CHAN to sit down first? Mr Albert CHAN said that Members from the ADPL are despicable.

**PRESIDENT** (in Cantonese): Mr Albert CHAN, you said that Members from the ADPL were despicable. Are you referring to the ADPL or Members from the ADPL?

**MR ALBERT CHAN** (in Cantonese): Mr President, I said despicable tricks.

**PRESIDENT** (in Cantonese): Despicable tricks?

**MR ALBERT CHAN** (in Cantonese): Including Legislative Councillors from the ADPL.

**PRESIDENT** (in Cantonese): So that refers to every one of them, does it not?

**MR ALBERT CHAN** (in Cantonese): I refer particularly to Mr MOK Ying-fan and Mr Bruce LIU, and also Members from the ADPL who supported that the Pillar of Shame should not be put on display at any of the venues of the Urban Council, if they did so.

**PRESIDENT** (in Cantonese): You are testing my Chinese! I shall reserve my judgment until next meeting whether "despicable" (卑劣) can be used. If we go on like this, we will find that we cannot use any word.

**MR ALBERT CHAN** (in Cantonese): Mr President, those are despicable tricks.

**PRESIDENT** (in Cantonese): It is only with a despicable mind that you can have despicable tricks. I do not want to adjudge on this at the moment. Could you stop using this for the time being? Just a minute. Dr LAW Cheung-kwok.

**DR LAW CHEUNG-KWOK** (in Cantonese): What I want to ask again is that at first I heard that it was "despicable", but "tricks" was added afterwards. Please take note of this when you listen to the tape. Thank you.

**PRESIDENT** (in Cantonese): Thank you, Dr LAW Cheung-kwok. Mr Albert CHAN, please continue.

**MR ALBERT CHAN** (in Cantonese): Mr President, their "engaging in talks but keep fighting" approach actually is their stand on the 4 June incident — on the one hand, they said that it had to be rehabilitated, and they petitioned at the Xinhua News Agency and sent moon cakes as gift during the Mid-Autumn Festival; on the other hand, they kept fighting against any action for rehabilitating the June 4 incident and rejecting the application for the Pillar of

Shame to be put on display.

**PRESIDENT** (in Cantonese): Mr Albert CHAN, I want to remind you that the motion is that the 4 June incident should be rehabilitated, not whether the ADPL is a good political party or a bad one. Please make your speech in respect of the motion.

**MR ALBERT CHAN** (in Cantonese): The conclusion is that it is not a good political party.

**MR BRUCE LIU** (in Cantonese): Objection.

**PRESIDENT** (in Cantonese): Mr Albert CHAN, please sit down first. Mr Bruce LIU, is it a point of order?

**MR BRUCE LIU** (in Cantonese): Yes, it is. Is it allowed that one can keep saying that a political party is not a good political party? Is this despicable trick? Should this be stopped?

**PRESIDENT** (in Cantonese): If the language used becomes too aggressive, even if it is made in respect of a political party, it is still not appropriate. In general, a political party can be criticised, but if the language used is too aggressive, like using words like "a crook", it will not be permitted. As to comments made in respect of a Member, even less aggressive language will not be permitted. That is the usual practice. Now this is an opinion that Mr Albert CHAN of the Democratic Party has on the ADPL, but today's motion is not on whether the ADPL is a good political party. Mr Albert CHAN, please speak in respect of the motion.

**MR ALBERT CHAN** (in Cantonese): Mr President, I shall continue my speech on the June 4 incident. Just now Mr Bruce LIU said, "Only in cold weather can one find the worthiness of the pine and cedar which stand unfaded all year

round." It makes one wonder how chilly the atmosphere has become now. I think the closer we are to 1997, the more chilly the atmosphere becomes in Hong Kong, making some people wilt and weak in their political stand. I feel that the June 4th incident is a monster-revealing mirror, enabling us to see clearly what one's stand is, who have changed, and who have remained steadfast.

Mr President, regarding art, many Members have mentioned the various ways one may use to express one's feeling about the June 4th incident. Some adopted a political stand, others express it through art. In the past few thousands years, using art to express a political message has been very common. In 1993, the Hong Kong Alliance in Support of Patriotic Democratic Movements of China rented a corner of the Victoria Park, which was managed by the Urban Council, to stage a painting and sculpture exhibition named "China Dream". Two of the exhibits carried a political message. One of them was a large wall painting, on which was written "Never to forgive, never to forget", and the other one was a sculpture of a piece of wood covered with nails. At that time, the Urban Council did not carry out any political censor, but now, maybe because the atmosphere gets more chilly, some people become fearful. Or perhaps their hearts have got cold and therefore they impose political censorship and make political judgements in order to get rid of exhibits that express political message in art forms.

Mr President, history is fair to everyone, making its judgements in the long run like a long river. Although some people had a glorious past and took part in the 4 June movement and joined the Hong Kong Alliance in Support of Patriotic Democratic Movements of China, because of the chilly atmosphere, their hearts also get colder, thus turning their backs on their past. These people have throttled the activities of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China to which they belong, and also changed the name of the Pillar of Shame. I believe that history will not forget, just as the slogan "History will never forget" says, which the Hong Kong Alliance in Support of Patriotic Democratic Movements of China used in its marches some years ago. We firmly believe .....

**PRESIDENT** (in Cantonese): Mr Albert CHAN, please hold on. Mr MOK Ying-fan, is it a point of order?

**MR MOK YING-FAN** (in Cantonese): Yes, it is, Mr President. I think what Mr Albert CHAN said is just their own version of things, it is their belief. I just want to make this clear.

**PRESIDENT** (in Cantonese): Mr MOK Ying-fan, please sit down first. You just want to explain; this is not a point of order. Mr Albert CHAN, please continue. Mr MOK Ying-fan, I will give you time to explain later.

**MR ALBERT CHAN** (in Cantonese): Mr President, I think I have set the record as the Member being interrupted the most times. This may be another trick of the ADPL. Mr President, I am about to finish my speech, hoping that I will not be interrupted again.

**PRESIDENT** (in Cantonese): You should also reflect on why it is so.

**MR ALBERT CHAN** (in Cantonese): Mr President, I hope that you can also reflect on the way you preside at this meeting.

**PRESIDENT** (in Cantonese): Mr Albert CHAN, do you think that I have mishandled anything just now?

**MR ALBERT CHAN** (in Cantonese): Mr President, many people raised points of order which were not any point of order. If those people do not know what a point of order is, Mr President, you should reproach them for abusing it.

**PRESIDENT** (in Cantonese): Without first listening to their question, how can I know that whether they are points of order?

**MR ALBERT CHAN** (in Cantonese): They have time and again repeated the same mistake, you should have reproached them.

**PRESIDENT** (in Cantonese): Did I not say immediately that it was not a point of order and ask them to sit down? It is almost time now, you still have one minute left. Please continue.

**MR ALBERT CHAN** (in Cantonese): I do not need one minute; 30 seconds is enough.

Mr President, my concluding remark is that history will never forget the shame today; history will never forget. I also believe that some day, the 4 June incident will be rehabilitated.

**DR JOHN TSE** (in Cantonese): Mr President, I hope that you allow me to use sign language tonight and record it in the Official Record of Proceedings.

**PRESIDENT** (in Cantonese): Dr John TSE, I believe that the Clerk is unable to record your sign language because, instead of using electronic video recording, we use written words to record the proceedings. I am sorry that we cannot do it but I shall remember what you say.

**DR JOHN TSE** (in Cantonese): I hope that my suggestion will be considered as not everyone can speak.

Mr President, eight years ago a sign was very popular in Hong Kong. Tonight, I really want to use this sign (though it cannot be recorded, the sign resembles the letter "V") to salute to our bravest Chinese heroes of the 4 June incident and demand the Chinese Government to rehabilitate the incident immediately. "V" is for victory, power to the people. People will win.

From tonight's speeches, I find a failing in the Chinese psychology. It is the fear for Authority, and the lack of courage to challenge the authority. When

there were Chinese students who had the courage to challenge the government, to doubt and challenge the authority, there are people amongst us who do not even have the courage to support the students. If we do not have the courage to doubt, to challenge or even do not have the conscience to voice criticism, Mr President, I believe the mistakes in history will emerge again.

With these remarks, I support the Honourable SZETO Wah's motion.

**PRESIDENT** (in Cantonese): Mr SZETO Wah, you can now respond. You have 10 minutes 32 seconds out of 15 minutes.

**MR SZETO WAH** (in Cantonese): Mr President, no one Member has spoken against my motion. I feel very happy but at the same time very sorry. I feel happy because this is a motion of righteousness that makes some Members feel too ashamed to stay. Certainly, they will not be able to vote against my motion. What I feel sorry about is that we cannot make them leave a record of their views.

The Honourable Allen LEE used the film "The Gate of Heavenly Peace" to defend his Liberal Party's decision to abstain. Luckily not just one or two persons have seen the movie; many people have also seen it. The film exposed the faults and weaknesses of the students but it also enables us to witness the gore of bloodshed and piles of corpses. About two years after the 4 June incident, one day Mr Allen LEE specially invited me to talk with him personally on the second floor of this building. On sitting down, the first sentence he uttered was, "Many people placed a wrong bet on the issue of the 4 June incident". Just by watching the way he wagged his tail, I know what he was up to. At that time I replied, "Mr LEE, I never gamble. If I had to put a bet on the 4 June incident, I would put down my whole life." As a result, our talk only lasted for a few minutes. When he said that people placed the wrong bets, I did not know whether he included himself as well. Does he place a bet now? He has mentioned that economic reform still continues. However, the corruption that the students protested against is still rife in China. What is more, WANG Dan is still in prison.

The Honourable CHIM Pui-chung did not agree to my using "Democratic

Movement" in the motion. According to his opinion, what happened at that time was perhaps not a movement advocating democracy. I do not understand why he does not put forward his amendment. It can be modified as "the 1989 rebellion must be suppressed and long live bloody suppression". I hope that he will stay behind to vote, be it a negative vote or abstention. It is nice to a negative vote; otherwise, the final record will appear too boring.

The Honourable Bruce LIU talked about moderation and radicalism. In fact, he is putting feathers on his own cap by alluding to someone who is radical. While describing himself as moderate, does he mean that the radicals whom he insinuates will be suppressed like the students at Tiananmen?

The Honourable MOK Ying-fan opposed the "Pillar of Shame". He said that it was used to test if the incoming ruler would tolerate human rights and freedom. Why can there not be a test? Why? Maybe we can find out that they can tolerate. Why did he oppose testing? Are we not allowed to test? He claimed that all was politics. The play "White-haired Lady" is now being performed at Urban Council venues. Is this not a political drama? He quoted a newspaper survey. On the day the vote was taken, the result of the survey was not yet published. I do not know if he got tipped off.

I have great respect for the Honourable Edward HO. I believe in his sincerity, which is of utmost important. I repeat, I respect him very much.

Someone, who seemed to be the Honourable IP Kwok-him, unless my memory fails me, has commented in a newspaper that there was foreign intervention in the 4 June incident. Let him show us the proof. As to "intervention", does it mean the conference of the International Monetary Fund held at Beijing at that time? Or Gorbachev's visit to Beijing? Or the media reporting in Beijing? Let the one who utters this prove what he claims and not to make slanderous accusations. Do not spit the victims of the massacre with the blood of the same victims.

Some people say that it is internal affairs of China and therefore we should



not discuss or interfere with them. I remember vividly the midday of 7 June, 1989, as I was walking past the retail section of Commercial Press, I saw a slogan — "Nanjing Massacre, the Japanese killed the Chinese; Beijing Tiananmen, the Chinese killed the Chinese". We cannot forget and forgive what the Japanese did in Nanjing. They massacred our compatriots. How on earth can we forget and forgive what the Chinese did during the 4 June incident? They massacred our compatriots. The Chinese killed their people. It is a more hideous crime than the killings carried out by foreigners.

We are human beings. We are Chinese. Why are we not allowed to discuss the Democratic Movement of 1989 and the 4 June incident? When we watch the film "The Schindler's List", we shed tears and condemn the Nazi's atrocities against the Jews. Why are we now not allowed to discuss the issue of rehabilitating the 4 June incident? Unless we were neither human beings nor Chinese, or else we would be animals, cats, dogs, mice and parrots, and could remain indifferent. However, we are not cats, dogs, mice or parrots; we cannot help being moved by the massacre of our compatriots.

Some people also say that the incident should be left to the judgement of history. The incident was first called "rebellion", and gradually downgraded to "political disturbances" and then to "disturbances". The gradual downgrading shows that some people are feeling weak in themselves. They would like to see big problems turn into small ones and small problems into no problem at all. They want everybody to forget. "Let history be the judge" is also a way to make people forget. "Let history be the judge" is no more than a ploy to let time wash away people's memory and make people forget this historical event. If you fear of nothing, why do you want others to forget? They are using history as an excuse to drag the matter on, the longer the better. LU Xun said, "Any debt of blood must be repaid. Delaying the debt longer will only drive up the interest". If our conscience is clear and justice is on our side, why need we drag the matter on in the name of history and dare not face it?

This Council has a Time Capsule. I have already arranged with the

Secretariat that once today's voting has completed and the speeches delivered, they will be put into the Time Capsule. Ten years from now, perhaps I may not be here to witness the opening of the Time Capsule, but somebody will be able to do so. Though today some Members neither speak nor vote, when people examine the records taken from the Capsule, they may question. Where were those Members? Where did they hide? Why did they feel so ashamed that they have to hide from people?

Many Members, who are not with us today, were with us on the streets during the 4 June incident. Mr IP Kwok-him said that our starting point is different. Actually we started from the same point. On this issue, we started from the same point. When we shouted our slogans during the 1989 marches, they shouted louder than we did. However, the further we went, the further they deviated from us. It is not that we set off from different starting points; actually we have parted company.

Mr President, these are my remarks. Thank you.

*Question on the motion put.*

*Voice vote taken.*

Mr SEZTO Wah and Mr TSANG Kin-shing claimed a division.

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

**PRESIDENT** (in Cantonese): I would like to remind Members that they are now called upon to vote on the motion that the Council regards that the 4 June Incident must be rehabilitated.

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 results will now be displayed.

Mr SZETO Wah, Dr LEONG Che-hung, 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 LAU Chin-shek, Dr LAW Cheung-kwok, Mr LAW Chi-kwong, Mr LEUNG Yiu-chung, Mr Bruce LIU, Mr MOK Ying-fan, Miss Margaret NG, Mr SIN Chung-kai, Mr TSANG Kin-shing, Dr John TSE, Mrs Elizabeth WONG and Mr YUM Sin-ling voted for the motion.

Mr CHIM Pui-chung voted against the motion.

Mr Allen LEE, Mr Edward HO, Mr Ronald ARCULLI and Mrs Miriam LAU abstained.

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

## **ADJOURNMENT AND NEXT SITTING**

**PRESIDENT** (in Cantonese): In accordance with Standing Orders, I now adjourn the Council until 2:30 pm on Wednesday, 28 May 1997.

*Adjourned accordingly at twenty-two minutes past Nine o'clock.*